TEXAS HEALTH AND HUMAN SERVICES COMMISSION

Invitation for Bids

for

Glass and Door Repair, Replacement and Installation Services, Austin SSLC

IFB No. HHS0010862

NIGP Class/Item No(s): 910-30 Glass Replacement, Maintenance and Repair Services; 910-14 Door Installation, Metal, Maintenance and Repair Services; 910-15 Door Installation, Wood, Maintenance and Repair Services

Procurement Schedule - All Times are Central Time Reference Section 2 for further information	
Solicitation Date Posted to ESBD	08-03-2021
Questions or Clarifications Submission Deadline	08-09-2021 5 p.m.
Responses to Questions or Clarifications - Addendum posted on the ESBD	08-11-2021 5 p.m.,
Response Deadline	08-17-2021, 10:30 a.m.
Anticipated Contract Start Date	09-01-2021

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1 Introduction and Purpose of Solicitation

The Texas Health and Human Services Commission (HHSC) is an agency within the Texas Health and Human Services (HHS) system. The Procurement and Contracting Services (PCS) division of HHSC administers solicitations for HHS.

HHSC PCS is seeking competitive bids to establish Contract(s) for glass and door repair, replacement and installation services at Austin State Supported Living Center.

Both HHS Agencies, HHSC and DSHS, will be entitled to use any contract awarded as a result of this Solicitation.

To be considered for award, Bidders must submit a comprehensive Response which includes all required information and documentation as outlined in this Solicitation to ensure the Bidder meets all requirements, possesses the required experience and qualifications and has the capacity to provide the goods and related services described in this Solicitation. See Appendix A, Submission Instructions and Response Checklist.

1.1 Historical Monetary Value

HHS Agency historical spend for the same or similar services is $25,000.00 for the period of 09-01-2020 to 08-31-2021.

1.2 No Guarantee of Volume, Usage or Compensation

HHS Agency does not guarantee any volume, usage, or compensation to be paid to any Contractor under any Contract resulting from this Solicitation. Additionally, all HHS Agency contracts are subject to appropriations, the availability of funds, and termination.

The estimated historical quantities included in the Price Sheet are provided only as a guideline for preparing the pricing response and should not be construed as representing anticipated or actual quantities that will be required.

1.3 Solicitation Components

This Solicitation includes the following items:

- Exhibit A - Affirmations and Solicitation Acceptance, pages 1-10 and HHSC Uniform Terms and Conditions (UTCs), pages 11-34
- Exhibit B – Bid Execution Page
- Exhibit C – Pricing Sheet
- Exhibit D – Bidder Reference Form
- Exhibit E – Online Bid Room Information

2 Procurement Schedule

The Procurement Schedule dates on the cover page are tentative. HHSC reserves the right to modify these dates at any time by issuing an addendum. Any events listed in the Procurement Schedule after the Response Deadline will occur at the discretion of HHSC.

Responses must be received by HHSC prior to the Response Deadline as indicated in the Procurement Schedule or as changed via an Addendum. Every Bidder is solely responsible for ensuring its Response is received before the Response Deadline. HHSC is not responsible for lost, misdirected or late Responses.

By submitting a Response, the Bidder represents and warrants that any individual submitting the Response and any related documents on behalf of the Bidder is authorized to do so and to bind the Bidder under any resulting contract.

3 Withdrawal of Response

Responses may be withdrawn from consideration or amended at any time prior to the Response Deadline by submitting a written request by email to the point of contact listed in Section 6.1.

The e-mail subject line for withdrawal should contain the Solicitation (IFB) number as indicated on the cover page of this Solicitation. The Bidder is solely responsible for ensuring the email is received by HHSC before the Response Deadline. HHSC is not responsible for lost or misdirected e-mails.

4 HHSC Overview

The Health and Human Services Commission (HHSC) was created in 1991 to oversee and coordinate the planning and delivery of health and human services in Texas. It is established pursuant to Chapter 531, Texas Government Code and is responsible for oversight of Texas Health and Human Services agencies (HHS Agency).

PCS administers the procurement processes, which include Solicitation announcement and publication, Bidder communications, receipt of Responses, screening of timely received responses, and facilitating the evaluation of qualified Responses. PCS, in coordination with each HHS program, manages the execution of the award, through issuance of Purchase Order(s) or other Contract document, resulting from this Solicitation.

5 Definitions

Unless the context clearly indicates otherwise, throughout this Solicitation, the definition given to a term below applies whenever the term appears in this Solicitation, in any Response (Bid) submitted in response to this Solicitation, and in any Contract awarded as a result of this Solicitation. All other terms have their ordinary and common meaning.

a) **Addendum** – A written clarification or revision to this Solicitation issued by HHSC.

b) **Bidder** – Entity or individual that submits a response to this Solicitation. This term also includes anyone acting on behalf of the entity or individual that submits a response, such as an agent, employee, or representative. *See also Respondent below.*

c) **Contract** – A legally enforceable agreement between two or more parties. As a result of this Solicitation, HHSC may issue a Contract document or Purchase Order (see definition).

d) **Contractor** - Each Bidder, business entity or individual, if any, awarded a Contract (Purchase Order) to provide the services or goods as a result of this Solicitation.

e) **Contract Term** – The period of time during which the Purchase Order or Contract is in effect from the start date through the end date and may include renewal or extension periods.

f) **Debarment** – An exclusion from contracting or subcontracting with state agencies on the basis of cause pursuant to Title 34, Part 1, Chapter 20, Subchapter G of the Texas Administrative Code, and the Federal System for Award Management (SAM).

g) **Deliverables** – The services or goods specified in this Solicitation and any resulting Contract, that the Contractor shall perform or deliver to the HHS Agency for acceptance.

h) **Electronic State Business Daily (ESBD)** - The electronic online directory, administered by the Comptroller of Public Accounts, Statewide Procurement Division (SPD), for publishing procurement opportunities which exceed $25,000 in total estimated value and for providing public notice of contract awards. The ESBD may be accessed through the CPA web site at: http://www.txsmartbuy.com/sp.

   Note: The Texas Comptroller of Public Accounts (CPA) recommends utilizing Google Chrome when navigating CPA websites.

i) **Exhibit** – A document, included as an attachment to this Solicitation, which provides terms and conditions, additional requirements and information related to this Solicitation.

j) **HHS Agency** - The Texas Health and Human Services Commission (HHSC) and the Texas Department of State Health Services (DSHS), separately or combined.

k) **Purchase Order** – A legally enforceable agreement between two or more parties. A Purchase Order is issued by HHSC indicating types, quantities, and agreed pricing for services and goods the Contractor will provide. Also considered a Contract.

l) **Response** – All information and materials submitted in response to this Solicitation. May also be referred to as Bid or Bid Response.

m) **Respondent** – a term interchangeable with Bidder.

n) **Scope of Work** – The description of requirements, services, specifications for goods which may be required, and deliverables as provided in this Solicitation and any resulting Contract which the Contractor is required to provide.

o) **Solicitation** - This document, including all exhibits, attachments, appendices, or Addenda (if applicable). May also be referred to as Invitation for Bid or IFB.

p) **Subcontractor** - Any entity or individual that enters into a contract with the Contractor to perform part or all of the obligations of the Contractor under the Contract.

q) **Unit Rate** – The set rate per the unit of measure (UOM), used for payment of the services, included on the Price Sheet under the Contract or Purchase Order. (e.g., Hourly, Daily, Weekly, Monthly, etc.).

r) **Vendor** – A business entity or individual that supplies services or goods and may be a potential Bidder to this Solicitation.

s) **Texas Identification Number (TIN)** – The 11-digit identification number set up through the Texas Comptroller of Public Accounts which is required for any entity or individual to receive payment under a Contract with the State of Texas. Also known as Texas Payee ID Number required in Exhibit A, Affirmations and Solicitation Acceptance. Further information regarding this number may be accessed on the CPA website at https://fmx.cpa.texas.gov/fm/pubs/payment/gen_prov/index.php?s=payee_numreq&p=payee_numreq.

6 General Solicitation Information

6.1 Sole Point of Contact and Communications

The PCS sole point of contact for inquiries concerning this Solicitation is:

Lori Ashworth, CTCD, CTCM

512-406-2462

lori.ashworth@hhs.texas.gov

Bidders shall NOT use the e-mail address above for submission of a response to this Solicitation. See Appendix A for submission requirements.

Bidders shall direct all communications, including questions or clarifications relating to this Solicitation, in writing by e-mail to the HHSC PCS sole point of contact named above; communications by phone will not be accepted. See Appendix A for submission requirements. All other communications between a Bidder and HHS agency staff concerning this Solicitation are prohibited. In no instance is a Bidder to discuss cost information regarding this Solicitation and contained in a response with the HHSC PCS point of contact or any other HHS staff**. Failure to comply with these requirements may result in disqualification of the Response.**

This restriction (as to only communicating in writing with the HHSC sole point of contact identified above) does not preclude discussions between Bidder and agency personnel for the purposes of conducting business unrelated to this Solicitation.

