



# TEXAS

## Health and Human Services

Cecile E. Young, Executive Commissioner

### REQUEST FOR COMPETITIVE SEALED PROPOSALS FOR A GENERAL CONTRACTOR

**Project 20-053-KSH – BAS Replacement, Kerrville State Hospital, Kerrville,  
TX**

**RFP No. HHS0009777**

**Date of Release: Friday, 7/9/2021**

**Proposals Due: Tuesday, 8/10/2021 by 10:30 A.M. Central Time**

**HUB Subcontracting Plans Due: Wednesday, 8/11/2021 by 10:30 A.M. Central Time**

**NIGP Class/Item Codes:**

**910-17** – Energy Computerized Control System, HVAC, Lighting, Utilities, etc., Installation, Maintenance and Repair Services

**914-50** – Heating, Ventilating and Air Conditioning (HVAC)

**941-55** – HVAC Systems, Power Plant, Maintenance and Repair

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## **SECTION 1 – GENERAL INFORMATION, HISTORICAL BACKGROUND, AND REQUIREMENTS**

### **1.1 General Information**

The Health and Human Services Commission (“**Owner**”), for and on behalf of its Health and Specialty Care System Division (“**HSCS**”), is soliciting Competitive Sealed Proposals (“**Proposals**”) for selection of a General Contractor (“**Contractor**”) to provide general construction and construction administration services to the Owner for Project No. 20-053-KSH, BAS Replacement, Kerrville State Hospital, Kerrville, TX (the “**Project**”), in accordance with the terms, conditions, and requirements set forth in this Solicitation.

1.1.1 This Solicitation is being issued to select a Contractor for the Project as provided by *Texas Government Code Chapter 2269, Subchapter D*.

1.1.2 The Owner will select the Proposal that offers the “best value” for the agency based on the published selection criteria and on its ranking evaluation. The Owner will first attempt to negotiate a Contract with the selected Respondent. The Owner may discuss with the selected Respondent options for a scope or time modification and any price change associated with the modification. If the Owner is unable to reach a Contract with the selected Respondent, the Owner will formally end negotiations with that Respondent and proceed to the next-qualified Respondent in the order of the selection ranking until a contract is reached or all Proposals are rejected, and the Solicitation is canceled.

### **1.2 Historical Background**

The Owner is responsible for oversight of all Texas Health and Human Services agencies, which includes overseeing and coordinating the planning and delivery of health and human services programs throughout the state of Texas. For more information about the Owner, its programs, or its facilities, please visit <https://hhs.texas.gov>.

As part of its responsibilities, the Owner owns and operates 13 state supported living centers and 10 state hospitals (the “**Facilities**”) across the state of Texas. The Owner offers programs at the Facilities 24 hours a day, 7 days a week, 365 days a year in both urban and rural settings. Facility programs and operations fall under the direction of HSCS. There are 24 campuses [note one facility has two separate campuses] with a total of 1,490 buildings encompassing approximately 9 million square feet of space. Construction dates for the Facilities range from 1857 to 2000, with new or planned construction at six new buildings in Austin, San Antonio, Houston, and Rusk. The majority of Facilities buildings are serviced and connected by aging utility, roadway, walkway, cabling, mechanical, electrical, and plumbing systems, and other such infrastructure. Many buildings have been renovated, modified, and added to over time with many now serving different purposes than when originally designed and built. In addition to Life Safety Codes, State Fire Marshal, and other such requirements, the Facilities (depending on program) may be subject to Centers for Medicare and Medicaid Services and/or The Joint Commission standards and inspections.

### 1.3 Definitions

Refer to **Exhibit C**, Attachment B, Texas Uniform General Conditions for Construction Contracts with HHSC Supplementary General Conditions (“**General Conditions**”), for additional definitions. Additionally, as used in this RFP or any exhibit or attachment incorporated and made a part of this Solicitation, unless the context clearly indicates otherwise, the following terms and conditions have the meanings assigned below:

“**Addendum/Addenda**” means written clarification(s) or revision(s) to this RFP issued by the Owner.

“**Confidential Information**” means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) deemed confidential under state or federal confidentiality laws.

“**Contract**” means the agreement entered into by the Owner and selected Respondent, which may incorporate the contents of this RFP and the selected Respondent’s Proposal, except as specifically provided to the contrary in the Contract and any amendments to the Contract.

“**ESBD**” means the Electronic State Business Daily, the electronic marketplace where State of Texas bid opportunities over \$25,000.00 are posted. The ESBD may currently be accessed at <http://www.txsmartbuy.com/esbd>.

“**HHSC**” or “**Owner**” means the Health and Human Services Commission established under *Texas Government Code* Chapter 531, its officers, employees and authorized agents.

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

“**HUB Subcontracting Plan**” or “**HSP**” means written documentation regarding the use of subcontractors, which is required to be submitted with all responses to state agency contracts with an expected value of \$100,000.00 or more where subcontracting opportunities have been determined by the state agency to be probable. The HUB subcontracting plan subsequently becomes a provision of the awarded Contract and shall be monitored for compliance by the state agency during the term of the Contract.

“**Proposal**” means all information and materials submitted by a Respondent in response to this RFP. Also, may be referred to as “**Submittal**” in this Solicitation, exhibits, attachments or Addenda.

“**Public Information Act Copy**” means an additional copy of a Respondent’s Proposal that has been redacted (blacked out) by the Respondent as set out in **Section 1.4.1.2** of this Solicitation.

“**Respondent**” means the entity responding to this RFP.

“**RFP**” means this Request for Competitive Sealed Proposals including any exhibits, attachments and Addenda, if any. Also may be referred to as “**Solicitation**” in this RFP, exhibits, attachments or Addenda.

“**State**” means the State of Texas and its instrumentalities, including HHSC and any other state agency, its officers, employees, or authorized agents.

“**Texas Health and Human Services agencies**” or “**HHS**” as used in this Solicitation, exhibits, attachments or Addenda, means both the HHSC and the Texas Department of State Health Services, separately or combined.

#### 1.4 **Public Information**

1.4.1 Proposals and contracts are subject to the Texas Public Information Act (“**PIA**”), *Texas Government Code* Chapter 552, and may be disclosed to the public upon request, unless an exception to disclosure applies. Information pertaining to Proposals and the Contract will be withheld or released only in accordance with the PIA. Subject to the PIA, certain information may be protected from public release. Respondents are advised to consult with their legal counsel concerning disclosure issues resulting from this process and to take precautions to safeguard trade secrets and proprietary or otherwise confidential information. Furthermore, other legal authority also requires the Owner to post certain Proposals and contracts on HHSC’s website (<https://contracts.hhs.texas.gov/>) and to provide such information to the Legislative Budget Board for posting on its website.

If a Respondent wishes to protect portions of its Proposal from public disclosure, the Respondent should familiarize itself with the law and submit its Proposal as follows:

##### 1.4.1.1 **Mark Original Proposal:**

- a) Mark the original Proposal, on the top of the front page, the words “**CONTAINS CONFIDENTIAL INFORMATION**” in bold, capitalized letters (the size of, or equivalent to, minimum 12-point Times New Roman font or larger); and
- b) Identify, adjacent to each portion of the Proposal that Respondent claims is exempt from public disclosure, the claimed exemption from disclosure (NOTE: no redactions should be made in the original Proposal).

##### 1.4.1.2 **Public Information Act Copy of Proposal:**

Submit a separate “Public Information Act Copy” of the original Proposal (in addition to the original and all copies otherwise required under the provisions of this Solicitation). The “Public Information Act Copy” must meet the following requirements:

- a) The copy must be clearly marked as “**PUBLIC INFORMATION ACT COPY**” on the front page in large, bold, capitalized letters (the size of, or equivalent to, 12-point Times New Roman font or larger);
- b) Each portion of the Proposal Respondent claims is exempt from public disclosure must be redacted (blacked out); and
- c) Respondent must identify, adjacent to each redaction, the claimed exemption from disclosure. Each identification provided as required

in subsection (c) of this Section must be identical to those set forth in the original Proposal as required in **Section 1.4.1.1(b)**, above.

- d) The only difference in required markings and information between the original Proposal and the “Public Information Act Copy” of the Proposal will be the redactions - which can only be included in the “Public Information Act Copy.” There must be no redactions (blacked out information) in the original Proposal.

1.4.2 In accordance with *Texas Government Code* §2252.907, Respondent shall be required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the PIA, available in a Microsoft Office® Word® format or Adobe® Portable Format (“PDF”) that is accessible by the public at no additional charge to the State.

1.4.3 Effective on or after January 1, 2020 (86<sup>th</sup> Legislature), *Texas Government Code* Chapter 552, Subsection J, added requirements regarding document retention and public disclosure for entities in a contract with a stated expenditure of, or results in an expenditure of, at least \$1 million. These requirements may apply to responses to this Solicitation and Respondent agrees that the Contract can be terminated if Respondent knowingly or intentionally fails to comply with a requirement of Subchapter J.

1.4.4 Owner will not consider any Proposal that is copyrighted in its entirety; however, this exclusion does not encompass limited copyrighted information within the Proposal (e.g. marketing materials, drawings, designs, submittals, etc.), which may be considered by the Owner on a case by case basis.

## 1.5 **Type of Contract**

The Contract will be in the form of the Owner’s General Construction Services Contract in **Exhibit C**, which incorporates by reference all attachments referenced therein including, but not limited to, Attachment B to **Exhibit C** of this Solicitation, General Conditions, and awarded under this RFP as a fixed price contract.

## 1.6 **Changes, Addenda, or Modification to RFP**

The Owner reserves the right to change or modify any provision of this RFP by addenda, or to withdraw this RFP at any time prior to award if it is in the best interest of the Owner. Any such revisions will be posted on the ESBD. It is the responsibility of Respondent to periodically check the ESBD to ensure full compliance with the requirements of this RFP.

## 1.7 **Informalities**

The Owner reserves the right to waive minor informalities in a Proposal if it is in the best interest of the Owner. A “minor informality” is an omission or error that, in the Owner’s determination if waived or modified when evaluating Proposals, would not give a Respondent an unfair advantage over other Respondents or result in a material change in the Proposal or RFP requirements.

## 1.8 Questions

The Owner will allow written questions and requests for clarification of this RFP. Questions must be submitted in writing and sent by email to the Owner's Point-of-Contact listed in **Section 1.13**. Respondents' names will be removed from questions in any responses released. Questions shall be submitted in the following format. Submissions that deviate from this format may not be accepted:

- a) Identifying RFP number
- b) Section Number
- c) Paragraph Number
- d) Page Number
- e) Text of Passage being questioned
- f) Question(s)

**Note: Questions or other written requests for clarification must be received by the Point-of-Contact by the deadline in the Schedule of Events. Please provide company name, address, phone number, e-mail address and name of contact person when submitting questions.**

## 1.9 Clarifications

Respondents must notify the Owner's Point-of-Contact of any ambiguity, conflict, discrepancy, exclusionary specifications, omission or other error in the RFP in the manner and by the deadline for submitting questions. If a Respondent fails to properly and timely notify the Owner's Point-of-Contact of such issues, the Respondent submits its Proposal at its own risk, and if awarded a Contract: (1) shall have waived any claim of error or ambiguity in the RFP and any resulting Contract, (2) shall not contest the interpretation by Owner of such provision(s), and (3) shall not be entitled to additional compensation, relief, or time by reason of ambiguity, error, or later correction. Responses to questions or other written requests for clarification may be posted as addenda on the ESBD. The Owner reserves the right to modify addenda prior to the deadline for submission of Proposals. It is Respondent's responsibility to check the ESBD. The Owner also reserves the right to decline to answer any question or questions or to provide a single consolidated response for one or more questions at the Owner's sole discretion.

- 1.9.1 Requests for clarification regarding Project Scope of Work (Attachment H1 of Exhibit C) shall be communicated through Point-of-Contact, identified in **Section 1.13** below. Any response from the Owner will be in the form of an Addendum, which will be posted to the ESBD and shall be acknowledged by the Respondent on the Respondent's Pricing Proposal Form (**Exhibit F**).
- 1.9.2 Respondents shall consider only those clarifications and interpretations to the Project Scope of Work that the Owner's Maintenance and Construction Department's Architect issues through the Point-of-Contact, identified in **Section 1.13** below, by Addendum. Interpretations or clarifications in any other form, including oral statements, will not be binding on the Owner and should not be relied on in preparing Proposals.

## 1.10 Exceptions

The Owner will consider more favorably Proposals that offer no or few exceptions, reservations, or limitations to the terms and conditions of this RFP.

- 1.10.1 Respondent shall carefully review the Owner's draft Contract (**Exhibit C**) and all attachments. Respondent must expressly state in its Proposal all terms and conditions of the Owner's draft Contract (including any contract attachments) that Respondent will require to be changed before Respondent will sign the Contract. However, Respondent must be willing to accept Owner's draft Contract without change or modification or, if Respondent will require changes, Respondent must provide all draft language it proposes for each change requested. In addition to proposed edits, Respondent must provide a reasonable and articulable explanation of why the Respondent requests each change. Redlining Owner's draft Contract or its attachments or providing a statement with the intent or an implication that the Contract will require further discussion is insufficient.
- 1.10.2 If a Respondent includes exceptions in its Proposal, Respondent is required to use the Exceptions Form included as **Exhibit D** to this RFP and provide all information requested on the form. Any exception for which the Respondent does not provide all required information without qualification in the format set forth in **Exhibit D** may be rejected without consideration.
- 1.10.3 Respondents are highly encouraged, in lieu of including exceptions in their Proposals, to address all issues that might be advanced by way of exception by submitting such issues to the Owner as questions or requests for clarification. Any exception included in a Proposal may result in a Respondent not being awarded a Contract.
- 1.10.4 No exception, nor any other term, condition, or provision in a Proposal that differs, varies from or contradicts the terms and conditions in this RFP will be considered to be part of any Contract resulting from this RFP unless expressly made a part of the Contract in writing by the Owner.
- 1.10.5 A Proposal should be responsive to the RFP as worded, not with any assumption that any or all terms, conditions, or provisions of the RFP will be negotiated. Furthermore, all Proposals constitute binding offers. **Any Proposal submitted in response to this RFP that includes any type of disclaimer or other statement indicating that the Proposal does not constitute a binding offer may be disqualified.**

## 1.11 Assumptions

Respondent must identify on the Exceptions Form any business, economic, legal, programmatic, or practical assumptions that underlie the Respondent's response to the RFP. The Owner reserves the right to accept or reject any assumptions. All assumptions not expressly identified and incorporated into any Contract resulting from this RFP are deemed rejected by the Owner.



## 1.12 Submission of Proposals

1.12.1 **Proposal and HSP Deadline and Location:** The Owner will receive Proposals and HSPs at the times and location described below.

**Proposal: Tuesday 8/10/2021 by 10:30 A.M. CENTRAL TIME**  
**HSP: Wednesday, 8/11/2021 by 10:30 A.M. CENTRAL TIME**

**Express / Overnight and Hand Delivery Address:**

**Health and Human Services Commission  
Procurement and Contracting Services  
Attn: Bid Room Coordinator  
1100 West 49th Street, Mail Code 2020  
Austin, Texas 78756**

**USPS Mail Address:**

**HHSC Procurement and Contracting Services  
Bid Room  
Attn: Jay Dancer  
P.O. Box 149166  
Austin, TX 78714-9166**

**Label:**

**RFP No. HHS0009777  
Purchaser's Name: Jay Dancer  
Due Date and Time: 8/10/2021 by 10:30 A.M. Central Time  
Name of Company: XXXXXX**

1.12.1.1 Submit one electronic copy of the Original Proposal and if applicable, one electronic copy of the Public Information Act Copy, on one or two USB Flash Drive(s) that are labeled "Proposal" and "PIA Copy." The Respondent's signed Pricing Proposal Form must be included within the Proposal.

1.12.1.2 If an HSP is required, Respondent must submit in accordance with *Texas Administrative Code* Title 34, Part 1, Chapter 20, Subchapter D, Division 1, §20.285(b)(2) and as specified herein. Submit one electronic copy of the **Exhibit B**, HSP, on one separate USB Flash Drive(s) that is labeled "HSP."

1.12.1.3 Submit security bond in separate sealed envelope within the Proposal package referenced in **Section 1.12.5**.

1.12.2 Late submissions will be returned to the Respondent unopened. The Owner will not be held responsible for any Proposal that is mishandled prior to receipt by Owner. It is Respondent's responsibility to mark appropriately and deliver the Proposal to

the Owner by the specified date and time. The Bid Room Coordinator identified in **Section 1.12.1** will identify the official time clock at the Proposal submittal location identified above.

- 1.12.3 The Owner will not acknowledge or receive any submissions that are delivered by telephone, facsimile (fax), or electronic mail (e-mail).
- 1.12.4 Properly submitted Proposals and HSPs will not be returned to the Respondents.
- 1.12.5 Proposals and HSP materials must be enclosed in a sealed envelope, box, or container addressed to the Bid Room Coordinator identified in **Section 1.12.1**; **the Proposal package must clearly identify the Submittal deadline, the RFP Number, Point-of-Contact, and the name and return address of the Respondent.**
- 1.12.6 Properly submitted Proposals will be opened publicly and the names and any monetary proposals will be read aloud after the HSPs, if applicable to the RFP, are received by the Owner.
- 1.12.7 Prior to the RFP submission deadline, a Respondent may: (1) withdraw its Proposal by submitting a written request to the Owner's Point-of-Contact; or (2) modify its Proposal by submitting a written amendment to Owner's Point-of-Contact.

### **1.13 Point-of-Contact**

All requests, questions, or other communication about this RFP shall be made in writing via email to the following individual, as the Owner's representative and Point-of-Contact for this RFP. The Owner takes no responsibility for a potential Respondent's emails that are captured, blocked, filtered, quarantined, or otherwise prevented from reaching the proper destination server by any HHSC antivirus or other security software. All other communications between Respondents and other Owner staff members or the project Architect/Engineer(s) concerning the RFP are strictly prohibited. **Failure to comply with these requirements may result in disqualification of Respondent's Proposal.**

**Jay Dancer, CTCD**

[Jay.dancer@hhs.texas.gov](mailto:Jay.dancer@hhs.texas.gov)

- 1.13.1 The only exception to the Point-of-Contact is the HUB Coordinator. Any questions relating to the HUB Subcontracting Plan must be directed to the HUB Coordinator Marcus Gomez at [marcus.gomez@hhs.texas.gov](mailto:marcus.gomez@hhs.texas.gov).

### 1.13.2 Standards of Conduct for Vendors

Pursuant to Title 1 of the Texas Administrative Code (TAC), Part 15, Chapter 391, Subchapter D, Rule §391.405(a), contractors, respondents, and vendors interested in working with HHS are required to implement standards of conduct to apply to all matters involving, or related to, those solicitations and contract(s) between themselves and HHS. These standards must adhere to ethics requirements adopted in rule, in addition to any ethics policy, or code of ethics approved by the HHSC Executive Commissioner and must be at least as restrictive as those applicable to HHS personnel in the applicable ethics law and policy provisions.

The standards of conduct must include the ten standards of ethical conduct set forth in Section I of the HHS Ethics Policy and requirements to comply with ethical standards set forth in federal and state law (including, but not limited to, 1 TAC pt. 15, ch. 391, subch. D).

The standards of conduct, together with the responsibilities and restrictions incorporated herein, also apply to subcontractors of contractors, respondents and vendors.

Standards of conduct of any contractor, respondent or vendor may be reviewed and/or audited by the State Auditor and HHSC. Additionally, pursuant to Title 1 TAC Part 15, Chapter 391, Subchapter D, Rule §391.405(a), HHS may examine a respondent's standards of conduct in the evaluation of a bid, offer, proposal, quote, or other applicable expression of interest in a proposed purchase of goods or services.

Any vendor or contractor that violates a provision of Title 1 TAC Part 15, Chapter 391, Subchapter D may be barred from receiving future contracts or have an existing contract canceled. Additionally, HHSC may report the vendor's actions to the Comptroller of Public Accounts for statewide debarment, or law enforcement.

### 1.14 Prohibited Communication

On issuance of this RFP, except for the written inquiries for questions and clarifications, the Owner, its representative(s), or authorized representatives will not answer any questions or otherwise discuss the contents of this RFP with any potential Respondent or its representative(s). Attempts to ask questions by phone or in person will not be allowed or recognized as valid. Respondent shall rely only on written statements issued by or through the Owner's Point-of-Contact. This restriction does not preclude discussions between affected parties for the purposes of conducting business unrelated to this RFP. Failure to comply with these requirements may result in disqualification of Respondent's Proposal.

### 1.15 Evaluation of Proposals

Proposals shall be evaluated in accordance with *Texas Government Code* Chapter 2269. The Owner shall not be obligated to accept the lowest priced Proposal but shall make an award to the Respondent that provides the "best value" to the state of Texas. When considering "best value" and award, Owner reserves the right to set a minimum point requirement regarding the weighted qualifications criteria listed in **Section 3.2**. Proposals shall be consistently evaluated and scored in accordance with the requirements described in this RFP and in **Exhibit G**, Evaluation Criteria and Tool. **40%** of the evaluation will be based on the Respondent's Pricing Proposal Form (**Exhibit F**); the remaining evaluation will be based on

the Respondent's qualifications. All responsive Proposals will be reviewed, evaluated, and ranked by the Owner.

### **1.16 Other Information**

The Owner may contact references provided in response to this RFP, Respondent's clients, or solicit information from any available source, including owner's and/or Architect/Engineer's familiar with Respondent's work on past projects, opposing litigant from a public proceeding or their counsel, and the Comptroller's Vendor Performance Tracking System.

### **1.17 Initial Compliance Screening**

The Owner will perform an initial screening of all Proposals received. Unsigned Proposals and Proposals that do not meet minimum qualifications or do not include all required forms and information may be subject to rejection without further evaluation.

### **1.18 Owner's Reservation of Rights**

The Owner may evaluate the Proposals based on the anticipated completion of all or any portion of the Project. The Owner reserves the right to divide the Project into multiple parts, to reject any and all Proposals and re-solicit for new Proposals, or to reject any and all Proposals and temporarily or permanently abandon the Project. Owner makes no representations, written or oral, that it will enter into any form of agreement with any Respondent to this RFP for any project and no such representation is intended or should be construed by the issuance of this RFP.

### **1.19 Acceptance of Evaluation Methodology**

By submitting Proposals in response to this RFP, the Respondent accepts the evaluation process and acknowledges and accepts that determination of the "best value" Respondent may require subjective judgments by the Owner.

1.19.1 The Owner reserves the right to reject any Proposal if the Proposal Cost is determined to be unreasonable or irresponsible in relation to the other submitted Proposals and/or the Owner's estimate of the construction cost.

### **1.20 No Reimbursement for Costs**

Respondents understand that issuance of this RFP in no way constitutes a commitment by Owner to award a Contract or to pay any costs incurred by a Respondent in the preparation of a response to this RFP. The Owner is not liable for any costs incurred by a Respondent prior to issuance of or entering into a formal agreement, Contract, or purchase order. Costs of developing a Proposal, preparing for or participating in oral presentations and site visits, or any other similar expenses incurred by a Respondent are entirely the responsibility of the Respondent, and will not be reimbursed in any manner by the State of Texas.

## **1.21 Mandatory Pre-Proposal Webinars and Site Visits**

HHSC will conduct two pre-proposal webinars that will be held at the dates and times described below. **Attendance at one (1) pre-proposal webinar and at one (1) site visit is mandatory.**

### **Pre-Proposal Webinars:**

Wednesday, 7/14/2021 at 2:30 P.M. Central Time  
OR  
Monday, 7/19/2021 at 2:30 P.M. Central Time

Please register for the Pre-Proposal Webinar at:

<https://attendee.gotowebinar.com/rt/4222211928042761743>

After registering, you will receive a confirmation email containing information about joining the webinar.

### **Facility Site Visits:**

All respondents are required to attend one Facility Site Visit tour for each affected facility, in accordance with the schedule below. Facility site visit tour groupings will be strictly limited to 6 attendees per tour. Each attendant firm shall be allowed a maximum of two (2) representatives at each facility site visit. Representative groups that exceed this limit will not be accommodated. Facility site visit tours are anticipated to take approximately four (4) hours. Potential Respondents should be prepared to complete the tours for which you are scheduled; additional tours will not be offered.

Pre-registration for a site visit is **required**. To register for a site visit, e-mail Jay Dancer at [jay.dancer@hhs.texas.gov](mailto:jay.dancer@hhs.texas.gov). E-mails must include the following:

- a. Name, e-mail and phone number of firm representative(s) (two maximum); and
- b. Site visit dates in accordance with the schedule below.

**Deadline for Pre-registration for the Facility Site Visits is Thursday, July 22, 2021 by 5:00 PM Central Time.** Firms that do not pre-register for site visits will not be granted access to the facilities.

All attendees are required to observe the protocols detailed in **Attachment H5 – Site Visit Information, to include, but not be limited to an N95 mask (required – non- N95 masks will not be considered acceptable PPE for facility site visits) and eye protection (face shield or goggles). Regular eyeglasses are insufficient protection.**

See **Attachment H4 – Facility Maps**. Attendees will be given a COVID-19 screening at the stated staging area. COVID-19 screening may also be administered at the front gate. Upon arrival, attendees will be escorted to the parking area by Security Staff. Attendees will be met by facility staff in Building 610, Room 101. **Facility Contact:** Warren Setnan at 830-258-5284. Facility contacts are provided for issues with parking and navigation to the facility. All other issues shall be directed to the HHSC contact listed in Section 1.13.

**\*\*\*MANDATORY SITE VISITS \*\*\***

**The Texas Department of State Health Services has determined that COVID-19 represents a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code. As a precaution to reduce the transmission of COVID-19 and to protect patients, residents, contractors, and employees at the facility, personal site visits at the facility will be conducted with strict adherence to social distancing protocol.**

- 1. Visitors will adhere to the guidelines for the campus in Attachment D.**
- 2. Must sign the Sign-In Sheet to receive attendance credit.**
- 3. Must wear N95 Face Mask.**
- 4. Must wear eye protection (face shield or goggles).**

**1.22 Oral Presentations**

The Owner may require an oral presentation from any or all Respondents. Respondents will be provided with advance notice of any such oral presentation and are responsible for their own presentation equipment. Failure to participate in the oral presentation, if required, may eliminate a Respondent from further consideration. The Owner is not responsible for any costs incurred by the Respondent in preparation for any oral presentation. Singular non-competitive oral presentation of the highest scoring Respondent is a clarification exercise based upon the Respondent's initial proposal and is not scored. If deemed necessary and appropriate by Owner, evaluation and scoring of competitive oral presentations from selected acceptable, or potentially acceptable, Respondents shall replace the scoring of the initial evaluation, and shall serve as the final selection tool, using the initial evaluation criteria defined in Section 3.2.2.

**1.23 Questions or Requests for Clarification by Owner**

The Owner reserves the right to ask questions or request clarification from any Respondent at any time during the RFP process, including during oral presentations or site visits.

**1.24 Eligible Respondents**

Only companies or lawfully formed business organizations may apply. This does not preclude a Respondent from using subcontractors. The Owner will contract only with the individual, company, or formal business organization that submits a Proposal.

**1.25 HUB Subcontracting Plan**

It is the policy of the Owner, and all Texas Health and Human Services agencies, to promote and encourage contracting and subcontracting opportunities for Historically Underutilized Businesses in all contracts. Accordingly, the Owner includes a HSP when subcontracting opportunities are probable and a contract has an expected value of \$100,000.00 or more. The HSP is applicable for the life of the contract, including any subsequent amendments and renewals after award of the contract as related to the original HSP. If the Owner determines

that subcontracting opportunities are probable, then Respondents are required to submit a completed HSP. Failure to submit a required HSP will result in rejection of the Proposals.

Additional information regarding the applicability of the HSP requirement is set forth in **Exhibit B**.

## 1.26 **Protests**

Protests relating to the purchase of goods and services by Owner are governed by the *Texas Administrative Code*, Title 1, Part 15, Chapter 391, Subchapter C.

## **SECTION 2 – PROJECT INFORMATION AND SCHEDULE OF EVENTS**

**Project Location:** Kerrville State Hospital  
721 Thompson Dr.  
Kerrville, TX 78028

**Project Summary:** The scope of work includes, but is not limited to, the following:

The existing Johnson Controls Metasys Building Automation System (BAS) workstation which controls the Kerrville State Hospital is currently operating on a Windows 7 operating system (OS) that is no longer supported by Microsoft. The current Johnson Controls Metasys software will require the latest software revision to effectively operate on a windows 10 platform. The BAS control system and sequences of operation will be designed to accommodate the existing mechanical HVAC building systems, equipment, and utilities. The existing primary network between building controllers, BAS server and central operator workstation shall remain BACnet/IP.

**Project Estimate:** The approximate cost for construction of the Project is \$400,000.00.

## 2.1 **Schedule of Events**

<b>Event</b>	<b>Date/Time</b>
Issuance of the RFP	Friday, 7/9/2021
Pre-Proposal Webinar #1	Wednesday, 7/14/2021 at 2:30 P.M. Central Time
OR	
Pre-Proposal Webinar #2	Monday, 7/19/2021 at 2:30 P.M. Central Time
Mandatory Site Visit #1	Wednesday, 7/21/2021 at 10:00 A.M. Central Time
OR	
Mandatory Site Visit #2	Friday, 7/23/2021 at 10:00 A.M. Central Time
Deadline for submitting Questions	Wednesday, 7/30/2021 by 5:00 P.M. Central Time

<b>Deadline for submission of Proposals</b> (NOTE: Proposals MUST be <b>RECEIVED</b> by Owner by the deadline.)	Tuesday, 8/10/2021 by 10:30 A.M. Central Time
<b>Deadline for submission of HSP</b> (NOTE: HSPs MUST be <b>RECEIVED</b> by Owner by the deadline.)	Wednesday, 8/11/2021 by 10:30 A.M. Central Time
Opening of Proposals - Due to the Covid-19 Texas Public Health Disaster Proclamation and Declarations, proposals will be publicly opened by Webinar at the date and time specified. Webinar Link: <a href="https://attendee.gotowebinar.com/register/3129324857824175119">https://attendee.gotowebinar.com/register/3129324857824175119</a> Respondents' pricing information will be sent by email.	Thursday, 8/12/2021 at 10:00 A.M. Central Time
Anticipated Notice of Award	Tuesday, 8/31/2021
Anticipated Contract Start Date	Tuesday, 9/28/2021

Respondents must submit their Solicitation Responses to HHSC in accordance with the due date and time indicated in this Schedule of Events or as changed via an Addendum posted to the ESB.

NOTE: All dates are tentative and HHSC reserves the right to modify these dates at any time. At the sole discretion of HHSC, events listed in the Schedule of Events are subject to scheduling changes and cancellation. Scheduling changes or cancellation determinations made prior to the Deadline for Submission will be published by posting an Addendum to the ESB. After the Deadline for Submission, if there are delays that significantly impact the anticipated award date, HHSC, at its sole discretion, may post updates regarding the anticipated award date to the [Procurement Forecast on the HHS Procurement Opportunities web page](#). Each Respondent is responsible for checking the ESB and [Procurement Forecast](#) for updates.

By submitting a Solicitation Response, Respondent represents and warrants that any individual submitting the Solicitation Response and any related documents on behalf of the Respondent is authorized to do so and to bind the Respondent under any contract that may result from this Solicitation.

### **SECTION 3 – REQUIREMENTS FOR COMPETITIVE SEALED PROPOSALS**

#### **3.1 Minimum Qualifications** (Pass or Fail)

Respondents must meet the minimum qualifications listed below. The Owner, in its sole discretion, may reject Proposals that appear unrealistic in terms of technical commitment, that show a lack of technical competence, or that indicate a failure to comprehend the risk and complexity of a potential Contract.

##### 3.1.1 Respondent must:

- a) Submit a completed Proposal in accordance with **Section 5**;
- b) Affirm by its signature on **Exhibit F**, Respondent's Pricing Proposal Form, that Respondent's personnel, including subcontractors, who will be assigned to the Project have all licenses and permits required to perform the work described;
- c) Affirm by its signature on **Exhibit F** that it has been in business for a minimum of five years, or the principals/owners must have a minimum of five years recent ownership/executive management experience in a previous company that provided construction services of similar scope and complexity;



- d) Affirm by its signature on **Exhibit A**, Affirmations and Solicitation Acceptance for State Architectural/Engineering and Construction Projects, acceptance to be bound by all state of Texas required contract clauses.
- e) Submit a letter of intent from a surety company indicating Respondent is financially solvent, adequately capitalized, and able to obtain performance and payment bonds for the entire construction cost of the proposed project. The information submitted must indicate Respondent's total bonding capacity, available bonding capacity and current backlog;
- f) Submit a compliant HSP, as set forth in **Section 1.25**;
- g) Submit references for three listed projects of comparable scope and complexity. References shall be considered relevant based on specific project participation and experience with the Respondent. The Owner may contact references during any part of this RFP process. The Owner reserves the right to contact any other references at any time during the RFP process; and
- h) Submit a security bond in the form of a cashier's check, certified check, or original bid bond payable to the Health and Human Services Commission, in an amount not less than **5%** of the largest possible total proposed cost, including consideration of alternates, to be held by the Owner's representative in accordance with Section 5 of **Exhibit F**. No other form of security will be accepted.

### 3.2 **Selection Criteria**

Proposals shall be consistently evaluated and scored in accordance with the following steps:

#### 3.2.1 **Level 1 Evaluation** (Pass or Fail)

Level 1 evaluation begins with determining whether a Proposal meets the minimum qualifications listed in **Section 3.1**.

#### 3.2.2 **Level 2 Evaluation**

Level 2 continues with further review of the responsive Proposals submitted based on the evaluation criteria in **Exhibit G**, Evaluation Criteria and Tool. Each Respondent must provide all information required for evaluation as set forth within **Exhibit G**. The evaluation criteria categories are:

- a) **Respondent's Ability to Provide Relevant Construction Services and Respondent's Proposed Team's Relevant Experience - Evaluation Criterion 1.1, 1.2, and 1.3** (30% Value)
- b) **Respondent's Quality and Safety Program - Evaluation Criterion 2** (5% Value)
- c) **Respondent's Financial Stability and Risk - Evaluation Criterion 3.1 and 3.2** (10% Value) (**Exhibit E**, Respondent's Information, Disclosures, and Financial Form)
- d) **Respondent's Proposed Methodology - Evaluation Criterion 4** (15% Value)
- e) **Respondent's Pricing Proposal - Evaluation Criterion 5** (40% Value) (**Exhibit F**, Respondent's Pricing Proposal Form)

## **SECTION 4 – FORMAT OF PROPOSALS AND SUBMISSION CHECKLIST**

### **4.1 General Instructions**

- 4.1.1 Proposals shall be prepared **SIMPLY AND ECONOMICALLY**, providing a straightforward, **CONCISE** description of the Respondent's ability to meet the requirements of this RFP. Emphasis shall be on the quality, completeness, clarity of content, responsiveness to the requirements, and an understanding of the Owner's needs. Expensive bindings, colored displays, promotional materials, etc., are not necessary or desired. Respondent should focus on the instructions and requirements of the RFP.
- 4.1.2 Proposals shall consist of answers to questions and statements referenced throughout the RFP. It is not necessary to repeat the RFP requirement in the Proposal response; however, the RFP section number should be included in the corresponding answer or with any submitted information.
- 4.1.3 Respondent shall carefully read the information contained in this RFP and submit a complete response to all requirements and questions as directed. Incomplete Proposals will be considered non-responsive and subject to rejection.
- 4.1.4 Proposals and any other information submitted by Respondent in response to this RFP shall become the property of the Owner.
- 4.1.5 Proposals that are qualified with conditional clauses, alterations, items not called for in the RFP documents, or irregularities of any kind are subject to rejection by the Owner, at its option.
- 4.1.6 The Owner makes no guarantee of volume, usage, or total compensation to be paid to any Respondent under any awarded Contract, if any, resulting from this RFP. Any awarded Contract is subject to appropriations and the continuing availability of funds. The Owner reserves the right to cancel, make partial award, or decline to award a Contract under this RFP at any time in its sole discretion. Further, the Owner reserves the right to accept or reject any or all Proposals, waive any formalities or minor technical inconsistencies, or delete any items/requirements from this RFP when deemed to be in Owner's best interest.
- 4.1.7 Proposals shall consist of answers to questions referenced in **Exhibit G** of the RFP. It is not necessary to repeat the question in the Proposals; however, **it is essential to reference the question number with the corresponding answer.**
- 4.1.8 Proposals received without the information and documentation required in this RFP **may be DISQUALIFIED. The Owner, in its sole discretion, will review all Proposals received and determine if any Proposals will be disqualified or if additional time will be permitted for submission of the incomplete or missing documentation. If additional time will be permitted, Respondents will be notified in writing of the opportunity to provide the missing documentation by a specified deadline. Failure by a Respondent to submit the requested documentation by the deadline WILL result in disqualification.**

## 4.2 Formatting and Page Size

4.2.1 Proposals shall be digitally formatted for letter-size (8-1/2" x 11") and combined into a single document, when possible, with divider pages before each section.

4.2.1.1 **ALL DOCUMENTS SHALL BE SUBMITTED AS A SEARCHABLE ADOBE® PDF FILE. HOWEVER, IF RESPONDENT IS UNABLE TO SUBMIT A SEARCHABLE PDF FILE, IT SHOULD SUBMIT DOCUMENTS IN MICROSOFT OFFICE® FORMATS (WORD® AND EXCEL®) OR IN A FORM THAT MAY BE READ BY MICROSOFT OFFICE® SOFTWARE, EXCLUDING ANY DOCUMENTS WITH SIGNATURES THAT SHALL BE SUBMITTED AS A PDF FILE.**

4.2.1.2 **HHSC IS NOT RESPONSIBLE FOR DOCUMENTS THAT CANNOT BE READ OR CONVERTED. UNREADABLE PROPOSALS MAY BE, AT HHSC'S DISCRETION, REJECTED AS NONRESPONSIVE.**

4.2.2 Additional attachments shall NOT be included with the Proposals.

4.2.3 Separate and identify each evaluation criteria response to **Section 3** of this RFP by use of a divider sheet with an integral tab for ready reference.

## 4.3 Table of Contents

Submittals shall include a "**Table of Contents**" and give page numbers for each part of the Proposal.

## 4.4 Pagination

Proposal pages should be numbered sequentially using Arabic numerals (1, 2, 3, etc.); the Respondent is not required to number the pages of the HUB Subcontracting Plan.

## 4.5 Submittal Checklist

4.5.1 **Solicitation Proposal Package.** The Respondent's Proposal package must include one "**Original**" Proposal and, if applicable, one "**Public Information Act Copy**" Proposal, and be submitted in accordance with **Section 1.12.1**.

4.5.2 Respondent shall organize its Proposal in accordance with the checklist below, which is being provided for Respondent's convenience only. Each Respondent is solely responsible for ensuring its Proposal is submitted in accordance with all RFP requirements. In no event will the Owner be responsible or liable for any missing RFP requirements or errors within a Respondent's Proposal package. The Proposal package must be submitted in the following order:

Proposal Package and Response Submittal Order	Include
<b><i>USB Flash Drive (Labeled "Proposal")</i></b>	
1. Proposal Cover	
2. Cover Letter	
3. Table of Contents	
4. <b>Criterion 1.1, 1.2, 1.3:</b> Respondent's Ability to Provide Relevant Construction Services and Respondent's Proposed Team Relevant Experience	
5. <b>Criterion 2:</b> Quality and Safety Programs	
6. <b>Criterion 3:</b> Respondent's Financial Stability and Risk ( <b>Exhibit E, Part 6</b> )	
7. <b>Criterion 4:</b> Respondent's Proposed Methodology	
8. <b>Criterion 5:</b> Signed Respondent's Pricing Proposal Form ( <b>Exhibit F</b> )	
9. Signed Affirmations and Solicitation Acceptance for State Architectural/Engineering and Construction Projects ( <b>Exhibit A</b> )	
10. Exceptions Form, <i>if applicable</i> ( <b>Exhibit D</b> )	
11. Respondent's Information, Disclosures, and Financial Form ( <b>Exhibit E</b> )	
12. Letter of intent from a surety company	
13. References	
<b><i>USB Flash Drive (Labeled "HSP")</i></b>	
14. <b>Exhibit B</b> , HUB Subcontracting Plan - The HUB Subcontracting Plan should be submitted in accordance with <b>Section 1.12.1.2*</b>	
<b><i>Separate Envelope within Solicitation Package (Labeled "Security Bond")</i></b>	
15. Security Bond	

## **SECTION 5 – SOLICITATION, CONTRACT, AND CONSTRUCTION DOCUMENTS**

### **5.1 Bidding Requirements and Documents**

The Solicitation documents include the bidding requirements and the proposed Contract documents in Attachment B (General Conditions) to **Exhibit C** of this Solicitation. The bidding requirements consist of the Solicitation advertisement, the RFP, the Respondent's Pricing Proposal Form, and other bidding and contract forms. The Contract documents include the performance and payment bonds, Texas Uniform General Conditions for Construction Contracts with HHSC Supplementary General Conditions, Special Conditions, Prevailing Wage Rate Determination, HUB Subcontracting Plan, other forms and documents identified in the Contract, Drawings, Specifications, and all Addenda issued prior to receipt of Proposals.

### **5.2 Disclosure of Interested Parties**

Subject to certain specified exceptions, *Texas Government Code* §2252.908, Disclosure of Interested Parties, applies to a contract of a state agency that has a value of at least \$1 million or a contract that requires an action or vote by the governing body of the agency before the contract may be signed. One of the requirements of Section 2252.908 is that a business entity (defined as "any entity recognized by law through which business is conducted, including a

sole proprietorship, partnership, or corporation”) must submit a Form 1295, Certificate of Interested Parties, to the state agency at the time the business entity submits the signed contract to the agency.

Respondent represents and warrants that, if selected for award of a Contract as a result of this RFP, Respondent will submit to the Owner a Certificate of Interested Parties at the time Respondent submits the signed Contract. Form 1295 involves an electronic process through the Texas Ethics Commission (“TEC”).

Information regarding the on-line process for completing Form 1295 is available at: [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm).

For further information:

Reference Section 2252.908 of the Texas Government Code which can be accessed at: <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2252.htm#2252.908>

*Texas Administrative Code*, Title 1, Chapter 46, Disclosure of Interested Parties, can be accessed at: [https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=4&ti=1&pt=2&ch=46&rl=Y](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=1&pt=2&ch=46&rl=Y).

If the selected Respondent does not timely submit a completed, certified, and signed TEC Form 1295 to the Owner with the signed Contract, the Owner is prohibited by law from executing a Contract, even if the selected Respondent is otherwise eligible for award. As a result, the Owner may award the Contract to the next qualified Respondent, who will then be subject to this procedure.

### **5.3 Secretary of State Certificate of Fact**

All awarded Respondents must (i) be currently authorized to do business in the state of Texas, (ii) must be able to obtain a Certificate of Fact-Status from the Secretary of State showing the entity status as “in existence”, and (iii) must be able to obtain a Certificate of Account Status from the Texas Comptroller’s Office showing that the Respondent is in good standing. No contract shall be executed with a Respondent that cannot meet these requirements.

### **5.4 Construction Documents and Distribution**

Electronic documents are available from the **ESBD** posting for this RFP or the Owner’s Point-of-Contact listed in **Section 1.13** who can provide two sets of drawings and specifications to a Respondent who is a prime contractor and one set to a Respondent who is a major subcontractor (mechanical and electrical trades) who propose to submit a Proposal. Documents, other than digital documents, will not be issued free to suppliers, material companies, or lower tier subcontractors.

*(Remainder of Page Intentionally Left Blank)*

## HHS0009777 Pre-Proposal #1 Attendees

Wednesday, 7/14/2021 at 2:30 PM Central Time

Last Name	First Name	Company	Phone	Email
Dancer	Jay	HHSC		jay.dancer@hhs.texas.gov
Reyes	Vincent	HHSC		Vincent.Reyes@hhs.texas.gov
Bou-Saada	Tarek	HHSC		tarek.bou-saada@hhs.texas.gov
Garcia	Joaquin	HHSC		Joaquin.Garcia07@hhs.texas.gov
Gomez	Marcus	HHSC		Marcus.Gomez@hhs.texas.gov

## HHS0009777 Pre-Proposal #2 Attendees

Monday, 7/19/2021 at 2:30 PM Central Time

Last Name	First Name	Company	Phone	Email
Harrison	Chris	Johnson Controls	210.612.3705	chris.rae.harrison@jci.com
LeVaughn	Candace	Schneider Electric	469.510.9064	candace.levaughn@se.com
Storenski	Sam	Envirotech Mechanical Systems	936.588.4114	sams@envirotech-tx.com
Perez	Robert	Schneider Electric	469.510.9064	robert.perez@se.com
Dancer	Jay	HHSC		jay.dancer@hhs.texas.gov
Reyes	Vincent	HHSC		Vincent.Reyes@hhs.texas.gov
Bou-Saada	Tarek	HHSC		tarek.bou-saada@hhs.texas.gov
Garcia	Joaquin	HHSC		Joaquin.Garcia07@hhs.texas.gov
Gomez	Marcus	HHSC		Marcus.Gomez@hhs.texas.gov



**Sign In Sheet**

**Project No.:** 20-053-KSH  
**Project Name:** BAS Replacement  
**Meeting Date:** 7/21/21

**Please Print All Information Clearly**

Name: _____
Company: _____
Address: _____

Phone: _____ Fax: _____
Email: _____

Name: _____
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Address: _____

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Company: _____
Address: _____

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Email: _____



## Attachment A

### **Contract Affirmations for State Architectural/Engineering and Construction Projects**

The term “**Owner**” used in these affirmations means Texas Health and Human Services (“**HHS**”) or any of the agencies of the State of Texas that are overseen by Health and Human Services Commission (“**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, the Architect/Engineer, General Contractor, Construction Manager-Agent, Construction Manager-at-Risk, or Design-Build Firm (all of which are defined by the term the “**Contractor**”, unless their specific name or title is given), as applicable, affirms, without exception, understands, and agrees to comply with the following terms through the life of the Contract:

1. **Parties to the Affirmations.** Contractor represents and warrants that the affirmations, representations, warranties, understandings, agreements, acceptances, acknowledgements, or statements contained herein (“**Contract Affirmations**” or “**Affirmations**”) apply to Contractor and all of Contractor'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, have a financial interest in, or otherwise are interested in this Contract and any related solicitation.
2. **Headings.** Contractor further acknowledges and understands that the headings used below are for convenience and reference only; the headings shall not affect the interpretation or construction of these Affirmations.
3. **Standard of Care for Architect/Engineer.** Pursuant to Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the Texas Local Government Code, Contractor shall perform services (1) with professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.
4. **Public Information Act.** Contractor understands that the Owner 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.

5. **Contracting Information Requirements.** Contractor represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code, and preserve all contracting information as required by, and specifically set forth in, Section 552.372(a). Unless Section 552.374(c) of the Texas Government Code applies, the requirements of Subchapter J, Chapter 552 of the Texas Government Code may apply to this 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.
6. **Terms and Conditions.** 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 the Contractor that differ in any manner from Owner's terms and conditions, if any, are rejected unless expressly accepted by the Owner in writing.
7. **Owner Right to Use.** Contractor 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 this Contract or any related Proposal as the Owner deems necessary to complete the procurement process or comply with state or federal laws.
8. **Disclosure of Interested Parties.** Contractor certifies that, if the value of this Contract is \$1 million or higher, Contractor has complied with Section 2252.908 of the Texas Government Code and 1 Texas Administrative Code, Part 2, Chapter 46, sections 46.1-46.5 as implemented by the Texas Ethics Commission ("TEC"), if applicable, and has provided the Owner with a fully executed TEC Form 1295, certified by the TEC and signed and notarized by the Contractor.
9. **Release from Liability.** *CONTRACTOR GENERALLY RELEASES FROM LIABILITY AND WAIVES ALL CLAIMS AGAINST ANY PARTY PROVIDING INFORMATION ABOUT THE CONTRACTOR AT THE REQUEST OF THE OWNER.*
10. **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 Proposal.
11. **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 Proposal is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
12. **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 Proposal is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

13. **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 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.
14. **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.
15. **Excluded Parties.** Contractor certifies that it is not listed in any 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.
16. **Foreign Terrorist 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.
17. **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 a Texas Health and Human Services agency, (2) a person who at any time during the four years before the date of this 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.
18. **Certification Regarding Prohibition Related to Persons Involved in Human Trafficking.** 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.
19. **Franchise Tax Certification.** 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.
20. **Tax Exemption Certificates.** Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. The Owner will furnish Tax Exemption Certificates upon request. 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. The Owner shall not be liable for any taxes resulting from the Contract.

21. **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.
22. **Excess Obligations Prohibited.** This Contract is subject to termination or cancellation, without penalty to the Owner, either in whole or in part, subject to the availability of state funds. Owner is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If the Owner becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either the Owner's or Contractor's delivery or performance under the Contract impossible or unnecessary, this Contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, the Owner will not be liable to Contractor for any damages that are caused or associated with such termination or cancellation, and the Owner will not be required to give prior notice.
23. **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).
24. **Buy Texas.** In accordance with Section 2155.4441 of the Texas Government Code, Contractor agrees that during the performance of a contract for services 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.
25. **Disaster Recovery Plan.** Contractor agrees that upon request of the Owner, Contractor shall provide copies of its most recent business continuity and disaster recovery plans.
26. **Former Agency Employees.** Contractor represents and warrants, during the twelve 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 a 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 Owner to perform services under this Contract during the twelve month period immediately following the employee's last date of employment by the Owner.
27. **Nepotism Prohibitions.** Contractor knows of no officer or employee of the Owner, nor any relative within the second degree of consanguinity or affinity of an officer or employee of the Owner, that has a financial interest in the Contractor's firm or corporation. Contractor further certifies that no partner, corporation, limited liability company, or unincorporated association that employs, retains or contracts with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which Contractor will be dealing on behalf of the Owner pursuant to Chapter 573 of the Texas Government Code and Section 2254.032 of the Texas Government Code.

28. **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.
29. **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 Owner or another agency at any time during the two years preceding the submission of any 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 Owner or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation at the time the employment was terminated.
30. **No Felony Criminal Convictions.** Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representatives of such subcontractors, have been convicted of a felony criminal offense, or, that if such a conviction has occurred, Contractor has fully advised the Owner in writing of the facts and circumstances surrounding the convictions.
31. **No Conflicts of Interest.** Contractor 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 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. 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 Owner. 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 Owner as a potential conflict. Owner reserves the right to make a final determination regarding the existence of conflicts of interest, and Contractor agrees to abide by Owner's decision.
32. **Fraud, Waste and Abuse.** Contractor understands that the Owner does not tolerate any type of fraud. The Owner'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 Owner policies regarding fraud.
33. **Antitrust.** The Contractor affirms under penalty of perjury of the laws of the State of Texas that (a) in connection with this Contract and any related Solicitation Proposal, neither it 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 Proposal, neither it nor any representative of the Contractor has violated any federal antitrust law; and (c) neither it nor any representative of the Contractor has directly or indirectly communicated any of the contents of this Contract and any related Solicitation Proposal 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.

34. **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 calendar years immediately preceding execution of this Contract or the submission of any related Proposal 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 the Owner'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 the Owner 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 the Owner'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 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 termination of the Contract.
35. **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.
36. **Certification Regarding Boycotting Israel.** If the Contractor has ten or more full-time employees and the Contract has a value of \$100,000.00 or more, then Contractor certifies that, pursuant to Section 2271.002 of the Texas Government Code, Contractor does not boycott Israel and will not boycott Israel during the term of this Contract. If this certification is required and Contractor refuses to make the certification, then Contractor shall state here any facts that make it exempt from the boycott certification:

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37. **Equal Employment Opportunity.** Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.
38. **E-Verify.** 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:
  - (a) all persons employed by Contractor to perform duties within Texas; and
  - (b) all persons, including subcontractors, assigned by Contractor to perform work pursuant to this Contract within the United States of America.
39. **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.
40. **Cybersecurity Training.**
  - A. Contractor represents and warrants that it shall 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.
41. **False Representations.** Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor may subject Contractor to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract. Contractor understands, acknowledges, and agrees that Owner is relying upon all representations, warranties, certifications, and affirmations made by Contractor.
42. **All Applicable Laws.** 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. Any alterations, additions, or deletions to the terms of the Contract that are required by changes in federal or state law or regulations are automatically incorporated into the Contract without written amendment hereto, and shall become effective on the date designated by such law or regulation.
43. **False Statements.** Contractor represents and warrants that all statements and information prepared and submitted by Contractor in this Contract and any related Solicitation Proposal 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 may subject Contractor to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract. Contractor understands, acknowledges, and agrees that Owner is relying upon all statements and information prepared and submitted by Contractor in this Contract and any related Solicitation Proposal.

44. **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.

45. **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:

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46. **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.

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 is authorized to sign on behalf of Contractor and to bind the Contractor. The person signing the Contract also certifies that he or she is duly authorized to execute the Contract on behalf of Contractor.

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**Texas Uniform General Conditions  
for Construction Contracts**

with

**HHSC Supplementary General Conditions**

Version 2.2

*(2015 Texas Facilities Commission Uniform General Conditions with 2015 and 2018 Supplements)  
(HHSC Supplementary General Conditions are denoted by bold blue italics)*

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## Article 1. Definitions

Unless the context clearly requires another meaning, the following terms have the meaning assigned herein.

- 1.1 *Addendum/Addenda* means formally issued written or graphic modifications and/or interpretations of the Construction Documents that may add to, delete from, clarify or correct the description and/or scope of the Work. Addenda are issued during the bidding phase of the project.
- 1.2 *Application for Payment* means Contractor's monthly partial invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted and performed in accordance with the requirements of the Contract Documents. The Application for Payment accurately reflects the progress of the Work, is itemized based on the Schedule of Values, bears the notarized signature of Contractor, and shall not include subcontracted items for which Contractor does not intend to pay.
- 1.3 *Amendment means any change to the Contract agreed to by the Parties other than those made by a Change Order.*
- 1.4 *Application for Final Payment* means Contractor's final invoice for payment that includes any portion of the Work that has been completed for which an invoice has not been submitted, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of remaining Contractor's retainage.
- 1.5 *Architect/Engineer (A/E)* means a person registered as an architect pursuant to Tex. Occ. Code Ann., Ch. 1051, as a landscape architect pursuant to Tex. Occ. Code Ann., Ch. 1052, a person licensed as a professional engineer pursuant Tex. Occ. Code Ann., Ch. 1001, and/or a firm employed by Owner or Design-Build Contractor to provide professional architectural or engineering services and to exercise overall responsibility for the design of a Project or a significant portion thereof, and to perform the contract administration responsibilities set forth in the Contract.
- 1.6 *Architect/Engineer's Supplemental Instructions (ASI) means the written response by the A/E to the Contractor's RFI, or other written or telephonic communication from the Contractor to the A/E, clarifying an issue (or issues) with regard to the Work deemed unclear by the Contractor.*
- 1.7 *Authority Having Jurisdiction* means a federal, state, local, or other regional department, or an individual such as a fire marshal, building official, electrical inspector, utility provider or other individual having statutory authority.
- 1.8 *Baseline Schedule* means the initial time schedule prepared by Contractor for Owner's information and acceptance that conveys Contractor's and Subcontractors' activities (including coordination and review activities required in the Contract Documents to be performed by A/E and ODR), durations, and sequence of work related to the entire Project to the extent required by the Contract Documents. The schedule clearly demonstrates the critical path of activities, durations and necessary predecessor

conditions that drive the end date of the schedule. The Baseline Schedule shall not exceed the time limit current under the Contract Documents.

- 1.9 *Certificate of Final Completion* means the certificate issued by A/E that documents, to the best of A/E's knowledge and understanding, Contractor's completion of all Contractor's Punchlist items and pre-final Punchlist items, final cleanup and Contractor's provision of Record Documents, operations and maintenance manuals, and all other closeout documents required by the Contract Documents.
- 1.10 *Certificate of Substantial Completion* means the certificate executed by the A/E, ODR and Contractor that documents to the best of A/E's and ODR's knowledge and understanding, Contractor's sufficient completion of the work in accordance with the Contract, so as to be operational and fit for the use intended.
- 1.11 *Change Order* means a written modification of the Contract between Owner and Contractor, signed by Owner, Contractor, and A/E.
  - 1.11.1 *An Owner-initiated Change Order (CO) consists of four parts, which are identified in Subsection 11.7.2.*
  - 1.11.2 *The Contractor's receipt of the fully executed Change Order constitutes the authorization to proceed with the changed Work described in the CO.*
- 1.12 *Change Order Proposal Evaluation (CPE) includes the adjustment necessary to the Contract Sum and Time, if any.*
- 1.13 *Change Order Justification (COJ) identifies the reason and justification for the change in the Work, and indicates the review and approval by the Architect/Engineer of the adjustments necessary to the Contract Sum and Time described in the CPE.*
- 1.14 *Change Authorization (CA) indicates Owner's agreement to the adjusted cost and time for the change in the work.*
- 1.15 *Close-out Documents* mean the product brochures, submittals, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, record documents, affidavit of payment, release of lien and claim, and as may be further defined, identified, and required by the Contract Documents.
- 1.16 *Contract* means the entire agreement between Owner and Contractor, including all of the Contract Documents.
- 1.17 *Contract Date* is the date when the agreement between Owner and Contractor becomes effective.
- 1.18 *Contract Documents* mean those documents identified as a component of the agreement (Contract) between Owner and Contractor. These may include, but are not limited to, Drawings; Specifications; General, Supplementary General, and Special Conditions; and all pre-bid and/or pre-proposal addenda.

- 1.19 *Contract Sum* means the total compensation payable to Contractor for completion of the Work in accordance with the terms of the Contract.
- 1.20 *Contract Time* means the period between the start date identified in the Notice to Proceed with construction and the Substantial Completion date identified in the Notice to Proceed or as subsequently amended by a Change Order.
- 1.21 *Contractor* means the individual, corporation, limited liability company, partnership, firm, or other entity contracted to perform the Work, regardless of the type of construction contract used, so that the term as used herein includes a Construction Manager-at-Risk or a Design-Build firm as well as a general or prime Contractor. The Contract Documents refer to Contractor as if singular in number.
- 1.22 *Construction Documents* mean the Drawings, Specifications, and other documents issued to build the Project. Construction Documents become part of the Contract Documents when listed in the Contract or any Change Order.
- 1.23 *Construction Manager-at-Risk*, in accordance with Tex. Gov't Code, Ch. 2166, means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to Owner regarding construction during and after the design of the facility.<sup>1</sup>
- 1.24 *Date of Commencement* means the date designated in the Notice to Proceed for Contractor to commence the Work.
- 1.25 *Day* means a calendar day unless otherwise specifically stipulated.
- 1.26 *Design-Build* means a project delivery method in which the detailed design and subsequent construction is provided through a single contract with a Design-Build firm; a team, partnership, or legal entity that includes design professionals and a builder. The Design-Build Project delivery shall be implemented in accordance with Tex. Gov't Code § 2166.2531.<sup>2</sup>
- 1.27 *Drawings* mean that product of A/E which graphically depicts the Work.
- 1.28 *Final Completion* means the date determination certified by A/E and Owner that the Work is fully and satisfactorily complete in accordance with the Contract.
- 1.29 *Final Payment* means the last and final monetary compensation made to Contractor

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<sup>1</sup> *Tex. Gov't Code § 2166.2532 has been repealed (Repealed by Acts 2011, 82nd Leg., ch. 1129 (H.B. 628) § 5.01(2), eff. Sept. 1, 2011) and replaced by Tex. Gov't Code Chapter 2269, Subchapter F (Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011. Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.).*

<sup>2</sup> *Tex. Gov't Code § 2166.2531 has been repealed (Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 5.01(2), eff. September 1, 2011) and replaced by Tex. Gov't Code Chapter 2269, Subchapter G (Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011. Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.).*

for any portion of the Work that has been completed and accepted for which payment has not been made, amounts owing to adjustments to the final Contract Sum resulting from approved change orders, and release of Contractor's retainage.

- 1.30 *Historically Underutilized Business (HUB)* pursuant to Tex. Gov't Code, Ch. 2161, means a business that is at least 51% owned by an Asian Pacific American, a Black American, a Hispanic American, a Native American and/or an American Woman; is an entity with its principal place of business in Texas; and has an owner residing in Texas with proportionate interest that actively participates in the control, operations, and management of the entity's affairs.
- 1.31 *Interim Change Authorization (ICA)* means an Owner-generated document which authorizes the Contractor to proceed with changed work before submitting a CPE, when work must proceed in order to prevent damage to Work in place, to prevent significant delay in the Project Schedule or to maintain safety.
- 1.32 *Notice to Proceed* means a written document informing Contractor of the dates begin Work and the dates anticipated for Substantial Completion.
- 1.33 *Open Item List* means a list of work activities, Punchlist items, changes or other issues that are not expected by Owner and Contractor to be complete prior to Substantial Completion.
- 1.34 *Owner* means the State of Texas, and any agency of the State of Texas, acting through the responsible entity of the State of Texas identified in the Contract as Owner.
- 1.35 *Owner's Designated Representative (ODR)* means the individual assigned by Owner to act on its behalf and to undertake certain activities as specifically outlined in the Contract. ODR is the only party authorized to direct changes to the scope, cost, or time of the Contract.
- 1.36 *Project* means all activities necessary for realization of the Work. This includes design, contract award(s), execution of the Work itself, and fulfillment of all Contract and warranty obligations.
- 1.37 *Progress Assessment Report (PAR)* means the monthly compliance report to Owner verifying compliance with the HUB subcontracting plan (HSP).
- 1.38 *Proposed Change Order (PCO)* means a document that informs Contractor of a proposed change in the Work and appropriately describes or otherwise documents such change including Contractor's response of pricing for the proposed change.
- 1.39 *Punchlist* means a list of items of Work to be completed or corrected by Contractor after Substantial Completion. Punchlists indicate items to be finished, remaining Work to be performed, or Work that does not meet quality or quantity requirements as required in the Contract Documents.
- 1.40 *Record Documents* mean the drawing set, Specifications, and other materials

maintained by Contractor that documents all addenda, Architect's Supplemental Instructions, Change Orders and postings and markings that record the as-constructed conditions of the Work and all changes made during construction.

- 1.41 *Request for Information (RFI)* means a written request by Contractor directed to A/E or ODR for a clarification of the information provided in the Contract Documents or for direction concerning information necessary to perform the Work that may be omitted from the Contract Documents.
- 1.42 *Samples* mean representative physical examples of materials, equipment, or workmanship used to confirm compliance with requirements and/or to establish standards for use in execution of the Work.
- 1.43 *Schedule of Values* means the detailed breakdown of the cost of the materials, labor, and equipment necessary to accomplish the Work as described in the Contract Documents, submitted by Contractor for approval by Owner and A/E.
- 1.44 *Shop Drawings* mean the drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data prepared by Contractor or its agents which detail a portion of the Work.
- 1.45 *Site* means the geographical area of the location of the Work.
- 1.46 *Special Conditions* mean the documents containing terms and conditions which may be unique to the Project. Special Conditions are a part of the Contract Documents and have precedence over the Uniform General Conditions and Supplementary General Conditions.
- 1.47 *Specifications* mean the written product of A/E that establishes the quality and/or performance of products utilized in the Work and processes to be used, including testing and verification for producing the Work.
- 1.48 *Subcontractor* means a business entity that enters into an agreement with Contractor to perform part of the Work or to provide services, materials, or equipment for use in the Work.
- 1.49 *Submittal Register* means a list provided by Contractor of all items to be furnished for review and approval by A/E and Owner and as identified in the Contract Documents including anticipated sequence and submittal dates.
- 1.50 *Substantial Completion* means the date determined and certified by Contractor, A/E, and Owner when the Work, or a designated portion thereof, is sufficiently complete, in accordance with the Contract, so as to be operational and fit for the use intended.
- 1.51 *Supplementary General Conditions* mean procedures and requirements that modify the Uniform General Conditions. Supplementary General Conditions, when used, have precedence over the Uniform General Conditions.
- 1.52 *Survey means a land survey document produced by a licensed surveyor. The survey*

*contains information about a particular parcel of property including but not limited to boundaries, natural land features, constructed improvements and legal descriptions.*

- 1.53 *Unit Price Work* means the Work, or a portion of the Work, paid for based on incremental units of measurement.
- 1.54 *Unilateral Change Order (ULCO)* means a Change Order issued by Owner without the complete agreement of Contractor, as to cost and/or time.
- 1.55 *Work* means the administration, procurement, materials, equipment, construction and all services necessary for Contractor, and/or its agents, to fulfill Contractor's obligations under the Contract.
- 1.56 *Work Progress Schedule* means the continually updated time schedule prepared and monitored by Contractor that accurately indicates all necessary appropriate revisions as required by the conditions of the Work and the Project while maintaining a concise comparison to the Baseline Schedule.

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## Article 2. Wage Rates and Other Laws Governing Construction

- 2.1 Environmental Regulations. Contractor shall conduct activities in compliance with applicable laws and regulations and other requirements of the Contract relating to the environment and its protection at all times. Unless otherwise specifically determined, Owner is responsible for obtaining and maintaining permits related to stormwater run-off. Contractor shall conduct operations consistent with stormwater run-off permit conditions. Contractor is responsible for all items it brings to the Site, including hazardous materials, and all such items brought to the Site by its Subcontractors and suppliers, or by other entities subject to direction of Contractor. Contractor shall not incorporate hazardous materials into the Work without prior approval of Owner and shall provide an affidavit attesting to such in association with request for Substantial Completion inspection.
- 2.2 Wage Rates. Contractor shall not pay less than the wage scale of the various classes of labor as shown on the prevailing wage schedule provided by Owner in the bid or proposal specifications. The specified wage rates are minimum rates only. Owner is not bound to pay any claims for additional compensation made by any Contractor because the Contractor pays wages in excess of the applicable minimum rate contained in the Contract. The prevailing wage schedule is not a representation that qualified labor adequate to perform the Work is available locally at the prevailing wage rates.
- 2.2.1 Notification to Workers. Contractor shall post the prevailing wage schedule in a place conspicuous to all workers on the Project Site. When requested by Owner, Contractor shall furnish evidence of compliance with the Texas Prevailing Wage Law and the addresses of all workers.
- 2.2.1.1 Pursuant to Tex. Gov't Code § 2258.024, Contractor shall keep, on site, true and accurate records showing the name and occupation of each worker employed by the Contractor or subcontractors and the actual per diem wages paid to each worker. The record shall be open to inspection by the ODR and their agents at all reasonable hours for the duration of the contract.
- 2.2.1.2 With each application for progress payment, Contractor shall make available upon request certified payroll records, including from subcontractors of any tier level, on Form WH-347 as promulgated by the U.S. Department of Labor, as may be revised from time to time and in unlocked and unprotected Excel format, along with copies of any and all Contract Documents between Contractor and any Subcontractors. Pursuant to Tex. Penal Code §§ 37.02 and 37.10, Employees of Contractor and subcontractors, including all tier levels, shall be subject to prosecution for submitting certified payroll records that contain materially false information.
- 2.2.1.3 The prevailing wage schedule is determined by Owner in compliance with Tex. Gov't Code, Ch. 2258. Should Contractor at any time become aware that a particular skill or trade not reflected on

Owner's prevailing wage schedule will be or is being employed in the Work, whether by Contractor or by Subcontractor, Contractor shall promptly inform ODR of the proposed wage to be paid for the skill along with a justification for same and ODR shall promptly concur with or reject the proposed wage and classification.

- 2.2.1.4 Contractor is responsible for determining the most appropriate wage for a particular skill in relation to similar skills or trades identified on the prevailing wage schedule. In no case, shall any worker be paid less than the wage indicated for laborers.
- 2.2.1.5 Pursuant to Tex. Labor Code § 214.008, Misclassification of Workers; Penalty. The Owner requires Contractor and all subcontractors properly classify individuals as Employees or Independent Contractors.
- 2.2.2 Penalty for Violation. Contractor, and any Subcontractor, will pay to the State a penalty of sixty dollars (\$60) for each worker employed for each day, or portion thereof, that the worker is paid less than the wage rates stipulated in the prevailing wage schedule
- 2.2.3 Complaints of Violations.
  - 2.2.3.1 Owner's Determination of Good Cause. Upon receipt of information concerning a violation, Owner will conduct an investigation in accordance with Tex. Gov't Code, Ch. 2258 and make an initial determination as to whether good cause exists that a violation occurred. Upon making a good cause finding, Owner will retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage schedule and any supplements thereto, together with the applicable penalties in accordance with Tex. Gov't Code § 2258.023, such amounts being subtracted from successive progress payments pending a final decision on the violation.
  - 2.2.3.2 No Extension of Time. If Owner's determination proves valid that good cause existed to believe a violation had occurred, Contractor is not entitled to an extension of time for any delay arising directly or indirectly from the arbitration procedures.
  - 2.2.3.3 Cooperation with Owner's Investigation. Contractor shall cooperate with Owner during any investigations hereunder. Such cooperation shall include, but not necessarily be limited to, timely providing the information and/or documentation requested by Owner, which may include certified payroll records on Form WH-347 as promulgated by the U.S. Department of Labor, as may be revised from time to time and in unlocked and unprotected Excel format; and copies of any and all Contract Documents between Contractor and any Subcontractors.

2.2.3.4 Notification to Owner. In the event Contractor or Subcontractor elect to appeal an initial determination made pursuant to Paragraph 2.2.3.1, the Contractor and/or Subcontractor, as applicable, shall deliver notice thereof to Owner.

2.2.3.4.1 *If the Contractor and the claimant worker reach an agreement concerning the claim, the Contractor shall promptly provide the Owner with a copy of the written agreement, countersigned by the claimant.*

2.2.3.4.2 Arbitration Required. *If the violation is not resolved within fourteen (14) days following initial determination by the Owner, the Contractor and the claimant worker must participate in binding arbitration in accordance with the “Texas General Arbitration Act,” Texas Civil Practice & Remedies Code Chapter 171. If the Contractor and the claimant worker are unable to reach an agreement for selection of an arbitrator within ten (10) business days, either party may petition the district court to appoint an arbitrator whose decision will be binding on all parties.*

2.2.3.4.3 Arbitration Award. *If an arbitrator assesses an award against the Contractor, the Contractor shall promptly furnish a copy of said award to the Owner. The Owner may use any amounts retained under Section 2.2.3.1 to pay the worker. If the retained funds are insufficient to pay the arbitration award, the worker has a right of action against the Contractor and/or the surety to receive the amount owed, plus attorneys’ fees and court costs. The Owner has no duty to release any funds to either the claimant or the Contractor until the Owner has received the notices of agreement or the arbitration award.*

2.3 Venue for Suits. The venue for any suit arising from the Contract will be in a court of competent jurisdiction in Travis County, Texas, or as may otherwise be designated in the Supplementary General Conditions.

2.3.1 *Notwithstanding Section 2.3 above, venue for any suit asserting a payment or performance bond claim will be in a court of competent jurisdiction in the county in which all or part of the Project is located.*

2.4 Licensing of Trades. Contractor shall comply with all applicable provisions of State law related to license requirements for skilled tradesmen, contractors, suppliers and or laborers, as necessary to accomplish the Work. In the event Contractor, or one of its Subcontractors, loses its license during the term of performance of the Contract, Contractor shall promptly hire or contract with a licensed provider of the service at no additional cost to Owner.

- 2.5 Royalties, Patents, and Copyrights. Contractor shall pay all royalties and license fees, defend suits or claims for infringement of copyrights and patent rights, and shall hold Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by Owner or A/E. However, if Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent, Contractor shall be responsible for such loss unless such information is promptly furnished to A/E.
- 2.6 State Sales and Use Taxes. Owner qualifies for exemption from certain State and local sales and use taxes pursuant to the provisions of Tex. Tax Code, Ch. 151. Upon request from Contractor, Owner shall furnish evidence of tax exempt status. Contractor may claim exemption from payment of certain applicable State taxes by complying with such procedures as prescribed by the State Comptroller of Public Accounts. Owner acknowledges not all items qualify for exemption. Owner is not obligated to reimburse Contractor for taxes paid on items that qualify for tax exemption.
- 2.7 **Buy America Requirements for Iron and Steel Used in Construction.** In accordance with Texas Government Code 2252, Section 2252.202, all iron or steel products (i.e., rolled structural shapes including wide flange beams and columns, angles, bars, plates, sheets, hollow structural sections, pipe, etc.) shall be produced, manufactured and fabricated in the United States.<sup>3</sup>
- 2.7.1 *Notwithstanding anything to the contrary herein, Contractor must satisfy the requirements of Section 2.7 above, unless one of the exemptions in Texas Government Code Section 2252.203 is applicable.*

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<sup>3</sup> Added by TFC 2018 Supplementary General Conditions to the state of Texas 2015 edition of the Uniform General Conditions for Contracts.

### **Article 3. General Responsibilities of Owner and Contractor**

- 3.1 Owner's General Responsibilities. Owner is the entity identified as such in the Contract and referred to throughout the Contract Documents as if singular in number.
- 3.1.1 Preconstruction Conference. Prior to, or concurrent with, the issuance of Notice to Proceed with construction, a conference will be convened for attendance by Owner, Contractor, A/E and appropriate Subcontractors. The purpose of the conference is to establish a working understanding among the parties as to the Work, the operational conditions at the Project Site, and general administration of the Project. Topics include communications, schedules, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, maintaining required records and all other matters of importance to the administration of the Project and effective communications between the Project team members.
- 3.1.2 Owner's Designated Representative. Prior to the start of construction, Owner will identify Owner's Designated Representative (ODR), who has the express authority to act and bind Owner to the extent and for the purposes described in the various Articles of the Contract, including responsibilities for general administration of the Contract.
- 3.1.2.1 Unless otherwise specifically defined elsewhere in the Contract Documents, ODR is the single point of contact between Owner and Contractor. Notice to ODR, unless otherwise noted, constitutes notice to Owner under the Contract.
- 3.1.2.2 All directives on behalf of Owner will be conveyed to Contractor and A/E by ODR in writing.
- 3.1.2.3 Owner will furnish or cause to be furnished, free of charge, the number of complete sets of the Drawings, Specifications, and addenda as provided in the Supplementary General Conditions or Special Conditions.
- 3.1.2.4 The ODR will establish the protocol for planning, scheduling and documenting progress meetings with provisions for absence of various project team members that have a key role in these duties.
- 3.1.3 Owner Supplied Materials and Information.
- 3.1.3.1 Owner will furnish to Contractor those surveys describing the physical characteristics, legal description, limitations of the Site, Site utility locations, and other information used in the preparation of the Contract Documents.
- 3.1.3.2 Owner will provide information, equipment, or services under Owner's control to Contractor with reasonable promptness.

- 3.1.4 Availability of Lands. Owner will furnish, as indicated in the Contract, all required rights to use the lands upon which the Work occurs. This includes rights-of-way and easements for access and such other lands that are designated for use by Contractor. Contractor shall comply with all Owner identified encumbrances or restrictions specifically related to use of lands so furnished. Owner will obtain and pay for easements for permanent structures or permanent changes in existing facilities,
- 3.1.5 Limitation on Owner's Duties.
- 3.1.5.1 Owner will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, technologies, sequences or procedures of construction or the safety precautions and programs incident thereto. Owner is not responsible for any failure of Contractor to comply with laws and regulations applicable to the Work. Owner is not responsible for the failure of Contractor to perform or furnish the Work in accordance with the Contract Documents. Except as provided in Section 2.5, Owner is not responsible for the acts or omissions of Contractor, or any of its Subcontractors, suppliers or of any other person or organization performing or furnishing any of the Work on behalf of Contractor.
- 3.1.5.2 Owner will not take any action in contravention of a design decision made by A/E in preparation of the Contract Documents, when such actions are in conflict with statutes under which A/E is licensed for the protection of the public health and safety.
- 3.2 Role of Architect/Engineer. Unless specified otherwise in the Contract between Owner and Contractor, A/E shall provide general administration services for Owner during the construction phase of the project. Written correspondence, requests for information, and Shop Drawings/submittals shall be directed to A/E for action. A/E has the authority to act on behalf of Owner to the extent provided in the Contract Documents, unless otherwise modified by written instrument, which will be furnished to Contractor by ODR, upon request.
- 3.2.1 Site Visits.
- 3.2.1.1 A/E will make visits to the Site at intervals as provided in the A/E's Contract with Owner, to observe the progress and the quality of the various aspects of Contractor's executed Work and report findings to Owner.
- 3.2.1.2 A/E has the authority to interpret Contract Documents and inspect the Work for compliance and conformance with the Contract. Except as referenced in Paragraph 3.1.5.2, Owner retains the sole authority to accept or reject Work and issue direction for correction, removal, or replacement of Work.

- 3.2.2 Clarifications and Interpretations. It may be determined that clarifications or interpretations of the Contract Documents are necessary. Upon direction by ODR, such clarifications or interpretations will be provided by A/E consistent with the intent of the Contract Documents. A/E will issue these clarifications with reasonable promptness to Contractor as A/E's supplemental instruction ("ASI") or similar instrument. If Contractor believes that such clarification or interpretation justifies an adjustment in the Contract Sum or the Contract Time, Contractor shall so notify Owner in accordance with the provisions of Article 11.
- 3.2.3 Limitations on Architect/Engineer Authority. A/E is not responsible for:
- 3.2.3.1 Contractor's means, methods, techniques, sequences, procedures, safety, or programs incident to the Project, nor will A/E supervise, direct, control or have authority over the same;
  - 3.2.3.2 The failure of Contractor to comply with laws and regulations applicable to the furnishing or performing the Work;
  - 3.2.3.3 Contractor's failure to perform or furnish the Work in accordance with the Contract Documents; or
  - 3.2.3.4 Acts or omissions of Contractor, or of any other person or organization performing or furnishing any of the Work.
- 3.3 Contractor's General Responsibilities. Contractor is solely responsible for implementing the Work in full compliance with all applicable laws and the Contract Documents and shall supervise and direct the Work using the best skill and attention to assure that each element of the Work conforms to the Contract requirements. Contractor is solely responsible for all construction means, methods, techniques, safety, sequences, coordination, procedures and protection of the installed work as part of the contract until substantial completion of the project. Contractor remains responsible for the care and protection of materials and Work in the areas where punch list items are completed until Final Completion.
- 3.3.1 Project Administration. Contractor shall provide Project administration for all Subcontractors, vendors, suppliers, and others involved in implementing the Work and shall coordinate administration efforts with those of A/E and ODR in accordance with these general conditions and other provisions of the Contract, and as outlined in the preconstruction conference. Contractor's Project Administration includes periodic daily reporting on weather, work progress, labor, materials, equipment, obstructions to prosecution of the work, accidents and injuries in accordance with the Contract and transmitted no less frequently than on a weekly basis.
- 3.3.2 Contractor's Management Personnel. Contractor shall employ a competent person or persons who will be present at the Project Site during the progress of the Work to supervise or oversee the work. The competent persons are subject to the approval of ODR. Contractor shall not change approved staff

during the course of the project without the written approval of ODR unless the staff member leaves the employment of Contractor. Contractor shall provide additional quality control, safety and other staff as stated in the Supplementary General Conditions.

- 3.3.3 Labor. Contractor shall provide competent, suitably qualified personnel to survey, lay-out, and construct the Work as required by the Contract Documents and maintain good discipline and order at the Site at all times.
- 3.3.4 Services, Materials, and Equipment. Unless otherwise specified, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities, incidentals, and services necessary for the construction, performance, testing, start-up, inspection and completion of the Work.
- 3.3.5 Contractor General Responsibility. For Owner furnished equipment or material that will be in the care, custody, and control of Contractor, Contractor is responsible for damage or loss. Owner shall deliver to Contractor a complete list and respective values of such materials or equipment and make an equitable adjustment to the contract amount for any increase in cost of Builder's Risk insurance.
- 3.3.6 Non-Compliant Work. Should A/E and/or ODR identify Work as non-compliant with the Contract Documents, A/E and/or ODR shall communicate the finding to Contractor, and Contractor shall correct such Work at no additional cost to the Owner. The approval of Work by either A/E or ODR does not relieve Contractor from the obligation to comply with all requirements of the Contract Documents.
- 3.3.7 Subcontractors. Contractor shall not employ any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom Owner shall have reasonable objection. Owner will communicate such objections in writing within ten (10) days of receipt of Contractor's intent to use such Subcontractor, supplier, or other person or organization. Contractor is not required to employ any Subcontractor, supplier or other person or organization to furnish any of the work to whom Contractor has reasonable objection. Contractor shall not substitute Subcontractors without the acceptance of Owner. Pursuant to Tex. Gov't Code § 2269.256(b), if the Contractor reviews, evaluates and recommends that the Owner accept a bid or proposal from a Subcontractor but the Owner requires another bid or proposal to be accepted, Owner shall compensate the Contractor by a change in price, time or guaranteed maximum cost for any additional cost or risk the Contractor will incur because of Owner's requirement to select another bid or proposal rather than the one recommended.
- 3.3.7.1 All Subcontracts and supply contracts shall be consistent with and bind the Subcontractors and suppliers to the terms and conditions of



the Contract Documents including provisions of the Contract between Contractor and Owner.

- 3.3.7.2 Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor. Require all Subcontractors, suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with Owner only through Contractor. Contractor shall furnish to Owner a copy, at Owner's request, of each first-tier subcontract promptly after its execution. Contractor agrees that Owner has no obligation to review or approve the content of such contracts and that providing Owner such copies in no way relieves Contractor of any of the terms and conditions of the Contract, including, without limitation, any provisions of the Contract which require the Subcontractor to be bound to Contractor in the same manner in which Contractor is bound to Owner.
- 3.3.8 Continuing the Work. Contractor shall carry on the Work and adhere to the progress schedule during all disputes, disagreements, or alternative resolution processes with Owner. Contractor shall not delay or postpone any Work because of pending unresolved disputes, disagreements or alternative resolution processes, except as Owner and Contractor may agree in writing.
- 3.3.9 Cleaning. Contractor shall at all times, keep the Site and the Work clean and free from accumulation of waste materials or rubbish caused by the construction activities under the Contract. Contractor shall ensure that the entire Project is thoroughly cleaned prior to requesting Substantial Completion inspection and, again, upon completion of the Project prior to the final inspection.
- 3.3.9.1 *The Contractor shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Texas Health and Safety Code Section 365.012.*
- 3.3.10 Acts and Omissions of Contractor, its Subcontractors, and Employees. Contractor shall be responsible for acts and omissions of his employees and all its Subcontractors, their agents and employees. Owner may, in writing, require Contractor to remove from the Project any of Contractor's or its Subcontractor's employees whom ODR finds to be careless, incompetent, unsafe, uncooperative, disruptive, or otherwise objectionable.
- 3.3.11 Acts or Omissions. Contractor shall indemnify and hold harmless the State of Texas and Customers, 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. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE 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 ATTORNEY GENERAL. CONTRACTOR AND OWNER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

3.3.12 ***Violation of Law. To the extent allowed by law, Contractor shall defend, indemnify, and hold harmless the State of Texas, the Owner, and their officers and employees, from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, including attorneys' fees and court costs arising out of, or connected with, or resulting from any breach or violation of a statute, ordinance, governmental regulation, standard, rule, or breach of contract by Contractor, any agent, employee, subcontractor, or supplier of Contractor, or any third party under the control or supervision of Contractor, in the execution or performance of this Contract. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE 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 ATTORNEY GENERAL. CONTRACTOR AND OWNER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.***

3.3.13 Infringements.

3.3.13.1 Contractor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE 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 ATTORNEY GENERAL.

3.3.13.1.1 *As used in this subsection, “the State of Texas” is understood to include the Owner and its employees, agents, representatives, contractors, assignees and designees.*

3.3.13.2 Contractor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Contractor’s written approval, (iii) any modifications made to the product by Contractor pursuant to Customer’s specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

3.3.13.3 If Contractor becomes aware of an actual or potential claim, or Customer provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against Customer, shall), at Contractor’s sole option and expense; (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer’s use is non-infringing.

3.3.13.4 Taxes/Workers’ Compensation/Unemployment Insurance–Including Indemnity.

3.3.13.4.1 CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR’S AND CONTRACTOR’S EMPLOYEES’ TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS’ COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS’ COMPENSATION OR ANY

BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

3.3.13.4.2 CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS OWNER, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND OWNER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

3.3.13.5 The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

3.3.13.6 Contractor shall promptly advise Owner in writing of any claim or demand against Owner or against Contractor which involves Owner and known to Contractor and related to or arising out of Contractor's activities under this Contract.

3.3.14 Ancillary Areas. Operate and maintain operations and associated storage areas at the site of the Work in accordance with the following:

3.3.14.1 Confine all Contractor operations, including storage of materials and employee parking upon the Site of Work, to areas designated by Owner.

3.3.14.2 Contractor may erect, at its own expense, temporary buildings that will remain its property. Remove such buildings and associated utility service lines upon completion of the Work, unless Contractor requests and Owner provides written consent that it may abandon such buildings and utilities in place.

- 3.3.14.3 Use only established roadways or construct and use such temporary roadways as may be authorized by Owner. Do not allow load limits of vehicles to exceed the limits prescribed by appropriate regulations or law. Provide protection to road surfaces, curbs, sidewalks, trees, shrubbery, sprinkler systems, drainage structures and other like existing improvements to prevent damage and repair any damage thereto at the expense of Contractor.
- 3.3.14.4 Owner may restrict Contractor's entry to the Site to specifically assigned entrances and routes.
- 3.3.14.5 *Damages to Owner's or Third Parties' Property Caused by Contractor and/or Subcontractors. The Contractor shall, at Contractor's sole cost and at no expense to the Owner or any third parties, repair and/or replace Owner's property and adjacent property, buildings and equipment owned by third parties, damaged by the Contractor and/or the Subcontractors. Contractor shall return the damaged property, buildings and equipment to the same or better quality type or condition that existed prior to the damage. This contractual duty to repair damages shall survive any termination of Contractor under this Contract or any subsequent contract and, thereafter, become the obligation of the Surety.*
- 3.3.15 Separate Contracts. Owner reserves the right to award other contracts in connection with other portions of the Project under these same or substantially similar contract conditions, including those portions related to insurance and waiver of subrogation. Owner reserves the right to perform operations related to the Project with Owner's own forces.
- 3.3.16 Under a system of separate contracts, the conditions described herein continue to apply except as may be amended by change order.
- 3.3.17 Contractor shall cooperate with other contractors or forces employed on the Project by Owner, including providing access to Site and Project information as requested.
- 3.3.18 Owner shall be reimbursed by Contractor for costs incurred by Owner which are payable to a separate contractor because of delays, improperly timed activities, or defective construction by Contractor. Owner will equitably adjust the Contract by Change Order for costs incurred by Contractor because of delays, improperly timed activities, damage to the Work or defective construction by a separate contractor.
- 3.3.18.1 *If separate contracts are awarded for different portions of the Project, all Parties (the Contractors and Owner) shall cooperate and work together to complete the Project. Each Contractor shall inspect and promptly report in writing to the ODR any visually apparent discrepancies or defects found that may interfere with proper*

*execution or proper results of the contracted work. Failure to inspect and report visually apparent discrepancies or defects shall constitute an acknowledgment by Contractor there are no impediments to proper execution or proper results of the contracted work, except as to defects which may develop after the execution of the Contract.*

- 3.3.18.2 *Should any Contractor damage the Work or property of any other Contractor on the Project, the Contractor responsible for the damage shall, upon written notice from the Owner, endeavor to settle with the other contractor. If the contractors are unable to settle their dispute, the Owner may initiate a Dispute Resolution process and each Contractor shall be financially accountable for any damages or loss based on its proportionate fault determined by the Dispute Resolution process.*
- 3.3.18.3 *Each Contractor shall afford the Owner, the Architect/Engineer, and the other contractors, as necessary, with the reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work.*
- 3.3.18.4 *The Owner and the Contractors shall coordinate their activities, including, but not limited to, reviewing and revising construction schedules, when directed to do so.*
- 3.3.18.5 *The Contractor shall be responsible for its conduct, including Subcontractors conduct, resulting in delays, improperly timed activities or defective construction and shall reimburse the Owner for costs incurred by Owner as a result of Contractor caused delays or defective construction, including costs payable to another contractor. The Owner shall be responsible to the Contractor for Owner caused delays, improperly timed activities, or damage to the Work. Contractor may make claim to Owner for such amounts as outlined in the Contract or any other supplemental agreements.*

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## Article 4. Historically Underutilized Business (HUB) Subcontracting Plan

- 4.1 General Description. The purpose of the Historically Underutilized Business (HUB) program is to promote equal business opportunities for economically disadvantaged persons (as defined by Tex. Gov't Code, Ch. 2161) to contract with the State of Texas in accordance with the goals specified in the State of Texas Disparity Study. The HUB program annual procurement utilization goals are defined in 34 T.A.C. § 20.13(b).<sup>4</sup>
- 4.1.1 State agencies are required by statute to make a good faith effort to assist HUBs in participating in contract awards issued by the State. 34 T.A.C. § 20.13(b) outlines the State's policy to encourage the utilization of HUBs in State contracting opportunities through race, ethnic and gender neutral means.<sup>5</sup>
- 4.1.2 A Contractor who contracts with the State in an amount of \$100,000 or greater is required to make a good faith effort to award subcontracts to HUBs in accordance with 34 T.A.C. § 20.14(a)(2)(A) by submitting a HUB subcontracting plan within twenty-four (24) hours after the bid or response is due and complying with the HUB subcontracting plan after it is accepted by Owner and during the term of the Contract.<sup>6</sup>
- 4.2 Compliance with Approved HUB Subcontracting Plan. Contractor, having been awarded this Contract in part by complying with the HUB program statute and rules, hereby covenants to continue to comply with the HUB program as follows:
- 4.2.1 Prior to adding or substituting a Subcontractor, promptly notify Owner in the event a change is required for any reason to the accepted HUB subcontracting plan.
- 4.2.2 Conduct the good-faith effort activities required and provide Owner with necessary documentation to justify approval of a change to the approved HUB subcontracting plan.
- 4.2.3 Cooperate in the execution of a Change Order or such other approval of the change in the HUB subcontracting plans as Contractor and Owner may agree to.
- 4.2.4 Maintain and make available to Owner upon request business records documenting compliance with the accepted HUB subcontracting plan.
- 4.2.5 Upon receipt of payment for performance of Work, submit to Owner a compliance report, in the format required by Owner that demonstrates

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<sup>4</sup> [34 T.A.C. §20.13\(b\) has been repealed \(§§ 20.10 to 20.24. Repealed eff. January 24, 2017\) and replaced by 34 T.A.C. § 20.284.](#)

<sup>5</sup> [34 T.A.C. § 20.13\(b\) has been repealed \(§§ 20.10 to 20.24. Repealed eff. January 24, 2017\) and replaced by 34 T.A.C. § 20.281.](#)

<sup>6</sup> [34 T.A.C. § 20.14\(a\)\(2\)\(A\) has been repealed \(§§ 20.10 to 20.24. Repealed eff. January 24, 2017\) and replaced by 34 T.A.C. § 20.285.](#)

Contractor's performance of the HUB subcontracting plan.

4.2.5.1 Progress Assessment Report (PAR): monthly compliance reports to Owner (contracting agency), verifying their compliance with the HUB subcontracting plan, including the use/expenditures they have made to Subcontractors. (The PAR is available in the Index Forms Library on the Facilities Design & Construction page of the Texas Facilities Commission website.

4.2.6 Promptly and accurately explain and provide supplemental information to Owner to assist in Owner's investigation of Contractor's good-faith effort to fulfill the HUB subcontracting plan and the requirements under 34 T.A.C. § 20.14(a)(1).<sup>7</sup>

4.3 Failure to Demonstrate Good-Faith Effort. Upon a determination by Owner that Contractor has failed to demonstrate a good-faith effort to fulfill the HUB subcontracting plan or any Contract covenant detailed above, Owner may, in addition to all other remedies available to it, report the failure to perform to the Comptroller of Public Accounts, Texas Procurement and Support Services Division, Historically Underutilized Business Program and may bar Contractor from future contracting opportunities with Owner.

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<sup>7</sup> [34 T.A.C. 20.14\(a\)\(1\)](#) has been repealed (§§ 20.10 to 20.24. Repealed eff. January 24, 2017) and replaced by [34 T.A.C. § 20.285](#).



## Article 5. Bonds and Insurance

5.1 Construction Bonds. Contractor is required to tender to Owner, prior to commencing the Work, performance and payment bonds, as required by Tex. Gov't Code, Ch. 2253. On Construction Manager-at-Risk and Design-Build Projects the Owner shall require a security bond, as described in Subsection 5.1.2 below.