6.2 Offer Period

By submitting a Response to this Solicitation, Bidder agrees that its Response will remain a firm and binding offer for at least the period of time, 240 days, as also stated in the **Affirmations and Solicitation Acceptance (Exhibit A).**

Bidder may extend the time for which its Response will be honored and include the extended period in the Response.

6.3 Costs Incurred

Bidder understands that issuance of this Solicitation or retention of responses in no way constitutes a commitment by HHSC to award a Contract. HHSC accepts no obligations for cost incurred in preparing and submitting a response, including, but not limited to, preparing for or participating in a vendor conference or site visit.

Responses shall be submitted at the sole expense of the Bidder. All responses shall be prepared simply and economically, providing a straightforward, concise delineation of the Bidder's capabilities to satisfy the requirements of this Solicitation.

6.4 Changes, Modifications and Cancellation

HHSC reserves the right to change, amend, or modify this Solicitation prior to the Response Deadline indicated in the Procurement Schedule (cover page). Changes, amendments and modifications will be processed through one or more Addendum. The notification for any Addendum will be processed in accordance with Section 6.7.

HHSC reserves the right to cancel this Solicitation at any time. The notice of cancellation will be in accordance with Section 6.7.

6.5 Ambiguity, Conflict, Discrepancy

Bidders must notify the Sole Point of Contact, Section 6.1, of any ambiguity, conflict, discrepancy, exclusionary specification, omission or other error in the Solicitation in the manner and by the deadline for submitting questions.

If Bidder fails to properly and timely notify the Sole Point of Contact, Section 6.1, of any ambiguity, conflict, discrepancy, exclusionary specification, omission or other error in the Solicitation, the Bidder, whether awarded a contract or not:

a) shall have waived any claim of error or ambiguity in the Solicitation and any resulting contract,

b) shall not contest the interpretation by HHSC of such provision(s), and

c) shall not be entitled to additional compensation, relief, or time by reason of ambiguity, conflict, discrepancy, exclusionary specification, omission, or other error or its later correction.

6.6 Solicitation Questions or Clarifications

HHSC will allow written questions and requests for clarification regarding this Solicitation if submitted by e-mail to the Sole Point of Contact, Section 6.1, by the deadline established in the Procurement Schedule (Cover Page) or deadlines established in subsequent Addenda. Responses to questions or other written requests for clarification will not be provided individually to requestors but will be consolidated in one or more Addenda.

HHSC reserves the right to amend the answers to questions or clarifications prior to the Response Deadline (cover page) through a new Addendum. The notification will be processed in accordance with Section 6.7.

6.6.1 Submission of Questions or Clarifications

All questions and requests for clarification must be submitted in writing by e-mail and include the following information:

a) IFB Number and Title of Solicitation (from cover page) must be included in the e-mail subject line and in the e-mail body

b) Section or Paragraph number from this Solicitation

c) Page Number of this Solicitation

d) Exhibit name, Section or Paragraph, page number from the Exhibit

e) Language, Topic, Section Heading being questioned

f) Requestor Contact Information must be included in the body of the e-mail submitted with questions

Questions or requests for clarification received after the deadline set in the Procurement Schedule (cover page) may be reviewed by HHSC but will not be answered.

6.7 Notification of Addenda or Cancellation

6.7.1 Addenda Notification

Addenda for changes, modifications and answers to questions or requests for clarification as well as subsequent Addenda with amended answers to questions or requests for clarifications, will be posted to the ESBD. It is the responsibility of each Bidder to monitor the ESBD for any Addenda affecting this Solicitation. Failure to check the ESBD will in no way release any Bidder

or awarded Contractor from the requirements of posted Addenda. No HHS Agency will be responsible or liable in any regard for the failure of any Bidder or awarded Contractor to stay informed of all postings to the ESBD. If the Bidder fails to monitor the ESBD for any changes or modifications to this Solicitation, such failure will not relieve the Bidder or Contractor of its obligation to fulfill the requirements as posted.

6.7.2 Cancellation Notification

HHSC reserves the right to cancel this Solicitation at any time. Notice of the cancellation will be posted on the ESBD. Bidders are responsible for monitoring the ESBD frequently for notices regarding this Solicitation.

7 Scope of Work (SOW)

7.1 Scope of Services to be Performed

The required services to be provided are as needed and emergency glass and door replacement, repair and installation services at Austin State Supported Living Center (Austin SSLC).

Services to be performed shall include:

1. Glass window and door installation (including sliding doors).
2. Glass window and door repair, including clear annealed glass for doors, window film or stained-glass replacement, clear tempered insulation glass for sliding glass doors, and replacement windows, doors and glass.
    a. Glass types include but are not limited to obscured glass, laminated glass, float glass, tempered glass, insulated glass and low emission glass.
3. Contractor shall ensure upon completion of services that all glass and doors are sealed and leak free. Only new gaskets and seals shall be used for services under this SOW, in accordance with manufacturer requirements.

All labor and material shall be warrantied for a minimum of one (1) year from date of installation.

All services completed under this SOW are subject to inspection and approval of Austin SSLC.

Contractor shall have available all products and materials needed to perform and complete services requested under this SOW.

7.1.1 Service Location(s)

HHSC, at its sole discretion, during the contract term and with a 30 days' advance written notice, reserves the right to change, consolidate, delete or add service locations.

a) Location(s) for Services

Austin SSLC

2203 W. 35th St., Austin, Texas 78703

HHS Region 7

The Map (PDF) of the HHSC Regions may be accessed at:
https://hhs.texas.gov/sites/default/files/documents/about-hhs/hhs-regional-map.pdf

b) Changes to location(s) for services include but are not limited to: new office space within facility, office closure, consolidation of multiple offices increasing or decreasing square footage, expansion of an office into multiple offices, and relocation of office.

7.1.2 Performance Schedule

Contractor shall perform contracted services, including any minor adjustment call-back services, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. (Central Time). Contractor shall not interfere with normal flow of business at the service location.

Contractor shall respond to all service calls within twenty-four (24) hours of HHS Agency request, unless the Response Deadline is extended by the HHS Agency contract manager.

7.1.3 Outside Regular Hours

Any services performed outside of regular work hours must be approved by the Contract Manager and will be paid at the hourly rate stated in **Exhibit C – Pricing Sheet**.

HHSC reserves the right to declare any necessary work to be an emergency. Services performed by the Contractor outside of the regular service hours, without prior approval, will be at Contractor's own risk and not considered or approved for payment at other than the established regular hours service rate.

Unless otherwise requested by HHSC, Contractor shall respond to a request for emergency services within one (1) hour of notification and continue work until the services requested are complete to the satisfaction of HHSC.

7.1.4 State Holidays

The state holidays observed are maintained by the State Auditor's Office and may be accessed at: http://www.hr.sao.texas.gov/Holidays. HHSC does not specifically require services to be performed on these holidays.

To fulfill the required services, as applicable, the Contractor may perform the services on a holiday observed by HHS at NO additional expense to the HHS Agency.

Performance of services on a state holiday requested by HHSC will be performed and invoiced at the Contract rate for Outside Regular Hours.

7.1.5 Minimum Experience and Qualifications

These minimum requirements apply to the Contractor and Contractor's personnel and any Subcontractor and Subcontractor's personnel.

Documentation of experience and qualifications must be submitted with Response.

a) The Bidder shall have relevant experience required for the performance of the services as outlined in this Solicitation. The minimum experience required is three (3) years.

b) The Bidder's personnel to be assigned to perform the services must be fully trained and, at minimum, have three (3) years relevant experience.

c) Required Licensure and Accreditation

d) All Contractor or Subcontractor personnel assigned to perform the services must be at least 18 years of age.

e) The Bidder must provide a minimum of three (3) verifiable references for current or previous contracts of the same size and for similar or same services within the last three (3) years. See **Exhibit D – Bidder Reference Form**.

7.1.6 HHS Agency Responsibilities

a) Provide reasonable access to the facility(s) and property where services are to be performed.

7.1.7 Contractor Responsibilities

HHSC will look solely to the Contractor(s) for the performance of all contractual obligations resulting from an award based on this Solicitation. No Contractor will be relieved of its obligations for any nonperformance by its Subcontractor(s).

a) The Contractor shall furnish all labor, tools, transportation, equipment, materials, and supplies, as necessary to perform the services and/or provide the goods, if applicable, as required.

b) The Contractor shall be responsible for supervision, clean up and proper disposal of any site work waste.

c) Contractor shall submit to Austin SSLC upon request documentation of all repair work performed, description of the reason for work, corrective action taken, and quantities of parts and material used for completion of the work.

The Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of the Contract including, if applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations.

Training for Contractor Employees:

All Contractor employees, and Subcontractor's employees, if applicable, assigned to perform the services must be trained and experienced in the type of work to be performed. The Contractor shall provide adequate training to all personnel assigned to perform the services on the roles, responsibilities and technical aspects of the work.

The Contractor shall only provide and allow trained and qualified personnel to perform the required services under the Contract.

The Contractor is required to provide current copies of the completed training(s) and of the license or accreditation certificate related to the training upon request by the HHS Agency contract manager. This requirement applies to Subcontractor(s) and Subcontractor's personnel who may be used in the performance of services.

7.1.8 Independent Contractor

It is understood and agreed by the HHS agency and the Contractor that the Contractor is retained as an independent Contractor and in no event shall any employee hired by the Contractor be considered an employee of the State.

a) The Contractor shall not allow any visitors, spouses, children or other relatives of the Contractor's or Subcontractor's employees to be on state property in connection with the Contract during working hours.

b) The Contractor shall be responsible for all employment taxes and other payroll withholding for its employees.

c) The Contractor shall be responsible and liable for the safety and health of its personnel while they are performing work for an HHS agency and while on the HHS Agency premises.

d) The Contractor shall be responsible for verifying that all of its employees assigned to perform services under the Contract are in compliance with all requirements of the Immigration Reform and Control Act of 1986, Public Law 99-603, which became effective November 6, 1986, and any subsequent amendments.

e) The Contractor and the assigned Contractor employees or the Contractor's Subcontractor and Subcontractor employees assigned to perform the services must have all applicable permits, licenses, accreditations and insurance coverage.

7.1.9 Contractor Equipment

The Contractor shall be responsible for the security, maintenance, loss or damage to its equipment or its Subcontractor's equipment while on HHS Agency premises.

HHS Agency will NOT be held responsible for damage to or loss of the Contractor's or Subcontractor's equipment while on HHS Agency premises, while in route to the HHS Agency or in route back to Contractor's location.

7.1.10 Background Check for Personnel

The Contractor or an independent third party shall conduct comprehensive, statewide Texas Department of Public Safety (DPS) criminal and sex offender background checks on all Contractor personnel (e.g., permanent and temporary personnel and/or Subcontractor and Subcontractor personnel) who will be assigned to perform the services under the Contract.

The Contractor shall be responsible for all background check expenses.

The background checks must be conducted prior to any Contractor or Subcontractor personnel arriving on state property and beginning the required Contract services.

Supporting documentation confirming the completion of the background checks is subject to review upon request by HHSC. Failure to produce the requested documentation, as with any violation of the Contract, constitutes grounds for termination of the Contract and/or Purchase Order with cause.

The background checks shall include, but not be limited to Social Security Number Verification.

Statewide criminal and sex offender records shall include, but not be limited to, all Texas counties and out-of-state counties based on the current and previous addresses of the key personnel for the last seven years.

Personnel with sex offender, child or adult abuse, or fraud convictions shall not be allowed to provide Contract services and shall not be allowed access to HHS Agency property, facilities, or documents in connection with the Contract.

Assigned personnel with misdemeanor convictions must receive prior approval by the HHS Agency before being allowed to work under this Contract.

7.1.11 Absenteeism and Vacation

The Contractor shall provide substitutes for any employees not present at the HHS facility to perform services due to illness or vacation. The Contractor shall provide relief personnel as necessary and/or work overtime, at no cost to the HHS agency, to ensure that the requirements of this Contract are performed and accomplished as required.

7.1.12 Telephone Service

The Contractor shall have an active telephone service answered during normal business hours. Normal business hours are between 8:00 a.m. and 5:00 p.m. Monday through Friday, unless otherwise stated in the Solicitation.

7.1.13 24-Hour Contact

The Contractor must provide the HHS Agency Contract Manager with 24-hour contact information for a minimum of two (2) Contractor personnel so the HHS Agency may communicate urgent performance issues that require immediate correction or any other issues that may occur. The Contractor’s 24-hour contact must always be available. Any urgent

performance issues requiring immediate correction will be followed up in writing by the HHSC Contract Manager.

NOTE: Bidder must complete the information below and submit a copy of this page with the Response.

24-hour contact information – Provide minimum of two (2):

Contact Name	Office Phone	Cell Phone	Email

7.1.14 Contractor and Contractor Personnel Conduct

All personnel employed by the Contractor to fulfill the requirements and terms and conditions of the Contract remain under the Contractor's sole direction and control.

The following applies to the Contractor, Contractor employees, and, if applicable, the Contractor's Subcontractor and Subcontractor's employees.

7.1.14.1 Performance Compliance

While performing the services, all Contractor and Subcontractor personnel must comply with all applicable state rules, regulations, and HHS Agency's requests regarding personal and professional conduct applicable to the services being provided as well as the service locations. All personnel must always conduct themselves in a businesslike and professional manner.

If the HHS Agency determines in good faith that an employee of the Contractor or Subcontractor is not conducting himself or herself in accordance with the conduct standards under this Contract, the HHS Agency may provide written notice to the Contractor. Upon receipt of such notice, Contractor must promptly investigate the matter and take appropriate action that may include:

a) Removing the employee from the project;

b) Providing the HHS Agency with written notice of such removal; and

c) Providing the HHS Agency with the information for the replacement employee, who must be qualified and trained, within the timeline designated by the HHS Agency.

7.1.14.2 Contractor Supervisor(s) and Performance Monitoring

The Contractor shall provide competent supervisor(s) at each HHS Agency facility where services are performed. A Supervisor may be considered a roving Supervisor to monitor more than one location with approval from the HHS Contract Manager.

All supervisors must be able to communicate in English verbally and in writing. The supervisor shall be knowledgeable of the Statement of Work (SOW) and requirements of the Contract.

The Contractor and the supervisors shall continuously monitor and maintain awareness, by personal inspection, of the quality and completeness of the work being performed. The Contractor and supervisor may be requested and required to inspect the HHS Agency facility with the HHS Agency Contract Manager or designee.

7.1.14.3 Personnel Removal and Replacement

a) Removal

The HHS Agency may request removal of any Contractor or Subcontractor employee assigned to the Contract for cause, including but not limited to:

1. poor or unacceptable work performance,
2. theft,
3. abusive language or behavior, or
4. improper attire, in accordance with the terms and conditions of this Contract.

Occurrences of this type may be cause for termination of the Contract.

b) Replacement

Replacement of Contractor or Subcontractor personnel will be subject to HHS Agency review and approval. At the request of the HHS Agency, the Contractor must replace, any Contractor or Subcontractor personnel who are not adequately performing the required services or who are unable to work effectively with the HHS Contract Manager or other HHS staff. The Contractor will provide replacement personnel who have the required qualifications and training as outlined in this Solicitation and resulting Contract. The Contractor and HHS Contract Manager will work together in the event of any such required replacement to prevent disruption in the services or performance schedule and will mutually agree upon the timeline for the replacement.

7.1.14.4 Intoxicants and Illegal Drugs Prohibited

The use or possession of any kind of intoxicants or illegal drugs while employees are on duty at HHS Agency premises, including the building and grounds, is prohibited. At the sole discretion of the HHS Agency, non-compliance with this requirement may result in termination of the Contract.

7.1.14.5 Smoking Prohibited

All HHS Agency facilities are nonsmoking buildings. **Contractor's and Subcontractor's employees are prohibited from smoking in all non-designated areas.**

7.1.14.6 Contractor Uniforms and Identification

All Contractor and Subcontractor employees are required to wear company uniforms and identifying badges while providing services in or delivering to HHS Agency premises.

Uniforms may be company shirts or T-shirts, smocks, and pants or shorts. The Contractor shall contact the HHS Agency Contract Manager to request approval for the use of other apparel.

The Contractor's or Subcontractor's uniform apparel must be of one standard color or design.

The Contractor's or Subcontractor's on-site managers or supervisors may wear a distinguishing style of uniform but should strive to maintain a company "standard color" to aid in identification.

All Contractor and Subcontractor personnel must prominently display their company identification badges or the company name and employee's name (first and/or last) must be on their shirt, T-shirt or smock.

8 HUB Subcontracting Plan (HSP) Requirements

The Comptroller of Public Accounts (CPA), Statewide Procurement Division (SPD) administers the Historically Underutilized Business (HUB) Program in accordance with Chapter 2161, Texas Government Code, and Rules §20.281 to §20.298, Title 34, Chapter 20, Subchapter D, Division 1, Texas Administrative Code. The HUB Program rules may be accessed at: https://comptroller.texas.gov/purchasing/vendor/hub/.

It is the policy of HHSC to promote and encourage contracting and subcontracting opportunities with State of Texas-certified Historically Underutilized Businesses (HUBs). Information regarding the HHSC Policy on Using HUBs may be accessed at: https://hhs.texas.gov/doing-business-hhs/contracting-hhs/historically-underutilized-business-opportunities-program.

8.1 HUB Subcontracting Plan (HSP)

The HHSC HUB Coordinator has reviewed the service requirements of this Solicitation and determined that subcontracting opportunities are NOT probable; therefore, Bidders are NOT required to submit a HSP with their responses.