5.1.1 Bond Requirements. Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to Owner, on Owner's form, and in compliance with the relevant provisions of the Texas Insurance Code. If any bond is for more than ten (10) percent of the surety's capital and surplus, Owner may require certification that the company has reinsured the excess portion with one or more reinsurers authorized to do business in the State. A reinsurer may not reinsure for more than ten (10) percent of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, Contractor shall, within thirty (30) days after such loss, furnish a replacement bond at no added cost to Owner.

5.1.1.1 **A Performance bond is required if the Contract Sum is in excess of \$100,000. The performance bond is solely for the protection of Owner. The performance bond is to be for the Contract Sum to guarantee the faithful performance of the Work in accordance with the Contract Documents. The form of the bond shall be approved by the Office of the Attorney General of Texas. The performance bond shall be effective through Contractor's warranty period.<sup>8</sup>**

5.1.1.2 **A Payment bond is required if the Contract price is in excess of \$25,000. The payment bond is to be for the Contract Sum and is payable to Owner solely for the protection and use of payment bond beneficiaries. The form of the bond shall be approved by the Office of the Attorney General of Texas.<sup>9</sup>**

5.1.2 Security Bond. The security bond provides protection to Owner if Contractor presents an acceptable guaranteed maximum price ("GMP") to Owner and 1) fails to execute the GMP; or 2) fails to deliver the required payment and performance bonds within the time period stated below.

5.1.3 When Bonds Are Due.

5.1.3.1 Security bonds are due within ten (10) days of signing a Construction Manager-at-Risk or Design-Build Contract.

5.1.3.2 Payment and performance bonds are due within ten (10) days of

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<sup>8</sup> Revised by TFC 2018 Supplementary General Conditions to the state of Texas 2015 edition of the Uniform General Conditions for Contracts.

<sup>9</sup> Revised by TFC 2018 Supplementary General Conditions to the state of Texas 2015 edition of the Uniform General Conditions for Contracts.

Contractor's receipt of a fully executed GMP on a Construction Manager-at-Risk project or the Contract Sum for a Design-Build project, or within ten (10) days of Contractor's receipt of a fully executed Contract on competitively bid or competitive sealed proposal projects.

- 5.1.4 Power of Attorney. Each bond shall be accompanied by a valid power of attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney-in-fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.
- 5.1.5 Bond Indemnification. The process of requiring and accepting bonds and making claims there under shall be conducted in compliance with Tex. Gov't Code, Ch. 2253. IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.
- 5.1.6 Furnishing Bond Information. Owner shall furnish certified copies of the payment bond and the related Contract to any qualified person seeking copies who complies with Tex. Gov't Code § 2253.026.
- 5.1.7 Claims on Payment Bonds. Claims on payment bonds must be sent directly to Contractor and his surety in accordance with Tex. Gov't Code § 2253.041. All payment bond claimants are cautioned that no lien exists on the funds unpaid to Contractor on such Contract, and that reliance on notices sent to Owner may result in loss of their rights against Contractor and/or his surety. Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.
- 5.1.8 Payment Claims when Payment Bond not Required. The rights of Subcontractors regarding payment are governed by Tex. Prop. Code §§ 53.231 – 53.239 when the value of the Contract between Owner and Contractor is less than \$25,000.00. These provisions set out the requirements for filing a valid lien on funds unpaid to Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claim.
- 5.1.9 Sureties. A surety shall be listed on the US Department of the Treasury's Listing of Approved Sureties maintained by the Bureau of Financial Management Service (FMS), [www.fms.tres.gov/c570](http://www.fms.tres.gov/c570), stating companies holding Certificates of Authority as acceptable sureties on Federal bonds and acceptable reinsuring companies (FMS Circular 570).
- 5.1.9.1 *The surety list can currently be accessed at: <https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm>.*

- 5.2 Insurance Requirements. Contractor shall carry insurance in the types and amounts indicated in this Article for the duration of the Contract. The insurance shall be evidenced by delivery to Owner of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Upon request, Owner, and/or its agents, shall be entitled to receive without expense, copies of the policies and all endorsements. Contractor shall update all expired policies prior to submission for monthly payment. Failure to update policies shall be reason for withholding of payment until renewal is provided to Owner.
- 5.2.1 Contractor shall provide and maintain all insurance coverage with the minimum amounts described below until the end of the warranty period unless otherwise stated in Supplementary General Conditions or Special Conditions. Failure to maintain insurance coverage, as required, is grounds for suspension of Work for cause pursuant to Article 14.
- 5.2.2 Contractor shall deliver to Owner true and complete copies of certificates and corresponding policy endorsements prior to the issuance of any Notice to Proceed.
- 5.2.3 Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- 5.2.4 The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.
- 5.2.4.1 **Contractor shall deliver to Owner true and complete copies of the General Contractor's certificates prior to the issuance of any Notice to Proceed.<sup>10</sup>**
- 5.2.4.2 **Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.<sup>11</sup>**
- 5.2.4.3 **The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the**

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<sup>10</sup> Revised by TFC 2018 Supplementary General Conditions to the state of Texas 2015 edition of the Uniform General Conditions for Contracts.

<sup>11</sup> Revised by TFC 2018 Supplementary General Conditions to the state of Texas 2015 edition of the Uniform General Conditions for Contracts.

**indemnities granted to Owner in the Contract Documents.<sup>12</sup>**

**5.2.4.4 The insurance coverage and limits established in the Uniform General Conditions, Supplementary General Conditions, or Special Conditions shall not be interpreted as any representation or warranty that the insurance coverage and limits necessarily will be adequate to protect Contractor.<sup>13</sup>**

5.2.5 The insurance coverage and limits established herein shall not be interpreted as any representation or warranty that the insurance coverage and limits necessarily will be adequate to protect Contractor.

5.2.6 Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company or similar rating company or otherwise acceptable to Owner.

**5.2.6.1 Insurance Coverage Required.**

5.2.6.1.1 Workers' Compensation. Insurance with limits as required by the Texas Workers' Compensation Act, with the policy endorsed to provide a waiver of subrogation in favor of Owner, employer's liability insurance of not less than:

\$1,000,000 each accident;  
\$1,000,000 disease each employee; and  
\$1,000,000 disease policy limit.

5.2.6.1.2 Commercial General Liability Insurance. Including premises, operations, independent contractor's liability, products and completed operations and contractual liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Contractor's liability for bodily injury (including death) and property damage with a minimum limit of:

\$1,000,000 per occurrence;  
\$2,000,000 general aggregate;  
\$5,000 Medical Expense each person;  
\$1,000,000 Personal Injury and Advertising Liability;  
\$2,000,000 products and completed operations aggregate;  
\$50,000 Damage to Premises Rented to You; and  
Coverage shall be on an "occurrence" basis.

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<sup>12</sup> Revised by TFC 2018 Supplementary General Conditions to the state of Texas 2015 edition of the Uniform General Conditions for Contracts.

<sup>13</sup> Revised by TFC 2018 Supplementary General Conditions to the state of Texas 2015 edition of the Uniform General Conditions for Contracts.

The policy shall include coverage extended to apply to completed operations and explosion, collapse, and underground hazards. The policy shall include endorsement CG2503 Amendment of Aggregate Limits of Insurance (per Project) or its equivalent.

If the Work involves any activities within fifty (50) feet of any railroad, railroad protective insurance as may be required by the affected railroad, written for not less than the limits required by such railroad.

5.2.6.1.2.1 *The term “You” as reference in Subsection 5.2.6.1.2 above, means the Contractor.*

5.2.6.1.3 Asbestos Abatement Liability Insurance, including coverage for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos containing materials. \*This requirement applies if the Work or the Project includes asbestos containing materials.

The combined single limit for bodily injury and property damage will be a minimum of \$1,000,000 per occurrence.

\*Specific requirement for claims-made form: Required period of coverage will be determined by the following formula: continuous coverage for life of the Contract, plus one (1) year (to provide coverage for the warranty period), and an extended discovery period for a minimum of five (5) years which shall begin at the end of the warranty period.

Employer’s liability limits for asbestos abatement will be:

\$500,000 each accident;  
\$500,000 disease each employee; and  
\$500,000 disease policy limit.

**If this Contract is for asbestos abatement only, the Special Form builder’s risk or Special Form installation floater (e) is not required.**

5.2.6.1.4 Comprehensive Automobile Liability Insurance, covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage of \$1,000,000 per accident. No aggregate shall be permitted for this type of coverage.

Such insurance is to include coverage for loading and unloading hazards.

5.2.6.1.5 Special Form Builder's Risk Insurance, if applicable (or Special Form installation floater for instances in which the project involves solely the installation of material and/or equipment). Coverage shall be Special Form, including, but not limited to, fire, extended coverage, vandalism and malicious mischief, theft and, if applicable, flood, earth movement and named storm. Builder's risk and installation floater limits shall be equal to 100 percent of the Contract Sum plus, if any, existing property and Owner-furnished equipment specified by Owner. The policy shall be written jointly in the names of Owner and Contractor. Subcontractors shall be named as additional insureds. The policy shall have endorsements as follows:

5.2.6.1.5.1 This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.

5.2.6.1.5.2 This insurance shall not contain an occupancy clause suspending or reducing coverage should Owner partially occupy the Site and before the parties have determined Substantial Completion.

5.2.6.1.5.3 Loss, if any, shall be adjusted with and made payable to Owner as trustee for the insureds as their interests may appear. Owner shall be named as loss payee.

5.2.6.1.5.4 For renovation projects or projects that involve portions of Work contained within an existing structure, refer to Supplementary General and Special Conditions for possible additional builder's risk insurance requirements.

5.2.6.1.5.5 For Owner furnished equipment or materials that will be in care, custody or control of Contractor, Contractor will be responsible for damage and loss.

5.2.6.1.5.6 For those properties located within a Tier 1 or 2 windstorm area, named storm coverage must be provided with limits specified by Owner.

5.2.6.1.5.7 For those properties located in flood prone areas, flood insurance coverage must be provided with limits specified by Owner.

5.2.6.1.5.8 Builder's risk insurance policy shall remain in effect until Substantial Completion.

5.2.6.1.6 "Umbrella" Liability Insurance. Contractor shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring Contractor for an amount of not less than amount specified in the Supplementary General Conditions or Special Conditions that provides coverage at least as broad as and applies in excess and follows form of the primary liability coverages required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

5.2.7 Policies must include the following clauses, as applicable:

5.2.7.1 This insurance shall not be canceled, materially changed, or non-renewed except after thirty (30) days written notice has been given to Owner.

5.2.7.2 It is agreed that Contractor's insurance shall be deemed primary with respect to any insurance or self-insurance carried by Owner for liability arising out of operations under the Contract with Owner.

5.2.7.3 Owner, its officials, directors, employees, representatives, and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured performed under Contract with Owner. The additional insured status must cover completed operations as well. This is not applicable to workers' compensation policies.

5.2.7.4 A waiver of subrogation in favor of Owner shall be provided in all policies.

5.2.8 Without limiting any of the other obligations or liabilities of Contractor, Contractor shall require each Subcontractor performing work under the Contract, at Subcontractor's own expense, to maintain during the term of the Contract, the same stipulated minimum insurance including the required provisions and additional policy conditions as shown above. As an alternative, Contractor may include its Subcontractors as additional insureds on its own coverage as prescribed under these requirements. Contractor's certificate of insurance shall note in such event that Subcontractors are included as additional insureds and that Contractor agrees to provide workers' compensation for Subcontractors and their employees. Contractor shall obtain and monitor the certificates of insurance from each Subcontractor in order to assure compliance with the insurance requirements. Contractor must retain the certificates of insurance for the duration of the Contract plus five (5) years and shall have the responsibility of enforcing these insurance requirements among

its Subcontractors. Owner shall be entitled, upon request and without expense, to receive copies of these certificates.

5.2.9 Workers' compensation insurance coverage must be provided for all workers at all tier levels and meet the statutory requirements of Tex. Lab. Code § 401.011(44) and specific to construction projects for public entities as required by Tex. Lab. Code § 406.096.

5.2.10 *Owner shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements as they apply to the limits set out herein.*

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## **Article 6. Construction Documents, Coordination Documents, and Record Documents**

### 6.1 Drawings and Specifications.

- 6.1.1 Copies Furnished. Contractor will be furnished, free of charge, the number of complete sets of the Drawings, Specifications, and Addenda as provided in the Supplementary General Conditions or Special Conditions. Additional complete sets of Drawings and Specifications, if requested, will be furnished at reproduction cost to the entity requesting such additional sets. Electronic copies of such documents will be provided to Contractor without charge.
- 6.1.2 Ownership of Drawings and Specifications. All Drawings, Specifications and copies thereof furnished by A/E are to remain A/E's property. These documents are not to be used on any other project, and with the exception of the Contract record set and electronic versions needed for warranty operations, are to be returned to the A/E, upon request, following completion of the Work.
- 6.1.3 Interrelation of Documents. The Contract Documents as referenced in the Contract between Owner and Contractor are complimentary, and what is required by one shall be as binding as if required by all.
- 6.1.4 Resolution of Conflicts in Documents. Where conflicts may exist within the Contract Documents, the documents shall govern in the following order: (a) Change Orders, addenda, and written amendments to the Contract; (b) the Contract; (c) Drawings; (d) Specifications (but Specifications shall control over Drawings as to quality of materials and workmanship); and (e) other Contract Documents. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control and more specific requirements shall govern over general requirements. Contractor shall notify A/E and ODR for resolution of the issue prior to executing the Work in question.
- 6.1.5 Contractor's Duty to Review Contract Documents. In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to commencing the Work, Contractor shall examine and compare the Contract Documents, information furnished by Owner, relevant field measurements made by Contractor and any visible or reasonably anticipated conditions at the Site affecting the Work. This duty extends throughout the construction phase prior to commencing each particular work activity and/or system installation.
- 6.1.6 Discrepancies and Omissions in Drawings and Specifications.
- 6.1.6.1 Promptly report to ODR and to A/E the discovery of any apparent error, omission or inconsistency in the Contract Documents prior to execution of the Work.

- 6.1.6.2 It is recognized that Contractor is not acting in the capacity of a licensed design professional, unless it is performing as a Design-Build firm.
- 6.1.6.3 *In the event of conflict among the drawings, Contractor is required to submit a Request for Information (RFI) to the A/E for clarification.*
- 6.1.6.3.1 *The Contractor shall submit the RFI to the Architect/Engineer, with copy to the ODR, in sufficient time to allow a reasonable response time by the A/E to avoid delays in the Work. The RFI shall contain sufficient information to clearly identify the issue and requested information.*
- 6.1.6.3.2 *The A/E's Supplemental Instructions (ASI) shall be issued by the A/E to the Contractor, with copy to the ODR, in a prompt manner, and in accordance with the Contract Documents without change in Contract Sum or Contract Time. Proceeding with the work in accordance with these instructions indicates the Contractor's Acknowledgement that there will be no change in the Contract Sum or Contract Time. If the clarification results in a change in the scope of the Work and causes a change in the Contract Sum and/or Contract Time, then Contractor shall submit a Change Order Proposal Evaluation (CPE) to the A/E with a copy to the ODR.*
- 6.1.6.4 It is further recognized that Contractor's examination of Contract Documents is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations, unless it is performing as a Design-Build firm or a Construction Manager-at-Risk.
- 6.1.6.5 When performing as a Design-Build firm, Contractor has sole responsibility for discrepancies, errors, and omissions in the Drawings and Specifications.
- 6.1.6.6 When performing as a Construction Manager-at-Risk, Contractor has a shared responsibility with A/E for discovery and resolution of discrepancies, errors, and omissions in the Contract Documents. In such case, Contractor's responsibility pertains to review, coordination, and recommendation of resolution strategies within budget constraints.
- 6.1.6.7 Contractor has no liability for errors, omissions, or inconsistencies unless Contractor knowingly failed to report a recognized problem to Owner or the Work is executed under a Design-Build or Construction

Manager-at-Risk Contract as outlined above. Should Contractor fail to perform the examination and reporting obligations of these provisions, Contractor is responsible for avoidable costs and direct and/or consequential damages.

6.2 Requirements for Record Documents. Contractor shall:

- 6.2.1 Maintain at the Site one copy of all Drawings, Specifications, addenda, approved submittals, Contract modifications, and all Project correspondence. Keep current and maintain Drawings and Specifications in good order with postings and markings to record actual conditions of Work and show and reference all changes made during construction. Provide Owner and A/E access to these documents.
- 6.2.2 Maintain the Record Documents including Drawings, Specifications and other materials which reflect the actual field conditions and representations of the Work performed, whether it be directed by addendum, Change Order or otherwise. Make available all records prescribed herein for reference and examination by Owner and its representatives and agents.
- 6.2.3 Update the Record Documents at least monthly prior to submission of periodic partial pay estimates. Failure to maintain current Record Documents constitutes cause for denial of a progress payment otherwise due.
- 6.2.4 Prior to requesting Substantial Completion inspection Contractor shall furnish a copy of its marked-up Record Documents and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications, or parts for all installed equipment, systems, and like items and as described in the Contract Documents. (Unexecuted samples of the aforementioned documentation may be reviewed by ODR when the absence of substantial completion transactions preclude execution; however, Contractor remains obligated to provide fully executed copies of such materials prior to final payment.)
- 6.2.5 Once determined acceptable by ODR with input from A/E, provide one (1) reproducible copy and one (1) electronic media copy of all Record Documents, unless otherwise required by the Supplementary General Conditions or Special Conditions.
- 6.2.6 Contractor shall be responsible for updating the Record Documents for all Contractor initiated documents and changes to the Contract Documents due to coordination and actual field conditions, including RFIs.
- 6.2.7 A/E shall be responsible for updating the Record Documents for any addenda, Change Orders, A/E supplemental instructions and any other alterations to the Contract Documents generated by A/E or Owner.

## Article 7. Construction Safety

- 7.1 General. It is the duty and responsibility of Contractor and all of its Subcontractors to be familiar with, enforce and comply with all requirements of Public Law No. 91-596, 29 U.S.C. § 651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto. Contractor shall prepare a safety plan specific to the Project and submit it to ODR and A/E prior to commencing Work. In addition, Contractor and all of its Subcontractors shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury or loss and erect and maintain all necessary safeguards for such safety and protection.
- 7.2 Notices. Contractor shall provide notices as follows:
- 7.2.1 Notify owners of adjacent property including those that own or operate utility services and/or underground facilities, and utility owners, when prosecution of the Work may affect them or their facilities, and cooperate with them in the protection, removal, relocation and replacement, and access to their facilities and/or utilities.
- 7.2.2 Coordinate the exchange of material safety data sheets (MSDSs) or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations. Maintain a complete file of MSDSs for all materials in use on site throughout the construction phase and make such file available to Owner and its agents as requested.
- 7.3 Emergencies. In any emergency affecting the safety of persons or property, Contractor shall act to minimize, mitigate, and prevent threatened damage, injury or loss.
- 7.3.1 Have authorized agents of Contractor respond immediately upon call at any time of day or night when circumstances warrant the presence of Contractor to protect the Work or adjacent property from damage or to take such action pertaining to the Work as may be necessary to provide for the safety of the public.
- 7.3.2 Give ODR and A/E prompt notice of all such events.
- 7.3.3 If Contractor believes that any changes in the Work or variations from Contract Documents have been caused by its emergency response, promptly notify Owner within seventy-two (72) hours of the emergency response event.
- 7.3.4 Should Contractor fail to respond, Owner is authorized to direct other forces to take action as necessary and Owner may deduct any cost of remedial action from funds otherwise due Contractor.
- 7.4 Injuries. In the event of an incident or accident involving outside medical care for an

individual on or near the Work, Contractor shall notify ODR and other parties as may be directed promptly, but no later than twenty-four (24) hours after Contractor learns that an event required medical care.

- 7.4.1 Record the location of the event and the circumstances surrounding it, by using photography or other means, and gather witness statements and other documentation which describes the event.
  - 7.4.2 Supply ODR and A/E with an incident report no later than thirty-six (36) hours after the occurrence of the event. In the event of a catastrophic incident (one (1) fatality or three (3) workers hospitalized), barricade and leave intact the scene of the incident until all investigations are complete. A full set of incident investigation documents, including facts, finding of cause, and remedial plans shall be provided within one (1) week after occurrence, unless otherwise directed by legal counsel. Contractor shall provide ODR with written notification within one week of such catastrophic event if legal counsel delays submission of full report.
- 7.5 Environmental Safety. Upon encountering any previously unknown potentially hazardous material, or other materials potentially contaminated by hazardous material, Contractor shall immediately stop work activities impacted by the discovery, secure the affected area, and notify ODR immediately.
- 7.5.1 Bind all Subcontractors to the same duty.
  - 7.5.2 Upon receiving such notice, ODR will promptly engage qualified experts to make such investigations and conduct such tests as may be reasonably necessary to determine the existence or extent of any environmental hazard. Upon completion of this investigation, ODR will issue a written report to Contractor identifying the material(s) found and indicate any necessary steps to be taken to treat, handle, transport or dispose of the material.
  - 7.5.3 Owner may hire third-party Contractors to perform any or all such steps.
  - 7.5.4 Should compliance with ODR's instructions result in an increase in Contractor's cost of performance, or delay the Work, Owner will make an equitable adjustment to the Contract Sum and/or the time of completion, and modify the Contract in writing accordingly.
- 7.6 Trenching Plan. When the project requires excavation which either exceeds a depth of four (4) feet, or results in any worker's upper body being positioned below grade level, Contractor is required to submit a trenching plan to ODR prior to commencing trenching operations unless an engineered plan is part of the Contract Documents. The plan is required to be prepared and sealed by a professional engineer registered in the State of Texas and hired or employed by Contractor or Subcontractor to perform the work. Said engineer cannot be anyone who is otherwise either directly or indirectly engaged on this project.
- 7.6.1 *In addition, the Contractor and all of its subcontractors shall comply with all requirements of 29 C.F.R. 1926.652, OSHA Safety and Health Standards,*

*and shall require a pay item classification for the particular safety system to be utilized by the Contractor.*

7.7 *Construction Site Security*

7.7.1 *Construction Site Fencing:*

7.7.1.1 *Contractor shall provide a fence to completely enclose the immediate work area, including, but not limited to, all areas undergoing demolition or construction as well as all staging areas or as shown on the plans. The Contractor will maintain this fence throughout project construction until released by the Owner following Substantial Completion. In no event will barbed wire be used in connection with a fence.*

7.7.1.2 *Contractor will construct a fence of weather-resistant steel posts and chain link fabric with No. 9 gauge 2" mesh. Posts will be securely anchored in the ground such that they remain upright at all times and spaced no more than 8'-0" on center. Contractor will stretch and secure Chain link fabric to the steel posts at the top and bottom and on 2'-0" centers between. Minimum height of fence will be 6'-0".*

7.7.1.3 *Contractor will construct a fence with gates capable of being padlocked. Gates and gateposts will be constructed with materials as described previously with a minimum height of 6'-0". Gates will be secured with a padlock at all times when not in use or directly supervised by designated personnel. Gateposts will be set solidly in concrete.*

7.8 *Infection Control.* *The Contractor is required to apply Infection Control principles as designated and outlined within the Infection Control Plan documents for construction at state hospitals and other Owner facilities when otherwise required by Owner, and set forth within the specifications attachment to the Contract. The ODR may incorporate mandatory adherence agreements for infection control into Construction Documents with penalties for noncompliance and mechanisms to ensure timely correction of problems.*

7.81. *Infection Control Construction Permit.* *The Contractor is required to submit an Infection Control Construction Permit to the ODR.*

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## Article 8. Quality Control

8.1 Materials & Workmanship. Contractor shall execute Work in a good and workmanlike matter in accordance with the Contract Documents. Contractor shall develop and provide a quality control plan specific to this Project and acceptable to Owner. Where Contract Documents do not specify quality standards, complete and construct all Work in compliance with generally accepted construction industry standards. Unless otherwise specified, incorporate all new materials and equipment into the Work under the Contract.

8.1.1 *Intent of Contract Documents. Unless otherwise stated, the Specifications and Contract Documents are not limited to materials, equipment, or fixtures produced by any particular manufacturer. Where materials, equipment and/or fixtures have been specified by name, manufacturer or catalog number, it has been done to set a definite standard and a reference for comparison as to quality, application, physical conformity, and other characteristics. Any dealer, jobber or manufacturer may furnish materials, equipment, or fixtures which meet or exceed the characteristics of the specified items. Substitution of materials will not be made without prior written approval from the Architect/Engineer and Owner, in conformance with Subsections 8.3.6 and 8.3.7.*

8.2 Testing.

8.2.1 Owner is responsible for coordinating and paying for routine and special tests required to confirm compliance with quality and performance requirements, except as stated below or otherwise required by the Contract Documents. Contractor shall provide the following testing:

8.2.1.1 Any test of basic material or fabricated equipment included as part of a submittal for a required item in order to establish compliance with the Contract Documents.

8.2.1.2 Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to establish compliance with the Contract Documents.

8.2.1.3 Preliminary, start-up, pre-functional and operational testing of building equipment and systems as necessary to confirm operational compliance with requirements of the Contract Documents.

8.2.1.4 All subsequent tests on original or replaced materials conducted as a result of prior testing failure.

8.2.2 All testing shall be performed in accordance with standard test procedures by an accredited laboratory, or special consultant as appropriate, acceptable to Owner. Results of all tests shall be provided promptly to ODR, A/E, and Contractor.

8.2.3 Non-Compliance (Test Results). Should any of the tests indicate that a material and/or system does not comply with the Contract requirements, the burden of proof remains with Contractor, subject to:

8.2.3.1 Contractor selection and submission of the laboratory for Owner acceptance.

8.2.3.2 Acceptance by Owner of the quality and nature of tests.

8.2.3.3 All tests taken in the presence of A/E and/or ODR, or their representatives.

8.2.3.4 If tests confirm that the material/systems comply with Contract Documents, Owner will pay the cost of the test.

8.2.3.5 If tests reveal noncompliance, Contractor will pay those laboratory fees and costs of that particular test and all future tests, of that failing Work, necessary to eventually confirm compliance with Contract Documents.

8.2.3.6 Proof of noncompliance with the Contract Documents will make Contractor liable for any corrective action which ODR determines appropriate, including complete removal and replacement of non-compliant work or material.

8.2.4 Notice of Testing. Contractor shall give ODR and A/E timely notice of its readiness and the date arranged so ODR and A/E may observe such inspection, testing, or approval.

8.2.5 Test Samples. Contractor is responsible for providing Samples of sufficient size for test purposes and for coordinating such tests with their Work Progress Schedule to avoid delay.

8.2.6 Covering Up Work. If Contractor covers up any Work without providing Owner an opportunity to inspect, Contractor shall, if requested by ODR, uncover and recover the work at Contractor's expense.

### 8.3 Submittals.

8.3.1 Contractor's Submittals. Contractor shall submit with reasonable promptness consistent with the Project schedule and in orderly sequence all Shop Drawings, Samples, or other information required by the Contract Documents, or subsequently required by Change Order. Prior to submitting, Contractor shall review each submittal for general compliance with Contract Documents and approve submittals for review by A/E and Owner by an approval stamp affixed to each copy. Submittal data presented without Contractor's stamp will be returned without review or comment, and any delay resulting from failure is Contractor's responsibility.



- 8.3.1.1 Contractor shall within twenty-one (21) days of the effective date of the Notice To Proceed with construction, submit to ODR and A/E, a submittal schedule/register, organized by specification section, listing all items to be furnished for review and approval by A/E and Owner. The list shall include Shop Drawings, manufacturer's literature, certificates of compliance, materials Samples, materials colors, guarantees, and all other items identified throughout the Specifications.
- 8.3.1.2 Contractor shall indicate the type of item, Contract requirements reference, and Contractor's scheduled dates for submitting the item along with the requested dates for approval answers from A/E and Owner. The submittal register shall indicate the projected dates for procurement of all included items and shall be updated at least monthly with actual approval and procurement dates. Contractor's Submittal Register must be reasonable in terms of the review time for complex submittals. Contractor's submittal schedule must be consistent with the Work Progress Schedule and identify critical submittals. Show and allow a minimum of fifteen (15) calendar days duration after receipt by A/E and ODR for review and approval. If resubmittal required, allow a minimum of an additional fifteen (15) calendar days for review. Submit the updated Submittal Register with each request for progress payment. Owner may establish routine review procedures and schedules for submittals at the preconstruction conference and/or elsewhere in the Contract Documents. If Contractor fails to update and provide the Submittal Register as required, Owner may, after seven (7) days notice to Contractor withhold a reasonable sum of money that would otherwise be due Contractor.
- 8.3.1.3 Contractor shall coordinate the Submittal Register with the Work Progress Schedule. Do not schedule Work requiring a submittal to begin prior to scheduling review and approval of the related submittal. Revise and/or update both schedules monthly to ensure consistency and current project data. Provide to ODR the updated Submittal Register and schedule with each application for progress payment. Refer to requirements for the Work Progress Schedule for inclusion of procurement activities therein. Regardless, the Submittal Register shall identify dates submitted and returned and shall be used to confirm status and disposition of particular items submitted, including approval or other action taken and other information not conveniently tracked through the Work Progress Schedule.
- 8.3.1.4 By submitting Shop Drawings, Samples or other required information, Contractor represents that it has determined and verified all applicable field measurements, field construction criteria, materials, catalog numbers and similar data to the extent possible from existing conditions and design information provided by A/E prior to fabrication; and has checked and coordinated each Shop

Drawing and Sample with the requirements of the Work and the Contract Documents.

- 8.3.2 Review of Submittals. A/E and ODR review is only for conformance with the design concept and the information provided in the Contract Documents. Responses to submittals will be in writing. The approval of a separate item does not indicate approval of an assembly in which the item functions. The approval of a submittal does not relieve Contractor of responsibility for any deviation from the requirements of the Contract unless Contractor informs A/E and ODR of such deviation in a clear, conspicuous, and written manner on the submittal transmittal and at the time of submission, and obtains Owner's written specific approval of the particular deviation.
- 8.3.3 Correction and Resubmission. Contractor shall make any corrections required to a submittal and resubmit the required number of corrected copies promptly so as to avoid delay, until submittal approval. Direct attention in writing to A/E and ODR, when applicable, to any new revisions other than the corrections requested on previous submissions.
- 8.3.4 Limits on Shop Drawing Review. Contractor shall not commence any Work requiring a submittal until review of the submittal under Subsection 8.3.2. Construct all such work in accordance with reviewed submittals. Comments incorporated as part of the review in Subsection 8.3.2 of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless authorized through a Change Order. A/E's and ODR's review, if any, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the submittal, regardless of any approval action. A/E or ODR shall not make formal changes to the Contract Documents via the submittal process. Changes to the Construction Documents shall be accomplished via Section 3.2.2 and Article 11 Changes.
- 8.3.5 *Contractor will not provide any construction materials that contain potentially hazardous substances (asbestos, asbestos products, PCB, lead-based paint, etc.). Contractor will provide documentation (material safety data sheets (MSDS), laboratory test results, manufacturer's statements, etc.) from the manufacturer confirming the construction materials do not contain hazardous substances. Shop Drawings, Samples, or other required information prepared by Contractor for construction materials that do not contain the supporting documentation described above may be rejected by the Owner, and any delay resulting therefrom will be the Contractor's sole responsibility.*
- 8.3.6 No Substitutions Without Approval. ODR and A/E may receive and consider Contractor's request for substitution when Contractor agrees to reimburse Owner for review costs and satisfies the requirements of this section. If Contractor does not satisfy these conditions, ODR and A/E will return the request without action except to record noncompliance with these requirements. Owner will not consider the request if Contractor cannot

provide the product or method because of failure to pursue the Work promptly or coordinate activities properly. Contractor's request for a substitution may be considered by ODR and A/E when:

- 8.3.6.1 The Contract Documents do not require extensive revisions; and
- 8.3.6.2 Proposed changes are in keeping with the general intent of the Contract Documents and the design intent of A/E and do not result in an increase in cost to Owner; and
- 8.3.6.3 The request is timely, fully documented, properly submitted and one or more of the following apply:
  - 8.3.6.3.1 Contractor cannot provide the specified product, assembly or method of construction within the Contract Time;
  - 8.3.6.3.2 The request directly relates to an "or-equal" clause or similar language in the Contract Documents;
  - 8.3.6.3.3 The request directly relates to a "product design standard" or "performance standard" clause in the Contract Documents;
  - 8.3.6.3.4 The requested substitution offers Owner a substantial advantage in cost, time, energy conservation or other considerations, after deducting additional responsibilities Owner must assume;
  - 8.3.6.3.5 The specified product or method of construction cannot receive necessary approval by an authority having jurisdiction, and ODR can approve the requested substitution;
  - 8.3.6.3.6 Contractor cannot provide the specified product, assembly or method of construction in a manner that is compatible with other materials and where Contractor certifies that the substitution will overcome the incompatibility
  - 8.3.6.3.7 Contractor cannot coordinate the specified product, assembly or method of construction with other materials and where Contractor certifies they can coordinate the proposed substitution; or
  - 8.3.6.3.8 The specified product, assembly or method of construction cannot provide a warranty required by the Contract Documents and where Contractor certifies that the proposed substitution provides the required warranty.

8.3.6.3.9 The manufacture of the specified product has been removed from production due to cancellation or obsolescence.

8.3.7 Unauthorized Substitutions at Contractor's Risk. Contractor is financially responsible for any additional costs or delays resulting from unauthorized substitution of materials, equipment or fixtures other than those specified. Contractor shall reimburse Owner for any increased design or contract administration costs resulting from such unauthorized substitutions.

#### 8.4 Field Mock-up.

8.4.6 Mock-ups shall be constructed prior to commencement of a specified scope of work to confirm acceptable workmanship.

8.4.6.1 As a minimum, field mock-ups shall be constructed for roofing systems, exterior veneer / finish systems, glazing systems, and any other Work requiring a mock-up as identified throughout the Contract Documents. Mock-ups for systems not part of the Project scope shall not be required.

8.4.6.2 Mock-ups may be incorporated into the Work if allowed by the Contract Documents and if acceptable to ODR. If mock-ups are freestanding, they shall remain in place until otherwise directed by Owner.

8.4.6.3 Contractor shall include field mock-ups in their Work Progress Schedule and shall notify ODR and A/E of readiness for review sufficiently in advance to coordinate review without delay.

#### 8.5 Inspection During Construction.

8.5.1 Contractor shall provide sufficient, safe, and proper facilities, including equipment as necessary for safe access, at all reasonable times for observation and/or inspection of the Work by Owner and its agents. "Reasonable times" of inspection allow for sufficient monitoring of the quality of materials and installation without substantially impeding the progress of the Work.

8.5.2 Contractor shall not cover up any Work with finishing materials or other building components prior to providing Owner and its agents an opportunity to perform an inspection of the Work.

8.5.2.1 Should corrections of the Work be required for approval, Contractor shall not cover-up corrected Work until Owner indicates approval.

8.5.2.2 Contractor shall provide notification of at least five (5) working days or otherwise as mutually agreed, to ODR of the anticipated need for a cover-up inspection. Should ODR fail to make the necessary

inspection within the agreed period, Contractor may proceed with cover-up Work, but is not relieved of responsibility for Work to comply with requirements of the Contract Documents.

8.6 *Condemnation and removal of defective work.*

- 8.6.1 *The ODR may reject and condemn Work which does not meet the requirements of the Contract. The Contractor will remove and replace defective work in accordance with written directions provided by ODR. The approval of a work item by the ODR does not relieve the Contractor from compliance with the Contract Documents.*
- 8.6.2 *If any materials or Work furnished under the Contract is condemned by the Owner, the Contractor will, after notice from the Owner, promptly remove the materials, whether worked or unworked, and take down all portions of the Work condemned. Contractor will make good all work damaged or destroyed during the removal and replacement process.*
- 8.6.3 *Upon notice of condemnation, the Contractor may request to prove to the Owner, at Contractor's sole cost, that the Work should be accepted because it meets performance and other relevant standards. Owner will respond to Contractor showing of proof in writing.*

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## Article 9. Construction Schedules

- 9.1 Contract Time. **TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT.** The Contract Time is the time between the dates indicated in the Notice to Proceed for commencement of the Work and for achieving Substantial Completion. The Contract Time can be modified only by Change Order. Failure to achieve Substantial Completion within the Contract Time as otherwise agreed to in writing will cause damage to Owner and may subject Contractor to liquidated damages as provided in the Contract Documents. If Contractor fails to achieve Final Completion within thirty (30) calendar days after Substantial Completion or a mutually agreed upon longer period of time between Contractor and Owner, Contractor shall be responsible for Owner's additional inspection, project management, and maintenance cost to the extent caused by Contractor's failure to achieve Final Completion.
- 9.2 Notice to Proceed. Owner will issue a Notice to Proceed which shall state the dates for beginning Work and for achieving Substantial Completion of the Work.
- 9.3 Work Progress Schedule. Refer to Supplementary General Conditions or Special Conditions for additional schedule requirements. Unless indicated otherwise in those documents, Contractor shall submit their initial Work Progress Schedule for the Work in relation to the entire Project not later than twenty-one (21) days after the effective date of the Notice to Proceed to ODR and A/E. Unless otherwise indicated in the Contract Documents, the Work Progress Schedule shall be computerized Critical Path Method (CPM) with fully editable logic. This initial schedule shall indicate the dates for starting and completing the various aspects required to complete the Work, including mobilization, procurement, installation, testing, inspection, delivery of Close-out Documents and acceptance of all the Work of the Contract. When acceptable to Owner, the initially accepted schedule shall be the Baseline Schedule for comparison to actual conditions throughout the Contract duration.
- 9.3.1 Schedule Requirements. Contractor shall submit electronic and paper copy of the initial Work Progress Schedule reflecting accurate and reliable representations of the planned progress of the Work, the Work to date if any, and of Contractor's actual plans for its completion. Contractor shall organize and provide adequate detail so the schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.
- 9.3.1.1 Contractor shall resubmit initial schedule as required to address review comments from A/E and ODR until such schedule is accepted as the Baseline Schedule.
- 9.3.1.2 Submittal of a schedule, schedule revision or schedule update constitutes Contractor's representation to Owner of the accurate depiction of all progress to date and that Contractor will follow the schedule as submitted in performing the Work.
- 9.3.2 Schedule Updates. Contractor shall update the Work Progress Schedule and the Submittal Register monthly, as a minimum, to reflect progress to date and

current plans for completing the Work, while maintaining original schedule as Baseline Schedule and submit paper and electronic copies of the update to A/E and ODR as directed, but as a minimum with each request for payment. Owner has no duty to make progress payments unless accompanied by the updated Work Progress Schedule. Show the anticipated date of completion reflecting all extensions of time granted through Change Order as of the date of the update. Contractor may revise the Work Progress Schedule when in Contractor's judgment it becomes necessary for the management of the Work. Contractor shall identify all proposed changes to schedule logic to Owner and to A/E via an executive summary accompanying the updated schedule for review prior to final implementation of revisions into a revised Baseline Schedule. Schedule changes that materially impact Owner's operations shall be communicated promptly to ODR and shall not be incorporated into the revised Baseline Schedule without ODR's consent.

9.3.3 The Work Progress Schedule is for Contractor's use in managing the Work and submittal of the schedule, and successive updates or revisions, is for the information of Owner and to demonstrate that Contractor has complied with requirements for planning the Work. Owner's acceptance of a schedule, schedule update or revision constitutes Owner's agreement to coordinate its own activities with Contractor's activities as shown on the schedule.

9.3.3.1 Acceptance of the Work Progress Schedule, or update and/or revision thereto does not indicate any approval of Contractor's proposed sequences and duration.

9.3.3.2 Acceptance of a Work Progress Schedule update or revision indicating early or late completion does not constitute Owner's consent, alter the terms of the Contract, or waive either Contractor's responsibility for timely completion or Owner's right to damages for Contractor's failure to do so.

9.3.3.3 Contractor's scheduled dates for completion of any activity or the entire Work do not constitute a change in terms of the Contract. Change Orders are the only method of modifying the Substantial Completion Date(s) and Contract Time.

9.4 Ownership of Float. Unless indicated otherwise in the Contract Documents, Contractor shall develop its schedule, pricing, and execution plan to provide a minimum of ten (10) percent total float at acceptance of the Baseline Schedule. Float time contained in the Work Progress Schedule is not for the exclusive benefit of Contractor or Owner but belongs to the Project and may be consumed by either party as needed on a first-used basis.

9.5 Completion of Work. Contractor is accountable for completing the Work within the Contract Time stated in the Contract, or as otherwise amended by Change Order.

9.5.1 If, in the judgment of Owner, the work is behind schedule and the rate of placement of work is inadequate to regain scheduled progress to insure timely

completion of the entire work or a separable portion thereof, Contractor, when so informed by Owner, shall immediately take action to increase the rate of work placement by:

9.5.1.1 An increase in working forces.

9.5.1.2 An increase in equipment or tools.

9.5.1.3 An increase in hours of work or number of shifts.

9.5.1.4 Expedite delivery of materials.

9.5.1.5 Other action proposed if acceptable to Owner.

9.5.2 Within ten (10) days after such notice from ODR, Contractor shall notify ODR in writing of the specific measures taken and/or planned to increase the rate of progress. Contractor shall include an estimate as to the date of scheduled progress recovery and an updated Work Progress Schedule illustrating Contractor's plan for achieving timely completion of the Project. Should ODR deem the plan of action inadequate, Contractor shall take additional steps or make adjustments as necessary to its plan of action until it meets with ODR's approval.

## 9.6 Modification of the Contract Time.

9.6.1 Delays and extension of time as hereinafter described are valid only if executed in accordance with provisions set forth in Article 11.

9.6.2 When a delay defined herein as excusable prevents Contractor from completing the Work within the Contract Time, Contractor is entitled to an extension of time. Owner will make an equitable adjustment and extend the number of days lost because of excusable delay or Weather Days, as measured by Contractor's progress schedule. All extensions of time will be granted in calendar days. In no event, however, will an extension of time be granted for delays that merely extend the duration of non-critical activities, or which only consume float without delaying the project Substantial Completion date(s).

9.6.2.1 A "Weather Day" is a day on which Contractor's current schedule indicates Work is to be done, and on which inclement weather and/or related site conditions prevent Contractor from performing seven (7) continuous hours of Work on the critical path between the hours of 7:00 a.m. and 6:00 p.m. Weather days are excusable delays. When weather conditions at the site prevent work from proceeding, Contractor shall immediately notify ODR for confirmation of the conditions. At the end of each calendar month, submit to ODR and A/E a list of Weather Days occurring in that month along with documentation of the impact on critical activities. Based on confirmation by ODR, any time extension granted will be issued by Change Order. If Contractor and Owner



cannot agree on the time extension, Owner may issue a ULCO for fair and reasonable time extension.

9.6.2.2 Excusable Delay. Contractor is entitled to an equitable adjustment of the Contract Time, issued via change order, for delays caused by the following:

9.6.2.2.1 Errors, omissions and imperfections in design, which A/E corrects by means of changes in the Drawings and Specifications.

9.6.2.2.2 Unanticipated physical conditions at the Site, which A/E corrects by means of changes to the Drawings and Specifications or for which ODR directs changes in the Work identified in the Contract Documents.

9.6.2.2.3 Failure of Owner to have secured property, right-of-way or easements necessary for Work to begin or progress.

9.6.2.2.4 Changes in the Work that effect activities identified in Contractor's schedule as "critical" to completion of the entire Work, if such changes are ordered by ODR or recommended by A/E and ordered by ODR.

9.6.2.2.5 Suspension of Work for unexpected natural events, Force Majeure (sometimes called "acts of God"), civil unrest, strikes or other events which are not within the reasonable control of Contractor.

9.6.2.2.6 Suspension of Work for convenience of ODR, which prevents Contractor from completing the Work within the Contract Time.

9.6.2.2.7 Administrative delays caused by activities or approval requirements related to an Authority Having Jurisdiction.

9.6.3 Contractor's relief in the event of such delays is the time impact to the critical path as determined by analysis of Contractor's schedule. In the event that Contractor incurs additional direct costs because of the excusable delays other than described in Subparagraph 9.6.2.2.4 and within the reasonable control of Owner, the Contract price and Contract Time are to be equitably adjusted by Owner pursuant to the provisions of Article 11.

9.7 No Damages for Delay. Contractor has no claim for monetary damages for delay or hindrances to the work from any cause, including without limitation any act or omission of Owner.

9.8 Concurrent Delay. When the completion of the Work is simultaneously delayed by an excusable delay and a delay arising from a cause not designated as excusable,

Contractor may not be entitled to a time extension for the period of concurrent delay.

9.9 Other Time Extension Requests. Time extensions requested in association with changes to the Work directed or requested by Owner shall be included with Contractor's proposed costs for such change. Time extensions requested for inclement weather are covered by Paragraph 9.6.2.1 above. If Contractor believes that the completion of the Work is delayed by a circumstance other than for changes directed to the Work or weather, they shall give ODR written notice, stating the nature of the delay and the activities potentially affected, within five (5) days after the onset of the event or circumstance giving rise to the excusable delay. Contractor shall provide sufficient written evidence to document the delay. In the case of a continuing cause of delay, only one claim is necessary. State claims for extensions of time in numbers of whole or half days.

9.9.1 Within ten (10) days after the cessation of the delay, Contractor shall formalize its request for extension of time in writing to include a full analysis of the schedule impact of the delay and substantiation of the excusable nature of the delay. All changes to the Contract Time or made as a result of such claims is by Change Order, as set forth in Article 11.

9.9.2 No extension of time releases Contractor or the Surety furnishing a performance or payment bond from any obligations under the Contract or such a bond. Those obligations remain in full force until the discharge of the Contract.

9.9.3 Contents of Time Extension Requests. Contractor shall provide with each Time Extension Request a quantitative demonstration of the impact of the delay on project completion time, based on the Work Progress Schedule. Contractor shall include with Time Extension Requests a reasonably detailed narrative setting forth:

9.9.3.1 The nature of the delay and its cause; the basis of Contractor's claim of entitlement to a time extension.

9.9.3.2 Documentation of the actual impacts of the claimed delay on the critical path indicated in Contractor's Work Progress Schedule, and any concurrent delays.

9.9.3.3 Description and documentation of steps taken by Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Work Progress Schedule.