Although submission of the HSP is not required, if Bidders identify subcontracting opportunities or have a need to subcontract to fulfill any portion of an awarded Contract, Bidders are encouraged to submit, with their Proposal, a properly completed HSP.

To obtain more information regarding the HSP, contact the HUB Program Office. Provide the Solicitation number and title (cover page).

- Phone: 512-406-2570 or
- E-mail: HHSCHUB@hhs.texas.gov

9 Pricing Information

9.1 Pricing Structure

Prices offered, as part of the Bidder's response, must be firm, fixed prices for the initial term of the Contract.

The pricing must be submitted only using **Exhibit C Pricing Sheet** based on the description and the unit of measure(s) provided for each line item. The unit prices must include all Solicitation requirements, including, but not limited to, labor, equipment, materials, supplies and all related expenses.

9.2 Price Adjustments

Contractors are required to immediately implement any price decrease that may become available during the Contract term. Contractor must notify the designated contract manager in writing so that a Purchase Order Change Notice or Contract Amendment may be processed. The Contractor will be provided the contract manager contact information upon award.

9.2.1 Price Adjustment Index

Price adjustments are not automatic. Prices only may be adjusted at the sole discretion of HHSC.

HHSC may permit price adjustments when correlated with the index as specified below and as published by the Bureau of Labor Statistics (BLS), Region VI, Washington, DC 20212.

BLS Website: https://data.bls.gov/cgi-bin/srgate

CPI-W Urban Wage Earners and Clerical Workers – Series ID: CWURR0000AA0:
https://data.bls.gov/timeseries/CWUR0000AA0

CPI-U All Urban Consumers – Series ID: CUUR0000AA0
https://data.bls.gov/timeseries/CUUR0000AA0

When using the most recent monthly information from the index, the following applies:

A = Index from the month of the Response Deadline of this Solicitation, OR

The effective date/month of the last approved price increase or renewal option exercised

B = Current or latest baseline index

The allowable percent change must be calculated as follows:

B-A ÷ A x 100% = Percent of allowable price increase or decrease

Failure by the Contractor to calculate this formula and provide any supporting documentation will not be considered a properly submitted price increase request.

The Contractor may offer price decreases in excess of the allowable percent change at any time during the term of the Contract.

9.2.2 Price Adjustment Requests

The Contractor must provide, in writing to the HHS Agency contract manager, a request for a price adjustment. The adjustment request must use the index and formula identified in **Section 9.2.1.**

Contractor must provide supporting documentation to justify any price adjustment. Any request submitted that fails to use the formula above for calculating a price adjustment will not be considered a complete, properly submitted request. Additionally, any request submitted by a Contractor that does not include supporting documentation will not be considered a complete, properly submitted price adjustment request.

The HHS Agency reserves the right to accept or reject the request for a price adjustment. The Contractor will receive written notification, through a Purchase Order Change Notice or Contract Amendment, from the HHS Agency contract manager documenting action taken, to include effective dates, for any adjustments approved.

9.2.3 Federal Minimum Wage Adjustments

Contractor may request a price adjustment based on an increase in the Federal Minimum Wage Rate, published by the U.S. Department of Labor (USDOL), if applicable.

The request must be submitted to the HHS Agency contract manager in writing and include supporting documentation from the USDOL reflecting the increase and the effective date of the increase. HHSC reserves the right to accept or reject the request for an increase.

The effective date for an increase, if approved, will be based on the date of approval by the HHS Agency. Retroactive increases will not be allowed or approved if the USDOL effective date is prior to the date the written request is received by HHSC. Notification of an approved increase in the Contract rate will be provided through a Purchase Order Change Notice or Contract Amendment from the HHS Agency contract manager to include the new unit price and effective date for the increase.

10 Changes to The Contract

Following award, additional services or changes to the original solicitation be added/deleted via Purchase Order Change Notice (POCN) approved by the Agency and the Vendor.

11 Contract Term

11.1 Term of Contract or Purchase Order

The term of the awarded Contract or Purchase Order will be effective on the date the Purchase Order is issued and will expire based on the schedule for delivery of services as outlined in this Solicitation or by the date or delivery days after receipt of order (ARO) provided by the Bidder.

11.2 Contract Term:

Any contract resulting from this Solicitation will have a term beginning 09-01-2021 to 08-31-2023.

11.3 Extension Option

HHSC, at its sole option and subject to availability of funding, may extend the Contract beyond the initial term and all renewal periods for up to one (1) year as necessary to ensure continuity of service, to process a new solicitation, to secure a new contract, for purposes of transition to a new Contractor, or as otherwise determined by HHSC.

This extension, if exercised, will require the Contractor to continue performing services in accordance with the Contract requirements and all terms and conditions.

12 Contract Administration/Transactional Purchase Order Administration

12.1 Contract Manager/Program Lead

A Contract Manager or Program Lead will be designated, and the contact information will be provided to the Contractor.

After award of any Contract resulting from this IFB, all communications related to the Contract and requests for changes to the Contract will be processed through the designated Contract Manager.

12.2 Services Performed

a) The HHS Contract Manager or designee will monitor all work performed which shall be in accordance with this Contract, local codes and ordinances and any other authority having lawful jurisdiction and shall periodically communicate with the Contractor via telephone, email, and conduct on-site visits to address questions, concerns or progress.

b) It is important that the Contractor performs all duties and requirements as stated. Failure to do so may result in termination of the Contract.

c) All services and deliverables must meet or exceed the required levels of performance specified in this Solicitation.

d) Contractor will be notified by the HHS Agency Contract Manager or designee in writing to correct any service or portion of a service. The Contractor shall take immediate action to correct the service or portion of a service at no additional cost to the HHS Agency. The Contractor shall notify the HHS Agency Contract Manager or designee upon completion for HHS Agency inspection and acceptance, as applicable.

12.3 Performance Reporting

The HHS Contract Manager is required to report vendor performance for purchases over $25,000 through the Texas Comptroller of Public Accounts (CPA) Vendor Performance Tracking System (VPTS). The VPTS reporting is required throughout the life of a contract and not just at its conclusion. HHSC PCS, at its sole discretion, may submit reports in the VPTS on Purchase Orders under $25,000. The VPTS information and report search may be accessed at: https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/.

Performance Notification – Non-Material Deficiency

The HHS Agency may notify Contractor in writing of specific areas of the Contractor's performance that fail to meet performance expectations, standards, or schedules, but that, in the determination of the HHS Agency, do not result in a material deficiency or delay in the implementation or operation of the services.

12.4 Contractor Response to Notification of Non-Material Deficiency

The Contractor shall, within three (3) business days (or another date approved by the HHS Agency) of receipt of written notice of a non-material deficiency, provide the HHS Agency contract manager a written response that:

a) Explains the reasons for the deficiency, the Contractor's plan to address or cure the deficiency, and when the deficiency will be cured; or

b) If the Contractor disagrees with the HHS Agency's findings, the response must include the reasons why the findings are disputed.

The Contractor's noncompliance or rectifying the deficiency may result in delayed payment or non-payment as determined by the HHS Agency.

12.5 Corrective Action Plan (The Plan)

At its discretion, the HHS Agency may request in writing and require the Contractor to submit a detailed written Corrective Action Plan and include how the Contractor will correct or resolve an issue, deficiency, or a breach of this Contract.

The Plan must include, but is not limited to:

a) A detailed explanation of the reasons for the cited deficiency;

b) The Contractor's assessment or diagnosis of the cause; and

c) A specific proposal to cure or resolve the deficiency.

The Plan must be submitted by the deadline set forth in the HHS Agency's request.

The Plan is subject to approval, which will not be unreasonably withheld, by the HHS Agency.

12.6 Performance Issues

The Contractor shall be required to correct all performance issues reported by the HHS Contract Manager within 48 business hours. If requested by the HHS Agency, the Contractor shall provide a written report detailing the performance issue(s) and resolution. The HHS Agency's Contract Manager will report/discuss performance deficiencies with the Contractor and seek to achieve resolution of the issues.

The HHS Agency Contract Manager may report the following compliance issues to HHSC/PCS for resolution.

a) Failure to reach agreement on corrective action.

b) Failure to perform in accordance with the Corrective Action Plan.

c) Violations of this Contract and Corrective Action Plan(s).

12.7 Confidential or Proprietary Information

Bidder Requirements Regarding Disclosure

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. Other legal authority also requires HHSC to post certain contracts and Solicitation responses on its public website and to provide such information to the Legislative Budget Board for posting on its website.