9.9.4 Owner's Response. Owner will respond to the Time Extension Request by providing to Contractor written notice of the number of days granted, if any, and giving its reason if this number differs from the number of days requested by Contractor.

9.9.4.1 Owner will not grant time extensions for delays that do not affect the Contract Substantial Completion date.

9.9.4.2 Owner will respond to each properly submitted Time Extension Request within fifteen (15) days following receipt. If Owner cannot reasonably make a determination about Contractor's entitlement to a time extension within that time, Owner will notify Contractor in writing. Unless otherwise agreed by Contractor, Owner has no more than fifteen (15) additional days to prepare a final response. If Owner fails to respond within forty-five (45) days from the date the Time Extension Request is received, Contractor is entitled to a time extension in the amount requested.

9.10 Failure to Complete Work Within the Contract Time. **TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT.** Contractor's failure to substantially complete the Work within the Contract Time or to achieve Substantial Completion as required will cause damage to Owner. These damages shall be liquidated by agreement of Contractor and Owner, in the amount per day as set forth in the Contract Documents.

9.11 Liquidated Damages. Owner may collect liquidated damages due from Contractor directly or indirectly by reducing the Contract Sum in the amount of liquidated damages stated in the Supplementary General Conditions or Special Conditions.

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## Article 10. Payments

- 10.1 Schedule of Values. Contractor shall submit to ODR and A/E for acceptance a Schedule of Values accurately itemizing material and labor for the various classifications of the Work based on the organization of the specification sections and of sufficient detail acceptable to ODR. The accepted Schedule of Values will be the basis for the progress payments under the Contract.
- 10.1.1 No progress payments will be made prior to receipt and acceptance of the Schedule of Values, provided in such detail as required by ODR, and submitted not less than twenty-one (21) days prior to the first request for payment. The Schedule of Values shall follow the order of trade divisions of the Specifications and include itemized costs for general conditions, costs for preparing close out documents, fees, contingencies, and Owner cash allowances, if applicable, so that the sum of the items will equal the Contract price. As appropriate, assign each item labor and/or material values, the subtotal thereof equaling the value of the work in place when complete.
- 10.1.1.1 Owner requires that the Work items be inclusive of the cost of the Work items only. Any contract markups for overhead and profit, general conditions, etc., shall be contained within separate line items for those specific purposes which shall be divided into at least two (2) lines, one (1) for labor and one (1) for materials.
- 10.1.2 Contractor shall retain a copy of all worksheets used in preparation of its bid or proposal, supported by a notarized statement that the worksheets are true and complete copies of the documents used to prepare the bid or proposal. Make the worksheets available to ODR at the time of Contract execution. Thereafter Contractor shall grant Owner during normal business hours access to said copy of worksheets at any time during the period commencing upon execution of the Contract and ending one year after final payment.
- 10.2. Progress Payments. Contractor will receive periodic progress payments for Work performed, materials in place, suitably stored on Site, or as otherwise agreed to by Owner and Contractor. Payment is not due until receipt by ODR or his designee of a correct and complete Pay Application in electronic and/or hard copy format as set forth in Supplementary General Conditions, Special Conditions, and certified by A/E. Progress payments are made provisionally and do not constitute acceptance of work not in accordance with the Contract Documents. Owner will not process progress payment applications for Change Order Work until all parties execute the Change Order.
- 10.2.1 Preliminary Pay Worksheet. Once each month that a progress payment is to be requested, the Contractor shall submit to A/E and ODR a complete, clean copy of a preliminary pay worksheet or preliminary pay application, to include the following:
- 10.2.1.1 Contractor's estimate of the amount of Work performed, labor furnished and materials incorporated into the Work, using the

established Schedule of Values;

10.2.1.2 An updated Work Progress Schedule including the executive summary and all required schedule reports;

10.2.1.3 HUB subcontracting plan Progress Assessment Report as required in Paragraph 4.2.5.1;

10.2.1.4 Such additional documentation as Owner may require as set forth in the Supplementary General Conditions or elsewhere in the Contract Documents; and

10.2.1.5 Construction payment affidavit.

10.2.2 ***The Contractor shall submit the Preliminary Pay Worksheet at least ten (10) days before the Application for Payment meeting.***

10.2.3 Contractor's Application for Payment. As soon as practicable, but in no event later than seven (7) days after receipt of the preliminary pay worksheet, A/E and ODR will meet with Contractor to review the preliminary pay worksheet and to observe the condition of the Work. Based on this review, ODR and A/E may require modifications to the preliminary pay worksheet prior to the submittal of an Application for Payment, and will promptly notify Contractor of revisions necessary for approval. As soon as practicable, Contractor shall submit its Application for Payment on the appropriate and completed form, reflecting the required modifications to the Schedule of Values required by A/E and/or ODR. Attach all additional documentation required by ODR and/or A/E, as well as an affidavit affirming that all payrolls, bills for labor, materials, equipment, subcontracted work and other indebtedness connected with Contractor's Application for Payment are paid or will be paid within the time specified in Tex. Gov't Code, Ch. 2251. No Application for Payment is complete unless it fully reflects all required modifications, and attaches all required documentation including Contractor's affidavit.

10.2.4 ***Periodic Application for Payment Meeting. At the Preconstruction Conference, periodic Application for Payment Meetings (monthly, unless agreed to in writing by the Contractor, A/E, and ODR) will be scheduled by the ODR for the duration of the project.***

10.2.5 Certification by Architect/Engineer. Within five (5) days or earlier following A/E's receipt of Contractor's formal Application for Payment, A/E will review the Application for Payment for completeness, and forward it to ODR. A/E will certify that the application is complete and payable, or that it is incomplete, stating in particular what is missing. If the Application for Payment is incomplete, Contractor shall make the required corrections and resubmit the Application for Payment for processing.

10.3 Owner's Duty to Pay. Owner has no duty to pay the Contractor except on receipt by ODR of: 1) a complete Application for Payment certified by A/E; 2) Contractor's

updated Work Progress Schedule; and 3) confirmation that Contractor's record documentation at the Site is kept current.

10.3.1 Payment for stored materials and/or equipment confirmed by Owner and A/E to be on-site or otherwise properly stored is limited to eighty-five (85) percent of the invoice price or eighty-five (85) percent of the scheduled value for the materials or equipment, whichever is less.

10.3.2 Retainage. Owner will withhold from each progress payment, as retainage, five (5) percent of the total earned amount, the amount authorized by law, or as otherwise set forth in the Supplementary General Conditions or Special Conditions. Retainage is managed in conformance with Tex. Gov't Code, Ch. 2252, Subch. B.

10.3.2.1 *Notwithstanding Section 10.3.2 above, Owner will withhold from each progress payment, as retainage, ten (10) percent if the Contract Sum is at or below \$400,000.00 or four and ninety-nine one hundredth (4.99) percent if the Contract Sum is above \$400,000.00 of the total earned amount, or the amount set forth in Special Conditions or authorized by law.*

10.3.2.2 Contractor shall provide written consent of its surety for any request for reduction or release of retainage.

10.3.2.3 At least sixty-five (65) percent of the Contract, or such other discrete Work phase as set forth in Subsection 12.1.6 or Work package delineated in the Contract Documents, must be completed before Owner can consider a retainage reduction or release.

10.3.2.4 Contractor shall not withhold retainage from their Subcontractors and suppliers in amounts that are any percentage greater than that withheld in its Contract with Owner under this subsection, unless otherwise acceptable to Owner.

10.3.3 Price Reduction to Cover Loss. Owner may reduce any Application for Payment, prior to payment to the extent necessary to protect Owner from loss on account of actions of Contractor including, but not limited to, the following:

10.3.3.1 Defective or incomplete Work not remedied;

10.3.3.2 Damage to Work of a separate Contractor;

10.3.3.3 Failure to maintain scheduled progress or reasonable evidence that the Work will not be completed within the Contract Time;

10.3.3.4 Persistent failure to carry out the Work in accordance with the Contract Documents;

- 10.3.3.5 Reasonable evidence that the Work cannot be completed for the unpaid portion of the Contract Sum;
  - 10.3.3.6 Assessment of fines for violations of prevailing wage rate law; or
  - 10.3.3.7 Failure to include the appropriate amount of retainage for that periodic progress payment.
- 10.3.4 Title to all material and Work covered by progress payments transfers to Owner upon payment.
- 10.3.4.1 Transfer of title to Owner does not relieve Contractor and its Subcontractors of the sole responsibility for the care and protection of materials and Work upon which payments have been made until substantial completion, responsibility for the care and protection of materials and Work in areas where punch list items are completed until final completion or the restoration of any damaged Work, or waive the right of Owner to require the fulfillment of all the terms of the Contract.
- 10.4 Progress Payments. Progress payments to Contractor do not release Contractor or its surety from any obligations under the Contract.
- 10.4.1 Upon Owner's request, Contractor shall furnish manifest proof of the status of Subcontractor's accounts in a form acceptable to Owner.
  - 10.4.2 Pay estimate certificates must be signed by a corporate officer or a representative duly authorized by Contractor.
  - 10.4.3 Provide copies of bills of lading, invoices, delivery receipts or other evidence of the location and value of such materials in requesting payment for materials.
  - 10.4.4 For purposes of Tex. Gov't Code § 2251.021(a)(2), the date the performance of service is complete is the date when ODR approves the Application for Payment.
- 10.5 Off-Site Storage. With prior approval by Owner and in the event Contractor elects to store materials at an off-site location, abide by the following conditions, unless otherwise agreed to in writing by Owner.
- 10.5.1 Store materials in a commercial warehouse meeting the criteria stated below.
  - 10.5.2 Provide insurance coverage adequate not only to cover materials while in storage, but also in transit from the off-site storage areas to the Project Site. Copies of duly authenticated certificates of insurance, made out to insure the State agency which is signatory to the Contract, must be filed with Owner's representative.

- 10.5.3 Inspection by Owner's representative is allowed at any time. Owner's inspectors must be satisfied with the security, control, maintenance, and preservation measures.
- 10.5.4 Materials for this Project are physically separated and marked for the Project in a sectioned-off area. Only materials which have been approved through the submittal process are to be considered for payment.
- 10.5.5 Owner reserves the right to reject materials at any time prior to final acceptance of the complete Contract if they do not meet Contract requirements regardless of any previous progress payment made.
- 10.5.6 With each monthly payment estimate, submit a report to ODR and A/E listing the quantities of materials already paid for and still stored in the off-site location.
- 10.5.7 Make warehouse records, receipts and invoices available to Owner's representatives, upon request, to verify the quantities and their disposition.
- 10.5.8 In the event of Contract termination or default by Contractor, the items in storage off-site, upon which payment has been made, will be promptly turned over to Owner or Owner's agents at a location near the jobsite as directed by ODR. The full provisions of performance and payment bonds on this Project cover the materials off-site in every respect as though they were stored on the Project Site.
- 10.6 Time for Payment by Contractor Pursuant to Tex. Gov't Code § 2255.022.<sup>14</sup>
- 10.6.1 Contractor who receives a payment from a governmental entity shall pay Subcontractor the appropriate share of the payment not later than the tenth (10<sup>th</sup>) day after the date Contractor receives the payment.
- 10.6.2 The appropriate share is overdue on the eleventh (11<sup>th</sup>) day after the date Contractor receives the payment.

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<sup>14</sup> Tex. Gov't Code § 2255.022 is an inaccurate reference with the correct reference being Tex. Gov't Code § 2251.022 (Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993).



## Article 11. Changes

11.1 Change Orders. A Change Order issued after execution of the Contract is a written order to Contractor, signed by ODR, Contractor, and A/E, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time can only be changed by Change Order. A Change Order signed by Contractor indicates his agreement therewith, including the adjustment in the Contract Sum and/or the Contract Time. ODR may issue a written authorization for Contractor to proceed with Work of a Change Order in advance of final execution by all parties in accordance with Section 11.9.

11.1.1 *Notwithstanding anything to the contrary provided herein, any Change Orders to be valid must be executed by the Owner's Executive Commissioner or an authorized designee of the Executive Commissioner.*

11.1.2 Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, and the Contract Sum and the Contract Time will be adjusted accordingly. All such changes in the Work shall be authorized by Change Order or ULCO, and shall be performed under the applicable conditions of the Contract Documents. If such changes cause an increase or decrease in Contractor's cost of, or time required for, performance of the Contract, an equitable adjustment shall be made and confirmed in writing in a Change Order or a ULCO.

11.1.3 It is recognized by the parties hereto and agreed by them that the Specifications and Drawings may not be complete or free from errors, omissions and imperfections or that they may require changes or additions in order for the Work to be completed to the satisfaction of Owner and that, accordingly, it is the express intention of the parties, notwithstanding any other provisions in this Contract, that any errors, omissions or imperfections in such Specifications and Drawings, or any changes in or additions to same or to the Work ordered by Owner and any resulting delays in the Work or increases in Contractor's costs and expenses arising out of such errors, shall not constitute or give rise to any claim, demand or cause of action of any nature whatsoever in favor of Contractor, whether for breach of Contract, or otherwise; provided, however, that Owner shall be liable to Contractor for the sum stated to be due Contractor in any Change Order approved and signed by both parties, it being agreed hereby that such sum, together with any extension of time contained in said Change Order, shall constitute full compensation to Contractor for all costs, expenses and damages to Contractor, as permitted under Tex. Gov't Code, Ch. 2260.

11.1.4 Procedures for administration of Change Orders shall be established by Owner and stated in Supplementary General Conditions, Special Conditions, or elsewhere in the Contract Documents.

11.1.5 No verbal order, verbal statement, or verbal direction of Owner or his duly

appointed representative shall be treated as a change under this article or entitle Contractor to an adjustment.

11.1.6 Contractor agrees that Owner or any of its duly authorized representatives shall have access and the right to examine any directly pertinent books, documents, papers, and records of Contractor. Further, Contractor agrees to include in all its subcontracts a provision to the effect that Subcontractor agrees that Owner or any of its duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers and records of such Subcontractor relating to any claim arising from the Contract, whether or not the Subcontractor is a party to the claim. The period of access and examination described herein which relates to appeals under the Disputes article of the Contract, litigation, or the settlement of claims arising out of the performance of the Contract shall continue until final disposition of such claims, appeals or litigation.

11.2 Unit Prices. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a Proposed Change Order that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to Owner or Contractor, the applicable unit prices shall be equitably adjusted as provided in the Supplementary General Conditions or Special Conditions or as agreed to by the parties and incorporated into a Change Order.

11.2.1 *If unit prices are stated in the Contract Documents or subsequently agreed upon, each unit price will include all costs applicable to the Work, including but not limited to mobilization, labor, materials, equipment, supervision, overhead at any level and profit.*

11.3 Claims for Additional Costs.

11.3.1 If Contractor wishes to make a claim for an increase in the Contract Sum not related to a requested change, they shall give Owner and A/E written notice thereof within twenty-one (21) days after the occurrence of the event giving rise to such claim, but, in any case before proceeding to execute the Work considered to be additional cost or time, except in an emergency endangering life or property in which case Contractor shall act in accordance with Subsection 7.3. No such claim shall be valid unless so made. If Owner and Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined as set forth under Article 15. Any change in the Contract Sum resulting from such claim shall be authorized by a Change Order or a ULCO.

11.3.2 If Contractor claims that additional cost is involved because of, but not limited to, 1) any written interpretation of the Contract Documents, 2) any order by Owner to stop the Work pursuant to Article 14 where Contractor was not at fault, or 3) any written order for a minor change in the Work issued pursuant to Section 11.4, Contractor shall make such claim as provided in Subsection 11.3.1.

- 11.3.3 Should Contractor or his Subcontractors fail to call attention of A/E to discrepancies or omissions in the Contract Documents, but claim additional costs for corrective Work after Contract award, Owner may assume intent to circumvent competitive bidding for necessary corrective Work. In such case, Owner may choose to let a separate Contract for the corrective Work, or issue a ULCO to require performance by Contractor. Claims for time extensions or for extra cost resulting from delayed notice of patent Contract Document discrepancies or omissions will not be considered by Owner.
- 11.4 Minor Changes. A/E, with concurrence of ODR, will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order which Contractor shall carry out promptly and record on as-built record documents.
- 11.5 Concealed Site Conditions. Contractor is responsible for visiting the Site and being familiar with local conditions such as the location, accessibility, and general character of the Site and/or building. If, in the performance of the Contract, subsurface, latent, or concealed conditions at the Site are found to be materially different from the information included in the Contract Documents, or if unknown conditions of an unusual nature are disclosed differing materially from the conditions usually inherent in Work of the character shown and specified, ODR and A/E shall be notified in writing of such conditions before they are further disturbed or subsequent related work proceeds. Upon such notice, or upon its own observation of such conditions, A/E, with the approval of ODR, will promptly make such changes in the Drawings and Specifications as they deem necessary to conform to the different conditions, and any increase or decrease in the cost of the Work, or in the time within which the Work is to be completed, resulting from such changes will be adjusted by Change Order, subject to the prior approval of ODR.
- 11.5.1 *The Contractor is responsible for having visited the Site and having ascertained pertinent local conditions such as location, accessibility, and general character of the Site or building, the character and extent of existing Work within and adjacent to the Site, and any other Work being performed thereon at the time of the submission of its proposal. No failure to do so will relieve Contractor from responsibility for successfully performing the Work without additional expense to the Owner.*
- 11.6 Extension of Time. All changes to the Contract Time shall be made as a consequence of requests as required under Section 9.6, and as documented by Change Order as provided under Section 11.1.
- 11.7 Administration of Change Order Requests. All changes in the Contract shall be administered in accordance with procedures approved by Owner, and when required, make use of such electronic information management system(s) as Owner may employ.
- 11.7.1 Routine changes in the construction Contract shall be formally initiated by A/E by means of a PCO form detailing requirements of the proposed change for pricing by Contractor. This action may be preceded by communications between Contractor, A/E and ODR concerning the need and nature of the

change, but such communications shall not constitute a basis for beginning the proposed Work by Contractor. Except for emergency conditions described below, approval of Contractor's cost proposal by A/E and ODR will be required for authorization to proceed with the Work being changed. Owner will not be responsible for the cost of Work changed without prior approval and Contractor may be required to remove Work so installed.

- 11.7.2 *Owner-initiated Changes. When the Owner wishes to order changes in the Work, the A/E, on behalf of the Owner, will submit to the Contractor a PCO (Part A of the Change Order Form), consisting of a description of the request, including such Drawings and Specifications as are reasonably necessary to inform the Contractor of the nature of the change. Within 20 days of receipt of the Owner's PCO, the Contractor will submit a CPE (Part B) to the A/E, with a copy to the ODR, stating either: 1) that the proposed change will be at no-cost, or proposing an adjustment in the Contract Sum and/or Time. The A/E will then prepare, sign, and submit a COJ (Part C) to the ODR, either confirming: 1) that the proposed change will be at no cost; or 2) that the change will result in a change in the Contract Sum. If the Owner agrees with the A/E findings, as presented in the COJ, then the Owner will sign a CA (Part D) authorizing the CO.*
- 11.7.3 All proposed costs for change order Work must be supported by itemized accounting of material, equipment and associated itemized installation costs in sufficient detail, following the outline and organization of the establish Schedule of Values, to permit analysis by A/E and ODR using current estimating guides and/or practices. Photocopies of Subcontractor and vendor proposals shall be furnished unless specifically waived by ODR. Contractor shall provide written response to a change request within twenty-one (21) days of receipt.
- 11.7.4 Any unexpected circumstance which necessitates an immediate change in order to avoid a delay in progress of the Work may be expedited by verbal communication and authorization between Contractor and Owner, with written confirmation following within twenty-four (24) hours. A limited scope not-to-exceed estimate of cost and time will be requested prior to authorizing Work to proceed. Should the estimate be impractical for any reason, ODR may authorize the use of detailed cost records of such work to establish and confirm the actual costs and time for documentation in a formal Change Order.
- 11.7.5 *Interim Change Authorizations. The ODR may issue an Interim Change Authorization (ICA) directing the Contractor to proceed with changed work before submitting a CPE. The ICA will authorize the Contractor to bill work as completed on the basis of either (1) time and materials, (2) cost not to exceed a specified amount, or (3) a combination thereof. The Work will be included in and become part of the change order, and billing will not be made until the change order is approved and the work is satisfactorily completed. Upon receipt of an ICA, the Contractor will proceed immediately to document all increased costs actually incurred as a result of the Work required under*

*the ICA. At any time prior to the completion of the changed Work, the Contractor may submit a CPE containing a lump sum proposal for the cost of the changed Work; provided, however, that if the Work is completed prior to acceptance by the ODR of the Contractor's CPE, the Contractor's adjustment of the cost will be limited to the actual cost of the Work, or the not-to-exceed amount, whichever is less. If the ODR determines that a Contractor initiated change is without merit, the ODR will notify the Contractor to proceed according to the subject written interpretation or instruction. Such a notice to proceed will have the same effect as a Unilateral Change Order.*

- 11.7.6 *Contractor-Initiated Changes.* *When the Contractor considers that any written instruction or interpretation of the Contract Documents issued by the Architect/Engineer constitutes a change in the Work affecting the Contract Sum and/or Time, the Contractor will so notify the A/E and ODR as soon as possible, but not later than fifteen (15) days after receipt of the instruction or interpretation, and will submit a CPE to the A/E and a copy to the ODR as soon as possible thereafter, but not later than thirty (30) days after issuance of the Contractor's notice. This CPE will contain a proposal for an adjustment in the Contract Sum, and/or Time, as provided under Article 11. The Contractor will include with the CPE a copy of the written instruction or interpretation from the A/E or ODR, evidence of the date Contractor received the writing, and an explanation of why the Contractor believes the instruction or interpretation changes the Work and requires an adjustment to the Contract Sum.*
- 11.7.7 *Response to CPE.* *As soon as possible, but not more than twenty-one (21) days after receipt of any CPE submitted by the Contractor, the A/E will consult with the ODR and respond in writing to the Contractor by either (1) accepting the CPE, (2) rejecting the CPE, (3) initiating negotiations with the Contractor concerning the proposed cost adjustment, or (4) requesting additional information. If approved, the A/E will submit the CPE and COJ to the ODR. If the A/E fails to respond to the Contractor within the required 21 days, the Contractor will notify the ODR in writing; and the ODR will have thirty (30) days to respond in writing. If, however, the A/E ultimately rejects the CPE, the Contractor may submit supporting information to both the A/E and ODR, and request a review by the ODR. The ODR will again have thirty (30) days to respond in writing.*
- 11.7.8 *Change Authorization.* *If the A/E or ODR have approved the CPE for adjustments to the Contract Sum and/or Time, the Owner will accept the Contractor's CPE, or any subsequently revised CPE issued pursuant to negotiation by executing the Change Authorization (CA - Part D), and returning the completed Change Order (CO) to the Contractor. A CO is effective upon receipt by the Contractor and authorizes the Contractor to proceed with the changed work and submit the adjusted cost, if any, on succeeding Pay Applications as Work is completed.*
- 11.7.9 *Execution of Change Order.* *Not more than fourteen (14) days following the*

*date of acceptance noted on the CA, the ODR will issue the executed Change Order to the Contractor and the A/E. The Contractor will proceed with the changed work within ten (10) days of receipt of the executed Change Order.*

- 11.7.11 Emergency changes to save life or property may be initiated by Contractor alone (see Section 7.3) with the claimed cost and/or time of such work to be fully documented as to necessity and detail of the reported costs and/or time.
- 11.7.12 The method of incorporating approved Change Orders into the parameters of the accepted Schedule of Values must be coordinated and administered in a manner acceptable to ODR.
- 11.8 Pricing Change Order Work. The amounts that Contractor and/or its Subcontractor adds to a Change Order for profit and overhead will also be considered by Owner before approval is given. The amounts established hereinafter are the maximums that are acceptable to Owner.
- 11.8.1 For Work performed by its forces, Contractor will be allowed their actual costs for materials, the total amount of wages (including benefits) paid for labor, plus the total cost of State and Federal payroll taxes and of worker's compensation and comprehensive general liability insurance, plus additional bond and builders risk insurance cost if the change results in an increase in the premium paid by Contractor. To the total of the above costs, Contractor will be allowed to add a percentage as noted below to cover overhead and profit combined. Allowable percentages for overhead and profit on any specific change shall not exceed fifteen (15) percent for the first \$10,000 of value for self-performed work or portion thereof, ten (10) percent for the second \$10,000 of value for self-performed work or portion thereof and seven and a half (7.5) percent for any value of the self-performed work that exceeds \$20,000.
- 11.8.1.1 *The comprehensive general liability insurance referenced in the preceding section is intended to refer to the Commercial General Liability insurance required under Article 5.*
- 11.8.1.2 *For purposes of this Contract, the percentage totals references in Subsection 11.8.1 above, are to be calculated by applying the appropriate total to the aggregate amount of the Change Order.*
- 11.8.2 *In addition to the costs for materials and labor, the Contractor and/or its Subcontractor will be allowed their costs for the rental equipment used in performing the changed Work, based on hours of use, and multiplied by the actual cost per hour when reasonably available. Otherwise, the equipment rental cost per hour will not be more than the rate included in the most recent version of the Rental Rate Blue Book for Construction Equipment (published by PRIMEDIA Information, Inc.) to yield total cost. Mobilization costs will not be allowed except when the Contractor demonstrates that the need to mobilize a piece of equipment arose solely because of the changed Work.*

11.8.3 For subcontracted Work each affected Subcontractor shall figure its costs, overhead and profit as described above for Contractor's Work, all Subcontractor costs shall be combined, and to that total Subcontractor cost Contractor will be allowed to add a maximum mark-up of ten (10) percent for the first \$10,000 of subcontracted Work value or portion thereof, seven and half (7.5) percent for the second \$10,000 of subcontracted Work value or portion thereof, and five (5) percent for any value of the subcontracted Work exceeding \$20,000.

**11.8.3.1** *For purposes of this Contract, the percentage totals references in Subsection 11.8.3 above, are to be calculated by applying the appropriate total to the aggregate amount of the Change Order.*

11.8.4 *On changes involving deleted items, the Owner will receive credit for overhead and profit on each deleted item.*

11.8.5 On changes involving both additions and deletions, percentages for overhead and profit will be allowed only on the net addition. Owner does not accept and will not pay for additional Contract cost identified as indirect or consequential damages.

11.8.6 For Contracts based on a Guaranteed Maximum Price (GMP), the Construction Manager-at-Risk or Design Builder shall NOT be entitled to a percentage mark-up on any Change Order Work unless the Change Order increases the Guaranteed Maximum Price.

11.9 Unilateral Change Order (ULCO). Owner may issue a written ULCO directing a change in the Work prior to reaching agreement with Contractor on the adjustment, if any, in the Contract price and/or the Contract Time.

11.9.1 Owner and Contractor shall negotiate for appropriate adjustments, as applicable, to the Contract Sum or the Contract Time arising out of a ULCO. As the changed Work is performed, Contractor shall submit its costs for such Work with its Application for Payment beginning with the next Application for Payment within thirty (30) days of the issuance of the ULCO. The Parties reserve their rights as to the disputed amount, subject to Article 15.

11.10 Final Resolution of Changes. Upon execution of a Change Order and /or a ULCO by Owner, Contractor and A/E, all costs and time issues regarding that change are final and not subject to additive adjustments.

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## Article 12. Project Completion and Acceptance

### 12.1 Closing Inspections.

12.1.1 Substantial Completion Inspection. When Contractor considers the entire Work or part thereof Substantially Complete, it shall notify ODR in writing that the Work will be ready for Substantial Completion inspection on a specific date. Contractor shall include with this notice Contractor's Punchlist to indicate that it has previously inspected all the Work associated with the request for inspection, noting items it has corrected and included all remaining work items with date scheduled for completion or correction prior to final inspection. The failure to include any items on this list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. If any of the items on this list prevents the Project from being used as intended, Contractor shall not request a Substantial Completion Inspection. Owner and its representatives will review the list of items and schedule the requested inspection, or inform Contractor in writing that such an inspection is premature because the Work is not sufficiently advanced or conditions are not as represented on Contractor's list.

12.1.1.1 Prior to the Substantial Completion inspection, Contractor shall furnish a copy of its marked-up Record Documents and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties, and like publications or parts for all installed equipment, systems, and like items as described in the Contract Documents. Delivery of these items is a prerequisite for requesting the Substantial Completion inspection.

12.1.1.2 On the date requested by Contractor, or as mutually agreed upon pending the status of the Open Items List, A/E, ODR, Contractor, and other Owner representatives as determined by Owner will jointly attend the Substantial Completion inspection, which shall be conducted by ODR or their delegate. If ODR determines that the Work is Substantially Complete, ODR will issue a Certificate of Substantial Completion to be signed by A/E, Owner, and Contractor establishing the date of Substantial Completion and identifying responsibilities for security, maintenance, insurance and utilities. A/E will provide with this certificate a consolidated list of Punchlist items (the pre-final Punchlist including all items noted by the various inspecting parties) for completion prior to final inspection. This list may include items in addition to those on Contractor's Punchlist, which the inspection team deems necessary to correct or complete prior to final inspection. The failure to include any items on this list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. If Owner occupies the Project upon determination of Substantial Completion, Contractor shall complete all corrective Work at the convenience of Owner, without disruption to Owner's use of the Project for its



intended purposes.

12.1.2 Final Inspection. Contractor shall complete the list of items identified on the pre-final Punchlist prior to requesting a final inspection. Unless otherwise specified, or otherwise agreed in writing by the parties as documented on the Certificate of Substantial Completion, Contractor shall complete and/or correct all Work within thirty (30) days of the Substantial Completion date. Upon completion of the pre-final Punchlist work, Contractor shall give written notice to ODR and A/E that the Work will be ready for final inspection on a specific date. Contractor shall accompany this notice with a copy of the updated pre-final Punchlist indicating resolution of all items. On the date specified or as soon thereafter as is practicable, ODR, A/E and Contractor will inspect the Work. A/E will submit to Contractor a final Punchlist of open items that the inspection team requires corrected or completed before final acceptance of the Work.

12.1.2.1 Correct or complete all items on the final Punchlist before requesting Final Payment. Unless otherwise agreed to in writing by the parties, complete this work within seven (7) days of receiving the final Punchlist. Upon completion of the final Punchlist, notify A/E and ODR in writing stating the disposition of each final Punchlist item. A/E, Owner, and Contractor shall promptly inspect the completed items. When the final Punchlist is complete, and the Contract is fully satisfied according to the Contract Documents ODR will issue a certificate establishing the date of Final Completion. Completion of all Work is a condition precedent to Contractor's right to receive Final Payment.

12.1.3 Annotation. Any Certificate issued under this Article may be annotated to indicate that it is not applicable to specified portions of the Work, or that it is subject to any limitation as determined by Owner.

12.1.4 Purpose of Inspection. Inspection is for determining the completion of the Work, and does not relieve Contractor of its overall responsibility for completing the Work in a good and competent fashion, in compliance with the Contract. Work accepted with incomplete Punchlist items or failure of Owner or other parties to identify Work that does not comply with the Contract Documents or is defective in operation or workmanship does not constitute a waiver of Owner's rights under the Contract or relieve Contractor of its responsibility for performance or warranties.

12.1.5 Additional Inspections.

12.1.5.1 If Owner's inspection team determines that the Work is not substantially complete at the Substantial Completion inspection, ODR or A/E will give Contractor written notice listing cause(s) of the rejection. Contractor will set a time for completion of incomplete or defective work acceptable to ODR. Contractor shall complete or correct all work so designated prior to requesting a second

Substantial Completion inspection.

12.1.5.2 If Owner's inspection team determines that the Work is not complete at the final inspection, ODR or A/E will give Contractor written notice listing the cause(s) of the rejection. Contractor will set a time for completion of incomplete or defective work acceptable to ODR. Contractor shall complete or correct all Work so designated prior to again requesting a final inspection.

12.1.5.3 The Contract contemplates three (3) comprehensive inspections: the Substantial Completion inspection, the Final Completion inspection, and the inspection of completed final Punchlist items. The cost to Owner of additional inspections resulting from the Work not being ready for one or more of these inspections is the responsibility of Contractor. Owner may issue a ULCO deducting these costs from Final Payment. Upon Contractor's written request, Owner will furnish documentation of any costs so deducted. Work added to the Contract by Change Order after Substantial Completion inspection is not corrective Work for purposes of determining timely completion, or assessing the cost of additional inspections.

12.1.6 Phased Completion. The Contract may provide, or Project conditions may warrant, as determined by ODR, that designated elements or parts of the Work be completed in phases. Where phased completion is required or specifically agreed to by the parties, the provisions of the Contract related to closing inspections, occupancy, and acceptance apply independently to each designated element or part of the Work. For all other purposes, unless otherwise agreed by the parties in writing, Substantial Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Substantial Completion certificate.

Final Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Final Completion certificate.

12.2 Owner's Right of Occupancy. Owner may occupy or use all or any portion of the Work following Substantial Completion, or at any earlier stage of completion. Should Owner wish to use or occupy the Work, or part thereof, prior to Substantial Completion, ODR will notify Contractor in writing and identify responsibilities for security, maintenance, insurance and utilities. Work performed on the premises by third parties on Owner's behalf does not constitute occupation or use of the Work by Owner for purposes of this Article. All Work performed by Contractor after occupancy, whether in part or in whole, shall be at the convenience of Owner so as to not disrupt Owner's use of, or access to occupied areas of the Project.

12.2.1 *Notice and Early Occupancy Proposal*. *If the Owner determines that hardship will result if it is unable to occupy some portion of the Work prior to substantial completion, Owner will inform the Architect/Engineer and the Contractor no less than 30 days before the date the Owner wishes to occupy*

*the Work, and designate those portions of the Work to be occupied and the uses to be made of the occupied premises. Contractor will make the designated portions of the Work available to the Architect/Engineer and the ODR for observation. The Architect/Engineer and the ODR will observe the Work jointly with the Contractor. As soon as practicable, but not later than the third day after the inspection, the Architect/Engineer, in conjunction with the ODR, will prepare and submit to the Contractor an Early Occupancy Proposal, specifying any work that must be completed or corrected as well as any operation or maintenance manuals or other documentation necessary for the Work to be occupied by the Owner and used for the purposes designated by the Owner in its notice, and setting out the division of responsibility between the Owner and the Contractor for utilities, security, maintenance, insurance and liability for damage to the Work or damage arising from the condition of the Work. The Early Occupancy Proposal will also specify whether the area to be occupied must be Substantially Complete before occupation, and will specify the date for Substantial Completion if other than the date previously specified by the Contract Documents.*

### 12.3 Acceptance and Payment

12.3.1 Request for Final Payment. Following the certified completion of all work, including all final Punchlist items, cleanup, and the delivery of record documents, Contractor shall submit a certified Application for Final Payment and include all sums held as retainage and forward to A/E and ODR for review and approval.

12.3.2 Final Payment Documentation. Contractor shall submit, prior to or with the Application for Final Payment, final copies of all close out documents, maintenance and operating instructions, guarantees and warranties, certificates, Record Documents and all other items required by the Contract. Contractor shall submit evidence of return of access keys and cards, evidence of delivery to Owner of attic stock, spare parts, and other specified materials. Contractor shall submit consent of surety to Final Payment form and an affidavit that all payrolls, bills for materials and equipment, subcontracted work and other indebtedness connected with the Work, except as specifically noted, are paid, will be paid, after payment from Owner or otherwise satisfied within the period of time required by Tex. Gov't Code, Ch. 2251. Contractor shall furnish documentation establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims and liens arising out of the Contract. Contractor may not subsequently submit a claim on behalf of Subcontractor or vendor unless Contractor's affidavit notes that claim as an exception.

12.3.3 Architect/Engineer Approval. A/E will review a submitted Application for Final Payment promptly but in no event later than ten (10) days after its receipt. Prior to the expiration of this deadline, A/E will either: 1) return the Application for Final Payment to Contractor with corrections for action and resubmission; or 2) accept it, note their approval, and send to Owner.

12.3.4 Offsets and Deductions. Owner may deduct from the Final Payment all

sums due from Contractor. If the Certificate of Final Completion notes any Work remaining, incomplete, or defects not remedied, Owner may deduct the cost of remedying such deficiencies from the Final Payment. On such deductions, Owner will identify each deduction, the amount, and the explanation of the deduction on or by the twenty-first (21<sup>st</sup>) day after Owner's receipt of an approved Application for Final Payment. Such offsets and deductions shall be incorporated via a final Change Order, including a ULCO as may be applicable.

12.3.5 Final Payment Due. Final Payment is due and payable by Owner, subject to all allowable offsets and deductions, on the thirtieth (30<sup>th</sup>) day following Owner's approval of the Application for Payment. If Contractor disputes any amount deducted by Owner, Contractor shall give notice of the dispute on or before the thirtieth (30<sup>th</sup>) day following receipt of Final Payment. Failure to do so will bar any subsequent claim for payment of amounts deducted.

12.3.6 Effect of Final Payment. Final Payment constitutes a waiver of all claims by Owner, relating to the condition of the Work except those arising from:

12.3.6.1 Faulty or defective Work appearing after Substantial Completion (latent defects);

12.3.6.2 Failure of the Work to comply with the requirements of the Contract Documents;

12.3.6.3 Terms of any warranties required by the Contract, or implied by law; or

12.3.6.4 Claims arising from personal injury or property damage to third parties.

12.3.7 Waiver of Claims. Final payment constitutes a waiver of all claims and liens by Contractor except those specifically identified in writing and submitted to ODR prior to the application for Final Payment.

12.3.8 Effect on Warranty. Regardless of approval and issuance of Final Payment, the Contract is not deemed fully performed by Contractor and closed until the expiration of all warranty periods. Issuance of Final Payment does not alter Contractor's contractual obligations during the warranty period.

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## Article 13. Warranty and Guarantee

- 13.1 Contractor's General Warranty and Guarantee. Contractor warrants to Owner that all Work is executed in accordance with the Contract, complete in all parts and in accordance with approved practices and customs, and of the required finish and workmanship. Contractor further warrants that unless otherwise specified, all materials and equipment incorporated in the Work under the Contract are new. Owner may, at its option, agree in writing to waive any failure of the Work to conform to the Contract, and to accept a reduction in the Contract price for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute and is not waived by any inspection or observation by Owner, A/E or others, by making any progress payment or final payment, by the use or occupancy of the Work or any portion thereof by Owner, at any time, or by any repair or correction of such defect made by Owner.
- 13.2 Warranty Period. Except as may be otherwise specified or agreed, Contractor shall repair all defects in materials, equipment, or workmanship appearing within one year from the date of Substantial Completion of the Work. If Substantial Completion occurs by phase, then the warranty period for that particular Work begins on the date of such occurrence, or as otherwise stipulated on the Certificate of Substantial Completion for the particular Work.
- 13.3 Limits on Warranty. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
- 13.3.1 Modification or improper maintenance or operation by persons other than Contractor, Subcontractors, or any other individual or entity for whom Contractor is not responsible, unless Owner is compelled to undertake maintenance or operation due to the neglect of Contractor.
  - 13.3.2 Normal wear and tear under normal usage after acceptance of the Work by Owner.
- 13.4 Events Not Affecting Warranty. Contractor's obligation to perform and complete the Work in a good and workmanlike manner in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of defective Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
- 13.4.1 Observations by Owner and/or A/E;
  - 13.4.2 Recommendation to pay any progress or final payment by A/E;
  - 13.4.3 The issuance of a certificate of Substantial Completion or any payment by Owner to Contractor under the Contract Documents;
  - 13.4.4 Use or occupancy of the Work or any part thereof by Owner;

- 13.4.5 Any acceptance by Owner or any failure to do so;
- 13.4.6 Any review of a Shop Drawing or sample submittal; or
- 13.4.7 Any inspection, test or approval by others.
- 13.5 Separate Warranties. If a particular piece of equipment or component of the Work for which the Contract requires a separate warranty is placed in continuous service before Substantial Completion, the warranty period for that equipment or component will not begin until Substantial Completion, regardless of any warranty agreements in place between suppliers and/or Subcontractors and Contractor. ODR will certify the date of service commencement in the Substantial Completion certificate.
- 13.5.1 In addition to Contractor's warranty and duty to repair, Contractor expressly assumes all warranty obligations required under the Contract for specific building components, systems and equipment.
- 13.5.2 Contractor may satisfy any such obligation by obtaining and assigning to Owner a complying warranty from a manufacturer, supplier, or Subcontractor. Where an assigned warranty is tendered and accepted by Owner which does not fully comply with the requirements of the Contract, Contractor remains liable to Owner on all elements of the required warranty not provided by the assigned warranty.
- 13.6 Correction of Defects. Upon receipt of written notice from Owner, or any agent of Owner designated as responsible for management of the warranty period, of the discovery of a defect, Contractor shall promptly remedy the defect(s), and provide written notice to Owner and designated agent indicating action taken. In case of emergency where delay would cause serious risk of loss or damage to Owner, or if Contractor fails to remedy within thirty (30) days, or within another period agreed to in writing, Owner may correct the defect and be reimbursed the cost of remedying the defect from Contractor or its surety.
- 13.7 Certification of No Asbestos Containing Materials or Work. Contractor shall ensure compliance with the Asbestos Hazard Emergency Response Act (AHERA– 40 C.F.R § 763-99(7)) from all Subcontractors and materials suppliers, and shall provide a notarized certification to Owner that all equipment and materials used in fulfillment of their Contract responsibilities are non-Asbestos Containing Building Materials (ACBM). This certification must be provided no later than Contractor's application for Final Payment.

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## Article 14. Suspension and Termination

- 14.1 Suspension of Work for Cause. Owner may, at any time without prior notice, suspend all or any part of the Work, if after reasonable observation and/or investigation, Owner determines it is necessary to do so to prevent or correct any condition of the Work, which constitutes an immediate safety hazard, or which may reasonably be expected to impair the integrity, usefulness or longevity of the Work when completed.
- 14.1.1 Owner will give Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work suspended. Upon receipt of such notice, Contractor shall immediately stop the Work so identified. As soon as practicable following the issuance of such a notice, Owner will initiate and complete a further investigation of the circumstances giving rise to the suspension, and issue a written determination of the findings.
- 14.1.2 If it is confirmed that the cause was within the control of Contractor, Contractor will not be entitled to an extension of time or any compensation for delay resulting from the suspension. If the cause is determined not to have been within the control of Contractor, and the suspension has prevented Contractor from completing the Work within the Contract Time, the suspension is an excusable delay and a time extension will be granted through a Change Order.
- 14.1.3 Suspension of Work under this provision will be no longer than is reasonably necessary to remedy the conditions giving rise to the suspension.
- 14.2 Suspension of Work for Owner's Convenience. Upon seven (7) days written notice to Contractor, Owner may at any time without breach of the Contract suspend all or any portion of the Work for a period of up to thirty (30) days for its own convenience. Owner will give Contractor a written notice of suspension for convenience, which sets forth the number of suspension days for which the Work, or any portion of it, and the date on which the suspension of Work will cease. When such a suspension prevents Contractor from completing the Work within the Contract Time, it is an excusable delay. A notice of suspension for convenience may be modified by Owner at any time on seven (7) days written notice to Contractor. If Owner suspends the Work for its convenience for more than sixty (60) consecutive days, Contractor may elect to terminate the Contract pursuant to the provisions of the Contract.
- 14.3 Termination by Owner for Cause.
- 14.3.1 Upon written notice to Contractor and its surety, Owner may, without prejudice to any right or remedy, terminate the Contract and take possession of the Site and of all materials, equipment, tools, construction equipment, and machinery thereon owned by Contractor under any of the following circumstances:
- 14.3.1.1 Persistent or repeated failure or refusal, except during complete or partial suspensions of work authorized under the Contract, to supply

enough properly skilled workmen or proper materials;

- 14.3.1.2 Persistent disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, including ODR;
  - 14.3.1.3 Persistent failure to prosecute the Work in accordance with the Contract, and to ensure its completion within the time, or any approved extension thereof, specified in the Contract;
  - 14.3.1.4 Failure to remedy defective work condemned by ODR;
  - 14.3.1.5 Failure to pay Subcontractors, laborers, and material suppliers pursuant to Tex. Gov't Code, Ch. 2251;
  - 14.3.1.6 Persistent endangerment to the safety of labor or of the Work;
  - 14.3.1.7 Failure to supply or maintain statutory bonds or to maintain required insurance, pursuant to the Contract;
  - 14.3.1.8 Any material breach of the Contract; or
  - 14.3.1.9 Contractor's insolvency, bankruptcy, or demonstrated financial inability to perform the Work.
- 14.3.2 Failure by Owner to exercise the right to terminate in any instance is not a waiver of the right to do so in any other instance.
- 14.3.3 Should Owner decide to terminate the Contract under the provisions of Section 14.3, it will provide to Contractor and its surety thirty (30) days prior written notice.
- 14.3.4 Should Contractor or its surety, after having received notice of termination, demonstrate to the satisfaction of Owner that Contractor or its surety are proceeding to correct such default with diligence and promptness, upon which the notice of termination was based, the notice of termination may be rescinded in writing by Owner. If so rescinded, the Work may continue without an extension of time.
- 14.3.5 If Contractor or its surety fails, after written notice from Owner to commence and continue correction of such default with diligence and promptness to the satisfaction of Owner within thirty (30) days following receipt of notice, Owner may arrange for completion of the Work and deduct the cost of completion from the unpaid Contract Sum.
- 14.3.5.1 This amount includes the cost of additional Owner costs such as A/E services, other consultants, and contract administration.
  - 14.3.5.2 Owner will make no further payment to Contractor or its surety unless the costs to complete the Work are less than the Contract



balance, then the difference shall be paid to Contractor or its surety. If such costs exceed the unpaid balance, Contractor or its surety will pay the difference to Owner.

14.3.5.3 This obligation for payment survives the termination of the Contract.

14.3.5.4 Owner reserves the right in termination for cause to take assignment of all the Contracts between Contractor and its Subcontractors, vendors, and suppliers. ODR will promptly notify Contractor of the contracts Owner elects to assume. Upon receipt of such notice, Contractor shall promptly take all steps necessary to effect such assignment.

14.4 Conversion to Termination for Convenience. In the event that any termination of Contractor for cause under Section 14.3 is later determined to have been improper, the termination shall automatically convert to a termination for convenience under Section 14.5 and Contractor's recovery for termination shall be strictly limited to the payments allowable under Section 14.5.