Under the PIA, certain information is protected from public release. If Bidder asserts that information provided in its Solicitation Response is exempt from disclosure under the PIA, Bidder must:

a) Mark Original Proposal

1. Mark the Original Proposal, on the top of the front page, the words "CONTAINS CONFIDENTIAL INFORMATION" in large, bold, capitalized letters (the size of, or equivalent to, 12-point Times New Roman font or larger); and

2. Identify, adjacent to each portion of the Solicitation Response that Bidder claims is exempt from public disclosure, the claimed exemption from disclosure (NOTE: no redactions are to be made in the Original Solicitation Response).

b) Certify in Original Solicitation Response - Affirmations and Solicitation Acceptance (attached as Exhibit A to this Solicitation)

1. Certify, in the designated section of the Affirmations and Solicitation Acceptance, Bidder's confidential information assertion and the filing of its Public Information Act Copy; and

2. Submit Public Information Act Copy of Proposal

   i. 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:

   ii. 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);

   iii. Each portion Bidder claims is exempt from public disclosure must be redacted (blacked out); and

   iv. Bidder 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 Subsection (a)(2), above. The only difference in required markings and information between the Original Proposal and the "Public Information Act Copy" of the proposal will be redactions - which can only be included in the "Public Information Act Copy." There must be no redactions in the Original Proposal.

By submitting a response to this Solicitation, Bidder agrees that, if Bidder does not mark the Original Solicitation Response, provide the required certification in the Affirmations and Solicitation Acceptance, and submit the Public Information Act Copy, Bidder's Solicitation Response will be considered to be public information that may be released to the public in any manner including, but not limited to, in accordance with the Public Information Act, posted on the HHSC public website, and posted on the Legislative Budget Board's public website.

If any or all Bidders submit partial, but not complete, information suggesting inclusion of confidential information and failure to comply with the requirements set forth in this section, HHSC, in its sole discretion and in any solicitation, reserves the right to (1) disqualify all Bidders that fail to fully comply with the requirements set forth in this section, or (2) to offer all Bidders that fail to fully comply with the requirements set forth in this section additional time to comply.

Bidder should not submit a Public Information Act Copy indicating that the entire proposal is exempt from disclosure. Merely making a blanket claim that the entire proposal is protected from disclosure because it contains any amount of confidential, proprietary, trade secret, or

privileged information is not acceptable, and may make the entire Solicitation Response subject to release under the PIA.

Solicitation Responses should not be marked or asserted as copyrighted material. If Bidder asserts a copyright to any portion of its proposal, by submitting a proposal, Bidder agrees to reproduction and posting on public websites by the State of Texas, including HHSC and all other state agencies, without cost or liability.

HHSC will strictly adhere to the requirements of the PIA regarding the disclosure of public information. As a result, by participating in this solicitation process, Bidder acknowledges that all information, documentation, and other materials submitted in the Solicitation Response in response to this Solicitation may be subject to public disclosure under the PIA. HHSC does not have authority to agree that any information submitted will not be subject to disclosure. Disclosure is governed by the PIA and by rulings of the Office of the Texas Attorney General. Bidders 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. HHSC assumes no obligation or responsibility relating to the disclosure or nondisclosure of information submitted by Bidders.

For more information concerning the types of information that may be withheld under the PIA or questions about the PIA, refer to the Public Information Act Handbook published by the Office of the Texas Attorney General or contact the attorney general's Open Government Hotline at (512) 478-OPEN (6736) or toll-free at (877) 673-6839 (877-OPEN TEX). To access the Public Information Act Handbook, visit the attorney general's website at http://www.texasattorneygeneral.gov.

12.8 Bidder Waiver – Intellectual Property

Submission of any document to any HHS agency in response to this solicitation constitutes an irrevocable waiver and agreement by the submitting party to fully indemnify the state of Texas and the HHS agency from any claim of infringement by the HHS agency regarding the intellectual property rights of the submitting party or any third party for any materials submitted to HHS by the submitting party.

13 Invoicing and Payment

13.1 Bill-to Address

The Contract or Purchase Order will include the appropriate bill-to address for the submission of invoices to any HHS agency requesting services.

13.2 Invoice Information

Invoices submitted to the HHS agency must reflect the Contract or PO number and must provide the work completed, in detail, for which payment is due. The detail of the work completed must comply with the Pricing Sheet (see **Exhibit C**).

13.3 Payment

a) Payment will be made by the HHS Agency in accordance with the pricing provided on **Exhibit C - Pricing Sheet**. The pricing is considered all-inclusive and no other pricing may be provided on an invoice.

b) The HHS Agency must receive products included on an invoice prior to approving the invoice for payment.

c) Any additional expenses incurred by the Contractor are the responsibility of the Contractor and will not be paid by the HHS Agency.

d) The HHS Agency will not pay any per diem, travel, hotel, equipment, phone calls, paper, reproduction services, office space, or other incidental expenses related to performing the services required by the Contract.

13.4 Invoice Submission

a) Contractor must submit invoices on a monthly basis or as otherwise indicated on the purchase order.

b) Separate invoices must be submitted for each delivery and/or service performed, as applicable.

c) Failure to submit an accurate and valid invoice with all required information may result in delay of payment.

13.5 Disputed Invoice(s)

In accordance with 34 Texas Administrative Code, Rule §20.487(b), the HHS Agency will immediately return disputed invoices to the Contractor but in no event later than the 21st day after the HHS Agency receives the invoice. The HHS Agency reserves the right to dispute any portion of an invoice and will attempt to resolve the dispute with the Contractor in good faith. The HHS Agency shall not be required to pay any disputed portion of an invoice until the dispute is resolved. Notwithstanding any such dispute, the Contractor must continue to perform the services and/or produce deliverables in compliance with the terms of the Contract. Pending resolution of a dispute, the HHS Agency will continue to process payments for undisputed amounts and invoices to the Contractor.

14 Insurance Requirements

Contractor is required to submit bond documentation and current certificates of insurance or other proof acceptable to the HHS Agency at the time of notification of a potential award and such proof must be received by the HHS Agency Contract Manager prior to execution by the HHS Agency of any contract. The HHS Agency, in its sole discretion, may request additional evidence of insurance or bonds coverage as deemed necessary.

The HHS Agency may designate a deadline for submission of proof of required insurance or bonds. Failure to timely submit acceptable proof may result in the HHS Agency's revocation of the award.

Contractor shall maintain the required insurance during the initial Contract term and any renewal or extension period exercised. Contractor shall be responsible for ensuring its subcontractors are in compliance with all applicable insurance and bond requirements.

14.1 Specific Insurance Requirements

For the full term of the Contract, including the original Contract term and all periods of renewal and all additional extensions, Contractor and its Subcontractors, if any, shall obtain and maintain all insurance coverage as set forth below. Contractor shall be responsible for ensuring its Subcontractors' compliance with all requirements.

14.2 Workers' Compensation and Employers' Liability

Contractor shall maintain Workers' Compensation insurance coverage in accordance with applicable statutory limits.

a) Workers' Compensation: Statutory Limits

b) Employers Liability: Each Accident $1,000,000

c) Disease: Each Employee $1,000,000

d) Disease: Policy Limit $1,000,000

14.3 Commercial Automobile Liability

Coverage provided should include any automobile, including hired and non-owned automobiles, at: $1,000,000 combined single limit for each accident.

14.4 Commercial General Liability

Occurrence Based:

a) Bodily Injury and Property Damage

b) Each occurrence Limit: $1,000,000

c) Aggregate Limit: $2,000,000

d) Medical Expense Each Person: $5,000

e) Personal Injury and Advertising Liability: $1,000,000

f) Products / Completed Operations Aggregate Limit: $2,000,000

g) Damage to Premises Rented to HHSC or Affiliated Entity: $50,000

14.5 Umbrella/Excess Liability

Per Occurrence: $1,000,000

a) All required bonds and insurance shall be in a form satisfactory to the HHS Agency and must be issued by companies or financial institutions that:

   1. have a Financial Strength Rating of "A" or better from A.M. Best Company, Inc.;

   2. have a Financial Size Category Class of "VII" or better from A.M. Best Company, Inc.; and

   3. are duly licensed, admitted and authorized to do business under the laws of the State of Texas.

b) The HHS Agency shall be named as the obligee in each required bond.

c) All required insurance contracts must:

   1. be written on a primary and non-contributory basis with any other insurance coverages the Contractor currently has in place; and

   2. include a Waiver of Subrogation Clause in favor of the State of Texas and its officers, directors, and employees for bodily injury (including death), property damage or any other loss.

Each insurance policy, other than worker's compensation, employer's liability and professional liability, must name the State of Texas and its officers, directors, and employees as additional insureds on the original policy and all renewals or replacements.

The insurance shall be evidenced by delivery to the HHS Agency of certificates of insurance executed by the insurer or its authorized agency stating coverage, limits, expiration dates, and compliance with all required provisions. Upon request, the HHS Agency shall be entitled to receive, without expense, certified copies of the policies and all endorsements. Except as otherwise provided herein, required coverage must remain in full force and effect throughout the term of the Contract and any extensions thereof, and provide adequate coverage for incidents discovered after termination of the Contract.