14.5 Termination for Convenience of Owner. Owner reserves the right, without breach, to terminate the Contract prior to, or during the performance of the Work, for any reason. Upon such an occurrence, the following shall apply:

14.5.1 Owner will immediately notify Contractor and A/E in writing, specifying the reason for and the effective date of the Contract termination. Such notice may also contain instructions necessary for the protection, storage or decommissioning of incomplete work or systems, and for safety.

14.5.2 Upon receipt of the notice of termination, Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:

14.5.2.1 Stop all work.

14.5.2.2 Place no further subcontracts or orders for materials or services.

14.5.2.3 Terminate all subcontracts for convenience.

14.5.2.4 Cancel all materials and equipment orders as applicable.

14.5.2.5 Take action that is necessary to protect and preserve all property related to the Contract which is in the possession of Contractor.

14.5.3 When the Contract is terminated for Owner's convenience, Contractor may recover from Owner payment for all Work executed. Contractor may not claim lost profits on other work or lost business opportunities.

14.6 Termination By Contractor. If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making

materials unavailable, through no act or fault of Contractor or Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with Contractor, then Contractor may, upon thirty (30) additional days written notice to ODR, terminate the Contract and recover from Owner payment for all Work executed, but not lost profits on other work or lost business opportunities. If the cause of the Work stoppage is removed prior to the end of the thirty (30) day notice period, Contractor may not terminate the Contract.

- 14.7 Settlement on Termination. When the Contract is terminated for any reason, at any time prior to one hundred eighty (180) days after the effective date of termination, Contractor shall submit a final termination settlement proposal to Owner based upon recoverable costs as provided under the Contract. If Contractor fails to submit the proposal within the time allowed, Owner may determine the amount due to Contractor because of the termination and pay the determined amount to Contractor.

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## Article 15. Dispute Resolution

- 15.1 Unresolved Contractor Disputes. The dispute resolution process provided for in Tex. Gov't Code, Ch. 2260 or Tex. Civ. Prac. & Rem. Code, Ch. 114, shall be used by Contractor to attempt to resolve any claim for breach of Contract made by Contractor that is not resolved under procedures described throughout the Uniform General Conditions, Supplementary Conditions, or Special Conditions of the Contract.
- 15.2 Alternative Dispute Resolution Process. Owner will establish a dispute resolution process to be utilized in advance of that outlined in Tex. Gov't Code, Ch. 2260 or Tex. Civ. Prac. & Rem. Code, Ch. 114.
- 15.3 Nothing herein shall hinder, prevent, or be construed as a waiver of Owner's right to seek redress on any disputed matter in a court of competent jurisdiction.
- 15.4 Nothing herein shall waive or be construed as a waiver of the State's sovereign immunity.
- 15.4.1 *Notwithstanding anything to the contrary provided herein, nothing herein will not constitute nor is it intended to constitute the Owner's or the State of Texas' right to claim exemptions, privileges, and immunities as may be provided under the doctrines of sovereign and official immunity.*

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## Article 16. Miscellaneous

- 16.1 Supplementary General and Special Conditions. When the Work contemplated by Owner is of such a character that the foregoing Uniform General Conditions of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include Supplementary General and Special Conditions as described below:
- 16.1.1 Supplementary General Conditions may describe the standard procedures and requirements of contract administration followed by a contracting agency of the State. Supplementary General Conditions may expand upon matters covered by the Uniform General Conditions, where necessary, provided the expansion does not weaken the character or intent of the Uniform General Conditions. Supplementary General Conditions are of such a character that it is to be anticipated that a contracting agency of the State will normally use the same, or similar, conditions to supplement each of its several projects.
- 16.1.2 Special Conditions shall relate to a particular Project and be unique to that Project but shall not weaken the character or intent of the Uniform General Conditions.
- 16.2 Federally Funded Projects. On Federally funded projects, Owner may waive, suspend or modify any Article in these Uniform General Conditions which conflicts with any Federal statute, rule, regulation or procedure, where such waiver, suspension or modification is essential to receipt by Owner of such Federal funds for the Project. In the case of any Project wholly financed by Federal funds, any standards required by the enabling Federal statute, or any Federal rules, regulations or procedures adopted pursuant thereto, shall be controlling.
- 16.3 Internet-based Project Management Systems. At its option, Owner may administer its design and construction management through an Internet-based management system. In such cases, Contractor shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, Requests for Information, applications for payment and processing, amendment, Change Orders and other administrative activities.
- 16.3.1 Accessibility and Administration.
- 16.3.1.1 When used, Owner will make the software accessible via the Internet to all Project team members.
- 16.3.1.2 Owner shall administer the software.
- 16.3.2 Training. When used, Owner shall provide training to the Project team members.
- 16.4 Administrative Inspections and Audits. Contractor agrees that all relevant records related to this Contract or any work product under this Contract, including practices of its Subcontractors, shall be subject, at any reasonable time, to inspection, examination,

review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the Texas State Auditor's Office ("SAO"), the contracting agency or its contracted examiners, or the Office of the Texas Attorney General, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All Subcontracts shall reflect the requirements of this section. In addition, pursuant to Tex. Gov't Code § 2262.003 the SAO may conduct an audit or investigation of any entity receiving funds under this Contract, including direct payments to Contractor and indirect payments under a Subcontract to this Contract; acceptance of such monies acts as acceptance of SAO authority, under legislative audit committee direction, to audit and investigate related to those funds and the entity subject to the audit or investigation must provide SAO with access to any information SAO considers relevant to the scope of the audit or investigation.<sup>15</sup>

## **End of Uniform General Conditions**

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<sup>15</sup> *Tex. Gov't Code § 2262.003 was transferred and redesignated as Tex. Gov't Code § 2262.154 (Added by Acts 2003, 78th Leg., ch. 785, Sec. 44, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 1012 (H.B. 905), Sec. 2, eff. June 18, 2005. Transferred, redesignated and amended from Government Code, Section 2262.003 by Acts 2013, 83rd Leg., R.S., Ch. 1227 (S.B. 1681), Sec. 8, eff. November 1, 2013.)*

## Project Special Conditions

### Article I. INSURANCE

1.1 **Subsection 5.2.6.1.6** of the Texas Uniform General Conditions for Construction Contracts with HHSC Supplementary General Conditions, Version 2.2, is hereby amended by adding a new Subsection as follows:

5.2.6.1.6.1 **Umbrella Liability Insurance Required Amount.** Contractor shall provide Umbrella Liability Insurance coverage in the amount not less than \$1,000,000.00.

### Article II. LIQUIDATED DAMAGES

2.1 **Subsection 9.11** of the Texas Uniform General Conditions for Construction Contracts with HHSC Supplementary General Conditions, Version 2.2, is hereby amended by adding new Subsections as follows:

9.11.1 Owner is entitled to full and beneficial occupancy and use of the completed Work. If Contractor fails to meet Substantial Completion of any portion of the Work in accordance with the approved Work schedule, Owner will sustain actual damages as a result of such failure.

9.11.2 Contractor agrees that:

- (1) establishing the precise measure of damages in the event of default by the Contractor may be (i) costly, (ii) time consuming, or (iii) difficult or impossible to calculate;
- (2) the liquidated damage assessments in this section represent a good faith effort to quantify the damages that could reasonably be anticipated at the time of execution of the Contract;
- (3) the liquidated damages in this section are just and reasonable and are not a penalty;
- (4) nothing contained in this section shall be construed as relieving the Contractor from performing all Contract requirements whether or not said requirements are set forth herein; and
- (5) All assessments of damages shall be within the sole discretion of the Owner.

9.11.3 **Liquidated Damages Assessment.** Once the Owner has determined that liquidated damages are to be assessed, the Owner shall notify the Contractor of the assessment(s). Failure to notify does not impact the Owner's assessment of damage and is not a condition precedent thereto. The Owner will withhold liquidated damages from payments to the Contractor, or, if no payments have been made, the Owner will make demand of payment of liquidated damages. The Contractor must make payment within 30 days of the Owner's demand. In the event the Contractor fails to pay within the 30-day period, the Owner may make a claim for payment against the performance bond, with or without notice to the Contractor. In the alternative and at Owner's sole

discretion, the Owner may deduct liquidated damages from the Contract Sum payable to Contractor as stated in the UGCs, Standard Construction Terms and Conditions, or Project Special Conditions.

- 9.11.4 **Failure to Assess Liquidated Damages.** The failure of the Owner to assess liquidated damages in any instance where the Owner is entitled to liquidated damages pursuant to the terms of this Contract shall not constitute waiver in any fashion of the Owner's rights to assessment of liquidated damages.
- 9.11.5 **Severability of Individual Liquidated Damages Clauses.** If any portion of **Section 9.11** is determined to be unenforceable, the other portions of **Section 9.11** will remain in full force and effect.
- 9.11.6 **Failure to Meet Substantial Completion Date.** The failure of the Contractor to meet the Substantial Completion date for any portion of the Work in accordance with the approved Work schedule under Article 9, Construction Schedules, Texas Uniform General Conditions for Construction Contracts with HHSC Supplementary General Conditions, Versions, 2.2, may result in the assessment of liquidated damages in the sum of **\$250.00** for each calendar day, or part of a day, after the Substantial Completion Date that the Work remains incomplete. This sum is not construed in any sense as a penalty
- 9.11.7 **Time of Completion**
- 9.11.7.1 The date for achieving Substantial Completion of the Project shall be set forth within the Owner's Notice to Proceed.
- 9.11.7.2 The Construction Phase will be deemed to commence on the date specified in a Notice to Proceed issued by Owner.
- 9.11.7.3 Contractor will achieve Substantial Completion of the Work and Final Completion of the Work on or before the dates set forth within the Notice to Proceed and the Contract, subject to time extensions granted by Change Order.
- 9.11.7.4 The times set forth for completion of the Work in the Notice to Proceed with Construction are an essential element of the Contract. Owner may elect, at its option, to stage or "fast-track" portions of the Work. Owner will issue a separate Notice to Proceed or Change Order for each such stage and each such stage will have a separate substantial completion date.

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# **KERRVILLE STATE HOSPITAL**

**FAILURE TO OBSERVE THE FOLLOWING RULES AND REGULATIONS  
MAY RESULT IN PERMANENT EXPULSION FROM THE  
INSTITUTION'S PREMISES:**

- Speed Limit is 15 miles per hour, maximum, on the entire campus
- Pedestrians have the right-of-way ALWAYS! Drive with extreme caution, and be prepared to cope with unexpected circumstances
- ALL stop signs and other traffic controls must be obeyed
- Parking must be in areas designated by the Plant Engineer. Do not drive or park on lawns without express permission
- Vehicles must be locked and the keys removed at all times when unattended
- Tools and equipment must be properly secured at all times
- Firearms, including ones in the possession of persons with a concealed handgun license, are strictly forbidden on the Campus
- Alcoholic beverages are forbidden on the Campus
- Contact with the facility's patients is forbidden. Do not give them anything, including cigarettes, matches, food or money. Should a patient become annoying or obnoxious, notify the Plant Engineer and/or direct-care staff at once.
- Photos shall not be taken with patients in the image.

**THIS PAGE MUST BE POSTED AT JOB SITE**



"General Decision Number: TX20210161 07/02/2021

Superseded General Decision Number: TX20200161

State: Texas

Construction Type: Building

County: Kerr County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/01/2021
1	07/02/2021

ASBE0087-002 03/02/2020

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 23.97	10.79

BOIL0531-001 01/01/2017

	Rates	Fringes
Boilermaker.....	\$ 28.00	22.35

\* IRON0263-019 06/01/2020

	Rates	Fringes
Ironworker, reinforcing and structural.....	\$ 25.14	7.43

LAB00154-001 05/01/2008

	Rates	Fringes
Laborers: (Mason Tender - Cement/Concrete).....	\$ 12.98	3.49

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PLUM0142-010 08/07/2019

	Rates	Fringes
PLUMBER, Excludes HVAC Pipe Installation.....	\$ 31.05	13.76

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SUTX2009-048 04/20/2009

	Rates	Fringes
BRICKLAYER.....	\$ 19.67	0.00
CARPENTER, Includes Acoustical Ceiling Installation, Drywall Hanging, and Metal Stud Installation.....	\$ 13.13	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 13.27	0.00
ELECTRICIAN.....	\$ 20.00	3.11
GLAZIER.....	\$ 17.20	1.59
HVAC MECHANIC (HVAC Duct and Pipe Installation).....	\$ 14.21	0.77
INSTALLER - OVERHEAD DOOR.....	\$ 11.63	6.26
LABORER: Common or General.....	\$ 9.73	0.00
LABORER: Landscape & Irrigation.....	\$ 8.50	0.22
LABORER: Mason Tender - Brick...	\$ 12.02	0.00
LABORER: Mortar Mixer.....	\$ 12.00	0.00
LABORER: Plaster Tender.....	\$ 9.00	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 13.75	0.00
OPERATOR: Bulldozer.....	\$ 12.80	0.43
OPERATOR: Crane.....	\$ 21.33	0.00
OPERATOR: Forklift.....	\$ 14.58	0.00
OPERATOR: Loader (Front End)....	\$ 10.54	0.00
PAINTER: Brush, Roller and Spray.....	\$ 12.26	0.00
PLASTERER.....	\$ 15.50	0.00
ROOFER.....	\$ 13.64	1.80

SHEET METAL WORKER, Excludes

HVAC Duct Installation.....	\$ 17.00	0.00
TILE SETTER.....	\$ 15.00	0.00
TRUCK DRIVER.....	\$ 11.24	0.35

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.  
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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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END OF GENERAL DECISION

## Attachment H1- SCOPE OF WORK

### Project 20-053 -BAS - Building Automation System (BAS) Replacement – Kerrville State Hospital

The following Project Requirements are conditions of the Contract between the vendor and the STATE OF TEXAS acting through the Texas Department State Health Services, hereinafter called the OWNER.

#### A. Specifications:

1. Project Location:

- Kerrville State Hospital, 721 Thompson Dr., Kerrville, TX 78028

2. Project Description:

The existing Johnson Controls Metasys Building Automation System (BAS) workstation which controls the Kerrville State Hospital is currently operating on a Windows 7 operating system (OS) that is no longer supported by Microsoft. The current Johnson Controls Metasys software will require the latest software revision to effectively operate on a windows 10 platform. The BAS control system and sequences of operation will be designed to accommodate the existing mechanical HVAC building systems, equipment, and utilities. The existing primary network between building controllers, BAS server and central operator workstation shall remain BACnet/IP. Owner is pursuing an open platform system as defined by the American Society on Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) that can reside overtop of existing controls system and provide a non-vendor dependent path forward with the ASHRAE standard. ASHRAE standard 135 has been established as the industry defining body and standard governing Building Automation Systems. The standard promotes an open standard language (protocol) across its devices.

3. Project Detail

Building 615 Room 106: (see section XXii. Products, liii. Workstation/server for additional details)

- Replace the existing network BAS operator workstation: Include Windows 10 operating system software and latest BAS software with graphics package. Customer would also like to have programming capability to send/receive text/email to service tech when there is an alert or alarm on the critical refrigeration system.
- Replace existing BAS computer monitor with two (2) displays
- Retain existing network server: Dell PowerEdge T420, Microsoft Windows Server 2016 Standard operating system, Build Date 10/24/2018. Download latest Windows updates only and ensure all devices are communicating effectively.
- Update firmware to network devices if applicable: Network Control Engines (NCE2510-0/Qty. 1, NCE2560-0/Qty. 13), Network Automation Engines (NAE5510-2/Qty. 1, NAE3510-2/Qty. 1) and Network Control Module (NCM4510-2/Qty. 1) firmware if available.

Building 502

- New outside air dampers, actuators and add building air relief damper/s
- Install DAT (Discharge air temperature) sensors - (3) AHU's

Building 502A

- Add outside air dampers with actuators for Patient Rooms controlled in programming by the CO2 levels, and add building air relief damper with actuators/s
- Add wiring and Controller to Doctors Overnight Room (OD Room), Add points to BAS
- Install DAT (Discharge air temperature) sensors - (16) fan coils

Building 503

- Install DAT (Discharge air temperature) sensors – (2) RTU's

Building 577

- Replace all 22 existing UNT controllers add to existing BACnet controller Note: New wiring in place, no additional wiring needed.

- Controller, (replace the 1 existing FEC controller to new if needed to upgrade).
- Add hardware and sensors, upgrade all programming for humidity control, DAT sensors, and condensate alarms
- Replace all HVAC hot and cold-water valves and actuators on all 23 Fan Coils
- Add outside air dampers with actuators and add building air relief damper with actuators/s
- Install DAT (Discharge air temperature) sensors – (23) fan coils
- Install Occupancy sensors

#### Building 578

- Program BAS to send text or email to service techs when there is an alert or alarm on the critical refrigeration system.
- Add wiring/temperature thermistor and points to controller for two (2) reach in freezers
- Install DAT (Discharge air temperature) sensors – (2) RTU's

#### Building 601

- Replace outside air dampers and actuators and add/or repair building air relief damper with actuators/s
- Install DAT (Discharge air temperature) sensors – (2) AHU's

#### Building 603

- Replace outside air dampers and actuators and add/or repair building air relief damper with actuators/s
- Run wire to chiller for better control with programming
- Install DAT (Discharge air temperature) sensors – (2) AHU's

#### Building 605

- Replace existing TEC controllers
- Building 610
- Repair Dampers and/or actuators for the outside air units
- Repair building air relief damper with actuators

#### Building 611

- Install two (2) main valves and actuators for 2 pipe systems summer/winter programming
- Replace outside air dampers and actuators
- Repair building air relief damper with actuators
- Install DAT (Discharge air temperature) sensors – (3) AHU's

#### Building 615

- Add programming for unit heaters
- Install DAT (Discharge air temperature) sensors – (3) AHU's

#### Building 618

- Repair BACnet communication module that has been problematic between BAS and the RUUD Digital Controlled equipment

#### Building 620

- Replace outside air dampers and actuators and add/or repair building air relief damper with actuators

#### Building 623

- Ensure all devices are communicating with BAS
- Install DAT (Discharge air temperature) sensors – (2) RTU's

#### Building 630 Rm 100 and AHU Rm 1225

- Replace all Pneumatic Controls/Valves with Electric

Building 630 Rm 100

- Program outside air intake and the exhaust fan to control temperature of room
- Repair hanging heater programming, controls, pump and temperature sensor to control room temperature

Building 630 Area 1AB

- Install DAT (Discharge air temperature) sensors – (6) Fan Coils
- Install Occupancy sensors (6)

Building 630 Area 2AB

- Install DAT (Discharge air temperature) sensors – (6) Fan Coils
- Install Occupancy sensors (6)

Building 630 Area 2CD

- Install DAT (Discharge air temperature) sensors – (6) Fan Coils
- Install Occupancy sensors (6)

Building 630 Area 3AB

- Install DAT (Discharge air temperature) sensors – (6) Fan Coils
- Install Occupancy sensors (6)

Building 630 Area 3CD

- Install DAT (Discharge air temperature) sensors – (6) Fan Coils
- Install Occupancy sensors (6)

Add Alternate:

- Replace current server (Dell PowerEdge T420): New server will supersede all previous server requirements.
  - New server shall meet minimum requirements listed in section XXii. Products, liii. Workstation/server, item b.
1. Each building to be confirmed during physical walkthrough relative points needed at facilities direction.
  2. Request that controllers be updated to latest firmware and that confirmation that all programmed devices remain communicating effectively after completion.
  3. The work provided shall include, but not limited to furnishing software, hardware, materials delivery, labor, documentation, drawings, programming, acceptance testing and services necessary to install a complete and fully functional building automation and controls front-end system.
  4. The contractor must backup the system database prior to start and capture all graphical points and screens for archiving and storage. These critical points and screens shall be recreated and programmed with new BAS software.
  5. The contractor is responsible for front-end verification of software, firmware, field controllers, server (if applicable, workstations, and devices after installation. The warranty period will proceed once accepted by HHSC.
  6. All components of the system – workstations, network controllers, local controllers, unitary controllers, etc. shall communicate using the BACnet protocol, as defined by ASHRAE Standard 135-2008 and as specified herein.
    - Level 1 communication protocol shall be BACnet IP [Ethernet]. Proprietary communications are not allowed.
    - Level 2 communication protocol shall be BACnet IP, BACnet MS/TP Modbus IP, Modbus RTU LonWorks. Proprietary communications are not allowed.

7. Provide services and manpower necessary for commissioning of system in coordination with the Commissioning Authority, HVAC Contractor, Testing and Balancing Contractor, Electrical Contractor and Owner's Representative.
8. All work performed under this section of the specifications will comply with all codes, laws and governing bodies. If the drawings and/or specifications conflict with governing codes, the Contractor shall submit a proposal with appropriate modifications to the project to meet code restrictions. If this specification and associated drawings exceed governing code requirements, the specification will govern. The Controls Contractor shall obtain and pay for all necessary construction permits and licenses associated with this scope of work.
9. The BAS contractor shall coordinate with owner representative or project manager designee to confirm graphics created from floorplans as starting points are valid and approved before final graphical screens and images are completed.
10. The BAS contractor shall coordinate with owner or project manager designee to concur with graphic standards (i.e. font size, text color scheme, object animation, status points, equipment images, symbols, etc.).
11. The BAS contractor shall coordinate with owner representative or project manager designee when integrating support buildings into new central monitoring and control system.
12. The contractor will provide:
  - i. Technical Support through warranty period
  - ii. Emergency services if required
  - iii. Quarterly scheduled visits
13. QUALITY ASSURANCE
  - i. Building Automation System (BAS) shall be manufactured, tested and installed in accordance with the following standards:
  - ii. National Electrical Manufacturers Association (NEMA).
  - iii. Underwriters Laboratories (UL).
  - iv. BACnet Testing Laboratories (BTL).
  - v. National Fire Protection Association (NFPA).
  - vi. Installer Qualifications: Automatic control system manufacturer's authorized representative who is trained and approved for installation of system components required for this Project.
  - vii. Upon completion of the installation, the Contractor shall thoroughly inspect, check, adjust, calibrate, and make ready for use all devices/sensors comprising the control system and certify that they are installed in accordance with "Record" Drawings.
  - viii. Data Communications Protocol: Certify that each proposed DDC system component complies with ASHRAE Standard 135-2008 for each protocol.
  - ix. DDC system component testing: Comply with ASHRAE 135.1-2009 and all addenda for all DDC controllers.
  - x. All controllers used to control or monitor equipment and/or field devices shall be tested, compliant with and carry the mark of the BACnet Testing Laboratories (BTL):
    - xi. Building Controllers.
    - xii. Advanced Application Controllers.
    - xiii. Application Specific Controllers.
14. Equipment and Materials: Equipment and materials shall be cataloged products of manufacturers regularly engaged in the production and installation of HVAC control



systems. Products shall be manufacturer's latest standard design and have been tested and proven in actual use.

#### 15. Quality Management Program

- i. Designate a competent and experienced employee to provide BMS Project Management. The designated Project Manager shall be full time on this project and be empowered to make financial, technical, scheduling and related decisions on behalf of the BMS Contractor. At minimum, the Project Manager shall:
  - Serve as the point of contact for the Construction Team.
  - Manage the scheduling of the work to ensure that adequate materials, labor and other resources are available when needed.
  - Lead and be involved in the coordination efforts with other trades.
  - Be responsible for the work and actions of the BMS workforce on site.
  - System Software: Provide latest version of software at Project completion. Provide all software updates for five (5) year after date of acceptance as determined by the Owner.

#### 16. PROTECTION OF SOFTWARE RIGHTS

- i. Prior to delivery of software, the Owner and the party providing the software will enter into a software license agreement with provisions for the following:
- ii. Limiting use of software to equipment provided under these Specifications
- iii. Limiting copying.
- iv. Preserving confidentiality.
- v. Prohibiting transfer to a third party.
- vi. Register software to HHSC.

#### 17. SUBMITTALS

- i. The proposed equipment shall be subject to the approval of HHSC.
- ii. Product Data: For all products listed in Part 2 below provide detailed manufacturer product data sheets, technical literature indicating dimensions, finishes, material, weights, performance characteristics, electrical characteristics, capacities, loads, required clearances, method of field assembly, components, and location and size of each field connection. Include manufacturer's technical literature for each control device. Indicate finishes for materials, and installation and startup instructions for each type of product indicated.
- iii. DDC System Hardware: Bill of materials of equipment indicating quantity, manufacturer, part number, part description, and model number. Include technical data for system architecture, operator workstation equipment, server, interface equipment, control units, transducers/transmitters, sensors, actuators, valves, relays/switches, control panels, communication methods and operator interface equipment.
- iv. Control System Software: Include technical data sheets for operating system software, operator interface, color graphics, and other third-party applications including all software licensing agreements.
- v. Controlled Systems: Instrumentation list with element name, type of device, manufacturer, part number, model number, and product data. Include written description of sequence of operation including schematic control diagram.
- vi. Preparation instructions and recommendations.
- vii. Operations and Maintenance Manuals.
- viii. Installation methods.
- ix. Warranty documents

#### 18. Shop Drawings:

- i. 3 copies of shop drawings of the entire control system shall be submitted and shall consist of a complete list of equipment and materials, including manufactures' catalog data sheets and installation instructions. Submit in printed electronic format.
- ii. Shop drawing shall contain complete wiring and schematic diagrams, riser diagram on networked devices and any other details required to demonstrate that the system has been coordinated and will properly function as a system.
- iii. Upon completion of work, provide 3 complete sets of as-built drawings and other project specific documentation in 3-ring hard-backed binders and on Flash media.
- iv. Software and Firmware Operational Documentation: Include the following:
  - v. Software operating and upgrade manuals.
  - vi. Program Software Backup required to reinstall and configure system in the event of a catastrophic failure: On CD, complete with data files.
  - vii. Client workstation software.
  - viii. Device address list.
  - ix. Printout of software application and graphic screens.
  - x. Software license required by and installed for operator workstations, server (if applicable) and control systems.
  - xi. Software Upgrade Kit: For Owner to use in modifying software to suit future systems revisions or monitoring and control revisions.

#### 19. WARRANTY

- i. Controls Contractor shall guarantee all system components and installations to be free from defects for five (5) year from the date of acceptance as determined by the Owner. Any defects found during this period shall be repaired and/or replaced at no cost to the Owner. The Controls Contractor shall provide maximum of 1-hour response time for trouble calls or maintenance.
- ii. Controls Contractor shall provide all corrective software modifications or updates available from the software manufacturer during warranty service periods. All user documentation shall be updated on user and manufacturer backup software disks.

#### 20. PRODUCTS

- i. MANUFACTURERS
  - Acceptable Manufacturer used as a basis of design are subject to compliance with requirements outlined above.
    - Johnson Controls
- ii. Workstation and/or Server (if applicable): The contractor shall register and maintain system updates and support throughout warranty period.
  - Minimum requirements are as follows:
    - Operator Control and Monitoring Workstation:
      - CPU:
        1. OS: Windows 10 Professional 64-bit English
        2. Processor: Intel Xeon Processor (3.0 GHZ Turbo)
        3. Memory: 16GB 2133MHz
        4. Hard Drive: 500GB 7200RPM
        5. Video Card: NVIDIA Quadro 4GB
      - Displays:
        1. 24" Monitor (Dual, Qty. 2)
        2. USB Soundbar
    - Tower Server (If applicable)
      - OS: Windows Server 2016 Standard Edition

- Processor: 3.0 GHz Intel Xeon 6 core single processor or better
- Memory: 32GB
- Hard Drive: 600GB 15K SAS 6Gbps
- Optical Drive: DVD/RW
- RAID configuration: RAID 1
- Warranty: 1-year next business day onsite service (after remote diagnosis)
- Web Browser: Internet Explorer 11.0
- Anti-virus software
- Accessories: Rails, USB optical mouse, hot plug power supply x2
- Additional Software (if applicable): Microsoft SQL Server

iii. SYSTEM PERFORMANCE

- Graphics User Interface:
  - The BAS Contractor shall provide system software based on server/thin-client architecture, designed around the open standards of web technology. The BAS server shall communicate using Ethernet and TCP/IP. Server shall be accessed using a web browser or approved application over Owner intranet and remotely over the Internet.
  - The intent of the thin-client architecture is to provide the operator(s) complete access to the BAS system via a Graphical User Interface (GUI) shall be browser and operating system agnostic, meaning it will support Microsoft and Firefox and Chrome browsers (current released versions), and Windows as well as non-Windows operating systems.
  - The ability to access the Building Automation System via a mobile platform device.
  - The GUI shall provide a completely interactive user interface and shall offer and be configured with the following features as a minimum:
    - Trending.
    - Scheduling.
    - Set point adjustments
    - Alarm and event information
    - Configuration of Operators access levels.
    - Execution of Global commands
    - Add, delete, and modify graphics and displayed data.
    - Tree navigation
    - Add, delete, and modify user accounts and access.
- iv. Navigation through the GUI shall be accomplished by clicking on appropriate level of a navigation tree and/or by selecting dynamic links to other system graphics. With the option to have navigation tree and action pane displayed simultaneously, enabling the operator to select a specific system or equipment and view the corresponding graphic.
- v. Graphics: Using graphical format suitable for display in a web browser or graphical interface, graphics shall include aerial building/campus views, color building floor-plans, equipment drawings, active graphic setpoint controls, and points associated with system on the graphic. The data on each graphic page shall automatically refresh. Hovering mouse over logical points shall provide point name, priority of command, and value.

- vi. Schedules: Shall be used to create, modify/edit and view schedules based on the systems geographical hierarchy and operators access level.
  - Types of schedule shall be Normal, Holiday, or Override.
  - Specific date.
  - A range of dates.
  - Any combination of Month of Year (1 -12, any), Week of the Month (1 -5, last, any), Day of the Week (M – Sun, any).
  - Wildcard (example, allow combinations like second Tuesday of every month).
- vii. Alarms: Shall be used to view alarm information geographically (using the navigation tree), acknowledge alarms, sort alarms by category, actions and verify reporting actions.
  - Alarm Categories: The operator shall be able to create, edit or delete alarm categories such as HVAC, Maintenance, Fire, or Generator. An icon shall be associated with each alarm category, enabling the operator to easily sort through multiple events displayed.
  - Alarms shall populate on an alarm page and be able to sort by time and date. There should be an audible alert for the alarms and show on the navigation tree.
  - Each Alarm shall display an Alarms Category (using a different icon for each alarm category), date/time of occurrence, point name, and status. The alarm page shall indicate the system location, address and other pertinent information. An operator shall easily be able to sort events, edit event templates and categories, acknowledge or force a return to normal in the Events View as specified in this section.
  - Operators shall be able to define the type of Alarm generated per object. A ' network' view of the Navigation Tree shall expose all objects and their respective Alarm Configuration. Configuration shall include assignment of Alarm, type of Acknowledgement and notification for return to normal or fault status.
  - Ability for alarms to be emailed and/or SMS.
- viii. Trends: As system is engineered, all points shall be enabled to trend. Trends shall both be displayed and user configurable through the GUI. Trends shall comprise analog, digital or calculated points simultaneously. A trend log's properties shall be editable using the Navigation Tree and Graphic Pane.
  - The operator shall have the ability to view trends by using the Navigation Tree and selecting a Trends button in the Graphic Pane. The system shall allow y- and x-axis maximum ranges to be specified and shall be able to simultaneously graphically display multiple trends per graph or in text form that can be exported.
  - Sample intervals shall be as small as one second. Each trended point will have the ability to be trended at a different trend interval. When multiple points are selected for displays that have different trend intervals, the system will automatically scale the axis.
  - Operators will have the ability to modify/delete/edit trend intervals for time and change of value. Ability to set buffer size for trend data to be collected.

- ix. Logic - Live Graphic Programs: Shall be used to display 'live' graphic programs of the control algorithm, (micro block programming) for the mechanical/electrical system selected in the navigation tree.
- x. Reporting: Operators based off access shall be able to run various reports from the Building Automation System. Reports should have the ability to be emailed or exported.
  - Offline points report.
  - Overridden points reports.
  - Failed points report.
  - Alarm reports.
  - Points in Trend.
  - Other actions such as Print, Help, Command, and Logout shall be available.

## 21. SYSTEM NETWORK CONTROLLERS

- i. These controllers are designed to manage communications between the programmable equipment controllers (PEC), application specific controllers (ASC) and advanced unitary controllers (AUC) which are connected to its communications trunks, manage communications between itself and other system network controllers (SNC) and with any operator workstations (OWS) that are part of the BAS, and perform control and operating strategies for the system based on information from any controller connected to the BAS.
- ii. The controllers shall be capable of peer-to-peer communications with other SNC's and with any OWS connected to the BAS, whether the OWS is directly connected, connected via modem or connected via the Internet.
- iii. The communication protocols utilized for peer-to-peer communications between SNC's can be BACnet TCP/IP, BACnet MS/TP, and SNMP. Use of a proprietary communication protocol for peer-to-peer communications between SNC's is not allowed.
- iv. The SNC shall provide the following hardware features as a minimum:
  - One Ethernet Port-10/100 Mbps.
  - One RS-232/485 port.
  - Ability for LonWorks and Modbus communication.

### v. DDC EQUIPMENT

- Protocol Compliance: Control units shall use BACnet or Modbus protocol.
- Application Software:
- I/O capability from operator station.
- System security for each operator via software password and access levels.
- Automatic system diagnostics; monitor system and report failures.
- Database creation and support.
- Automatic and manual database save and restore.
- Dynamic color graphic displays with up to 10 screen displays at once.
- Custom graphics generation and graphics library of HVAC equipment and symbols.
- Alarm processing, messages, and reactions.
- Trend logs retrievable in spreadsheets and database programs.
- Alarm and event processing.
- Object and property status and control.

- Automatic restart of field equipment on restoration of power.
- Data collection, reports, and logs. Include standard reports for the following:
  - Current values of all objects.
  - Current alarm summary.
  - Disabled objects.
  - Alarm lockout objects.
  - Logs.
  - Custom report development.
  - Utility and weather reports.
  - Workstation application editors for controllers and schedules.
  - Maintenance management.
  - Custom Application Software:
    - English language oriented.
    - Full-screen character editor/programming environment.
    - Allow development of independently executing program modules with debugging/simulation capability.
    - Support conditional statements.
    - Support floating-point arithmetic with mathematic functions.
    - Contains predefined time variables.

## 22. Cabling

- Communication wiring shall not be run in conduit with any high voltage lines. If cabling penetrates any fire walls it must be properly caulked.
- All sensor and control cabling shall be wired to the local panel without any splicing or joints in between.
- Low and high voltage wiring shall not be permitted to share conduits.
- All cabling shall be labeled on both ends of the run.

## 23. EXAMINATION

- i. Verify that power supply is available to control units.

## 24. INSTALLATION

- i. Install software in control units, operator workstation, and server (if applicable).
- ii. Implement all features of programs to specified requirements and as appropriate to achieve sequence of operations (SOO) programming to existing equipment.
- iii. Provide software updates (1 year from the date of acceptance)
- iv. Connect and configure equipment and software to achieve sequence of operations as specified.
- v. Graphics software, including system graphics, animated and 3D screens.

## 25. DEMONSTRATION & TRAINING

- i. The contractor or a factory-authorized service representative shall provide training to Owner's maintenance personnel to include basic understanding of new BAS front-end in order to maintain HVAC instrumentation and controls.
- ii. Upon system acceptance provide a minimum of eight (8) hour general classroom training sessions for [three (3)] of the Owner's personnel in the operation, programming, troubleshooting and maintenance of the control system. The training should include software navigation, tool applications, setpoint adjustments, and graphic screen overview. Training sessions shall be videotaped by the BAS contractor and tapes/digital files turned over to the Owner at completion of training along with a logbook to document follow training issues.
  - Training to occur at manufacturer's local training facility.
  - Travel, room, and board at Owner's expense.

- iii. An additional 24 hours of on-site system-specific training shall be provided upon completion of general training at Owner's discretion. The instructor shall provide hands-on system navigation examples and real-time troubleshooting scenarios if possible and allow time for questions and answers.
  - iv. Over the first twelve months of operation after Substantial Completion provide [two (2), six (6)] hour follow up training sessions at the Owner's discretion.
  - v. The contractor will provide and maintain a sign-in training log and provide certificates of completion to HHSC.
26. The Contractor shall be licensed and an authorized dealer by the State of Texas in the trade's relating to the proposed scope of work on Building Automation Systems. Proof of authorization is required.
27. The Respondent having carefully examined the Texas Uniform General Conditions for Construction Contracts with HHSC Supplementary General Conditions ("UGCs"), this Project Scope, and any addenda thereto, as prepared by the Owner, for this Project, as well as the premises and all the conditions affecting the work, if applicable to this Project, does hereby propose to furnish all supervision, labor, materials, equipment, tooling, and permits necessary to achieve Substantial Completion of the work in accordance with the "Contract Documents" (as that term is defined in the UGCs).
28. All vendors will participate in a mandatory walkthrough prior to submitting a proposal, as detailed in the RFP Section 2.2, Schedule of Events.
29. The awarded Contractor shall verify all voltages, dimensions and connections prior to ordering equipment and materials. Work surfaces/workable areas shall be inspected by the contractor prior to commencing work. All deficiencies found but not covered by this proposal shall be reported to the Facility Plant Maintenance Manager (PMM). Acceptance of the Notice to Proceed (NTP) implies acceptance of work surfaces/workable areas, and any work deficiency shall become the responsibility of the contractor
30. The awarded Contractor shall be responsible for any repair of damaged surfaces that may be damaged as a result of the installation of this system, equipment or devices. This repair shall match the existing surrounding surfaces and provide a seamless transition.
31. Products (Basis of Design):
- i. Prior to ordering equipment, the awarded Contractor shall submit on the design and equipment, to include detailed calculations, equipment lists, plans, shop drawings, condensate removal and catalogue cuts marked in detail. These items must be approved by the Owners Representative/Project Manager prior to ordering material, equipment, and prior to Contractor mobilization.
  - ii. Acceptance testing and initial start-up shall be performed in the presence of the Owners Representative/Project Manager, Plant Maintenance Manager, or their designee.
  - iii. In the event that the system does not operate properly; the test may be terminated and rescheduled to allow contractor to make corrective actions.
  - iv. Testing will proceed once contractor has informed HHSC Project manager and plant manager and scheduled date has been approved.
  - v. The contractor is responsible for providing a BAS points list prior to testing.
  - vi. The contractor is responsible for providing test results and obtaining signatures of acceptance test from HHSC project manager and plant manager.
  - vii. Perform factory start up and provide three (3) copies of startup report prior to substantial completion observation. The reports shall be submitted to the Plant Maintenance Manager.
  - viii. Remove all debris from the work site and dispose of legally. Provide the Plant Maintenance Manager with disposal ticket for any hazardous materials.

- ix. Provide licensed electricians to perform all electrical work. All electrical and instrumentation wiring shall comply with the manufacturer's requirements and shall be in accordance with local and state electrical codes. The contractor shall provide all necessary electrical upgrades to provide a complete and working system in all respects included in the proposal.
- x. Seven working days prior to mobilization, the contractor shall provide to the Owners Representative/Project Manager a plan for the protection of grounds, sidewalks, roadways, etc. from heavy equipment such as lifts, trucks, etc. The contractor shall repair all damage to the facility caused by any equipment.
- xi. Provide all labor, equipment, and material including pipe, for a complete and operating system.
- xii. Construct any supports and access platforms necessary to support the equipment.
- xiii. If a staging and/or fenced area is required, coordinate with the facility designated point of contact prior to the start of construction.
- xiv. The contractor's crew will be escorted at all times. If the successful respondent desires to utilize more than one crew, this will have to be pre-arranged with the facility in writing prior to commencing work.
- xv. All work shall be coordinated with the Plant Maintenance Manager 72 hours in advance of the work.
- xvi. Normal hours for occupied buildings are 8-5, Monday thru Friday.
- xvii. The contractor shall disconnect the current operator monitoring and control workstation and turnover to HHSC project manager.
- xviii. The contractor will be responsible to coordinate with onsite facility plant manager before removal and setup of new central monitoring and control station.
- xix. All equipment and components will be installed in strict compliance with each manufacturer's recommendation.
- xx. The entire system shall be installed in a workmanlike manner, in accordance with approved manufacturer's recommendation.
- xxi. HHSC will provide IP addresses required for network devices.

**B. Special Provisions**

1. The contractor shall provide the following items to the Owners Representative/Project Manager within ten (10) calendar days from the date of issuance of a Purchase Order (PO) or Contract:
  - a. Provide the number of calendar days for the project work to be completed to assist the Facility in scheduling of personnel. Allow 14 calendar days total for submittal review and final test observation.
  - b. Name of field supervisor who will oversee the project and provide a single point of contact.
2. Contractor shall provide three (3) copies of shop drawings and product data submittals for review and approval to the Owners Representative/Project Manager within 21 calendar days of Notice of Award for all equipment, devices and materials needed to compete the work as specified. Owner's review comments shall be submitted to the Contractor.
3. All equipment, materials and parts shall be new and supported by the manufacturer.
4. All work surfaces/workable areas shall be inspected by the contractor prior to commencing work. All deficiencies found but not covered by this proposal shall be reported to the Facility PMM. Contractor commencing work implies acceptance of work surfaces/workable areas, and any work deficiency shall become the responsibility of the contractor.



5. Provide all cutting, patching, and structural support as required for a complete and operating system. All surfaces cut shall be patched to provide a seamless transition to surrounding areas. All wall penetrations shall be sealed in accordance with facility procedures.
6. All openings in rated walls, ceilings and floors associated with new systems installed as part of this contract shall be fire or smoke sealed in accordance with the required rating.
7. Contractor shall provide field supervisor to supervise installation, safety and project schedule. The field supervisor shall attend the pre-construction conference on site and any special meetings required to expedite the project.
8. Repair any damage caused by the Contractor at no cost to the Owner. Provide clean-up and legal disposition of all spoils created by the work. Contractor shall coordinate with the Facility on salvage of all items indicated for removal.
9. Install all equipment and material in accordance with the manufacturers' written instructions.
10. Maintain close coordination with the Plant Maintenance Manager on a day-to-day basis.
11. Included in this bid shall be materials and labor necessary to implement **Attachment H2 - Infection Control Plan**. The **Attachment H2 - Infection Control Plan** will be reviewed at the Pre-Construction conference and Contractor shall sign the **Attachment H3 - Infection Control Construction Permit**. Original permit shall be retained by the Facility.

The following Type, Group and Class have been assigned to this project by the Owners Representative/Project Manager and Facility PMM:

- a. Construction Project Activity Type: B
- b. Patient Risk Group: 2
- c. Class of Precautions: II

### **C. Project Close out Procedures**

1. Upon completion of the Work and prior to submitting for payment, the Contractor shall provide the following:
  - a. Training to facility personnel designated by the facility in the operations, adjustment and maintenance for all equipment and systems that are part of the work. Provide a copy of the training attendees list with date, project name and Purchase Order number.
  - b. Three (3) copies of the equipment Operation and Maintenance manuals.
  - c. Contractors and manufacturer's original warranties as noted above.
  - d. A letter on contractor's letterhead certifying that all materials and equipment provided as part of this contract does not contain asbestos.
  - e. Provide one (1) complete set of as-built drawings of the project construction and identify all areas that differ from the Contract Drawings, where provided.
  - f. Owners Representative/Project Manager shall inspect the work of the project to determine substantial completion. All outstanding items noted at the inspection shall be resolved and/or completed prior to obtaining the substantial completion designation.

# Guidelines for Infection Control for Construction and Renovation Projects

**EFFECTIVE: June 2, 2010**

<p><b>HHSC STATE SUPPORTED LIVING CENTERS AND STATE HOSPITALS</b></p>
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**Reason for Guidelines**

These guidelines apply to HHSC State Supported Living Centers and State Hospitals, HHSC Support Services, Maintenance and Construction. These Guidelines are for managing infection control during demolition, construction, renovation and repair projects in compliance with applicable federal and state laws, regulations, and rules that protect clients, patients, employees, the public, and individuals receiving services from exposure to infectious diseases and reduce the state's liability associated with illness resulting from exposure to such diseases.

**Person to Contact**

If you have technical questions concerning issues related to the contents of this operating procedure, contact the manager, Plant Maintenance and Operations, (512) 206-4513 or FAX (512) 206-5930.

**Distribution**

It is suggested that copies of this operating procedure be distribute to:  
assistant superintendent/assistant CEO;  
director of support services;  
director of auxiliary services;  
director, community services;  
director, competency training and development  
plant maintenance manager;  
risk manager;  
safety officer;  
infection control practitioners  
construction project managers; and  
materials management.

**OVERVIEW**

**Policy** It is the policy of HHSC Support Services, Maintenance and Construction, HHSC State Supported Living Centers and State Hospitals to manage the department’s demolition, construction and renovation projects in compliance with applicable federal and state law, regulations, and rules to protect clients, patients, employees, the public, and the individuals receiving services from exposure to environmental hazards and to reduce the state’s liability associated with illnesses or injuries resulting from exposure to such hazards.

**Application** The guidelines apply to all department buildings whether they are owned, leased, or under contract, and employees.

This guideline is applicable to, but not all inclusive:

- ▶ Airborne environmental diseases
- ▶ Dust
- ▶ Molds
- ▶ Noise
- ▶ Vibration

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**Definitions**

**Aerosol** - Particles of respirable size generated by both humans and environmental sources and that have the capability of remaining viable and airborne for extended periods in the indoor environment

**Alteration and renovation** – The addition or removal of an interior surface of a building for the purpose of restoration.

**AIA** - American Institute of Architects, a professional group responsible for publishing the *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*, a consensus document for design and construction of health-care facilities endorsed by the U.S. Department of Health and Human Services, health-care professionals, and professional organizations.

**APIC** – Association for Professionals in Infection Control and Epidemiology, Inc.

**Air Changes Per Hour (ACH)** – the ratio of the volume of air flowing through a space in a certain period of time (the airflow rate) to the volume of that space (the room volume), This ratio is expressed as the number of air changes per hour (ACH).

**Contiguous** – In close proximity; neighboring.

**Demolition** – The wrecking or removal of any load-supporting structural member of a public building or facility or any related asbestos removal, stripping, or handling operations together with any related operation or the intentional burning of any public building or facility.

**Facility** – All state-operated components of the DADS State Supported Living Centers and DSHS State Hospital systems.

**Facility Superintendent/CEO** – The head of a state operated DADS State Supported Living Center or DSHS State Hospital facility.

**HHSC** – Health and Human Services Commission.

**ILSM** - Interim Life Safety Measures

**Maintenance and repair** – Any operation limited to small-scale, short-duration operations as defined in 25 TAC, Part 1, Chapter 295, Subchapter C, §§295.31 - 295.73.

**Material safety data sheets (MSDS)** – Documents published by chemical manufacturers that list hazardous chemicals and remedies for employee exposure.

**M & C** – Maintenance and Construction

**Mold** – Any living or dead fungi or related products or parts, including spores, hyphae, and mycotoxins.

**Residential dwelling unit**- A detached single-family dwelling; an attached single-family dwelling in a building that contains two or more separate single-family dwellings; or a bedroom in-group housing. Examples of residential dwelling units include single homes, mobile homes (house trailers), duplexes, apartments, and condominiums. In-group housing, such as dormitories, fraternity or sorority houses, and boarding houses, each bedroom is a residential dwelling unit.

**Residential property** – A building containing one or more residential dwelling units intended to provide living quarters for more than a transitory period, including a residential property that is vacant or under construction. A residential property includes dormitories and employee housing in a non-residential setting (e.g., staff housing at an institutional or commercial facility). Residential properties do not include:

Institutional facilities that provide care or oversight for residents or inmates (such as hospital, nursing homes, homes for children with physical or mental disabilities, mental institutions, jails, prisons and detention centers).

**Routine Cleaning** – Cleaning that is ordinarily done on a regular basis and in a regular course of procedures

**Working days** – Monday through Friday, including holidays.

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**References**

The documents referenced in this operating procedure include:

- ▶ Joint Commission on Accreditation of Healthcare Organizations (JCAHO) publications;
- ▶ Licensing Standards for Intermediate Care Facilities Serving Persons with Mental Retardation or a Related Condition, 40 TAC, Part 1, Chapter 90, Subchapter D, §90.73;
- ▶ HHSC Facility Support Services Occupational Safety Operating Procedure;
- ▶ Texas Hazard Communication Act, 25 TAC, Part 1, Chapter 295, Subchapter A, §§295.1 - 295.13;
- ▶ Texas Worker's Right-to-Know Law, 25 TAC, Part 1, Chapter 506;
- ▶ U.S. Environmental Protection Agency National Emissions Standards for Hazardous Air Pollutants (NESHAPS), 40 CFR Part 61;
- ▶ Texas Health and Safety Code 161, Subtitle H, Subchapter Q, Sections 161.401 - 161.407; and
- ▶ Texas Mold Assessment and Remediation Rules, 25 TAC Chapter 295, Subchapter J.
- ▶ *APIC State-of-the-Art Report: The role of infection control during construction in health care facilities* by Judene Mueller Bartley, MS, MPH, CIC. AJIC, April 2000; 28:156-169.  
[www.apic.org/pdf/srconst.pdf](http://www.apic.org/pdf/srconst.pdf)
- ▶ *Infection Control Manual for Hospitals, 2004 ICP Associates, LLC*
- ▶ *Texas Voluntary Indoor Air Quality Guidelines for Government Buildings, 25 TAC Chapter 297.1 – 297.10*
- ▶ *Guidelines for Design and Construction of Hospital and Healthcare Facilities 2001*, American Institute of Architects, AIA. (2001)
- ▶ CDC Guidelines for Environmental Infection Control in Healthcare Facilities: Recommendation of CDC and the Healthcare Infection Control Practice Advisory Committee (HICPAC). MMWR 2003; 52 (No.RR-10). [www.cdc.gov/nicdod/hip/enviro/guide.htm](http://www.cdc.gov/nicdod/hip/enviro/guide.htm).
- ▶ NFPA 241, Standard for Safeguarding Construction, Alteration, and Demolition Operations, 2000 Edition.

**Note:** Any Federal Government Rule/Regulation (CFR) can be accessed on line at: [www.gpoaccess.gov/ecfr](http://www.gpoaccess.gov/ecfr) and OSHA at [www.osha.gov](http://www.osha.gov)

**Note:** Any Texas Administrative Code (TAC) can be accessed on line at: [www.sos.state.tx.us](http://www.sos.state.tx.us) or [www.capitol.state.tx.us](http://www.capitol.state.tx.us)

**Note:** Any Texas Health and Safety Code or Occupational Code can be accessed on line at: [www.capitol.state.tx.us](http://www.capitol.state.tx.us) then go to the Texas Statutes

**Note:** Risk Management for State Agencies can be accessed on line at: [www.sorm.state.tx.us](http://www.sorm.state.tx.us)

## GENERAL REQUIREMENTS

**Conduct a Risk Assessment** The facility when planning demolition, construction, repair, or renovation work, must conduct a proactive risk assessment using risk criteria to identify hazards that could potentially compromise client/patient care in occupied areas of the facility's buildings. The scope and nature of the activities should determine the extent of risk assessment required. The risk criteria shall address the impact demolition, renovation or new construction activities have on air quality requirements, infection control, utility requirements, noise, vibration, and emergency procedures. As required, the facility selects and implements proper controls to reduce risk and minimize the impact of these activities.

**Implementation of Risk Assessment** The HHSC staff responsible for administration of a construction project in a facility building occupied by clients, patients and /or staff must implement a risk assessment for each construction project utilizing the following procedures. The staff responsible for capital construction projects will be the assigned M&C Project Manger, and for facility managed projects the Plant Maintenance Manager. The following procedure must be implemented:

**Standard Applicable to All Projects**

The Manager selects participants for the risk assessment committee

- ▶ A Risk Assessment Committee may be assembled from some or all of the following individuals. The need of particular representatives may vary depending upon the scope and nature of the project. The committee would assign responsibilities for project review and documentation.
- ▶ M & C capital construction projects:
  - M & C project manager
  - Architect/Engineer
  - Contractor
  - Facility Plant Maintenance Manager and /or designee
  - Facility Risk Management/Safety Officer
  - Medical staff representative/Infection Control Practitioner
  - Program manager of affected building
- ▶ Facility managed projects:
  - Facility Plant Maintenance Manager and/or designee
  - Facility Risk management/Safety Officer
  - Medical staff representative and/or a representative from the infection control committee/infection control practitioner
  - Program manager of affected building
  - M & C Architectural project manager assigned to the Facility

The Committee determines the level of risk:

- ▶ Categorize the level of construction activities as:
  - **Level 1:** Small scale, short duration activities that create a minimal amount of noise, vibration, dust and/or fumes. Such activities would include but not be limited to cabling, minor repairs involving cutting walls or ceilings, equipment installation involving attachment to walls, painting and the like, or

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- **Level 2:** Work that generates a moderate to high level of noise, vibration, dust and/or fumes or requires demolition or removal of fixtures, building components or assemblies. Such activities would include but not be limited to sanding and painting, removing floor coverings, ceiling tiles or casework, installing doors or partitions or similar activity that cannot be completed within a single work shift, or
- **Level 3:** Major demolition and construction projects. Any activity that requires consecutive work shifts including but not limited to demolition and/or renovation of spaces and new construction.
- ▶ Consideration should be given to client/patient exposure during any activity. Determine if:
  - Clients/Patients will be present in the work area during the activity
  - Clients/Patients will be present in the building, but not in the work area during the activity
  - Clients/Patients will be relocated during activity hours and returned to the building at the end of the workday
  - Clients/Patients will be relocated for the duration of the project
- ▶ Consideration should be given to isolating individual clients/patients within a building where construction is occurring and the clients are evacuated, if:
  - Client/Patient health conditions pose a hazard to contractor personnel
  - Client/Patient behavior poses a hazard to contractor personnel
- ▶ All risk levels require the manager assigned to complete the HHSC *Environmental Clearance Permit* and it must be on file with plant maintenance. *See Attachment "A"*

The Committee determines control measures to be implemented

- ▶ For air quality control and infection control consider the following measures. Select measures based upon project demands and client/patient exposure. Construction personnel may be required to:
  - Not wear clothing that is heavily soiled with dust/debris out of the construction area into occupied parts of the building. Personnel to remove and/or brush dust/debris from clothing change clothing or wear coverall prior to leaving the construction area.
  - Transport items only on designated access routes
  - Restrict their movement in other parts of the building to designated access routes
  - Use enclosed chutes for removing debris from multi-story buildings. Debris is not to be removed near outside air intakes
  - Use the following containment methods:
    - a. Mist or wet materials where feasible before disturbing
    - b. Cover materials and/or debris prior to transport
    - c. Deliver HVAC ducting to the construction site capped to prevent infiltration of water and/or dirt during transportation
    - d. Seal all doors located between the construction area and other areas of the building with duct tape, except those needed for



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- access
- e. Block off and seal air vents where appropriate
- f. Place dust mat at entrance and exit of work area
- g. Remove, isolate, or shut down HVAC system in work area to eliminate re-circulation of air from the construction area to other areas of the building
- h. Locate fume-producing equipment away from outside air intakes. Provide filtering systems when necessary
- i. Maintain good housekeeping practice within construction areas. Do not allow debris to accumulate. Remove debris at the end of each day. Periodically sweep or vacuum construction area.
- Construct and maintain integrity of containment barriers:
  - a. Containment barriers are to be constructed as rigid or non-rigid barriers. Containment barriers are to be sealed to floors, ceiling and adjacent walls to ensure a complete dust barrier and seal the work area from other areas of the building.
  - b. Rigid barriers are to be provided where fire ratings for exit passageways are to be maintained, where a significant area of construction is under the control of the contractor, and where security concerns dictate their use. Rigid barriers are to be constructed of metal studs at 24" o.c. and ½" or 5/8" fire rated gypsum board, equivalent to a 1-hour fire rating. Doors are to be solid core wood mounted in hollow metal frames, self-closing, and provided with positive latching. Doors may be locked based on the security needs of the area affected.
  - c. Non-rigid barriers may be constructed where rigid barriers are not required. Non-rigid barriers are to be constructed of 6 mil flame retardant polyethylene sheeting with 2 ft. overlaps mounted to metal studs at 48" o.c. Doors are to be self-closing. Proof of the sheeting rating must be maintained throughout the project.
  - d. Containment barriers must be continuously maintained in their original condition throughout the duration of the work in the work area.
- Remediate flooding accidents and water damage:
  - a. Inventory water damaged areas of the building, materials, and furnishing, paying particular attention to carpeting under cabinets and furnishings.
  - b. Use moisture meters to identify extent of water damage to drywall.
  - c. Use environmental sampling to monitor stages of cleanup and remediation.
  - d. Remove materials within 48 hours of damage incident.
  - e. Decontaminate by spraying with chlorine-based mist or diluted bleach followed by drying.
  - f. Balance ventilation to reduce supply air volume to effect a

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- negative air pressure area, sealing off area with tape, and checking airflow with a smoke stick. Portable machines with HEPA filters may assist in providing the needed negative air balance in areas being remediated.
  - g. Identify and open wall coverings (e.g. strip off vinyl wall covering) for drying wall areas to be treated.
  - h. Decontaminate open wall areas with 1:9 dilution of copper-8-quinolinolate compound, using a pressurized spray pump.
  - i. Remove surface soil with a detergent (e.g. diluted tri-sodium Phosphate), followed by use of a liquid disinfectant (e.g. diluted bleach).
  - j. Vacuum ceilings, floors and wall surfaces with a HEPA filtered vacuum cleaner.
- ▶ Interruption of utilities during construction may contaminate air-handling units, medical vacuum, and water systems with infectious agents. For utility requirements consider:
    - Removing air borne contaminants within a space by operating ventilation system prior to re-inhabiting space. *Attachment "B"* list recommended running times for removal of air borne contaminants.
    - Systematic flushing of the water system to remove debris if necessary. Water pressure "shock" may send a surge of debris when pressure loss is restored after service interruption.
    - Testing if there is concern that *Legionella* spp. may be present. Major intervention methods include chlorinating, hot water flushing, or copper-silver ionization treatment.
  - ▶ For noise and vibration control consider:
    - Restricting noisy construction activities to limited hours or arranging for clients/patients to be relocated during noisy activities, if the building remains occupied during construction period.
    - Inspecting the work area along with spaces and floors adjacent to the work area for dust and vacuum affected areas. Construction activities that cause vibrations may dislodge dust collected above suspended ceilings.
    - Flushing the water system if necessary, as corrosion in pipes may have been loosened.
  - ▶ If Life Safety deficiencies are created by construction activities, Interim Life Safety Measures must be implemented. Interim Life Safety measures are included as *Attachment "C"*. For emergency procedures consider:
    - For basic risks including disruption of fire alarm, detection or suppression systems for more than 4 hours in a 24-hour period use ILSMs 4, 6, 7, and 9. Suppression system disruption for 4 plus hours in a 24 hour period requires notification of the fire department.
    - For intermediate risks including basic risks plus exits disrupted,

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emergency access limited or impaired, or evacuation routes disrupted use ILSMs 1, 2, 4, 7, 9, and 11.

- For major risks including intermediate risks plus structural or compartmental features compromised, exists access is through construction area or access for emergency services is through construction area use all 11 ILSMs.

The Assigned staff performs inspections to ensure compliance with the procedures, and documents the findings.

- ▶ For each project the risk assessment committee needs to decide which control measures will be used, the frequency of inspections and how to document findings. Inspections may vary from daily to weekly to monthly depending on need. A Sample Review Checklist is included as *Attachment "D"*.
- ▶ Risk assessment measures that affect potential contractors needs to be included in contract documents and discussed at pre-bid and pre-construction meetings. Contractors need to be alerted to their responsibilities regarding risk management and be held accountable for those responsibilities.
- ▶ Risk assessment measures need to be reassessed periodically during the project progress to confirm measures are still appropriate. Re-assessment would be at intervals determined by the risk assessment committee.
- ▶ A list of appropriate contacts should be made available to all for use in case of an event.

The Committee performs a post construction review to evaluate the results and make recommendations for future projects.

- ▶ Cleanup:
  - Contractor cleans construction area.
  - Contractor cleans area after removal of barriers.
  - Facility's routine cleaning before returning construction area to service.
  - Clean or replace HVAC filters and other equipment as necessary that has been affected by construction process.
  - Air sampling if necessary.
- ▶ Review risk assessment program for usefulness and provide recommendations, if any, for future projects.

**Education**

The Committee will educate both the construction team and health care staff in immunocompromised client/patient care areas regarding the airborne infection risks associated with construction projects, dispersal of fungal spores during such activities, and methods to control the dissemination of fungal spores.

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**Construction  
Contracts**

The facility plant manager or the construction manager will incorporate mandatory adherence agreements for infection control into construction contracts/in-house documents with penalties for noncompliance and mechanisms to ensue timely corrections of problems.



b. Will lead-based paint be disturbed? Yes \_\_\_\_\_ No \_\_\_\_\_  
If yes, have properly trained and/or licensed persons removed the hazard? \_\_\_\_\_  
Has the proper disposal method been determined? \_\_\_\_\_

10. Have all personnel been briefed on their responsibilities?

11. Has the outside contractor/volunteer provided Material Safety Data Sheets (MSDS) for any chemicals or other hazardous materials they will use? \_\_\_\_\_  
Which ones? \_\_\_\_\_

12. Have all requirements for Life Safety Code (LSC) or Joint Commission on Accreditation of Healthcare Organizations (JCAHO) requirements been reviewed and procedures instituted to ensure compliance.  
Yes \_\_\_\_\_ No \_\_\_\_\_

Comments \_\_\_\_\_  
\_\_\_\_\_

13. Miscellaneous information or documentation:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. Attach any documents amending this permit.

Signatures indicate that the person performing the work acknowledges the discussion of the foregoing and that he/she understands the requirements of the applicable federal and state laws and will follow those requirements.

\_\_\_\_\_  
Facility Maintenance Representative

\_\_\_\_\_  
Contractor's Representative

Point of contact (POC) for guidance and information on the use of this form is the Manager, Plant Maintenance and Operations, Maintenance & Construction, Facility Support Services

## Attachment B

### 1. Airborne Contaminant Removal

**Table B.1. Air changes/hr (ACH) and time required for airborne-contaminant removal efficiencies of 99% and 99.9%\***

ACH+§¶	Time (mins.) required for removal:	
	99% efficiency	99.9% efficiency
2	138	207
4	69	104
6	46	69
8	35	52
10	28	41
12	23	35
15	18	28
20	14	21
30	6	8

\* This table is revised from Table S3-1 in reference 4 and has been adapted from the formula for the rate of purging airborne contaminants present in reference 1435.

+ Shaded entries denote frequently cited ACH for patient-care areas.

§ Values were derived from the formula:

$$t_2 - t_1 = -[\ln(C_2/C_1) / (Q / V)] \times 60, \text{ with } t_1 = 0 \text{ and where}$$

$t_1$  = initial timepoint in minutes

$C_1$  = initial concentration of contaminant

$C_2 / C_1 = 1 - (\text{removal efficiency} / 100)$

$V$  = room volume in cubic feet

$t_2$  = final timepoint in minutes

$C_2$  = final concentration of contaminant

$Q$  = air flow rate in cubic feet/hour

$Q / V = \text{ACH}$

¶ Values apply to an empty room with no aerosol-generating source. With a person present and generating aerosol, this table would not apply. Other equations are available that include a constant generating source. However, certain diseases (e.g., infectious tuberculosis) are not likely to be aerosolized at a constant rate. The times given assume perfect mixing of the air within the space (i.e., mixing factor = 1). However, perfect mixing usually does not occur. Removal times will be longer in rooms or areas with imperfect mixing or air stagnation.<sup>213</sup> Caution should be exercised in using this table in such situations. For booths or other local ventilation enclosures, manufacturers, instructions should be consulted.

(Ref. CDC Guidelines for Environmental Infection Control in Health Care Facilities)

## Attachment C

# *Interim Life Safety Measures*

1. Facilities must ensure free and unobstructed exits. Personnel must receive additional training when alternative exits are designated. Buildings or areas under construction must maintain escape routes for construction workers at all times. Personnel or designees must inspect means of exiting for construction areas daily.
2. Facilities must ensure free and unobstructed access to emergency services and for fire, police, and other emergency forces.
3. Facilities must ensure that fire alarm, detection, and suppression systems are in good working order. Facilities shall provide a temporary but equivalent system when any fire system becomes impaired, Personnel or designees must inspect and test temporary systems monthly.
4. Facilities must ensure that temporary construction partitions are smoke-tight and built of noncombustible or limited combustible materials that will not contribute to the development or spread of fire.
5. Facilities must provide additional firefighting equipment and equipment and train personnel in its use.
6. Facilities must prohibit smoking according to EC.5 throughout its building as well in and adjacent to construction areas.
7. Facilities must develop and enforce storage, housekeeping, and debris removal to reduce the building's flammable and combustible fire load to the lowest feasible level.
8. Facilities must conduct a minimum of two fire drills per shift each quarter.
9. Facilities must increase hazard surveillance of buildings, grounds, and equipment, with special attention given to excavations, construction areas, construction storage, and field offices.
10. Facilities must train personnel to compensate for impaired structural or compartmental fire safety features.
11. Facilities must conduct organization-wide safety education programs to promote awareness of LSC deficiencies, construction hazards and ILSMs.

*Source: Environment of Care (EC) Standards, the Joint Commission on Accreditation of Healthcare Organizations.*



**Attachment D**

***Sample Review Checklist***

Date: *Sample form Modify to fit project requirements*

Project No:  
Project Title:  
Project Location:

Risk Assessment Committee	<u>CIRCLE ONE</u>
M & C	Yes-No Construction area occupied during construction
A/E	Yes-No Clients relocated during construction activity
Facility Maintenance	Yes-No Clients relocated for duration of project
Facility Safety Officer	
Facility Clinical	
Contractor	

Risk Containment Measures				
	Yes	No	N/A	Comments
Contractor personnel removing dust and debris prior to leaving construction area.				
Contractor adhering to designated construction routes.				
Contractor covering materials and debris during transportation.				
HVAC ducting delivered capped.				
Unused doors sealed.				
Air vents sealed off.				
Dust mats at entrance and exit of work areas.				
HVAC system isolated in work areas.				
Barriers in place.				
Barriers sealed to floors, ceiling, and adjacent walls.				
Barriers inspected daily.				
Barriers inspected weekly.				
Negative air pressure within work area maintained.				
Air pressure differentials monitored.				
Has water damage occurred? If yes, list corrective measures.				
Have any utilities been interrupted? If yes, list corrective measures				
Are ILSMs in effect? If yes, list measures.				
Are ILSMs being followed?				



**TEXAS**  
Health and Human Services

# **Attachment H3**

## **Infection Control Construction Permit**

Uniform General Conditions

**Infection Control Construction Permit**

		<b>Permit No:</b>
<b>Location of Construction:</b>		<b>Project Start Date:</b>
<b>Project Coordinator:</b>		<b>Estimated Duration:</b>
<b>Contractor Performing Work:</b>		<b>Permit Expiration Date:</b>
<b>Supervisor:</b>		<b>Telephone:</b>

YES	NO	CONSTRUCTION ACTIVITY	YES	NO	INFECTION CONTROL RISK GROUP
		TYPE A: Inspection, non-invasive activity			GROUP 1: Low Risk
		TYPE B: Small scale, short duration, moderate to high levels			GROUP 2: Medium Risk
		TYPE C: Activity generates moderate to high levels of dust, requires greater 1 work shift for completion			GROUP 3: Medium/High Risk
		TYPE D: Major duration and construction activities Requiring consecutives work shifts			GROUP 4: Highest Risk

<b>CLASS I</b>	<ol style="list-style-type: none"> <li>Execute work by methods to minimize raising dust from construction operations. Immediately replace any ceiling tile displaced for visual inspection.</li> </ol>	<ol style="list-style-type: none"> <li>Minor demolition for Remodeling</li> </ol>
<b>CLASS II</b>	<ol style="list-style-type: none"> <li>Provides active means to prevent air-borne dust from dispersing into atmosphere.</li> <li>Water mist work surfaces to control dust while cutting.</li> <li>Seal unused doors with duct tape.</li> <li>Block off and seal air vents.</li> <li>Wipe surfaces with disinfectant.</li> </ol>	<ol style="list-style-type: none"> <li>Contain construction waste before transport in tightly covered containers.</li> <li>Wet mop and/or vacuum with the HEPA filtered vacuum before leaving work area.</li> <li>Place dust mat at entrance and exit of work area.</li> <li>Remove or isolate HVAC system in areas where work is being performed.</li> </ol>
<b>CLASS III</b>	<ol style="list-style-type: none"> <li>Obtain infection control permit before construction begins.</li> <li>Isolate HVAC system in area where work is being done to prevent contamination of the duct system.</li> <li>Complete all critical barriers or implement control cube method before construction begins. Maintain negative air pressure within work site utilizing HEPA equipped air filtration units.</li> </ol>	<ol style="list-style-type: none"> <li>Vacuum work with HEPA filtered vacuums.</li> <li>Wet mop with disinfectant.</li> <li>Remove barrier materials carefully to minimize spreading of dirt and debris associated with construction.</li> <li>Contain construction waste before transport in tightly covered containers.</li> <li>Cover transport receptacles or carts. Tape covering.</li> <li>Remove or isolate HVAC system in areas where work is being performed.</li> </ol>
<b>Date</b>	4.	
<b>Initial</b>	5.	
<b>CLASS IV</b>	<ol style="list-style-type: none"> <li>Obtain infection control permit before construction begins.</li> <li>Isolate HVAC system in area where work is being done to prevent contamination of duct system.</li> <li>Complete all critical barriers or implement control cube method before construction</li> </ol>	<ol style="list-style-type: none"> <li>All personnel entering work site are required to wear shoe covers.</li> <li>Do not remove barriers from work area until completed project is thoroughly cleaned by the Environmental Service Department.</li> </ol>
<b>Date</b>		

<b>Initial</b>	4. begins. Maintain negative air pressure within work site utilizing HEPA equipped air filtration units. Seal holes, pipes, conduits, and punctures appropriately. 5. Construct anteroom and require all personnel to pass through this room so they can be vacuumed using a HEPA vacuum cleaner before leaving work site or they can wear cloth or paper coveralls that are removed each time they leave the work site.	9. Vacuum work with HEPA filtered vacuums. 10. Wet mop with disinfectant. 11. Remove barrier materials carefully to minimize spreading of dirt and debris associated with construction. 12. Contain construction waste before transport in tightly covered containers. 13. Cover transport receptacles or carts. Tape covering. 14. Remove or isolate HVAC system in areas where work is being performed.
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**Additional Requirements:**

<b>Date</b>	<b>Exceptions/Additions to this permit</b>
<b>Initials</b>	<b>Date Initials</b>
<b>are noted by attached memoranda</b>	
<b>Permit Request By:</b>	<b>Permit Authorized By:</b>
<b>Date:</b>	<b>Date:</b>

03/27/2018



**TEXAS**  
Health and Human Services

# **Attachment H4**

## **Facility Maps**

**Kernville State Hospital**  
6/27/2013

Paved Street	
[Grey line]	Asphalt
[Light grey line]	Concrete

Sidewalk	
[Light grey line]	Asphalt
[Light grey line]	Concrete

Building	
[Blue fill]	General Hospital
[Light blue fill]	Outpatient
[Yellow fill]	Emergency
[Green fill]	Medical
[Red fill]	Pharmacy
[Purple fill]	Lab
[Orange fill]	Radiology
[Pink fill]	Other

Residence	
[Red fill]	Residence

Patient Access	
[Green line]	Emergency
[Yellow line]	Outpatient
[Blue line]	Other

Boundary	
[Red line]	Property
[Green line]	Other





**TEXAS**  
Health and Human Services

# **Attachment H5**

## **Site Visit Information**

## SITE VISIT INFORMATION DURING COVID-19 PANDEMIC

Work guide document is outlined for personnel visiting State Hospitals and State Supported Living Centers to perform site visits related to construction projects.

Applicable to all personnel including visitors, vendors and contractors requiring access to building mechanical rooms, electrical closets, and non-patient areas during the coronavirus pandemic.

### Access criteria:

1. Personnel are required to sign in at each project location
2. Personnel will be required to fill out and answer a questionnaire at various locations
3. Personnel must pass COVID-19 screening
  - a. Including having their temperatures taken before entering facility
  - b. Visitors will not be allowed on campus if they have visited areas that are listed on the CDC guidelines that require self-isolation.
4. Personnel must use appropriate personal protective equipment (PPE) during site visit depending on activity.
5. Personnel are required to wear a face mask and eye protection at all times while on site (**N95 mask and face shield or goggles**). **Eyeglasses are insufficient protection.**
6. Personnel must follow and comply with social distancing practices. Including but not limited to:
  - a. Maintaining at least 6 feet between yourself and other personnel.
  - b. Frequently wash hands for at least 20 seconds or use hand sanitizer that contains at 65% to 95% alcohol.
  - c. Practice proper etiquette: sneeze or cough into your bent elbow or tissue. Immediately dispose of tissue and wash hands or utilize hand sanitizer.
7. All personnel must adhere to site specific requirements and guidelines to prevent any operational impacts.





**TEXAS**  
Health and Human Services

# **Exhibit A**

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

## Exhibit A

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

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:

- a. “**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.
- b. “**Solicitation Response**” shall mean any proposal, offer, bid or responsive documentation submitted in response to a Solicitation.
- c. “**Affirmation**” or “**Affirmations**” shall mean this Affirmations and Solicitation Acceptance for State Architectural/Engineering and Construction Projects document;
- d. “**Health and Human Services Commission**” or “**HHSC**” or “**HHS**” means the administrative agency established under Chapter 531, Texas Government Code or its designee. As stated above, “Health and Human Services Commission” also may be referred to as “Owner” and
- e. “**Owner**” shall mean, HHS or HHSC, 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 must provide information, as applicable, and 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. **Complete and Accurate Information.** Respondent represents and warrants that all statements and information provided to HHS are current, complete, and accurate. This includes all statements and information in this Solicitation Response.
3. **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.

4. **Contracting Information Requirements.** Respondent represents and warrants that it will comply with the requirements of Section 552.371(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 Provision 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. **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 Solicitation Response or its entire Solicitation Response as confidential or proprietary, the Solicitation Response is subject to being disqualified.
6. **Binding Offer.** Respondent's Solicitation Response will remain a firm and binding offer for 120 days from the date the Solicitation Response is due.
7. **Assignment.** 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. **Terms and Conditions.** 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 Owner's terms and conditions are rejected unless expressly accepted by Owner in writing in a fully executed contract.
9. **HHS Right to Use.** 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 Solicitation Response as the Owner deems necessary to complete the procurement process or comply with state or federal laws.
10. **Release from Liability.** ***RESPONDENT GENERALLY RELEASES FROM LIABILITY AND WAIVES ALL CLAIMS AGAINST ANY PARTY PROVIDING INFORMATION ABOUT THE RESPONDENT AT THE REQUEST OF THE OWNER.***
11. **Addenda and Amendments to Solicitation.** Respondent acknowledges all addenda and amendments to the Solicitation.
12. **Texas Bidder.** Respondent certifies that if a Texas address is shown as the address of Respondent on this Solicitation Response, Respondent qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.

**13. Preferences.** 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. 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 Solicitation Response, this Solicitation, or any contract resulting from this Solicitation.

**15. 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 Solicitation Response 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.

**16. 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 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. 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 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. Furthermore, any Respondent subject to Section 231.006 of the Texas Family Code must include in the Solicitation Response the names and social security numbers (SSNs) of each person with at least 25% ownership of the business entity submitting the Solicitation 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, Solicitation 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 Solicitation Response.

- 18. 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.
- 19. 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.
- 20. 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.
- 21. 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 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. **Human Trafficking Prohibition.** Under Section 2155.0061 of the Texas Government Code, Respondent certifies that the individual or business entity named in this Solicitation Response 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.
23. **Franchise Tax Status.** 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. **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.
25. **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).
26. **Buy Texas.** 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. **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.
28. **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.
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, Waste, and Abuse.** Respondent understands that HHS does not tolerate any type of fraud, waste, or abuse. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate

actions will be taken. Pursuant to Texas Government Code, Section 321.022, if the administrative head of a department or entity that is subject to audit by the state auditor has reasonable cause to believe that money received from the state by the department or entity or by a client or contractor of the department or entity may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the department or entity, the administrative head shall report the reason and basis for the belief to the Texas State Auditor's Office (SAO). All employees or contractors who have reasonable cause to believe that fraud, waste, or abuse has occurred (including misconduct by any HHS employee, Grantee officer, agent, employee, or subcontractor that would constitute fraud, waste, or abuse) are required to immediately report the questionable activity to the Health and Human Services Commission's Office of Inspector General. Respondent agrees to comply with all applicable laws, rules, regulations, and System Agency policies regarding fraud, waste, and abuse including, but not limited to, HHS Circular C-027.

A report to the SAO must be made through one of the following avenues:

- SAO Toll Free Hotline: 1-800-TX-AUDIT
- SAO website: <https://sao.fraud.texas.gov/>

All reports made to the OIG must be made through one of the following avenues:

- OIG Toll Free Hotline 1-800-436-6184
- OIG Website: [ReportTexasFraud.com](http://ReportTexasFraud.com)
- Internal Affairs Email: [InternalAffairsReferral@hhsc.state.tx.us](mailto:InternalAffairsReferral@hhsc.state.tx.us)
- OIG Hotline Email: [OIGFraudHotline@hhsc.state.tx.us](mailto:OIGFraudHotline@hhsc.state.tx.us).
- OIG Mailing Address: Office of Inspector General

Attn: Fraud Hotline  
MC 1300  
P.O. Box 85200  
Austin, Texas 78708-5200

- 32. Antitrust.** The undersigned affirms under penalty of perjury of the laws of the State of Texas that (a) in connection with this Solicitation Response, 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 Solicitation Response, 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 Solicitation 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.
- 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 **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 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 included as a detailed attachment to this Solicitation Affirmations document 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. Respondent must identify here how many pages, if any, are attached: \_\_\_\_\_. Respondent acknowledges this is a continuing disclosure requirement. In addition, Respondent represents and warrants that, if awarded a contract as a result of this Solicitation, Respondent shall notify the Owner 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 the Owner shall constitute breach of contract and may result in immediate contract termination.

- 34. Entities that Boycott Israel.** Pursuant to Section 2271.002 of the Texas Government Code, Respondent certifies that either (1) it meets an exemption criteria under Section 2271.002; or (2) 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 the certification, Respondent shall state here any facts that make it exempt from the boycott certification:

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- 35. Former Agency Employees – Certain Contracts.** In accordance with Section 2252.901 of the Texas Government Code, 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. Disclosure of Prior State Employment – Consulting Service.** 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)):

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(2) Status (check 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:

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(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: (1) performs an abortion procedure that is not reimbursable under the state's Medicaid program; (2) 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 (3) 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:

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**40. Public Information Act Copy.** Respondent understands, acknowledges, and agrees, that solicitation responses and contracts are subject to the Texas Public Information Act(PIA), Texas Government Code Chapter 552, and may be disclosed to the public upon request or through posting on the System Agency’s website, the LBB’s website, or as otherwise required by law. Respondent certifies that it:

- asserts that information provided in its response is exempt from disclosure under the PIA, and Respondent, therefore, has submitted a “Public Information Act Copy” as required under the solicitation; or
- asserts that there is no information provided in its response that is exempt from disclosure under the PIA, and Respondent, therefore, has not submitted a "Public Information Act Copy”.

**41. False Representation.** 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.

**42. Permits and Licenses.** 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.

**43. False Statements.** Respondent represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Solicitation 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 Solicitation Response 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 Solicitation Response.

**44. Signature Authority.** Respondent represents and warrants that the individual submitting these Affirmations and the other documents made a part of this Solicitation 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 Solicitation Response. The person signing these Affirmations must sign any contract resulting from the Solicitation Response. 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 Solicitation Response.

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

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**Legal Name of Respondent**

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**Assumed Business Name of Respondent, if applicable (d/b/a or 'doing business as')**

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**Texas County(s) for Assumed Business Name (d/b/a or 'doing business as')**  
**Attach Assumed Name Certificate(s) filed with the Texas Secretary of State and Assumed Name Certificate(s), if any, for each Texas County Where Assumed Name Certificate(s) has been filed**

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**Signature of Authorized Representative**

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**Date Signed**

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**Printed Name of Authorized Representative  
First, Middle Name or Initial, and Last Name**

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**Title of Authorized Representative**

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**Physical Street Address**

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**City, State, Zip Code**

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**Mailing Address, if different**

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**City, State, Zip Code**

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**Phone Number**

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**Fax Number**

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**Email Address**

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**DUNS Number**

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**Federal Employer Identification Number**

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**Texas Payee ID No. – 11 digits**

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**Texas Franchise Tax Number**

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**Texas Secretary of State Filing Number**



**TEXAS**  
Health and Human Services

## **Exhibit B**

### **Historically Underutilized Businesses Submittal Requirements**

# Historically Underutilized Business (HUB) Plan (HSP) Requirements

## Exhibit B

Health and Human Services (HHS / agency) is committed to promoting full and equal business opportunities for businesses in state contracting by contracting directly and indirectly (subcontracting) with HUBs. HHS strongly encourages the use of HUBs through race, ethnic, and gender-means in accordance with [Texas Government Code \(TGC\) Section 2161](#) and [Texas Administrative Code \(TAC\), Title 34, Part 1, Chapter 20, Subchapter D, Division 1](#).

### 1.1 HHS Administrative Rules

Pursuant to [TGC Section 2161.002](#) and [Section 2161.003](#), HHS adopted the rules of the Texas Comptroller of Public Accounts (CPA) as its own rules (see [TAC, Title 1, Part 15, Chapter 391, Subchapter E, Rule §391.501](#)). If there are any discrepancies between the CPA's administrative rules and this Solicitation, the rules will take priority.

### 1.2 Statewide Annual HUB Utilization Goal

HHS adopted the CPA's Statewide Annual HUB Goals based on the 2009 State of Texas Disparity Study as its own agency-specific goals ([TAC, Title 34, Part 1, Chapter 20, Subchapter D, Division 1, Rules §20.284](#)). The HHS policy is to promote full inclusion of HUBs in all of its procurement opportunities in a direct and indirect (subcontracting) capacity to achieve or exceed the goals specified by each procurement category reflected in the disparity study.

This Solicitation is classified as a **Building Construction** Contract under the above CPA rule and therefore the HHS HUB utilization goal is **21.1%**.

### 1.3 Determination of HSP Requirement

[TGC Chapter 2161](#) and [TAC, Title 34, Part 1, Chapter 20, Subchapter D, Division 1, Rules §20.284](#) and [§20.285](#), requires the agency to consider whether there will be probable subcontracting opportunities for all contracts, with an expected value of \$100,000 or more (including renewals and amendments), before the agency solicits bids, proposals, offers, or other applicable expressions of interest for the contract.. Subcontracting opportunities are considered to be equipment, materials, goods, contracted labor,<sup>1</sup> and services the

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<sup>1</sup> Contracted labor means individuals that are not "regular" employees of the company/organization, see also guidance available from the Internal Revenue Service (IRS) regarding contracted labor vs. employees (IRS 1099 publications). Contracted labor is a subcontractor.

Respondent cannot fulfill with its own internal resources.

If the agency determines that there is a probability of subcontracting opportunities, the agency **must** require that each bid, proposal, offer, or other applicable expression of interest for the contract include a completed HSP. If the response does not include a completed HSP and/or HHS determines that the HSP was not developed in good faith, the response will be deemed non-responsive, and it cannot be evaluated for a contract award.

HHS has examined the Scope of Work under the proposed Contract to determine if it is likely to be performed by a Subcontractor; researched the Centralized Master Bidders List (CMBL) for HUBs that may be available to perform the Contract Work; reviewed the past history of similar agency procurements; and has **determined that subcontracting opportunities are probable for this Solicitation.**

Therefore, all Respondents regardless of HUB status (HUB or non-HUB) must develop an HSP in good faith and submit a completed HSP with their response. Failure to comply with this requirement will deem the bid, proposal, offer, or other applicable expression of interest non-responsive, and it will be rejected without further evaluation due to material failure.

### 1.3.1 Probable Subcontracting Opportunities

HHS has determined that probable subcontracting opportunities exist within the following National Institute of Governmental Purchasing (NIPG) Class/Item Code(s):

Class	Item	Item Description
907	38	Drafting Services
910	17	Energy Computerized Control System, HVAC, Lighting, Utilities, etc., Installation, Maintenance and Repair Services
914	38	Electrical
914	50	Heating, Ventilating and Air Conditioning (HVAC)
941	55	HVAC Systems, Power Plant, Maintenance and Repair
992	47	HVAC System Testing, Balancing and Troubleshooting Services

The above identified items do not represent all of the possible subcontracting opportunities that may be available through this Solicitation. The Respondent is not required to use, nor limited to using any of the above class and item code(s). However, the Respondent is required to include HUBs in any opportunity the Respondent will not be performing with their internal resources (materials, equipment, supplies, and employees<sup>2</sup>).

## 1.4 Compliance Resources

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<sup>2</sup> Employee means an individual that receives a Wage and Tax Statement (W-2 Form) from the Respondent.

### **1.4.1 Solicitation's HUB Coordinator**

In an effort to assist Respondents to comply with the HUB requirements, HHS assigns a HUB Coordinator as a sole point of contact for HUB inquiries, HSP training, and to provide HSP Courtesy Reviews (upon request – see Section 1.4.2). The assigned HUB Coordinator for this Solicitation is:

Marcus Gomez

Email: [marcus.gomez@hhs.texas.gov](mailto:marcus.gomez@hhs.texas.gov)

### **1.4.2 HSP Courtesy Reviews**

A courtesy review of a Respondent's completed HSP is optional and is available to assist Respondents in providing a compliant and responsive HSP. This courtesy review may only identify possible deficiencies. The final HSP determination may only be provided at the time of the final submission of the HSP and the Solicitation Response.

To request a courtesy review, submit the completed HSP including all supporting documentation in portable document format (PDF) by e-mail to the HUB Coordinator listed in Section 1.4.1 of this exhibit prior to the "Courtesy Review of HSP" deadline in the Solicitation's Schedule of Events.

Identify the request in the e-mail "Subject" field as "HSP Courtesy Review, Solicitation No. [add Solicitation number], Courtesy Review [add specific Due Date]."

HSPs received after the "Courtesy Review of HSP" deadline in the Solicitation's Schedule of Events or deadlines established in subsequent Addenda, will not be reviewed and will be returned to the requestor.

The final HSP must be submitted by the Solicitation Response Deadline identified in the Solicitation's Schedule of Events or deadline established in subsequent Addenda. Responses received without a properly completed and compliant HSP will be disqualified.

### **1.4.3 HSP Training Resources**

HHS encourages Respondents to take advantage of the HSP training offered specifically for this Solicitation (if applicable) and noted in the Solicitation's Schedule of Events. In addition, a pre-recorded Webinar HSP training providing general information for developing an HSP in good faith is available at:

<https://attendee.gotowebinar.com/register/2235999142197410832>.

HHS also recommends that Respondents review training resources provided in Section 1.7, Post-Award HSP Requirements, and Section 1.8, HSP Most Common Errors, of this exhibit.

#### 1.4.4 CMBL/HUB Directory

The CPA is responsible for HUB certification as well as maintaining the CMBL/HUB Directory to satisfy the good-faith effort requirements. Note, only HUB vendors that are included in the CPA's database that are actively HUB certified at the time of the Solicitation may be used to satisfy the Respondent's requirement for developing the HSP in good faith.

Below are instructions for identifying the State of Texas Certified HUBs on the CMBL/HUB Directory:

1. Access the CMBL and HUB Directory at <https://mycpa.cpa.state.tx.us/tpasscmbsearch/tpasscmbsearch.do>.
2. CMBL page will default to certain fields already checked – using the “HUBs Only” and “HUBs On CMBL” radio buttons will help to provide a current list of Texas certified HUBs. Ensure the vendor's HUB status code is “A” for currently active HUBs.
3. Under the “Multiple Vendor Search” tab enter the NIGP code that correlates to the products or services in the “NIGP Class Code” and “Items” fields. A complete list of NIGP codes may be found at: <https://mycpa.cpa.state.tx.us/commbook/>.
4. Enter “Highway District(s)” number to select specific geographical location or leave blank for a statewide search. Start with a specific geographical search; and if unable to locate HUBs, expand the geographical search.
5. Under the “Selected Fields for Output” tab, the detail list page will default to certain fields. In addition to these defaulted fields, add “HUB Eligibility,” “HUB Gender,” and “Business Description” fields to the search.
6. The “Output Options” tab provides users with the ability to choose the format of the data. For better data sorting, “Excel” is recommended as the output option. Data manipulations are easier to perform in an Excel spreadsheet to find the appropriate HUB vendors for effective HUB outreach.
7. The CPA is responsible for certifying vendors that meet the legal criteria for HUB certification. More information regarding HUB certification may be accessed at <https://comptroller.texas.gov/purchasing/vendor/hub/certification-process.php>.
8. Respondent may contact the assigned HUB Coordinator in Section 1.4.1 for assistance if needed.

Note, HHS does not endorse, qualify, or guarantee any of the vendors listed in the CMBL or HUB directory.

#### 1.4.5 HUB Trade Organizations and Business Development Centers

Outreach resources to identify HUB trade organizations or business development centers that predominantly serve members of economically disadvantaged groups (e.g., Asian-Pacific Americans, Black Americans, Hispanic Americans, Native Americans, American Women, and service-disabled veterans as defined by 38 U.S.C. 101(2)) to assist with good-faith effort requirements may be accessed on the CPA's website at <https://mycpa.cpa.state.tx.us/tpasscmbsearch/tpasscmbsearch.do>.



## 1.5 HUB Subcontracting Plan Procedures - If Respondent Intends to Subcontract

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

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

A Respondent should first identify each area of the Contract Work it intends to Subcontract. Then, to maximize HUB participation, it should divide the Contract Work into reasonable lots or portions to the extent consistent with prudent industry practices.

### 1.5.2 Notify Potential HUB Subcontractors

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

1. Divide the Contract Work into reasonable lots or portions to the extent consistent with prudent industry practices. The Respondent must determine which portions of Work, including Goods and Services, will be Subcontracted.
2. Use the appropriate method(s) to demonstrate good-faith effort. The Respondent must use one of the method(s) I, II, III, or IV as set out below when subcontracting.  
as set out below when subcontracting:

#### 1.5.2.1 Method I: Using Only HUBs;

Respondent only intends to utilize HUB Subcontractors. No non-HUB Subcontractors may be use for this method. The Respondent must identify in the HSP the active and certified HUBs that will be utilized and submit written documentation that confirms 100% of all available subcontracting opportunities will be performed by one or more HUBs. Note, this method is not time sensitive.

Please complete the following sections and provide the following documents for "Method I":

- HSP, Page 1, Section 1 - Respondent and Requisition Information;
- HSP, Page 2, Section 2 - Respondent's Subcontracting Intentions;
- HSP, Page 3, Section 4 – Affirmation;
- Submit an "Attachment A" for each subcontracting item listed in HSP, Section 2; and
- Submit supporting documentation to substantiate each HUB selected is an actively certified HUB vendor (include a copy of the profile located in the CPA's CMBL/HUB Directory);

or

### 1.5.2.2 Method II: Mentor-Protégé Program;

Respondent (Mentor) intends to subcontract directly with their HUB Protégé. HHS will accept a Mentor Protégé Agreement that has been entered into by a Respondent (Mentor) and a certified HUB (Protégé) in accordance with TGC [Section 2161.065](#). When a Respondent proposes to subcontract with their Protégé(s), it does not need to provide additional notices to three (3) HUB vendors for the subcontracted item(s) provided by Protégé(s).

The Respondent must identify the subcontracting item(s) that the Protégé(s) will be providing as well as the subcontracting value. However, if the Respondent intends to utilize additional Subcontractors other than the Protégé(s), the Respondent is required to utilize Method IV: Solicitation, Section 1.5.6 below, for all other subcontracting items to comply fully with the HSP requirements – see all applicable requirements for Section 1.5.6, Method IV: Solicitation.

Participation in the Mentor Protégé Program, along with the submission of a Protégé as a Subcontractor in an HSP, constitutes a good-faith effort only for the particular area subcontracted to the Protégé.