Contractor Shall

a) Provide written notice to the HHS Agency contract manager as indicated on the purchase order at least 30 calendar days prior to any cancellation, non-renewal, or material change of a required policy;

b) Ensure all insurance policies and certificates of insurance for required coverage are written to include all products, services, and locations related to Contractor's performance under the Contract; and

c) Deliver to the HHS Agency contract manger as indicated on the purchaser order all renewal policies at least ten (10) calendar days prior to any expiration of a required policy. All renewal policies and corresponding certificates of insurance must meet all terms set forth herein.

Contractor must submit original certificates of insurance for each required insurance contract, and any renewals thereof, within 15 days after contract execution. Renewal certificates shall be submitted prior to or within 15 days after expiration of the existing policy. Bidders must submit required bonds when and as provided in sections of this Solicitation outlining bond requirements.

Contractor shall ensure that all Contract provisions concerning liability, duty, and standard of care, together with all indemnification provisions, shall be underwritten by contractual liability coverage sufficient to include the awarded Contractor's obligations under any contract awarded as a result of this Solicitation. In addition, Contractor shall be responsible for ensuring all Subcontractors used in the performance of the Contract maintain the insurance required in this section (covering all goods and services provided by the Subcontractors) throughout the Contract term and all renewals.

15 Screening of Responses

Neither issuance of this Solicitation nor retention of Responses constitutes a commitment on the part of HHSC to award a Contract. HHSC maintains the right to reject any or all Responses and to cancel this Solicitation if HHSC, in its sole discretion, considers it to be in the best interests of HHSC to do so.

Retention of Responses by HHSC confers no legal rights upon any Bidder.

HHSC reserves the right to select qualified Bidders to this Solicitation with or without discussion of the Response with Bidders.

15.1 Administrative Screening

An administrative screening of Responses timely received will be conducted by HHSC PCS to determine which Responses meet all Solicitation minimum requirements and are deemed responsive and qualified for further consideration and evaluation.

Appendix A – Submission Instructions and Response Checklist will be used to conduct the screening process.

HHSC reserves the right to ask questions or request clarification from any Bidder at any time during the screening process.

15.2 Minor Technicalities

HHSC reserves the right to waive minor technicalities in a Response. A "minor technicalities" is an omission or error that, in HHSC's determination if waived or modified when screening Responses, would not give a Bidder an unfair advantage over other Bidders or result in a material change in the Response or Solicitation requirements.

HHSC, at its sole discretion, may give a Bidder the opportunity to submit missing information or make corrections. The missing information or corrections must be submitted to the Point of Contact e-mail address, Section 6.1 by the deadline set by HHSC. Failure to respond before the deadline may result in HHSC's rejecting the Response and the Bidder not being considered for award.

Note: Any disqualifying factor set forth in this Solicitation does not constitute an informality (e.g., Submission of Exhibit A Affirmations and Solicitation Acceptance, which must be signed and submitted with the Solicitation response).

16 Evaluation

16.1 Evaluation of Responses

HHSC reserves the right to select qualified Responses to this Solicitation without discussion of the Responses with Bidders. It is understood that all Responses will become a part of HHSC PCS' official procurement files and the Contract after award or the procurement has been terminated and will be available for public inspection in accordance with the Texas Public Information Act.

HHSC reserves the right to conduct studies and other investigations as necessary to evaluate any Response.

16.2 Conformance with State Law for Evaluation

Responses shall be evaluated in accordance with Title 10, Subtitle D, Chapter 2155, sections 2155.074, 2155.075(a), and 2155.144; and Chapter 2156, section 2156.007, Texas Government Code; and Chapter 2157, section 2157.003.

Sections 2155.074, 2156.007, and 2157.003 provide the Best Value Standard for the purchase of goods or services and for the award, which includes consideration of the purchase price and whether the Bidder meets all requirements of this Solicitation.

16.3 Specific Evaluation Criteria

HHSC shall not be obligated to select the Bidder with the lowest price but shall make an award to the Bidder that provides the best value to the State of Texas.

All Responses will be evaluated according to the following criteria:

a) Bidder meeting or exceeding specifications in accordance with this solicitation

b) Bidder's ability to meet delivery requirements

c) Price

16.3.1 Required Pricing

The Pricing Sheet**, Exhibit C,** identifies the pricing requested and required for the products and related services outlined in this Solicitation. The pricing is significant in the overall evaluation of the responses. HHSC PCS is not obligated to select the lowest priced response. The pricing will be evaluated across all Bidders to determine the Response with the lowest price per line item or lowest total for all line items.

The award will be made to the Bidder whose response offers the best value to the State based on all factors considered, including price.

16.3.2 Verification of Past Vendor Performance

By submitting a Response, the Bidder generally releases from liability and waives all claims against any party providing information about the Bidder at the request of HHSC.

Bidders may be rejected as a result of unsatisfactory past performance under any contract(s) as reflected in vendor performance reports, reference checks, or other sources.

The Bidder's past performance may be considered in the evaluation process and prior to making an award determination.

Reasons for which a Bidder may be denied a contract include, but are not limited to:

a) Bidder has unfavorable reports or grade less than a C on the CPA Vendor Performance Tracking System (VPTS). VPTS may be accessed at:

https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/,

OR,

b) Bidder is currently under a corrective action plan through HHSC, OR,

c) Bidder has had repeated, negative vendor performance reports for the same reason, OR,

d) Bidder has a record of repeated non-responsiveness to vendor performance issues, OR,

e) Bidder has contracts or purchase orders that have been cancelled in the previous 12 months for non-performance or sub-standard performance.

In addition, HHSC may examine other sources of vendor performance which may include information provided by any governmental entity, whether an agency or political subdivision of the State of Texas, another state, or the Federal government.

The performance information may include, but is not limited to:

a) Notices of termination,

b) Cure notices,

c) Assessments of liquidated damages,

d) Litigation,

e) Audit reports, and

f) Non-renewals of contracts.

Further, HHSC, at its sole discretion, may initiate investigations or examinations of vendor performance based upon media reports. Any negative findings, as determined by HHSC in its sole discretion, may result in HHSC's removing the Bidder from further consideration for award.

16.3.3 Ability to Perform

Evaluation will be based upon Bidder's demonstrated experience and ability to provide goods and related services with consideration of the Bidder's business size and scope of all operations, the number of employees and supervisors available to perform the services. The evaluation may also consider the Bidder's demonstrated financial capability, financial solvency and capacity to fulfil the requirements of this Solicitation.

17 Award

HHSC, at its sole discretion, reserves the right to cancel this Solicitation at any time or decline to award any contract(s) as a result of this Solicitation.

All awards are contingent upon approval of the HHSC Executive Commissioner or designee.

HHSC, at its sole discretion, reserves the right to make a single award or multiple awards to achieve the highest overall best value for the state.

18 Disclosure of Interested Parties

Subject to certain specified exceptions, Texas Government Code Section 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 or a Purchase Order can be issued. 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 is notified it is a potential awardee or at the time the business entity submits the signed contract to the agency.

Bidder represents and warrants that, if selected for award of a contract as a result of this Solicitation, Bidder shall submit to HHSC a Certificate of Interested Parties at the time Bidder submits the signed contract or is notified by HHSC that Bidder is a potential awardee. Form 1295 involves an electronic process through the Texas Ethics Commission (TEC).

Information regarding the online process for completing Form 1295 is available at: 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.

Title 1, Chapter 46, Disclosure of Interested Parties of the Texas Administrative Code which 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 .

If the potential awardee does not timely submit a completed, certified and signed TEC Form 1295 to HHSC after notification of being a potential awardee or with the signed Contract, HHSC is prohibited by law from executing a contract, even if the potential awardee is otherwise eligible for award. Each qualified Bidder will be subject to this procedure.

19 Protest Procedures

Texas Administrative Code, Title 1, Part 15, Chapter 391, Subchapter D provides a formal protest procedure to be used by any Bidder who is allegedly aggrieved in connection with the solicitation, evaluation, or award of a contract by HHSC.

Appendix A – Submission Instructions and Response Checklist

Before submitting a response to this Solicitation, read the ENTIRE solicitation including all exhibits, attachments, forms, etc. Failure to read any part of this Solicitation will not relieve the Bidder from any submission requirements or a Contractor of its contractual obligations.

Each Bidder submits a Response at its own risk and is solely responsible for ensuring its Response is submitted in accordance with all Solicitation requirements, including, but not limited to, instructions in this Appendix, proper labeling, sufficient postage or delivery fees, and ensuring timely receipt by HHSC.

In no event will HHSC be responsible or liable for any delivery delays or errors. Responses must be received by HHSC by the Response Deadline as identified in the Procurement Schedule on the cover page of this Solicitation.

Each Response must include all required information/documents for this Solicitation, but also may contain additional information considered pertinent by Bidder. HHSC reserves the right to reject any or all responses. All responses become the property of HHSC and subject to the Public Information Act (PIA).

Failure to comply with these instructions or the submission requirements may result in disqualification of the response.

SUBMISSION REQUIREMENTS

Responses submitted by facsimile, or any other method not specified in this Solicitation, will NOT be accepted or considered.

1. Hardcopy Submission – USPS, Express/Overnight Mail, Hand Delivery

The Bidder is solely responsible for ensuring that the Response is complete and submitted to and RECEIVED by HHSC before the Response Deadline identified in the Procurement Schedule (cover page) or deadline established in subsequent Addenda. HHSC is not responsible for lost, misdirected or late Responses. Late Responses will be disqualified.

The Response must include all documentation required by this Solicitation and this Appendix.

a) Submit one (1) original of the complete response package.

b) The complete Response package must be enclosed in properly documented and sealed envelope(s) or sealed cartons.

c) In addition, submit one (1) copy of the original on portable media, such as a compact disk or USB, compatible with Microsoft Office 2000. Any disparities between the contents of the original and the copy submitted on portable media will be interpreted in favor of HHSC.

d) The envelope(s) or carton(s) must be properly labeled, on the face or top of each, with the following:

1. Bidder's name
2. Contact Name for Response
3. Phone number for Response Contact
4. Solicitation number from cover page
5. HHSC PCS Purchaser Name (Sole Point of Contact, Section 6.1).

e) The address for hand delivery, express/overnight delivery address is:

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

f) The address for USPS mail is:

Texas Health and Human Services Commission
Procurement and Contracting Services
Attn: Bid Room Coordinator
Procurement and Contracting Services Building
P.O. Box 149166
Austin, TX 78714-9166

2. E-Mail Submission

The Bidder is solely responsible for ensuring that the electronic Response is complete and submitted to, and RECEIVED by, HHSC before the Response Deadline identified in the Procurement Schedule (cover page) or deadline established in subsequent Addenda. HHSC is not responsible for lost, misdirected or late Responses. Late Responses will be disqualified.

The Response, including all documentation required by this Solicitation and Appendix, must be sent in its entirety in one or more e-mails as warranted by the size of each attachment.

Responses sent by e-mail must be sent to: pcsbids@hhsc.state.tx.us.

a) E-mail Subject Line

The e-mail subject line must contain the Solicitation number, title as indicated on the cover page and number of e-mails if more than one (e.g., 1 of #, etc.).

b) Body of E-mail

The body of each e-mail must include the following information:

- Bidder's name
- Contact Name for Response

- Phone number for Response Contact
- Solicitation number from cover page
- Purchaser Name (Sole Point of Contact, Section 6.1).

  HHSC takes no responsibility for e-mailed Responses that are captured, blocked, filtered, quarantined or otherwise prevented from reaching the proper destination server by any HHSC anti-virus or other security software.

c) Additional Information Regarding Electronic Submission by E-Mail

All documents should be submitted in Microsoft office® formats (Word® and Excel®, as applicable) or in a form that may be read by Microsoft office® software. Any documents with signatures shall be submitted as an Adobe® portable document format (pdf) file. HHSC is not responsible for documents that cannot be read or converted. Unreadable Responses may be, in HHSC's sole discretion, rejected as nonresponsive.

Be aware Internet Service Providers may limit file sizes on outgoing emails; therefore, it is recommended Responses not contain graphics, pictures, letterheads, etc., which consume a lot of space. These typically include *.tif/*.tiff, *.gif, & *.bmp file extensions, but may use others, as well. HHSC's firewall virus protection runs at all times, so during times of new active virus alerts, incoming traffic may be delayed while virus software scans emails with attachments.

3. HHS Online Bid Room (Optional Use)

The Bidder is solely responsible for ensuring that the Response is complete and submitted to, and RECEIVED by, HHSC before the Response Deadline identified in the Procurement Schedule (cover page) or deadline established in subsequent Addenda. HHSC is not responsible for lost, misdirected or late Responses, or technical difficulties preventing submission through the Online Bid Room. Late Responses will be disqualified.

The Response, including all documentation required by this Solicitation and Appendix, must be submitted in its entirety.

Responses may be submitted through the HHS Online Bid Room. **See Exhibit E** for information regarding the two-part registration process required prior to submitting a Response.

4. CHECKLIST FOR SUBMISSION OF RESPONSE

This checklist is included to provide assistance in submitting a complete and accurate response to this Solicitation.

Failure to submit the following with the Response WILL disqualify the Bidder from further consideration for evaluation or award.

- ☐ **Exhibit A** – HHS Solicitation Affirmations, pages 1-10
- ☐ **Exhibit B** - Bid Execution Page
- ☐ **Exhibit C** - Pricing Sheet

Failure to submit the following with the Response MAY disqualify a Bidder. HHSC will review all Responses received and will determine if any or all Responses which do not include the complete, signed (if applicable) copies of Addenda or requested information and documentation will be disqualified or whether additional time will be permitted for submission of the incomplete or missing documentation. If additional time will be permitted, Bidders will be notified in writing to provide the missing documentation by a specified deadline. Failure by Bidder to submit the requested documentation by that deadline WILL result in disqualification.

- ☐ **Exhibit D** – Bidder Reference Form
- ☐ **Bidder's Minimum Experience and Qualifications** - Section 7.1.5
- ☐ **Demonstration of the ability to perform** by a written description of the size and scope of all operations, including the number of Bidder's employees available to provide customer service, order fulfillment, safe shipping and handling of product and the number of supervisors for each location, as applicable. Bidder must include the number of years it has been in business.
- ☐ **24-Hour Contact information**: Provide completed information in Section 7.1.13 of the Solicitation and return a copy of that page with Response.
- ☐ **Provide any other information Bidder believes is pertinent** to demonstrate the Bidder's financial capability, financial solvency, and capacity to fulfill the requirements of this Solicitation.
- ☐ **Addenda,** if applicable
- ☐ **Public Information Act** Copy of Response, if applicable

Exhibit B – Bid Execution Page

TEXAS HEALTH AND HUMAN SERVICES COMMISSION			
Solicitation No.:	**Solicitation Post Date:**	**Response Due Date:**	**Response Due Time:**
HHS0010862	08-03-2021	08-17-2021	**10:30 A.M.**

By submitting the Response, Respondent represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract that may result from the submission of the Response. ***Respondent agrees to comply with all Contract Affirmations and Uniform Terms and Conditions - Vendor which are attached and incorporated into this document.***

Check below if preference claimed under Texas Administrative Code (TAC), Title 34, Part 1, Chapter 20, Subchapter D, Division 2, Rule § 20.306:

- ☐ Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
- ☐ Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
- ☐ Agricultural products grown in Texas
- ☐ Agricultural products offered by a Texas bidder
- ☐ Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
- ☐ Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran
- ☐ Texas Vegetation Native to the Region
- ☐ USA produced supplies, materials or equipment
- ☐ Products of persons with mental or physical disabilities
- ☐ Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
- ☐ Energy Efficient Products
- ☐ Rubberized asphalt paving material
- ☐ Recycled motor oil and lubricants
- ☐ Products produced at facilities located on formerly contaminated property
- ☐ Products and services from economically depressed or blighted areas
- ☐ Vendors that meet or exceed air quality standards
- ☐ Recycled or Reused Computer Equipment of Other Manufacturers
- ☐ Foods of Higher Nutritional Value.

RESPONDENT MUST COMPLETE ALL ITEMS:

X _____

Signature of Vendor or Authorized Representative
(Must be signed; failure to sign may disqualify response.)

Print Name:

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

Name of Business:

Street Address:

City-State-Zip Code:

Telephone Number:

Fax Number:

E-Mail Address:

By signing this bid, bidder certifies that if a Texas address is shown as the address of the bidder, bidder qualifies as a Texas Bidder as defined in Tex. Gov't Code § 2155.444(c)(2)

Exhibit D – Bidder Reference Form

Bidders must provide a minimum of three (3) verifiable references for contracts of similar size and scope of services within the last three (3) years.

For each reference, provide the following and attach to the Response any documentation to support the information regarding current or prior contracts.

1. **Business Name:**

   Point-of-Contact Name and Title:

   Address (City, State, Zip):

   Phone:

   Email address:

   Services Performed as Prime Contractor or as Subcontractor?

   [Prime Contractor] or [Subcontractor]

   Description and Dates of Services Provided:

2. **Business Name:**

   Point-of-Contact Name and Title:

   Address (City, State, Zip):

   Phone:

   Email address:

   Services Performed as Prime Contractor or as Subcontractor?

   [Prime Contractor] or [Subcontractor]

   Description and Dates of Services Provided:

3. **Business Name:**

   Point-of-Contact Name and Title:

   Address (City, State, Zip):

   Phone:

   Email address:

   Services Performed as Prime Contractor or as Subcontractor?