Please complete the following sections and provide the following documents for “Method II”:

- HSP, Page 1, Section 1 - Respondent and Requisition Information;
- HSP, Page 2, Section 2 - Respondent's Subcontracting Intentions;
- HSP, Page 3, Section 4 – Affirmation;
- Submit an “Attachment B” for each subcontracting item listed in HSP, Section 2; and
- Submit supporting documentation from the CPA's Mentor-Protégé Program Webpage <https://mycpa.cpa.state.tx.us/mentorprotege/ctg/menproPairs/> that confirms the M-P agreement is registered with CPA;

or

### 1.5.2.3 Method III: Meeting or Exceeding the HUB Contract Goal;

The Respondent intends to subcontract with both HUBs and non-HUBs and the expected aggregated percentage of the Contract will be meeting or exceeding the HHS HUB utilization goal listed in Section 1.2, Statewide Annual HUB Utilization Goal. The Respondent must identify in the HSP and submit written documentation that one or more HUB Subcontractors will be utilized and that the aggregate expected percentage of Subcontracts with HUBs will meet or exceed the HHS HUB utilization goal. When utilizing this method HUBs that have had a <sup>3</sup>continuous contract in place with the Respondent a period of more than five (5) years

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<sup>3</sup> \*Continuous Contract (excerpt from the HSP): Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into “new” contracts.

cannot be used to satisfy this requirement.

When the aggregate expected percentage of Subcontracts with HUBs meets or exceeds the goal specified in this exhibit, Respondents may also use non-HUB Subcontractors. All Subcontractors (HUB and non-HUB) to be utilized must be stated within the HSP. Note, this method is not time sensitive.

Please complete the following sections and provide the following documents for "Method III":

- HSP, Page 1, Section 1 - Respondent and Requisition Information;
- HSP, Page 2, Section 2 - Respondent's Subcontracting Intentions;
- HSP, Page 3, Section 4 - Affirmation;
- Submit an "Attachment A" for each subcontracting item listed in HSP, Section 2; and
- Submit supporting documentation to substantiate each HUB selected is an actively certified HUB vendor (include a copy of the profile located in the CPA's CMBL/HUB Directory).

or

#### **1.5.2.4 Method IV: Solicitation;**

The Respondent will NOT be utilizing all HUBs and will NOT be meeting the HHS HUB utilization goal on the Contract. ALL of the following requirements apply and requires written supporting documentation:

1. Written notifications to a minimum of two (2) HUB trade organizations and/or business development centers that predominantly serve members of economically disadvantaged groups (e.g., Asian-Pacific Americans, Black Americans, Hispanic Americans, Native Americans, American Women, and service-disabled veterans as defined by 38 U.S.C. 101(2)) to assist in identifying and marketing to potential HUBs by disseminating the subcontracting solicitations to their respective membership/participants. A list of HUB trade organizations, and/or business development centers is available on the CPA's website as noted in Section 1.4.5 of this exhibit and (<https://mycpa.cpa.state.tx.us/tpasscmbsearch/tpasscmbsearch.do>).
2. Provide written notifications to a minimum of three (3) HUB vendors per subcontracting opportunity item listed on the HSP, Page 2, "Section 2 Respondent's Subcontracting Intentions."
3. The above written notices to the HUB trade organizations/business development centers AND HUB vendors must contain the following information:
  - a. A description of the scope of work to be subcontracted and all of the pertinent information to submit a response;
  - b. Information regarding the location to review the plans or specifications;
  - c. Information regarding insurance and bonding requirements (if applicable);

- d. Required qualifications and other pertinent contract requirements;
- e. The Respondent's point of contact and how to respond to the subcontracting solicitation; and
- f. The time and date the subcontracting response is due to the Respondent (note, must be due prior to the Solicitation deadline identified in the Solicitation's Schedule of Events or deadlines established in a subsequent Addendum).

Note, the CPA's "HUB Subcontracting Opportunity Notification" form is an optional form that may also be used to comply with the above requirements. It is not a mandatory form but may assist Respondents in providing all of the required information.

- 4. Respondent must provide HUB trade organizations/business development centers AND HUB vendors a reasonable amount of time to respond to the written notice but not less than a minimum of seven (7) working days. The date the notification is sent is considered day "zero" and cannot be used to satisfy the seven (7) working days' requirement. In accordance with TAC, Title 34, Part 1, Chapter 20, Subchapter D, Division 1, Rule §20.282(35), a working day is a "normal business day of a state agency, excluding weekends, federal or state holidays, or days the agency is declared closed by its executive officer." To further clarify what days are considered non-working days due to federal or state holidays, a link to the state's holiday schedule is provided at <http://www.hr.sao.texas.gov/Holidays/>.

Note, Method IV: Solicitation **is time sensitive** and failure to provide the required seven (7) working days as noted as well as all of the other requirements noted in Section 1.5.6 will result in disqualification, and the HSP will be deemed non-responsive for material failure to comply with advertised specifications.

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

Please complete the following sections and provide the following documents for "Method IV":

- HSP, Page 1, Section 1 - Respondent and Requisition Information;
- HSP, Page 2, Section 2 - Respondent's Subcontracting Intentions;
- HSP, Page 3, Section 4 - Affirmation;
- Submit an "Attachment B" for each item listed in HSP, Page 2, Section 2
- Submit supporting documentation to substantiate that each HUB notified or selected is an actively certified HUB vendor (include a copy of the profile located in the CPA's CMBL/HUB Directory); and
- Submit written supporting documentation (emails, faxes, or certified letters) to substantiate compliance with Section 1.5.6, Method IV.

## **1.6 HUB Subcontracting Plan Procedures - Respondent Does Not Intend to Subcontract**

### **1.6.1 Method V: Self-Performance;**

When the Respondent does not intend to subcontract any portion of the Contract, but instead is able to provide all Work with the Respondent's own equipment, supplies, materials, and/or employees (see Footnote 2), the Respondent is still required to submit a completed HSP.

The Respondent must complete the HSP, Page 3, "Section 3: Self Performing Justification" and attest that it does not intend to subcontract for any Goods or Services, including the class and item codes identified in Section 1.3.1, Probable Subcontracting Opportunities. In addition, the Respondent must identify the sections of the proposal that describe how it will complete the Scope of Work using its own resources ( including employees, see Footnote 2) or provide a statement explaining how it will complete the entire Scope of Work using its own internal resources (including employees, see Footnote 2). The Respondent must agree to comply with the following upon HHS request:

1. Provide evidence of sufficient Respondent staffing to meet the Contract objectives;
2. Provide monthly payroll records showing the Respondent staff fully engaged in the Contract;
3. Allow HHS to conduct an on-site review of company headquarters or work site where Services are to be performed; and
4. Provide documentation proving employment of qualified personnel holding the necessary licenses and certificates required to perform the Scope of Work.

Note, for purposes of this exhibit, TAC, Title 34, Part 1, Chapter 20, Subchapter D, Division 1, Rule §20.282(27), defines Subcontractor "as defined by Government Code, §2251.001, this is a person who contracts with a prime contractor to work or contribute toward completing work for a governmental entity." Subcontracting includes outsourcing of supplies, materials, equipment, and/or services. In addition to provide further clarity, contracting staffing (see Footnote 1) is also considered subcontracting and if the Respondent intends to fulfill any portion of the Contract utilizing contracted staffing (see Footnote 1), then the Method V: Self-Performance is not an option for complying with the good-faith effort requirements. The Respondent must utilize any one of the four other methods listed above to submit a responsive HSP.

## 1.7 Post-Award HSP Requirements

Once the Contract has been awarded, the HSP submitted with the response becomes a Contract provision and must be implemented in good faith. To assist the Contractor in understanding the HUB Contract requirements post award, a pre-recorded Webinar-based training has been provided for review and may be accessed at:

<https://attendee.gotowebinar.com/register/5782273786467926800>.

Immediately after the Contract award, a HUB Coordinator will be assigned to coordinate a HUB Post-Contract-Award meeting with the Contractor and the program area. The following items will be addressed during this meeting:

1. Solidifying the HSP prior to the start of the Contract. Please note, to make any updates to the HSP, the Contractor must have proper justification. Pricing is not an acceptable justification **after** the Contract is awarded.
2. As a condition of award, the Contractor is required to send notification to all selected Subcontractors as identified in the accepted/approved HSP. In addition, a copy of the

notification(s) must be provided to the HHS contract manager and/or HUB Program Office within ten (10) working days of the Contract award.

3. Discuss procedure for any HSP change requirements should a need arise during the life of the Contract to replace or add any new Subcontractors onto the HSP. Contractor is required to make changes in good faith by utilizing any of the good-faith methods stated in Section 1.5, HUB Subcontracting Plan Procedures – If Respondent Intends to Subcontract, of this exhibit. In addition, it requires the HHS HUB Program Office to provide prior approval before the Contractor may engage any new Subcontractors.
4. Failure to meet the HSP and post-contract-award requirements will constitute a breach of Contract and will be subject to remedial actions.
5. HHS may also report noncompliance to the CPA in accordance with the administrative rule governing the Vendor Performance and Debarment Program. Note, the CPA Debarment Program may result in being debarred from state contracting for a period of up to five (5) years.

## 1.8 HSP Most Common Errors

1. **Methods I through V:** Failure to submit a completed HSP with the Solicitation Response when the agency determined probability of subcontracting opportunities (see Section 1.3.1, Probable Subcontracting Opportunities). Completion requires responses with supporting documentation reflected by respective HSP Method, see Section 1.5.3 through Section 1.6.1.
2. **HUB Respondent's failure to provide a completed HSP or incorrectly incorporating their company's participation into the HSP towards meeting the HUB goal.** Please note, being a certified Texas HUB does not exclude HUB Respondent from complying with the good-faith effort requirements reflected in this Solicitation, nor is the Respondent able to use their company's participation towards meeting the HUB Utilization Goal. All Respondents regardless of HUB status responding to the Solicitation must fully adhere to the good-faith effort requirements in developing the HSP.
3. **Method IV: Solicitation** - Failure to provide seven (7) working days for HUB trade organizations/business development centers and HUB vendors to respond. Note, in accordance with TAC, Title 34, Part 1, Chapter 20, Subchapter D, Division 1, Rule§20.282(35), "working day" means a "normal business day of a state agency, not including weekends, federal or state holidays, or days the state agency is declared closed by its executive officer." To further clarify what days are considered federal or state holidays, a link to the state's holiday schedule is provided: <http://www.hr.sao.texas.gov/Holidays/>. In addition, the day the Solicitation notification document is sent to the HUB trade organizations/business development centers and HUB vendors is considered day zero (0) and cannot be used to satisfy the seven (7) working days' requirement (i.e., the notices were sent out on a Friday and the following Monday was a holiday, then Tuesday would be day one (1)).
4. **Method IV: Solicitation** - Soliciting a trade organization that is not considered a HUB trade organization or a trade organization not located in the State of Texas. Contact information for HUB trade organizations is available on the CPA's website: <https://comptroller.texas.gov/purchasing/vendor/hub/resources.php>.

5. **Method IV: Solicitation - Solicitation Method IV:** Failure to provide sufficient information in the subcontractor solicitation(s) for HUB vendors and HUB trade organizations/business development centers to be able to respond to a solicitation or determine the Solicitation's Scope of Work (see Section 1.5.6, Method IV: Solicitation, and the HSP form, Attachment B, "Section B-3: Notification of Subcontracting Opportunity.)
6. **Method IV: Solicitation –** Soliciting to HUB businesses whose NIGP Class and Item Codes or business description is unrelated to the subcontracting solicitation or soliciting HUB businesses for services outside of the geographical area, when HUBs are available in the immediate area (i.e., the physical work is located in Houston, Texas, but Respondent choose to solicit HUBs in El Paso, Texas). Start with a specific geographical search; and if unable to locate HUBs, expand the geographical search area until HUBs are located. If unable to locate HUBs to solicit, contact the HUB Coordinator in Section 1.4.1 for guidance.
7. **Methods I through IV:** Indicating "TBD" in any of the required HSP fields. When a solicitation contains unknown variables for determining dollar amounts or percentages, contact the HUB Coordinator for guidance. Leaving these fields blank or documenting as "TBD" may result in a non-responsive HSP determination.
8. **Methods I through IV:** Documenting a non-certified vendor as a HUB vendor used to satisfy the good-faith effort requirements. Respondent should always confirm the vendor's HUB status in the CPA's CMBL/HUB Directory profile (<https://mycpa.cpa.state.tx.us/tpasscmbsearch/tpasscmbsearch.do>) to ensure the vendor HUB certification is "A" active on the date the Solicitation was sent to the vendor. Furthermore, it is recommended that a printed copy of the HUB vendor's profile be include with the HSP as supporting documentation to avoid any issues.
9. **Methods I through V:** Including contracting staffing (see Footnote 1) as employees in the proposal and/or HSP and does not perform a good-faith effort requirement to include HUBs in the services performed by the contracted staffing (see Footnote 1) - note, only employees (see Footnote 2) may be considered as employees.
10. **Methods I through V:** Failure to document all subcontracting activity reflected within the proposal on the HSP documents. At the time of the HSP evaluation, a comparison is performed of the submitted proposal and the HSP to ensure the HSP is a true representation of any subcontracting that will be needed to fulfill all portions of an awarded contract. Any discrepancies may result in a non-responsive HSP and cannot be considered for a contract award.
11. **Methods I through IV:** Calculating the subcontracting percentages incorrectly. The correct method for calculating subcontracting percentages is: (subcontracting amount divided by (+) total contract amount).



# HUB Subcontracting Plan (HSP) Quick Checklist

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

1. **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. – Yes, I will be subcontracting portions of the contract
  - Section 2 b. – List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
  - Section 2 c. – Yes
  - Section 4 – Affirmation
  - GFE Method A (Attachment A) – Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2b.
  
2. **If any of your subcontracting opportunities will be performed using HUB protégés, complete:**
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. – Yes, I will be subcontracting portions of the contract
  - Section 2 b. – List all the portions of work you will subcontract, and indicated the percentage of the contract you expect to award to HUB protégés (Skip Section 2c and 2d)
  - Section 4 – Affirmation
  - HSP GFE Method B (Attachment B) - Complete Section B-1, Section B-2, and B-4 only for each HUB Protégé
  
3. **If any of your subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregated percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you **do not** have a continuous contract\* in place for more than five (5) years meets or exceeds the HUB Goal the contracting Agency identified in the "Agency Special Instructions/Additional Requirements", complete :**
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. – Yes, I will be subcontracting portions of the contract
  - Section 2 b. – List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
  - Section 2 c. – No
  - Section 2 d. – Yes
  - Section 4 – Affirmation
  - GFE Method A (Attachment A) – Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2b.
  
4. **If you are subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you **do not** have a continuous contract \* in place for more than five (5) years **does not meet or exceed** the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
  - Section 1 - Respondent and Requisition Information
  - Section 2 a. – Yes, I will be subcontracting portions of the contract
  - Section 2 b. – List all the portions of work you will subcontract, and indicated the percentage of the contract you expect to award to Texas certified HUB vendors and Non HUB vendors.





# HUB Subcontracting Plan (HSP) Quick Checklist

- Section 2 c. – No
  - Section 2 d. – No
  - Section 4 – Affirmation
  - HSP GFE Method B (Attachment B) – Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2b.
5. **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment, including transportation and delivery, complete:**
- Section 1 – Respondent and Requisition Information
  - Section 2 a. – No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources
  - Section 3 – Self Performing Justification
  - Section 4 – Affirmation

***\*Continuous Contract:*** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides contractor with goods or services, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



# HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

**NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).**

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders' contracts,
- 32.9 percent for all special trade construction contracts,
- 23.7 percent for professional services contracts,
- 26.0 percent for all other services contracts, and
- 21.1 percent for commodities contracts.

**- - Agency Special Instructions/Additional Requirements - -**

*In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract\*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

The HUB Goal for this solicitation is 21.1% -Building Construction.

- > Respondents shall submit a completed HUB Subcontracting Plan (HSP) to be considered responsive. Failure to submit a completed HSP shall result in the bid, proposal, or other expression of interest to be considered non-responsive.
- > Respondents using Method Option 4 must complete the HSP Good Faith Effort - Method B (Attachment B) for EACH subcontracting opportunity identified in Section 2 of the HSP.
- > Please note: (Section B-3: Notification of Subcontracting Opportunity) of Attachment B requires respondent to provide notice to three (3) or more Texas certified HUBs AND two (2) or more Texas trade organizations and development centers for EACH subcontracting opportunity identified in Section 2.
- > These notification must be done at least seven (7) working days prior to submitting your bid response to the contracting agency to allow time for the potential subcontractor to respond. \*\*\*Seven (7) working days shall be defined as business days of HHSC, not including weekends or HHSC observed holidays. The first working days shall be the day following the day that the notice was sent, and the 7th day is the day that the response is due.
- > Provide along with all documentation (i.e., certified letter, fax, e-mail) and a copy of the CMBL/HUB Vendor Detail page. This is to ensure that the Texas certified HUB that is listed is an Active Bidder.

See SAMPLE CMBL/HUB Vendor Detail in the HUB Exhibit.

**SECTION 1: RESPONDENT AND REQUISITION INFORMATION**

- a. Respondent (Company) Name: \_\_\_\_\_ State of Texas VID #: \_\_\_\_\_  
 Point of Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_ Fax #: \_\_\_\_\_
- b. Is your company a State of Texas certified HUB?  - Yes  - No
- c. Requisition #: HHS0009777/20-053-KSH Bid Open Date: \_\_\_\_\_

(mm/dd/yyyy)

Enter your company's name here: \_\_\_\_\_

Requisition #: HHS0009777/20-053-KSH

**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS**

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b of this SECTION and continue to Item c of this SECTION.)
- **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If **No**, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <b>do not</b> have a <b>continuous contract*</b> in place for <b>more than five (5) years</b>	Percentage of the contract expected to be subcontracted to HUBs with which you have a <b>continuous contract*</b> in place for <b>more than five (5) years</b>	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
<b>Aggregate percentages of the contract expected to be subcontracted:</b>		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- **No** (If **No**, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract\*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- **No** (If **No**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: \_\_\_\_\_

Requisition #: HHS0009777/20-053-KSH

**SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)**

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you <u>do not</u> have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

**\*Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: \_\_\_\_\_ Requisition #: HHS0009777/20-053-KSH

**SECTION 3: SELF PERFORMING JUSTIFICATION** (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

**SECTION 4: AFFIRMATION**

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature	Printed Name	Title	Date <small>(mm/dd/yyyy)</small>
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**Reminder:**

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b.



# HSP Good Faith Effort - Method B (Attachment B)

Rev. 2/17

Enter your company's name here: \_\_\_\_\_ Requisition #: HHS0009777/20-053-KSH

**IMPORTANT:** If you responded "No" to SECTION 2, Items c and d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

## SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

## SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in SECTION B-1, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If **Yes**, continue to SECTION B-4.)
- No / Not Applicable (If **No** or **Not Applicable**, continue to SECTION B-3 and SECTION B-4.)

## SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.
- b.** List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID <small>(Do not enter Social Security Numbers.)</small>	Date Notice Sent <small>(mm/dd/yyyy)</small>	Did the HUB Respond? <input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- c.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to **two (2)** or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.
- d.** List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent <small>(mm/dd/yyyy)</small>	Was the Notice Accepted? <input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

# HSP Good Faith Effort - Method B (Attachment B) Cont.

Rev. 2/17

Enter your company's name here: \_\_\_\_\_

Requisition #: HHS0009777/20-053-KSH

## **SECTION B-4: SUBCONTRACTOR SELECTION**

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmlsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):



**REMINDER:** As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.





## Sample CMBL - HUB Vendor Detail

**Note:** The CMBL/HUB Vendor Detail page must be attached with all of the required documentation for the submittal of the HSP Plan.

CMBL/HUB Vendor Detail	
Vendor ID / Vendor Number	
Vendor Name	
Vendor Address	
county	
Contact	
Phone/Fax	 
Email Address	
Website	
Business Description	Vendor of medical merchandise, non-narcotic pharmaceutical drugs as well as medical equipment servicing Emergency Medical Services (EMS), Fire Departments, Law Enforcement agencies, Educational facilities, and Hospitals.
Business Category	<a href="#">Medical Services (09)</a>
Small Business	<a href="#">Y</a>
Service Disabled Veteran	<a href="#">No</a>
CMBL Status	<a href="#">Active Bidder</a>
CMBL Expires	25-MAY-2019
HUB Status	<a href="#">Active Bidder ( A-Approved; Active Texas certified HUB )</a>
HUB Expires	05-JUL-2022
HUB Eligibility	<a href="#">HI ( Hispanic American )</a>
HUB Gender	<a href="#">F</a>
	Commodity items shown above are available for district(s) 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25



**TEXAS**  
Health and Human Services

# Exhibit D

## Exceptions Form





**TEXAS**  
Health and Human Services

## **Exhibit E**

**Respondent's Information, Disclosures,  
and Financial Form**

Exhibit E

**Respondent's Information, Disclosures, and Financial Form**

<b>Part 1: Authorized Respondent</b>	<b>Part 2: Respondent's Primary Contact</b>
<b>Person Signing the Contract:</b> <i>(Please see requirements for signatory in Exhibit A)</i> Name: _____ Title: _____ Mailing Address: _____ _____ Telephone: _____ Fax: _____ E-mail: _____	<b>Primary Contact for Proposal Questions:</b> Name: _____ Title: _____ Mailing Address: _____ _____ Telephone: _____ Fax: _____ E-mail: _____
<b>Part 3: Respondent and Contractor Information</b> <i>(Provide the following information. Attach additional pages if necessary.)</i>	
1. Organization's Legal Name: _____	
2. Doing Business As: _____	
3. Physical Address: _____	
4. Mailing Address: _____	
5. Texas Taxpayer Number: _____	
6. <u>Legal Status (check one):</u> <input type="checkbox"/> For-Profit Entity or <input type="checkbox"/> Non-Profit Entity	
7. <u>Business Structure (check one):</u> <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Partnership* <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Joint Venture <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Other (Specify): _____	
<small>*If the General Partnership operates under an assumed name, then please include an assumed name certificate for the county or counties where the proposed Work will occur or where the business premise is maintained.</small>	
8. State of Incorporation or Formation: _____	
9. Name of the Parent Entity if Contractor is a subsidiary organization <i>(if Applicable)</i> : _____ _____	
10. State of Incorporation or Formation of Parent Entity and file or registration number of state of formation <i>(if Applicable)</i> : _____ _____	
Have you attached additional pages for Part 3? <input type="checkbox"/> Yes or <input type="checkbox"/> No	

**Part 4: Former Employees of a State Agency**

*(Identify all respondent or subcontractor personnel who have worked for HHSC or another Texas health and human services agency in the past two years. Attach additional pages if necessary.)*

1. Name of former state employee: \_\_\_\_\_

2. Job title at termination of state employment: \_\_\_\_\_

3. Date of termination of state employment: \_\_\_\_\_

4. Annual rate of compensation at termination: \_\_\_\_\_

5. Description of job responsibilities while state employee: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. If the former state employee worked on matters relating to this Solicitation, describe those matters:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Have you attached additional pages for Part 4?  Yes or  No

**Part 5: Conflicts of Interest**

*(Describe all facts or circumstances that may give rise to a potential conflict of interest, and describe all measures the respondent and its subcontractors will take to ensure that these facts or circumstances do not create an actual conflict of interest. Attach additional pages if necessary.)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Have you attached additional pages for Part 5?  Yes or  No

**Part 6: Financial Stability & Risk (Evaluation Criterion 3.1 and 3.2)**

*(Please provide relevant details regarding the following risks. If the answer to any is yes, provide an explanation with all pertinent details)*

1. Is your company currently for sale?  Yes or  No

Explanation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Is your company involved in any transaction to expand or become acquired by another business entity?  Yes or  No

Explanation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Is your company currently in default under any contract or other obligation?  Yes or  No

Explanation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Has a bonding company ever been required to finance completion of a project?  Yes or  No

Explanation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Has your company experienced claims on its payment or performance bonds in the last 2 years?

Yes or  No

Explanation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Has your company had any job site incidents in the last 2 years that resulted in death?  Yes or  No

Explanation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. What is your firm's maximum bonding capacity?\*

**Individual Project \$** \_\_\_\_\_

**Aggregate \$** \_\_\_\_\_

*\*Attach a letter of intent from a surety company indicating Respondent's financial solvency, adequate capitalization, and ability to obtain performance and payment bonds for the entire construction cost of the proposed project. The information submitted must indicate Respondent's total bonding capacity, available bonding capacity and current backlog.*



**Part 7: Litigation**

*(Disclose all pending, resolved, or completed litigation, mediation, arbitration, or other alternative dispute resolution procedure involving the respondent within the past 36 months. Include the cause number, court, parties' names, subject matter, relief sought, amount in controversy, and final disposition or status. Provide the same information for all subcontractors. Attach additional pages if necessary.)*

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Have you attached additional pages for Part 7?  Yes or  No

**Part 8: Texas Public Information Act (PIA)**

*(Complete this part if you assert one or more parts of the proposal are excepted from disclosure under the PIA. Attach additional pages if necessary.)*

1. Proposal Section: \_\_\_\_\_

2. PIA Exception\*: \_\_\_\_\_

\*The most commonly asserted exception is Texas Government Code §552.110 (trade secret, or commercial or financial information confidential by law).

3. Explanation of Why the Exception Applies: \_\_\_\_\_

Have you attached additional pages for Part 8?  Yes or  No



**TEXAS**  
Health and Human Services

# **Exhibit F**

## **Respondent's Pricing Proposal Form**

## Exhibit F - Respondent's Pricing Proposal Form

RFP No.: HHS0009777

Project Name: Project 20-053-KSH – BAS Replacement, Kerrville State Hospital, Kerrville, TX

To: Health and Human Services Commission (“**Owner**”)

From: Respondent's Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_

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The Respondent having carefully examined the Texas Uniform General Conditions for Construction Contracts with HHSC Supplementary General Conditions (“**UGCs**”), the Drawings and Specifications, and any addenda thereto, as prepared by the Owner, and the Project Architect/Engineer for this Project, as well as the premises and all the conditions affecting the work, if applicable to this Project, does hereby propose to furnish all supervision, labor, materials, equipment, tooling, and permits necessary to achieve Substantial Completion of the work in accordance with the “Contract Documents” (as that term is defined in the UGCs) for the following sum: *(All amounts shall be written in number form.)*

### 1. Total Base Proposal Cost:

The Total Base Proposal Cost amount becomes the Respondent's “**Total Cost**” if allowances and/or if Additive Alternate Costs are not included and must total from the amounts listed below within this section.

The “**Total Base Proposal Cost**” amount must be used in the Respondent's Historically Underutilized Business Subcontracting Plan (“**HSP**”), if applicable, to determine subcontractor participation levels for the established HUB procurement goals.

	Materials	Labor	Total
Building 615, Room 106	\$	\$	\$
Building 502	\$	\$	\$
Building 502A	\$	\$	\$
Building 503	\$	\$	\$
Building 577	\$	\$	\$
Building 578	\$	\$	\$
Building 601	\$	\$	\$
Building 603	\$	\$	\$
Building 605	\$	\$	\$
Building 610	\$	\$	\$
Building 611	\$	\$	\$
Building 615	\$	\$	\$
Building 618	\$	\$	\$
Building 620	\$	\$	\$
Building 623	\$	\$	\$
Building 630, Rm 100 and AHU Rm 1225	\$	\$	\$
Building 630 Rm 100	\$	\$	\$
Building 630, Area 1AB	\$	\$	\$
Building 630, Area 2AB	\$	\$	\$
Building 630, Area 2CD	\$	\$	\$
Building 630, Area 3AB	\$	\$	\$
Building 630, Area 3CD	\$	\$	\$

**Total Base Proposal Cost:** \$ \_\_\_\_\_

**Proposed Equipment:**

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**2. Additive Alternate Costs:**

The “**Additive Alternate Costs**” are awarded at the Owner’s discretion and should not be included in the “Total Base Proposal Cost” as referenced in Section 1 above. Negotiation may be a part of the award discussions. Should Additive Alternate Costs be awarded, the awarded Respondent shall be given an opportunity to revise the originally submitted HSP, if applicable, to allow for a Good Faith Effort outreach to determine subcontractor participation levels for the Additive Alternate Costs and services.

**Alternate #1 Cost:** Server Replacement: \$ \_\_\_\_\_

**Proposed Equipment:**

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**3. Construction Milestone Schedule:** The undersigned agrees, if awarded the Contract, to achieve Substantial Completion of the Work as described in the UGCs, the Drawings and Specifications, and any addenda thereto.

- 3.1 Owner anticipates the Notice to Proceed for construction to be issued within two weeks of the Contract being executed.
- 3.2 Contractor will mobilize within ten calendar days after receiving the Notice to Proceed.
- 3.3 Contractor shall achieve Substantial Completion of the Work no later than **225 days** of the commencement date set forth in the Notice to Proceed; however, this is an estimate only. The Contract will specify the number of days from commencement date (as stated in Notice to Proceed) to Substantial Completion.

**4. RFP Addenda:** The Respondent hereby acknowledges receipt of the following RFP addenda issued by the Owner: *(Initial all that are applicable.)*

RFP No. 1 \_\_\_\_\_ RFP No. 2 \_\_\_\_\_ RFP No. 3 \_\_\_\_\_ RFP No. 4 \_\_\_\_\_ RFP No. 5 \_\_\_\_\_

**5. Security Bonds:** The Respondent shall include, with its Proposal, a bid security in the form of a cashier’s check, certified check (both described below as a “**Check**”), or original bid bond (“**Bid Bond**”) payable to the Health and Human Services Commission, in an amount not less than **5%** of the Total Base Proposal Cost referenced in **Section 1** above. A Bid Bond shall be delivered to an Owner’s representative and held by an Owner’s representative until such time as the Bid Bond is terminated by its terms or becomes null and void according to its terms. If the Bid Bond is terminated or becomes null and

void, then the Bid Bond will be returned to Respondent upon request. If the conditions of the Bid Bond are not met or satisfied, then Owner reserves the right to make a claim upon the Bid Bond and the security will be forfeited as stated below. If bid security is in the form of a Check, then the Check shall be delivered to, and held by an Owner's representative and not cashed or deposited (or, if negotiating the Check becomes necessary due to time issues, then the funds shall be held in an appropriate account for Owner and not released) until one of the following occurs: (i) another respondent has signed a Contract and has begun performing on the Project; or (ii) this Respondent has signed the Contract and has begun performing on the Project. If either (i) or (ii) occurs, then the Check, or the funds represented by the Check, will be returned to this Respondent. No other form of security will be accepted. Should the Respondent fail, neglect, or refuse to begin performance of the Contract after receiving the award, the security will be forfeited to the Owner, and in particular, the Check may be cashed or deposited, or the funds represented by the Check may be released to Owner.

6. **Payment and Performance Bonds:** The Respondent agrees to execute the performance and payment bonds in the amount of **100%** of the Contract price within ten calendar days of a fully executed Contract. (Performance Bond and Payment Bond Forms are attached hereto as **Attachment A of Exhibit F**)
7. **Award of Contract and Commencement of Work:** The Respondent agrees to execute the Contract within ten calendar days after notification that the Respondent has been identified by the Owner as the Respondent with the "best value" Proposal, and to commence work on or before the commencement date stated by the Owner in a Notice to Proceed; unless otherwise approved by Owner, such commencement date shall be no later than ten calendar days after the date of the Notice to Proceed. In addition, the Respondent agrees to execute and deliver to the Owner a Certification of Franchise Tax Payment and further agrees to obtain from each subcontractor and supplier - and hold for redelivery to the Owner if requested - a certification of franchise tax status of each subcontractor or supplier.
8. **Owner's Right:** It is understood that the Owner reserves the right to accept or reject any and all Proposals and to waive proposal irregularities.
9. **Authority to Sign.** The Respondent must complete, sign and return this Respondent's Pricing Proposal Form with its Submittal. If the person signing this Respondent's Pricing Proposal Form differs from the person signing the Affirmations and Solicitation Acceptance for State Architectural/Engineering and Construction Projects (Exhibit A to this Solicitation to which this pricing proposal is responding), then Respondent and the signatory below represent and warrant that the signatory has authority to sign this Respondent's Pricing Proposal Form on behalf of the Respondent.

*This Respondent's Pricing Proposal is Submitted and Certified by:*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email of Signatory: \_\_\_\_\_

\*Email of Primary Contact of Respondent: \_\_\_\_\_

*\*If different from signatory.*

Date: \_\_\_\_\_

**Respondent's Execution of Offer**  
*(See additional signature lines at end of this section)*

**THIS EXECUTION OF OFFER MUST BE COMPLETED, SIGNED, AND RETURNED WITH THE RESPONDENT'S PROPOSALS. FAILURE TO COMPLETE, SIGN, AND RETURN THIS EXECUTION OF OFFER WITH THE PROPOSALS WILL RESULT IN REJECTION OF THE PROPOSALS.**

**SIGNING A FALSE STATEMENT MAY VOID THE SUBMITTED PROPOSALS OR ANY CONTRACTS OR OTHER CONTRACTUAL ARRANGEMENTS, WHICH MAY RESULT FROM THE SUBMISSION OF RESPONDENT'S PROPOSALS, AND THE RESPONDENT MAY BE REMOVED FROM ALL PROPOSER LISTS. A FALSE CERTIFICATION SHALL BE DEEMED A MATERIAL BREACH OF CONTRACT AND, AT OWNER'S OPTION, MAY RESULT IN TERMINATION OF ANY RESULTING CONTRACT OR PURCHASE ORDER.**

1. By signature hereon, Respondent acknowledges and agrees that:
  - a. this Request for Competitive Sealed Proposals is a solicitation for Proposals and is not a contract or an offer to contract;
  - b. the submission of Proposals by Respondent in response to this Request for Competitive Sealed Proposals will not create a contract between the Owner and Respondent;
  - c. the Owner has made no representation or warranty, written or oral, that one or more contracts with the Owner will be awarded under this Request for Competitive Sealed Proposals; and
  - d. Respondent shall bear, as its sole risk and responsibility, any cost which arises from Respondent's preparation of a response to this Request for Competitive Sealed Proposals.
  
2. By signature hereon, Respondent offers and agrees to furnish to the Owner the products and/or services more particularly described in its Proposals, and to comply with all terms, conditions and requirements set forth in the Request for Competitive Sealed Proposals documents and contained herein.
  
3. By signature hereon, Respondent represents and warrants that:
  - a. Respondent is a reputable company regularly engaged in providing products and/or services necessary to meet the terms, conditions and requirements of the Request for Competitive Sealed Proposals;
  - b. Respondent has the necessary experience, knowledge, abilities, skills, and resources to satisfactorily perform the terms, conditions and requirements of the Request for Competitive Sealed Proposals;
  - c. Respondent has been in business for a minimum of five years, or the principals/owners have a minimum of five years' recent ownership/executive management experience in a previous company that provided construction services of similar scope and complexity;
  - d. Respondent is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances;
  - e. Respondent's personnel, including subcontractors, who will be assigned to the Project have all licenses and permits required to perform the work described;
  - f. Respondent understands (i) the requirements and specifications set forth in this Request for Competitive Sealed Proposals and (ii) the terms and conditions set forth in the Contract under which Respondent will be required to operate;
  - g. Respondent, if selected by the Owner, will maintain insurance as required by the Contract;
  - h. All statements, information and representations prepared and submitted in response to this Request for Competitive Sealed Proposals are current, complete, true, and accurate. Respondent acknowledges that the Owner will rely on such statements, information, and representations in selecting the successful Respondent. If selected by the Owner as the successful Respondent, Respondent will notify the Owner immediately of any material change in any matters with regard to which Respondent has made a statement or representation or provided information.
  
4. By signature hereon, Respondent certifies as follows:



- a. Respondent represents and warrants that all articles and services quoted in response to this Request for Competitive Sealed Proposals meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and its regulations in effect or proposed as of the date of this solicitation.
  - b. By signature hereon, Respondent signifies his compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
  - c. **By signature hereon, Respondent agrees to defend, indemnify, and hold harmless the State of Texas, the Owner, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of Respondent or any agent, employee, subcontractor, or supplier of Respondent in the execution or performance of any contract or other contractual arrangements which may result from the submission of Respondent's Proposals.**
  - d. By signature hereon, Respondent agrees that any payments that may become due under any contract or other contractual arrangements, which may result from the submission of Respondent's Proposals, will be applied towards any debt including, but not limited to, delinquent taxes and child support that is owed to the State of Texas.
5. Disclosure of Interested Parties Statute. In its Proposal, the Respondent must agree to comply with *Texas Government Code* Section 2252.908 (“**Disclosure of Interested Parties Statute**”) and *Texas Administration Code*, Title 1, Part 2, Chapter 46, Sections 46.1-46.3 (“**Disclosure of Interested Parties Regulations**”) as implemented by the Texas Ethics Commission (“TEC”), including, among other things, providing the TEC and the Owner with the information required by the Disclosure of Interested Parties Statute and the Disclosure of Interested Parties Regulations on the form promulgated by the TEC. The form will be required to be submitted to Owner prior to the countersigning of the final contract and not submitted with this RFP.

The Respondent must complete, sign and return this Execution of Offer as part of their Submittal. If the person signing this Pricing Proposal differs from the person signing the Affirmations (**Exhibit A** to this Solicitation to which this Execution of Offer is responding), then Respondent and the signatory below represent and warrant that the signatory has authority to sign this Pricing Proposal on behalf of the Respondent.

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attachment A

Performance and Payment Bond Forms

PAYMENT BOND

STATE OF TEXAS
COUNTY OF \_\_\_\_\_

LET IT BE KNOWN BY THIS INSTRUMENT:

That we, \_\_\_\_\_ as principal
and we, \_\_\_\_\_ a corporation
duly authorized to do business in this State, as Surety(s), are this date held and firmly
bound unto the State of Texas in the amount of

\_\_\_\_\_
\_\_\_\_\_ Dollars \$ \_\_\_\_\_

for payment of which indemnity the said Principal and Surety, by this declaration, do firmly bind
themselves, their heirs, executors, administrators, successors and assigns, jointly and individually.

Since a Contract, which by reference is made a part hereof, exists between Principal and the State of
Texas, acting by the through the Texas Health and Human Services Commission, and dated
\_\_\_\_\_ for the \_\_\_\_\_

The conditions of this obligation are, therefore, such that it shall remain in full force and effect unless
and until the Principal shall faithfully perform the Contract in accordance with the Contract
Documents.

The liabilities, rights, limitations, and remedies concerning this Bond shall be determined in
accordance with the provisions of Chapter 2253 of the Texas Government Code, pursuant to which
this Bond is executed.

IN WITNESS TO THIS DECLARATION, the said Principal and Surety(s) have signed and sealed this
instrument.

this \_\_\_\_\_ day of \_\_\_\_\_.

PRINCIPAL

SURETY

By \_\_\_\_\_

By \_\_\_\_\_

Bond Identification No. \_\_\_\_\_

Address of Attorney-In-Fact \_\_\_\_\_

Telephone No. of Attorney-In-Fact \_\_\_\_\_

(Use of this form for the purposes indicated has been approved by the Attorney General of Texas)

# PERFORMANCE BOND

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

LET IT BE KNOWN BY THIS INSTRUMENT:

That we, \_\_\_\_\_ as principal  
and we, \_\_\_\_\_ a corporation  
duly authorized to do business in this State, as Surety(s), are this date held and firmly  
bound unto the State of Texas in the amount of

\_\_\_\_\_ Dollars \$ \_\_\_\_\_  
for payment of which indemnity the said Principal and Surety, by this declaration, do firmly bind  
themselves, their heirs, executors, administrators, successors and assigns, jointly and individually.

Since a Contract, which by reference is made a part hereof, exists between Principal and the State of  
Texas, acting by the through the Texas Health and Human Services Commission, and dated  
\_\_\_\_\_ for the \_\_\_\_\_

The conditions of this obligation are, therefore, such that it shall remain in full force and effect unless  
and until the Principal shall faithfully perform the Contract in accordance with the Contract  
Documents.

In the event of Principal's failure, as defined by the Contract Documents, to faithfully perform the  
Contract, Surety(s) will within fifteen (15) days of determination of default, assume full responsibility  
for completion of said Contract and become entitled to payment of the balance of the Contract  
amount.

The liabilities, rights, limitations, and remedies concerning this Bond shall be determined in  
accordance with the provisions of Chapter 2253 of the Texas Government Code, pursuant to which  
this Bond is executed.

IN WITNESS TO THIS DECLARATION, the said Principal and Surety(s) have signed and sealed this  
instrument.

this \_\_\_\_\_ day of \_\_\_\_\_.

PRINCIPAL

SURETY

By \_\_\_\_\_

By \_\_\_\_\_

Bond Identification No. \_\_\_\_\_

\_\_\_\_\_  
Address of Attorney-In-Fact

\_\_\_\_\_  
Telephone No. of Attorney-In-Fact

(Use of this form for the purposes indicated has been approved by the Attorney General of Texas)

**Performance and Payment Bond Attachment**

As per Section 5.1.1 of the Texas Uniform General Conditions for Construction Contracts with Supplementary General Conditions, each bond shall show the name, address and telephone number of the Texas representative of the corporate surety or corporate sureties. Therefore, please provide the following information and return this form with the executed Payment Bond.

**Surety Company:**

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

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

**Texas Representative:** *(Agency through which bond is issued)*

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

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_



**TEXAS**  
Health and Human Services

# Exhibit G

## Evaluation Criteria and Tool

**Project 20-053-KSH, BAS Replacement, Kerrville State Hospital**  
**Criteria, Subcriteria Sheet**  
**HHS0009777**

Evaluator Respondent					
#		Criteria	Weight	Score	Comments
<b>1</b>	<b>RFP Requirement</b>	<b>Respondent's Ability to Provide Relevant Construction Services &amp; Respondent's Proposed Team's Relevant Experience (30%)</b>			
1.1	Identify and describe the Respondent's present and past experience for completed construction projects that are most related and/or similar to this project. List the projects in order of priority, with the most relevant and/or similar project listed first. Include project name, owner, location, description and final construction cost.	Evaluate the relevance of the Respondent's past and present experience for completed construction projects that are similar to this project.	15%		
1.2	Provide names, resumes and project responsibilities for management and employees that will be assigned to the project, including the Project Superintendent and Project Manager. Explain Project Superintendent's and Project Manager's availability relative to current commitments, and will current commitments affect mobilization timing after the Notice to Proceed is issued by the Owner's Designated Representative.	Evaluate the previous experience of the Respondent's Project Superintendent Project Manager, and other employee's assigned to this project.	10%		
1.3	Provide an Organizational Chart or other similar hierarchy explanation with responsibilities of the team members assigned to support the project. Include a matrix of the team members previous experience working on the same projects.	Evaluate the Respondent's designated team member responsibilities in relation to previous experience and/or working together on similar projects	5%		
<b>2</b>		<b>Respondent's Quality and Safety Programs (5%)</b>	<b>30%</b>		
2.1	Respondent shall provide the name, job title, and resume of both the person in the organization who oversees the quality assurance program, and the person specifically assigned to this project for quality assurance. Describe the quality assurance program, quality requirements and means of measurement. HHSOC reserves the right to require a copy of the Quality Control Manual and Quality Assurance Processes, which, if contracted, may become a contract document. Respondent shall provide the company's workers' compensation experience modification rate (EMR) for the last five years on the insurance broker's letterhead as part of the proposal; if above 1.0, provide an explanation.	Evaluate the Respondent's approach to quality, in regards to a dedicated individual for quality and a dedicated individual for quality on this project. Evaluate the Respondent's described quality assurance program, requirements, and means of measurement. Evaluate the Respondent's workers' compensation experience rate (EMR) for the last five years.	5%		
<b>3</b>		<b>Respondent's Financial Stability and Risk (10%)</b>	<b>5%</b>		
3.1	On the Exhibit E Respondent's Information, Disclosures, and Financial Form please provide relevant details regarding the following risk. If the answer to any is yes, provide all pertinent details: <ul style="list-style-type: none"> <li>- Is your company currently for sale?</li> <li>- Is your company involved in any transaction to expand or become acquired by another business entity?</li> <li>- Does your company have any pending litigation?</li> <li>- Has your company resolved any litigation within the last 2 years?</li> <li>- Is your company currently in default?</li> <li>- Has a bonding company ever been required to finance completion of a project?</li> <li>- Has your company experienced claims on its payment or performance bonds in the last 2 years?</li> <li>- Has your company had any job site incidents in the last 2 years that resulted in death?</li> </ul>	Evaluate the Respondent's information, disclosures, and financial information from the Exh. E. in regards to the risks listed in this criterion. Detail any concerns you have from the information provided on the evaluation tool in the comments field.	5%		
3.2	Attach a letter of intent from a surety company indicating Respondent's financial solvency, adequate capitalization, and ability to obtain performance and payment bonds for the entire construction cost of the proposed project. The information submitted must indicate Respondent's total bonding capacity, available bonding capacity and current backlog.	Evaluate the Respondent's maximum bonding capacity (should be equal to (minimal) or amply more (maximum) than the project dollar amount), in terms of financial solvency, adequate capitalization, and ability obtain performance and payment bonds for the entire construction cost of the proposed project.	5%		
<b>4</b>		<b>Respondent's Proposed Methodology (15%)</b>	<b>10%</b>		
4.1	Proposed Methodology: A detailed plan outlining the methodology intended to be employed by the respondent that demonstrates the processes of implementation regarding the requirements of the RFP Scope of Work into a realized and finished project. This shall include, but not be limited to: Processes and techniques used to understand the Statement of Work;	Evaluate the Respondent's plan and methodology proposed for the implementation and realization of the project.	5%		
4.2	Problem solving: Value engineering; Maintaining budgets; Maintaining schedules; Staff sizing and roles;	Evaluate the Respondent's description of how work with subcontractors will be coordinated and managed, or, if no subcontracting, evaluate the Respondent's description of how work will be coordinated with designated staff assigned to the project.	5%		
4.3	Company workload in proportion to the project outlined in the Statement of Work; Coordination of work with subcontractors and/or consultants, or if no subcontracting and/or subconsultants is needed, coordination of work with designated staff assigned to the project; Brief description of major critical path items and milestones necessary for completion of the project in the proposed timeline.	Evaluate the Respondent's identification of major critical path items and/or milestones necessary for the completion of the project in the proposed timeline.	5%		
<b>5</b>		<b>Respondent's Pricing Proposal (40%)</b>	<b>15%</b>		
5.1	The Respondent having carefully examined the Texas Uniform General Conditions for Construction Contracts with HHSOC Supplementary General Conditions ("UGCs"), the Drawings and Specifications, and any addenda thereto, as prepared by the Owner, and the Project Architect/Engineer for this Project, as well as the premises and all the conditions affecting the work, if applicable to this Project, does hereby propose to furnish all supervision, labor, materials, equipment, tooling, and permits necessary to achieve Substantial Completion of the work in accordance with the "Contract Documents" (as that term is defined in the UGCs) for the following sum: (All amounts shall be written in number form.)	Evaluate the Respondent's Exhibit F Pricing and Proposal (designated cost evaluators only)	40%		
<b>Sub Total</b>			<b>40%</b>		
<b>Overall Total</b>			<b>100%</b>		

**Project 20-053-KSH, BAS Replacement, Kerrville State Hospital**

**HHS0009777**

**Evaluation Scoring Guide**

<b>Score</b>	<b>Level</b>	<b>Description</b>
<b>Unacceptable</b>	<b>1</b>	Response does not address requirement. Response is completely unacceptable.
<b>Unacceptable</b>	<b>2</b>	Response mentions requirement, but is not responsive to the elements of the requirement.
<b>Unacceptable</b>	<b>3</b>	Response addresses requirement, but response described does not allow HHSC to fulfill mission.
<b>Marginal. Fails to meet evaluation standards but failures are correctable.</b>	<b>4</b>	Response meets fundamental requirements, however could not be implemented as described (would require both HHSC and Vendor to make significant changes not currently anticipated).
<b>Marginal. Fails to meet evaluation standards but failures are correctable.</b>	<b>5</b>	Response meets fundamental requirements, however could not be implemented as described (implementation would require both HHSC and Vendor to make minor changes not currently anticipated).
<b>Marginal. Fails to meet evaluation standards but failures are correctable.</b>	<b>6</b>	Response meets fundamental requirements, however could not be implemented as described (implementation would require changes to be made by Vendor only).
<b>Acceptable</b>	<b>7</b>	Response clearly satisfies requirement but has some minor weaknesses.
<b>Acceptable</b>	<b>8</b>	Response clearly satisfies requirement.
<b>Acceptable</b>	<b>9</b>	Response satisfies requirements and has some benefits above requirement.
<b>Exceptional</b>	<b>10</b>	Response far exceeds all aspects of requirement.

**Project 20-053-KSH, BAS Replacement, Kerrville State Hospital**

**HHS0009777**

<b>No.</b>	<b>Best Value Criteria</b>	<b>Weight</b>
1	Respondent's Ability to Provide Relevant Construction Services & Respondent's Proposed Team Relevant Experience	30%
2	Respondent's Quality and Safety Programs	5%
3	Respondent's Financial Stability and Risks	10%
4	Respondent's Proposed Methodology	15%
5	Respondent's Pricing Proposal	40%
	<b>GRAND TOTAL</b>	<b>100%</b>





# TEXAS

## Health and Human Services

Cecile E. Young, Executive Commissioner

### REQUEST FOR COMPETITIVE SEALED PROPOSALS FOR A GENERAL CONTRACTOR

**Project 20-053-KSH – BAS Replacement, Kerrville State Hospital, Kerrville,  
TX**

**RFP No. HHS0009777 Addendum #2**

**Date of Release: Friday, 7/9/2021**

**Proposals Due: Tuesday, 8/17/2021 by 10:30 A.M. Central Time**

**HUB Subcontracting Plans Due: Wednesday, 8/18/2021 by 10:30 A.M. Central Time**

**NIGP Class/Item Codes:**

**910-17** – Energy Computerized Control System, HVAC, Lighting, Utilities, etc., Installation, Maintenance and Repair Services

**914-50** – Heating, Ventilating and Air Conditioning (HVAC)

**941-55** – HVAC Systems, Power Plant, Maintenance and Repair

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**Attachment B** - Texas Uniform General Conditions for Construction Contracts with HHSC Supplementary General Conditions

**Attachment C** - Project Special Conditions

**Attachment D** - Facility Specific Policies

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**Attachment(s) H1** - Project Scope of Work

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**Exhibit F** - Respondent’s Pricing Proposal Form

**Exhibit G** - Evaluation Criteria and Tool

## **SECTION 1 – GENERAL INFORMATION, HISTORICAL BACKGROUND, AND REQUIREMENTS**

### **1.1 General Information**

The Health and Human Services Commission (“**Owner**”), for and on behalf of its Health and Specialty Care System Division (“**HSCS**”), is soliciting Competitive Sealed Proposals (“**Proposals**”) for selection of a General Contractor (“**Contractor**”) to provide general construction and construction administration services to the Owner for Project No. 20-053-KSH, BAS Replacement, Kerrville State Hospital, Kerrville, TX (the “**Project**”), in accordance with the terms, conditions, and requirements set forth in this Solicitation.

1.1.1 This Solicitation is being issued to select a Contractor for the Project as provided by *Texas Government Code Chapter 2269, Subchapter D*.

1.1.2 The Owner will select the Proposal that offers the “best value” for the agency based on the published selection criteria and on its ranking evaluation. The Owner will first attempt to negotiate a Contract with the selected Respondent. The Owner may discuss with the selected Respondent options for a scope or time modification and any price change associated with the modification. If the Owner is unable to reach a Contract with the selected Respondent, the Owner will formally end negotiations with that Respondent and proceed to the next-qualified Respondent in the order of the selection ranking until a contract is reached or all Proposals are rejected, and the Solicitation is canceled.

### **1.2 Historical Background**

The Owner is responsible for oversight of all Texas Health and Human Services agencies, which includes overseeing and coordinating the planning and delivery of health and human services programs throughout the state of Texas. For more information about the Owner, its programs, or its facilities, please visit <https://hhs.texas.gov>.

As part of its responsibilities, the Owner owns and operates 13 state supported living centers and 10 state hospitals (the “**Facilities**”) across the state of Texas. The Owner offers programs at the Facilities 24 hours a day, 7 days a week, 365 days a year in both urban and rural settings. Facility programs and operations fall under the direction of HSCS. There are 24 campuses [note one facility has two separate campuses] with a total of 1,490 buildings encompassing approximately 9 million square feet of space. Construction dates for the Facilities range from 1857 to 2000, with new or planned construction at six new buildings in Austin, San Antonio, Houston, and Rusk. The majority of Facilities buildings are serviced and connected by aging utility, roadway, walkway, cabling, mechanical, electrical, and plumbing systems, and other such infrastructure. Many buildings have been renovated, modified, and added to over time with many now serving different purposes than when originally designed and built. In addition to Life Safety Codes, State Fire Marshal, and other such requirements, the Facilities (depending on program) may be subject to Centers for Medicare and Medicaid Services and/or The Joint Commission standards and inspections.

### 1.3 Definitions

Refer to **Exhibit C**, Attachment B, Texas Uniform General Conditions for Construction Contracts with HHSC Supplementary General Conditions (“**General Conditions**”), for additional definitions. Additionally, as used in this RFP or any exhibit or attachment incorporated and made a part of this Solicitation, unless the context clearly indicates otherwise, the following terms and conditions have the meanings assigned below:

“**Addendum/Addenda**” means written clarification(s) or revision(s) to this RFP issued by the Owner.

“**Confidential Information**” means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) deemed confidential under state or federal confidentiality laws.

“**Contract**” means the agreement entered into by the Owner and selected Respondent, which may incorporate the contents of this RFP and the selected Respondent’s Proposal, except as specifically provided to the contrary in the Contract and any amendments to the Contract.

“**ESBD**” means the Electronic State Business Daily, the electronic marketplace where State of Texas bid opportunities over \$25,000.00 are posted. The ESBD may currently be accessed at <http://www.txsmartbuy.com/esbd>.

“**HHSC**” or “**Owner**” means the Health and Human Services Commission established under *Texas Government Code* Chapter 531, its officers, employees and authorized agents.

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

“**HUB Subcontracting Plan**” or “**HSP**” means written documentation regarding the use of subcontractors, which is required to be submitted with all responses to state agency contracts with an expected value of \$100,000.00 or more where subcontracting opportunities have been determined by the state agency to be probable. The HUB subcontracting plan subsequently becomes a provision of the awarded Contract and shall be monitored for compliance by the state agency during the term of the Contract.

“**Proposal**” means all information and materials submitted by a Respondent in response to this RFP. Also, may be referred to as “**Submittal**” in this Solicitation, exhibits, attachments or Addenda.

“**Public Information Act Copy**” means an additional copy of a Respondent’s Proposal that has been redacted (blacked out) by the Respondent as set out in **Section 1.4.1.2** of this Solicitation.

“**Respondent**” means the entity responding to this RFP.

“**RFP**” means this Request for Competitive Sealed Proposals including any exhibits, attachments and Addenda, if any. Also may be referred to as “**Solicitation**” in this RFP, exhibits, attachments or Addenda.

“**State**” means the State of Texas and its instrumentalities, including HHSC and any other state agency, its officers, employees, or authorized agents.

“**Texas Health and Human Services agencies**” or “**HHS**” as used in this Solicitation, exhibits, attachments or Addenda, means both the HHSC and the Texas Department of State Health Services, separately or combined.

#### 1.4 **Public Information**

1.4.1 Proposals and contracts are subject to the Texas Public Information Act (“**PIA**”), *Texas Government Code* Chapter 552, and may be disclosed to the public upon request, unless an exception to disclosure applies. Information pertaining to Proposals and the Contract will be withheld or released only in accordance with the PIA. Subject to the PIA, certain information may be protected from public release. Respondents are advised to consult with their legal counsel concerning disclosure issues resulting from this process and to take precautions to safeguard trade secrets and proprietary or otherwise confidential information. Furthermore, other legal authority also requires the Owner to post certain Proposals and contracts on HHSC’s website (<https://contracts.hhs.texas.gov/>) and to provide such information to the Legislative Budget Board for posting on its website.

If a Respondent wishes to protect portions of its Proposal from public disclosure, the Respondent should familiarize itself with the law and submit its Proposal as follows:

##### 1.4.1.1 **Mark Original Proposal:**

- a) Mark the original Proposal, on the top of the front page, the words “**CONTAINS CONFIDENTIAL INFORMATION**” in bold, capitalized letters (the size of, or equivalent to, minimum 12-point Times New Roman font or larger); and
- b) Identify, adjacent to each portion of the Proposal that Respondent claims is exempt from public disclosure, the claimed exemption from disclosure (NOTE: no redactions should be made in the original Proposal).

##### 1.4.1.2 **Public Information Act Copy of Proposal:**

Submit a separate “Public Information Act Copy” of the original Proposal (in addition to the original and all copies otherwise required under the provisions of this Solicitation). The “Public Information Act Copy” must meet the following requirements:

- a) The copy must be clearly marked as “**PUBLIC INFORMATION ACT COPY**” on the front page in large, bold, capitalized letters (the size of, or equivalent to, 12-point Times New Roman font or larger);
- b) Each portion of the Proposal Respondent claims is exempt from public disclosure must be redacted (blacked out); and
- c) Respondent must identify, adjacent to each redaction, the claimed exemption from disclosure. Each identification provided as required

in subsection (c) of this Section must be identical to those set forth in the original Proposal as required in **Section 1.4.1.1(b)**, above.

- d) The only difference in required markings and information between the original Proposal and the “Public Information Act Copy” of the Proposal will be the redactions - which can only be included in the “Public Information Act Copy.” There must be no redactions (blacked out information) in the original Proposal.

1.4.2 In accordance with *Texas Government Code* §2252.907, Respondent shall be required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the PIA, available in a Microsoft Office® Word® format or Adobe® Portable Format (“PDF”) that is accessible by the public at no additional charge to the State.

1.4.3 Effective on or after January 1, 2020 (86<sup>th</sup> Legislature), *Texas Government Code* Chapter 552, Subsection J, added requirements regarding document retention and public disclosure for entities in a contract with a stated expenditure of, or results in an expenditure of, at least \$1 million. These requirements may apply to responses to this Solicitation and Respondent agrees that the Contract can be terminated if Respondent knowingly or intentionally fails to comply with a requirement of Subchapter J.

1.4.4 Owner will not consider any Proposal that is copyrighted in its entirety; however, this exclusion does not encompass limited copyrighted information within the Proposal (e.g. marketing materials, drawings, designs, submittals, etc.), which may be considered by the Owner on a case by case basis.

## 1.5 **Type of Contract**

The Contract will be in the form of the Owner’s General Construction Services Contract in **Exhibit C**, which incorporates by reference all attachments referenced therein including, but not limited to, Attachment B to **Exhibit C** of this Solicitation, General Conditions, and awarded under this RFP as a fixed price contract.

## 1.6 **Changes, Addenda, or Modification to RFP**

The Owner reserves the right to change or modify any provision of this RFP by addenda, or to withdraw this RFP at any time prior to award if it is in the best interest of the Owner. Any such revisions will be posted on the ESBD. It is the responsibility of Respondent to periodically check the ESBD to ensure full compliance with the requirements of this RFP.

## 1.7 **Informalities**

The Owner reserves the right to waive minor informalities in a Proposal if it is in the best interest of the Owner. A “minor informality” is an omission or error that, in the Owner’s determination if waived or modified when evaluating Proposals, would not give a Respondent an unfair advantage over other Respondents or result in a material change in the Proposal or RFP requirements.

## 1.8 Questions

The Owner will allow written questions and requests for clarification of this RFP. Questions must be submitted in writing and sent by email to the Owner's Point-of-Contact listed in **Section 1.13**. Respondents' names will be removed from questions in any responses released. Questions shall be submitted in the following format. Submissions that deviate from this format may not be accepted:

- a) Identifying RFP number
- b) Section Number
- c) Paragraph Number
- d) Page Number
- e) Text of Passage being questioned
- f) Question(s)

**Note: Questions or other written requests for clarification must be received by the Point-of-Contact by the deadline in the Schedule of Events. Please provide company name, address, phone number, e-mail address and name of contact person when submitting questions.**

## 1.9 Clarifications

Respondents must notify the Owner's Point-of-Contact of any ambiguity, conflict, discrepancy, exclusionary specifications, omission or other error in the RFP in the manner and by the deadline for submitting questions. If a Respondent fails to properly and timely notify the Owner's Point-of-Contact of such issues, the Respondent submits its Proposal at its own risk, and if awarded a Contract: (1) shall have waived any claim of error or ambiguity in the RFP and any resulting Contract, (2) shall not contest the interpretation by Owner of such provision(s), and (3) shall not be entitled to additional compensation, relief, or time by reason of ambiguity, error, or later correction. Responses to questions or other written requests for clarification may be posted as addenda on the ESBD. The Owner reserves the right to modify addenda prior to the deadline for submission of Proposals. It is Respondent's responsibility to check the ESBD. The Owner also reserves the right to decline to answer any question or questions or to provide a single consolidated response for one or more questions at the Owner's sole discretion.

- 1.9.1 Requests for clarification regarding Project Scope of Work (Attachment H1 of Exhibit C) shall be communicated through Point-of-Contact, identified in **Section 1.13** below. Any response from the Owner will be in the form of an Addendum, which will be posted to the ESBD and shall be acknowledged by the Respondent on the Respondent's Pricing Proposal Form (**Exhibit F**).
- 1.9.2 Respondents shall consider only those clarifications and interpretations to the Project Scope of Work that the Owner's Maintenance and Construction Department's Architect issues through the Point-of-Contact, identified in **Section 1.13** below, by Addendum. Interpretations or clarifications in any other form, including oral statements, will not be binding on the Owner and should not be relied on in preparing Proposals.

## 1.10 Exceptions

The Owner will consider more favorably Proposals that offer no or few exceptions, reservations, or limitations to the terms and conditions of this RFP.

- 1.10.1 Respondent shall carefully review the Owner's draft Contract (**Exhibit C**) and all attachments. Respondent must expressly state in its Proposal all terms and conditions of the Owner's draft Contract (including any contract attachments) that Respondent will require to be changed before Respondent will sign the Contract. However, Respondent must be willing to accept Owner's draft Contract without change or modification or, if Respondent will require changes, Respondent must provide all draft language it proposes for each change requested. In addition to proposed edits, Respondent must provide a reasonable and articulable explanation of why the Respondent requests each change. Redlining Owner's draft Contract or its attachments or providing a statement with the intent or an implication that the Contract will require further discussion is insufficient.
- 1.10.2 If a Respondent includes exceptions in its Proposal, Respondent is required to use the Exceptions Form included as **Exhibit D** to this RFP and provide all information requested on the form. Any exception for which the Respondent does not provide all required information without qualification in the format set forth in **Exhibit D** may be rejected without consideration.
- 1.10.3 Respondents are highly encouraged, in lieu of including exceptions in their Proposals, to address all issues that might be advanced by way of exception by submitting such issues to the Owner as questions or requests for clarification. Any exception included in a Proposal may result in a Respondent not being awarded a Contract.
- 1.10.4 No exception, nor any other term, condition, or provision in a Proposal that differs, varies from or contradicts the terms and conditions in this RFP will be considered to be part of any Contract resulting from this RFP unless expressly made a part of the Contract in writing by the Owner.
- 1.10.5 A Proposal should be responsive to the RFP as worded, not with any assumption that any or all terms, conditions, or provisions of the RFP will be negotiated. Furthermore, all Proposals constitute binding offers. **Any Proposal submitted in response to this RFP that includes any type of disclaimer or other statement indicating that the Proposal does not constitute a binding offer may be disqualified.**

## 1.11 Assumptions

Respondent must identify on the Exceptions Form any business, economic, legal, programmatic, or practical assumptions that underlie the Respondent's response to the RFP. The Owner reserves the right to accept or reject any assumptions. All assumptions not expressly identified and incorporated into any Contract resulting from this RFP are deemed rejected by the Owner.



## 1.12 Submission of Proposals

1.12.1 **Proposal and HSP Deadline and Location:** The Owner will receive Proposals and HSPs at the times and location described below.

**Proposal: Tuesday 8/17/2021 by 10:30 A.M. CENTRAL TIME**  
**HSP: Wednesday, 8/18/2021 by 10:30 A.M. CENTRAL TIME**

**Express / Overnight and Hand Delivery Address:**

**Health and Human Services Commission  
Procurement and Contracting Services  
Attn: Bid Room Coordinator  
1100 West 49th Street, Mail Code 2020  
Austin, Texas 78756**

**USPS Mail Address:**

**HHSC Procurement and Contracting Services  
Bid Room  
Attn: Jay Dancer  
P.O. Box 149166  
Austin, TX 78714-9166**

**Label:**

**RFP No. HHS0009777  
Purchaser's Name: Jay Dancer  
Due Date and Time: 8/10/2021 by 10:30 A.M. Central Time  
Name of Company: XXXXX**

1.12.1.1 Submit one electronic copy of the Original Proposal and if applicable, one electronic copy of the Public Information Act Copy, on one or two USB Flash Drive(s) that are labeled "Proposal" and "PIA Copy." The Respondent's signed Pricing Proposal Form must be included within the Proposal.

1.12.1.2 If an HSP is required, Respondent must submit in accordance with *Texas Administrative Code* Title 34, Part 1, Chapter 20, Subchapter D, Division 1, §20.285(b)(2) and as specified herein. Submit one electronic copy of the **Exhibit B**, HSP, on one separate USB Flash Drive(s) that is labeled "HSP."

1.12.1.3 Submit security bond in separate sealed envelope within the Proposal package referenced in **Section 1.12.5**.

1.12.2 Late submissions will be returned to the Respondent unopened. The Owner will not be held responsible for any Proposal that is mishandled prior to receipt by Owner. It is Respondent's responsibility to mark appropriately and deliver the Proposal to

the Owner by the specified date and time. The Bid Room Coordinator identified in **Section 1.12.1** will identify the official time clock at the Proposal submittal location identified above.

- 1.12.3 The Owner will not acknowledge or receive any submissions that are delivered by telephone, facsimile (fax), or electronic mail (e-mail).
- 1.12.4 Properly submitted Proposals and HSPs will not be returned to the Respondents.
- 1.12.5 Proposals and HSP materials must be enclosed in a sealed envelope, box, or container addressed to the Bid Room Coordinator identified in **Section 1.12.1**; **the Proposal package must clearly identify the Submittal deadline, the RFP Number, Point-of-Contact, and the name and return address of the Respondent.**
- 1.12.6 Properly submitted Proposals will be opened publicly and the names and any monetary proposals will be read aloud after the HSPs, if applicable to the RFP, are received by the Owner.
- 1.12.7 Prior to the RFP submission deadline, a Respondent may: (1) withdraw its Proposal by submitting a written request to the Owner's Point-of-Contact; or (2) modify its Proposal by submitting a written amendment to Owner's Point-of-Contact.

### **1.13 Point-of-Contact**

All requests, questions, or other communication about this RFP shall be made in writing via email to the following individual, as the Owner's representative and Point-of-Contact for this RFP. The Owner takes no responsibility for a potential Respondent's emails that are captured, blocked, filtered, quarantined, or otherwise prevented from reaching the proper destination server by any HHSC antivirus or other security software. All other communications between Respondents and other Owner staff members or the project Architect/Engineer(s) concerning the RFP are strictly prohibited. **Failure to comply with these requirements may result in disqualification of Respondent's Proposal.**

**Jay Dancer, CTCD**

[Jay.dancer@hhs.texas.gov](mailto:Jay.dancer@hhs.texas.gov)

- 1.13.1 The only exception to the Point-of-Contact is the HUB Coordinator. Any questions relating to the HUB Subcontracting Plan must be directed to the HUB Coordinator Marcus Gomez at [marcus.gomez@hhs.texas.gov](mailto:marcus.gomez@hhs.texas.gov).

### 1.13.2 Standards of Conduct for Vendors

Pursuant to Title 1 of the Texas Administrative Code (TAC), Part 15, Chapter 391, Subchapter D, Rule §391.405(a), contractors, respondents, and vendors interested in working with HHS are required to implement standards of conduct to apply to all matters involving, or related to, those solicitations and contract(s) between themselves and HHS. These standards must adhere to ethics requirements adopted in rule, in addition to any ethics policy, or code of ethics approved by the HHSC Executive Commissioner and must be at least as restrictive as those applicable to HHS personnel in the applicable ethics law and policy provisions.

The standards of conduct must include the ten standards of ethical conduct set forth in Section I of the HHS Ethics Policy and requirements to comply with ethical standards set forth in federal and state law (including, but not limited to, 1 TAC pt. 15, ch. 391, subch. D).

The standards of conduct, together with the responsibilities and restrictions incorporated herein, also apply to subcontractors of contractors, respondents and vendors.

Standards of conduct of any contractor, respondent or vendor may be reviewed and/or audited by the State Auditor and HHSC. Additionally, pursuant to Title 1 TAC Part 15, Chapter 391, Subchapter D, Rule §391.405(a), HHS may examine a respondent's standards of conduct in the evaluation of a bid, offer, proposal, quote, or other applicable expression of interest in a proposed purchase of goods or services.

Any vendor or contractor that violates a provision of Title 1 TAC Part 15, Chapter 391, Subchapter D may be barred from receiving future contracts or have an existing contract canceled. Additionally, HHSC may report the vendor's actions to the Comptroller of Public Accounts for statewide debarment, or law enforcement.

### 1.14 Prohibited Communication

On issuance of this RFP, except for the written inquiries for questions and clarifications, the Owner, its representative(s), or authorized representatives will not answer any questions or otherwise discuss the contents of this RFP with any potential Respondent or its representative(s). Attempts to ask questions by phone or in person will not be allowed or recognized as valid. Respondent shall rely only on written statements issued by or through the Owner's Point-of-Contact. This restriction does not preclude discussions between affected parties for the purposes of conducting business unrelated to this RFP. Failure to comply with these requirements may result in disqualification of Respondent's Proposal.

### 1.15 Evaluation of Proposals

Proposals shall be evaluated in accordance with *Texas Government Code* Chapter 2269. The Owner shall not be obligated to accept the lowest priced Proposal but shall make an award to the Respondent that provides the "best value" to the state of Texas. When considering "best value" and award, Owner reserves the right to set a minimum point requirement regarding the weighted qualifications criteria listed in **Section 3.2**. Proposals shall be consistently evaluated and scored in accordance with the requirements described in this RFP and in **Exhibit G**, Evaluation Criteria and Tool. **40%** of the evaluation will be based on the Respondent's Pricing Proposal Form (**Exhibit F**); the remaining evaluation will be based on

the Respondent's qualifications. All responsive Proposals will be reviewed, evaluated, and ranked by the Owner.

### **1.16 Other Information**

The Owner may contact references provided in response to this RFP, Respondent's clients, or solicit information from any available source, including owner's and/or Architect/Engineer's familiar with Respondent's work on past projects, opposing litigant from a public proceeding or their counsel, and the Comptroller's Vendor Performance Tracking System.

### **1.17 Initial Compliance Screening**

The Owner will perform an initial screening of all Proposals received. Unsigned Proposals and Proposals that do not meet minimum qualifications or do not include all required forms and information may be subject to rejection without further evaluation.

### **1.18 Owner's Reservation of Rights**

The Owner may evaluate the Proposals based on the anticipated completion of all or any portion of the Project. The Owner reserves the right to divide the Project into multiple parts, to reject any and all Proposals and re-solicit for new Proposals, or to reject any and all Proposals and temporarily or permanently abandon the Project. Owner makes no representations, written or oral, that it will enter into any form of agreement with any Respondent to this RFP for any project and no such representation is intended or should be construed by the issuance of this RFP.

### **1.19 Acceptance of Evaluation Methodology**

By submitting Proposals in response to this RFP, the Respondent accepts the evaluation process and acknowledges and accepts that determination of the "best value" Respondent may require subjective judgments by the Owner.

1.19.1 The Owner reserves the right to reject any Proposal if the Proposal Cost is determined to be unreasonable or irresponsible in relation to the other submitted Proposals and/or the Owner's estimate of the construction cost.

### **1.20 No Reimbursement for Costs**

Respondents understand that issuance of this RFP in no way constitutes a commitment by Owner to award a Contract or to pay any costs incurred by a Respondent in the preparation of a response to this RFP. The Owner is not liable for any costs incurred by a Respondent prior to issuance of or entering into a formal agreement, Contract, or purchase order. Costs of developing a Proposal, preparing for or participating in oral presentations and site visits, or any other similar expenses incurred by a Respondent are entirely the responsibility of the Respondent, and will not be reimbursed in any manner by the State of Texas.

## **1.21 Mandatory Pre-Proposal Webinars and Site Visits**

HHSC will conduct two pre-proposal webinars that will be held at the dates and times described below. **Attendance at one (1) pre-proposal webinar and at one (1) site visit is mandatory.**

### **Pre-Proposal Webinars:**

Wednesday, 7/14/2021 at 2:30 P.M. Central Time  
OR  
Monday, 7/19/2021 at 2:30 P.M. Central Time

Please register for the Pre-Proposal Webinar at:

<https://attendee.gotowebinar.com/rt/4222211928042761743>

After registering, you will receive a confirmation email containing information about joining the webinar.

### **Facility Site Visits:**

All respondents are required to attend one Facility Site Visit tour for each affected facility, in accordance with the schedule below. Facility site visit tour groupings will be strictly limited to 6 attendees per tour. Each attendant firm shall be allowed a maximum of two (2) representatives at each facility site visit. Representative groups that exceed this limit will not be accommodated. Facility site visit tours are anticipated to take approximately four (4) hours. Potential Respondents should be prepared to complete the tours for which you are scheduled; additional tours will not be offered.

Pre-registration for a site visit is **required**. To register for a site visit, e-mail Jay Dancer at [jay.dancer@hhs.texas.gov](mailto:jay.dancer@hhs.texas.gov). E-mails must include the following:

- a. Name, e-mail and phone number of firm representative(s) (two maximum); and
- b. Site visit dates in accordance with the schedule below.

**Deadline for Pre-registration for the Facility Site Visits is Thursday, July 22, 2021 by 5:00 PM Central Time.** Firms that do not pre-register for site visits will not be granted access to the facilities.

All attendees are required to observe the protocols detailed in **Attachment H5 – Site Visit Information, to include, but not be limited to an N95 mask (required – non- N95 masks will not be considered acceptable PPE for facility site visits) and eye protection (face shield or goggles). Regular eyeglasses are insufficient protection.**

See **Attachment H4 – Facility Maps**. Attendees will be given a COVID-19 screening at the stated staging area. COVID-19 screening may also be administered at the front gate. Upon arrival, attendees will be escorted to the parking area by Security Staff. Attendees will be met by facility staff in Building 610, Room 101. **Facility Contact:** Warren Setnan at 830-258-5284. Facility contacts are provided for issues with parking and navigation to the facility. All other issues shall be directed to the HHSC contact listed in Section 1.13.

**\*\*\*MANDATORY SITE VISITS \*\*\***

**The Texas Department of State Health Services has determined that COVID-19 represents a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code. As a precaution to reduce the transmission of COVID-19 and to protect patients, residents, contractors, and employees at the facility, personal site visits at the facility will be conducted with strict adherence to social distancing protocol.**

- 1. Visitors will adhere to the guidelines for the campus in Attachment D.**
- 2. Must sign the Sign-In Sheet to receive attendance credit.**
- 3. Must wear N95 Face Mask.**
- 4. Must wear eye protection (face shield or goggles).**

**1.22 Oral Presentations**

The Owner may require an oral presentation from any or all Respondents. Respondents will be provided with advance notice of any such oral presentation and are responsible for their own presentation equipment. Failure to participate in the oral presentation, if required, may eliminate a Respondent from further consideration. The Owner is not responsible for any costs incurred by the Respondent in preparation for any oral presentation. Singular non-competitive oral presentation of the highest scoring Respondent is a clarification exercise based upon the Respondent's initial proposal and is not scored. If deemed necessary and appropriate by Owner, evaluation and scoring of competitive oral presentations from selected acceptable, or potentially acceptable, Respondents shall replace the scoring of the initial evaluation, and shall serve as the final selection tool, using the initial evaluation criteria defined in Section 3.2.2.

**1.23 Questions or Requests for Clarification by Owner**

The Owner reserves the right to ask questions or request clarification from any Respondent at any time during the RFP process, including during oral presentations or site visits.

**1.24 Eligible Respondents**

Only companies or lawfully formed business organizations may apply. This does not preclude a Respondent from using subcontractors. The Owner will contract only with the individual, company, or formal business organization that submits a Proposal.

**1.25 HUB Subcontracting Plan**

It is the policy of the Owner, and all Texas Health and Human Services agencies, to promote and encourage contracting and subcontracting opportunities for Historically Underutilized Businesses in all contracts. Accordingly, the Owner includes a HSP when subcontracting opportunities are probable and a contract has an expected value of \$100,000.00 or more. The HSP is applicable for the life of the contract, including any subsequent amendments and renewals after award of the contract as related to the original HSP. If the Owner determines

that subcontracting opportunities are probable, then Respondents are required to submit a completed HSP. Failure to submit a required HSP will result in rejection of the Proposals.

Additional information regarding the applicability of the HSP requirement is set forth in **Exhibit B**.

## 1.26 **Protests**

Protests relating to the purchase of goods and services by Owner are governed by the *Texas Administrative Code*, Title 1, Part 15, Chapter 391, Subchapter C.

## **SECTION 2 – PROJECT INFORMATION AND SCHEDULE OF EVENTS**

**Project Location:** Kerrville State Hospital  
721 Thompson Dr.  
Kerrville, TX 78028

**Project Summary:** The scope of work includes, but is not limited to, the following:

The existing Johnson Controls Metasys Building Automation System (BAS) workstation which controls the Kerrville State Hospital is currently operating on a Windows 7 operating system (OS) that is no longer supported by Microsoft. The current Johnson Controls Metasys software will require the latest software revision to effectively operate on a windows 10 platform. The BAS control system and sequences of operation will be designed to accommodate the existing mechanical HVAC building systems, equipment, and utilities. The existing primary network between building controllers, BAS server and central operator workstation shall remain BACnet/IP.

**Project Estimate:** The approximate cost for construction of the Project is \$400,000.00.

## 2.1 **Schedule of Events**

<b>Event</b>	<b>Date/Time</b>
Issuance of the RFP	Friday, 7/9/2021
Pre-Proposal Webinar #1	Wednesday, 7/14/2021 at 2:30 P.M. Central Time
OR	
Pre-Proposal Webinar #2	Monday, 7/19/2021 at 2:30 P.M. Central Time
Mandatory Site Visit #1	Wednesday, 7/21/2021 at 10:00 A.M. Central Time
OR	
Mandatory Site Visit #2	Friday, 7/23/2021 at 10:00 A.M. Central Time
Deadline for submitting Questions	Wednesday, 7/30/2021 by 5:00 P.M. Central Time

<b>Deadline for submission of Proposals</b> <i>(NOTE: Proposals MUST be <u>RECEIVED</u> by Owner by the deadline.)</i>	Tuesday, 8/17/2021 by 10:30 A.M. Central Time
<b>Deadline for submission of HSP</b> <i>(NOTE: HSPs MUST be <u>RECEIVED</u> by Owner by the deadline.)</i>	Wednesday, 8/18/2021 by 10:30 A.M. Central Time
Opening of Proposals - Due to the Covid-19 Texas Public Health Disaster Proclamation and Declarations, proposals will be publicly opened by Webinar at the date and time specified. Webinar Link: <a href="https://attendee.gotowebinar.com/register/3129324857824175119">https://attendee.gotowebinar.com/register/3129324857824175119</a> Respondents' pricing information will be sent by email.	Thursday, 8/19/2021 at 10:00 A.M. Central Time
Anticipated Notice of Award	Tuesday, 8/31/2021
Anticipated Contract Start Date	Tuesday, 9/28/2021

Respondents must submit their Solicitation Responses to HHSC in accordance with the due date and time indicated in this Schedule of Events or as changed via an Addendum posted to the ESBD.

NOTE: All dates are tentative and HHSC reserves the right to modify these dates at any time. At the sole discretion of HHSC, events listed in the Schedule of Events are subject to scheduling changes and cancellation. Scheduling changes or cancellation determinations made prior to the Deadline for Submission will be published by posting an Addendum to the ESBD. After the Deadline for Submission, if there are delays that significantly impact the anticipated award date, HHSC, at its sole discretion, may post updates regarding the anticipated award date to the [Procurement Forecast on the HHS Procurement Opportunities web page](#). Each Respondent is responsible for checking the ESBD and [Procurement Forecast](#) for updates.

By submitting a Solicitation Response, Respondent represents and warrants that any individual submitting the Solicitation Response and any related documents on behalf of the Respondent is authorized to do so and to bind the Respondent under any contract that may result from this Solicitation.

### **SECTION 3 – REQUIREMENTS FOR COMPETITIVE SEALED PROPOSALS**

#### **3.1 Minimum Qualifications** (Pass or Fail)

Respondents must meet the minimum qualifications listed below. The Owner, in its sole discretion, may reject Proposals that appear unrealistic in terms of technical commitment, that show a lack of technical competence, or that indicate a failure to comprehend the risk and complexity of a potential Contract.

3.1.1 Respondent must:

- a) Submit a completed Proposal in accordance with **Section 5**;
- b) Affirm by its signature on **Exhibit F**, Respondent's Pricing Proposal Form, that Respondent's personnel, including subcontractors, who will be assigned to the Project have all licenses and permits required to perform the work described;
- c) Affirm by its signature on **Exhibit F** that it has been in business for a minimum of five years, or the principals/owners must have a minimum of five years recent ownership/executive management experience in a previous company that provided construction services of similar scope and complexity;



- d) Affirm by its signature on **Exhibit A**, Affirmations and Solicitation Acceptance for State Architectural/Engineering and Construction Projects, acceptance to be bound by all state of Texas required contract clauses.
- e) Submit a letter of intent from a surety company indicating Respondent is financially solvent, adequately capitalized, and able to obtain performance and payment bonds for the entire construction cost of the proposed project. The information submitted must indicate Respondent's total bonding capacity, available bonding capacity and current backlog;
- f) Submit a compliant HSP, as set forth in **Section 1.25**;
- g) Submit references for three listed projects of comparable scope and complexity. References shall be considered relevant based on specific project participation and experience with the Respondent. The Owner may contact references during any part of this RFP process. The Owner reserves the right to contact any other references at any time during the RFP process; and
- h) Submit a security bond in the form of a cashier's check, certified check, or original bid bond payable to the Health and Human Services Commission, in an amount not less than **5%** of the largest possible total proposed cost, including consideration of alternates, to be held by the Owner's representative in accordance with Section 5 of **Exhibit F**. No other form of security will be accepted.

### 3.2 **Selection Criteria**

Proposals shall be consistently evaluated and scored in accordance with the following steps:

#### 3.2.1 **Level 1 Evaluation** (Pass or Fail)

Level 1 evaluation begins with determining whether a Proposal meets the minimum qualifications listed in **Section 3.1**.

#### 3.2.2 **Level 2 Evaluation**

Level 2 continues with further review of the responsive Proposals submitted based on the evaluation criteria in **Exhibit G**, Evaluation Criteria and Tool. Each Respondent must provide all information required for evaluation as set forth within **Exhibit G**. The evaluation criteria categories are:

- a) **Respondent's Ability to Provide Relevant Construction Services and Respondent's Proposed Team's Relevant Experience - Evaluation Criterion 1.1, 1.2, and 1.3** (30% Value)
- b) **Respondent's Quality and Safety Program - Evaluation Criterion 2** (5% Value)
- c) **Respondent's Financial Stability and Risk - Evaluation Criterion 3.1 and 3.2** (10% Value) (**Exhibit E**, Respondent's Information, Disclosures, and Financial Form)
- d) **Respondent's Proposed Methodology - Evaluation Criterion 4** (15% Value)
- e) **Respondent's Pricing Proposal - Evaluation Criterion 5** (40% Value) (**Exhibit F**, Respondent's Pricing Proposal Form)

## **SECTION 4 – FORMAT OF PROPOSALS AND SUBMISSION CHECKLIST**

### **4.1 General Instructions**

- 4.1.1 Proposals shall be prepared **SIMPLY AND ECONOMICALLY**, providing a straightforward, **CONCISE** description of the Respondent's ability to meet the requirements of this RFP. Emphasis shall be on the quality, completeness, clarity of content, responsiveness to the requirements, and an understanding of the Owner's needs. Expensive bindings, colored displays, promotional materials, etc., are not necessary or desired. Respondent should focus on the instructions and requirements of the RFP.
- 4.1.2 Proposals shall consist of answers to questions and statements referenced throughout the RFP. It is not necessary to repeat the RFP requirement in the Proposal response; however, the RFP section number should be included in the corresponding answer or with any submitted information.
- 4.1.3 Respondent shall carefully read the information contained in this RFP and submit a complete response to all requirements and questions as directed. Incomplete Proposals will be considered non-responsive and subject to rejection.
- 4.1.4 Proposals and any other information submitted by Respondent in response to this RFP shall become the property of the Owner.
- 4.1.5 Proposals that are qualified with conditional clauses, alterations, items not called for in the RFP documents, or irregularities of any kind are subject to rejection by the Owner, at its option.
- 4.1.6 The Owner makes no guarantee of volume, usage, or total compensation to be paid to any Respondent under any awarded Contract, if any, resulting from this RFP. Any awarded Contract is subject to appropriations and the continuing availability of funds. The Owner reserves the right to cancel, make partial award, or decline to award a Contract under this RFP at any time in its sole discretion. Further, the Owner reserves the right to accept or reject any or all Proposals, waive any formalities or minor technical inconsistencies, or delete any items/requirements from this RFP when deemed to be in Owner's best interest.
- 4.1.7 Proposals shall consist of answers to questions referenced in **Exhibit G** of the RFP. It is not necessary to repeat the question in the Proposals; however, **it is essential to reference the question number with the corresponding answer.**
- 4.1.8 Proposals received without the information and documentation required in this RFP **may be DISQUALIFIED. The Owner, in its sole discretion, will review all Proposals received and determine if any Proposals will be disqualified or if additional time will be permitted for submission of the incomplete or missing documentation. If additional time will be permitted, Respondents will be notified in writing of the opportunity to provide the missing documentation by a specified deadline. Failure by a Respondent to submit the requested documentation by the deadline WILL result in disqualification.**

## 4.2 Formatting and Page Size

4.2.1 Proposals shall be digitally formatted for letter-size (8-1/2" x 11") and combined into a single document, when possible, with divider pages before each section.

4.2.1.1 **ALL DOCUMENTS SHALL BE SUBMITTED AS A SEARCHABLE ADOBE® PDF FILE. HOWEVER, IF RESPONDENT IS UNABLE TO SUBMIT A SEARCHABLE PDF FILE, IT SHOULD SUBMIT DOCUMENTS IN MICROSOFT OFFICE® FORMATS (WORD® AND EXCEL®) OR IN A FORM THAT MAY BE READ BY MICROSOFT OFFICE® SOFTWARE, EXCLUDING ANY DOCUMENTS WITH SIGNATURES THAT SHALL BE SUBMITTED AS A PDF FILE.**

4.2.1.2 **HHSC IS NOT RESPONSIBLE FOR DOCUMENTS THAT CANNOT BE READ OR CONVERTED. UNREADABLE PROPOSALS MAY BE, AT HHSC'S DISCRETION, REJECTED AS NONRESPONSIVE.**

4.2.2 Additional attachments shall NOT be included with the Proposals.

4.2.3 Separate and identify each evaluation criteria response to **Section 3** of this RFP by use of a divider sheet with an integral tab for ready reference.

## 4.3 Table of Contents

Submittals shall include a "**Table of Contents**" and give page numbers for each part of the Proposal.

## 4.4 Pagination

Proposal pages should be numbered sequentially using Arabic numerals (1, 2, 3, etc.); the Respondent is not required to number the pages of the HUB Subcontracting Plan.

## 4.5 Submittal Checklist

4.5.1 **Solicitation Proposal Package.** The Respondent's Proposal package must include one "**Original**" Proposal and, if applicable, one "**Public Information Act Copy**" Proposal, and be submitted in accordance with **Section 1.12.1**.

4.5.2 Respondent shall organize its Proposal in accordance with the checklist below, which is being provided for Respondent's convenience only. Each Respondent is solely responsible for ensuring its Proposal is submitted in accordance with all RFP requirements. In no event will the Owner be responsible or liable for any missing RFP requirements or errors within a Respondent's Proposal package. The Proposal package must be submitted in the following order:

Proposal Package and Response Submittal Order	Include
<b><i>USB Flash Drive (Labeled "Proposal")</i></b>	
1. Proposal Cover	
2. Cover Letter	
3. Table of Contents	
4. <b>Criterion 1.1, 1.2, 1.3:</b> Respondent's Ability to Provide Relevant Construction Services and Respondent's Proposed Team Relevant Experience	
5. <b>Criterion 2:</b> Quality and Safety Programs	
6. <b>Criterion 3:</b> Respondent's Financial Stability and Risk ( <b>Exhibit E, Part 6</b> )	
7. <b>Criterion 4:</b> Respondent's Proposed Methodology	
8. <b>Criterion 5:</b> Signed Respondent's Pricing Proposal Form ( <b>Exhibit F</b> )	
9. Signed Affirmations and Solicitation Acceptance for State Architectural/Engineering and Construction Projects ( <b>Exhibit A</b> )	
10. Exceptions Form, <i>if applicable</i> ( <b>Exhibit D</b> )	
11. Respondent's Information, Disclosures, and Financial Form ( <b>Exhibit E</b> )	
12. Letter of intent from a surety company	
13. References	
<b><i>USB Flash Drive (Labeled "HSP")</i></b>	
14. <b>Exhibit B</b> , HUB Subcontracting Plan - The HUB Subcontracting Plan should be submitted in accordance with <b>Section 1.12.1.2*</b>	
<b><i>Separate Envelope within Solicitation Package (Labeled "Security Bond")</i></b>	
15. Security Bond	

## **SECTION 5 – SOLICITATION, CONTRACT, AND CONSTRUCTION DOCUMENTS**

### **5.1 Bidding Requirements and Documents**

The Solicitation documents include the bidding requirements and the proposed Contract documents in Attachment B (General Conditions) to **Exhibit C** of this Solicitation. The bidding requirements consist of the Solicitation advertisement, the RFP, the Respondent's Pricing Proposal Form, and other bidding and contract forms. The Contract documents include the performance and payment bonds, Texas Uniform General Conditions for Construction Contracts with HHSC Supplementary General Conditions, Special Conditions, Prevailing Wage Rate Determination, HUB Subcontracting Plan, other forms and documents identified in the Contract, Drawings, Specifications, and all Addenda issued prior to receipt of Proposals.

### **5.2 Disclosure of Interested Parties**

Subject to certain specified exceptions, *Texas Government Code* §2252.908, Disclosure of Interested Parties, applies to a contract of a state agency that has a value of at least \$1 million or a contract that requires an action or vote by the governing body of the agency before the contract may be signed. One of the requirements of Section 2252.908 is that a business entity (defined as "any entity recognized by law through which business is conducted, including a

sole proprietorship, partnership, or corporation”) must submit a Form 1295, Certificate of Interested Parties, to the state agency at the time the business entity submits the signed contract to the agency.

Respondent represents and warrants that, if selected for award of a Contract as a result of this RFP, Respondent will submit to the Owner a Certificate of Interested Parties at the time Respondent submits the signed Contract. Form 1295 involves an electronic process through the Texas Ethics Commission (“TEC”).

Information regarding the on-line process for completing Form 1295 is available at: [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm).

For further information:

Reference Section 2252.908 of the Texas Government Code which can be accessed at: <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2252.htm#2252.908>

*Texas Administrative Code*, Title 1, Chapter 46, Disclosure of Interested Parties, can be accessed at: [https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=4&ti=1&pt=2&ch=46&rl=Y](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=1&pt=2&ch=46&rl=Y).

If the selected Respondent does not timely submit a completed, certified, and signed TEC Form 1295 to the Owner with the signed Contract, the Owner is prohibited by law from executing a Contract, even if the selected Respondent is otherwise eligible for award. As a result, the Owner may award the Contract to the next qualified Respondent, who will then be subject to this procedure.

### **5.3 Secretary of State Certificate of Fact**

All awarded Respondents must (i) be currently authorized to do business in the state of Texas, (ii) must be able to obtain a Certificate of Fact-Status from the Secretary of State showing the entity status as “in existence”, and (iii) must be able to obtain a Certificate of Account Status from the Texas Comptroller’s Office showing that the Respondent is in good standing. No contract shall be executed with a Respondent that cannot meet these requirements.

### **5.4 Construction Documents and Distribution**

Electronic documents are available from the **ESBD** posting for this RFP or the Owner’s Point-of-Contact listed in **Section 1.13** who can provide two sets of drawings and specifications to a Respondent who is a prime contractor and one set to a Respondent who is a major subcontractor (mechanical and electrical trades) who propose to submit a Proposal. Documents, other than digital documents, will not be issued free to suppliers, material companies, or lower tier subcontractors.

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