   [Prime Contractor] or [Subcontractor]

   Description and Dates of Services Provided:

Exhibit C Pricing sheet

Event ID	Format	Type	Round	Version
HHSTX-HHS0010862	Sell	RFx	1	1
Event Name				
Glass and Door Repair, Replacement, Installation				
Post Date		**Due Date**		
08/03/2021		08/17/2021		

Event Currency: US Dollar

Bids Allowed in Other Currency: No

Respondent:

Bidder Name

Tin

Address

Phone

Fax

Email

Submit To: HHS Purchasing

See Solicitation for Submission Instructions

United States

Contact: Ashworth,Lori

Event Description

Glass and Door Repair, Replacement, Installation at Austin State Supported Living Center (Req 160195)

General Questions

Question	Response:
What is your standard hourly rate to perform the services requested in Section 7.1?	
What is your hourly after-hours/emergency rate to perform the services requested in Section 7.1?	

What is your standard percentage markup of parts over cost?	
What is your standard length of warranty for parts and labor?	
What is your trip charge, if any, for service calls?	
Attach Exhibit A HHS Solicitation Affirmations, completed and signed.	
Attach Exhibit B Bid Execution Page, completed and signed.	
Attached Exhibit C Pricing Sheet, completed.	

Attach Exhibit D Bidder Reference Form, completed.	
Attach documentation of minimum qualifications and experience, per Section 7.1.5.	
Attach 24-hour contact information, per Section 7.1.13.	
Attach demonstration of ability to perform, capacity to fulfill requirements of this solicitation, or any other information you believe is pertinent.	
Attach Addendum Acknowledgement Form(s), if any were issued, completed and signed	

HHS Online Bid Room

Exhibit E

HHS0010862

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

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

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

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

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

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

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

Note: *Applicants who already have access to the Enterprise Portal for other applications, must complete a new registration to receive access to the online bid room. The new registration must be completed with a different email than the original account as the Enterprise Portal does not allow the same email address to be used for two different accounts.*

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

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

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

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

Solicitation Number _____

Exhibit A. HHS SOLICITATION AFFIRMATIONS

In this document, HHS includes both the Health and Human Services Commission (HHSC) and the Department of State Health Services (DSHS). System Agency refers to HHSC, DSHS, or both, that will be a party to any contract resulting from the Solicitation. In this document, the terms Respondent, Contractor, Applicant, and Vendor, when referring to the following affirmations (whether framed as certifications, representations, warranties, or in other terms) refer to Respondent, and the affirmations apply to all Respondents regardless of their business form (e.g., individual, partnership, corporation).

Respondent must provide information, as applicable, and affirms, without exception, as follows:

1. Respondent represents and warrants that all certifications, representations, warranties, and other provisions in this Affirmations and Solicitation Acceptance apply to Respondent and all of Respondent's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Solicitation or any contract resulting from this Solicitation.

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

5. **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 240 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 System Agency. 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 HHS' terms and conditions are rejected unless expressly accepted by System Agency in writing in a fully executed contract.

9. **HHS Right to Use.** Respondent agrees that HHS has the right to use, produce, and distribute copies of and to disclose to HHS employees, agents, and contractors and other governmental entities all or part of Respondent's Solicitation Response as HHS 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 HHS.

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 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 Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

16. **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 Response is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Respondent subject to Section 231.006 of the Texas Family Code must include in the Response the names and social security numbers (SSNs) of each person with at least 25% ownership of the business entity submitting the Response:

Name: _____ SSN: _____

Name: _____ SSN: _____

Name: _____ SSN: _____

Name: _____ SSN: _____

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

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

18. **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 the 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 it is not (1) the executive head of an HHS agency, (2) a person who at any time during the four years before the date of the contract was the executive head of an HHS agency, or (3) a person who employs a current or former executive head of an HHS agency.

22. **Human Trafficking Prohibition.** Under Section 2155.0061 of the Texas Government Code, the Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

23. **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 HHS, Respondent shall provide copies of its most recent business continuity and disaster recovery plans.

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

29. **Television Equipment Recycling Program.** If Respondent is submitting a Response for the purchase or lease of covered television equipment, then Respondent certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.

30. **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.

31. **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.

32. **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 System Agency 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.

33. **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: http://sao.fraud.state.tx.us/

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
- Internal Affairs Email: InternalAffairsReferral@hhsc.state.tx.us
- OIG Hotline Email: 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

34. **Antitrust.** The undersigned affirms under penalty of perjury of the laws of the State of Texas that (a) in connection with this Response, neither I nor any representative of the Respondent has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (b) in connection with this Response, neither I nor any representative of the Respondent has violated any federal antitrust law; and (c) neither I nor any representative of the Respondent has directly or indirectly communicated any of the contents of this Response to a competitor of the Respondent or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Respondent.

35. **Legal and Regulatory Actions.** Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Respondent or any of the individuals or entities included in numbered paragraph 1 of this Affirmations and Solicitation Acceptance within the five (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 System Agency'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 System Agency'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 System Agency in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update System Agency shall constitute breach of contract and may result in immediate contract termination.

36. **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.

37. **Former Agency Employees – Certain Contracts.** 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.

38. **Disclosure of Prior State Employment – Consulting Services.** 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, System Agency or another State of Texas agency at any time during the two years preceding the submission of Respondent's Solicitation Response must disclose the following information in its Solicitation Response and hereby certifies that this information is true, correct, and complete:

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

_____

(2) Status (check one): ☐ Respondent ☐ Employee

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

_____

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

_____

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

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

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

39. **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 that certification, Respondent shall state here any facts that make it exempt from the boycott certification:

_____

40. **Abortion Funding Limitation.** Respondent understands, acknowledges, and agrees that, pursuant to Article IX 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.

41. **Funding Eligibility.** Respondent understands, acknowledges, and agrees that, pursuant to Chapter 2272 (eff. Sept. 1, 2021, Ch. 2273) of the Texas Government Code, except as exempted under that Chapter, System Agency cannot contract with an abortion provider or an affiliate of an abortion provider. Respondent certifies that it is not ineligible to contract with System Agency under the terms of Chapter 2272 (eff. Sept. 1, 2021, Ch. 2273) 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:

_____

42. **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 CFR 200.216).** Respondent certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract or funding pursuant to 2 CFR 200.216.

43. **COVID-19 Vaccine Passports.** Pursuant to Texas Health and Safety Code, Section 161.0085(c), a business in this state may not require a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the business. Respondent represents and warrants that it is in compliance with Texas Health and Safety Code, Section 161.0085(c) and eligible, pursuant to that section, to receive a grant or enter into a contract payable with state funds.

44. **Entities that Boycott Energy Companies.** In accordance with Senate Bill 13, Acts 2021, 87th Leg., R.S., if Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code (relating to prohibition on contracts with companies boycotting certain energy companies), Respondent certifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract resulting from this Solicitation. If Respondent refuses to make that certification, Respondent shall state here any facts that make it exempt from the boycott certification:

_____

45. **Entities that Discriminate Against Firearm and Ammunition Industries**. In accordance with Senate Bill 19, Acts 2021, 87th Leg., R.S., if Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code (relating to prohibition on contracts with companies that discriminate against firearm and ammunition industries), Respondent certifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and it will not discriminate during the term of the contract resulting from this Solicitation against a firearm entity or firearm trade association. If Respondent refuses to make that certification, Respondent shall state here any facts that make it exempt from the certification:

_____

46. **Security Controls for State Agency Data**. In accordance with Senate Bill 475, Acts 2021, 87th Leg., R.S., pursuant to Texas Government Code, Section 2054.138, Respondent understands, acknowledges, and agrees that if awarded a contract pursuant to this Solicitation and under which Respondent will be authorized to access, transmit, use, or store data for System Agency, Respondent is required to meet the security controls the System Agency determines are proportionate with System Agency's risk under the contract based on the sensitivity of System Agency's data and that Respondent must periodically provide to System Agency evidence that Respondent meets the security controls required under the contract.

47. **Cloud Computing State Risk and Authorization Management Program**. In accordance with Senate Bill 475, Acts 2021, 87th Leg., R.S., pursuant to Texas Government Code, Section 2054.0593, Respondent acknowledges and agrees that, if providing cloud computing services for System Agency, Respondent must comply with the requirements of the state risk and authorization management program and that System

Agency may not enter or renew a contract with a vendor to purchase cloud computing services for the agency that are subject to the state risk and authorization management program unless the vendor demonstrates compliance with program requirements. If providing cloud computing services for System Agency that are subject to the state risk and authorization management program, Respondent certifies it will maintain program compliance and certification throughout the term of the Contract.

48. **Foreign-Owned Companies in Connection with Critical Infrastructure.** If Texas Government Code, Section 2274.0102(a)(1) (relating to prohibition on contracts with certain foreign-owned companies in connection with critical infrastructure) is applicable to a contract resulting from this Solicitation, Respondent certifies that it is not (1) headquartered in China, Iran, North Korea, Russia, or a designated country; or (2) owned by or the majority of stock or other ownership interest of Respondent is not held or controlled by: (a) individuals who are citizens of China, Iran, North Korea, Russia, or a designated country; or (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country.

49. **Enforcement of Certain Federal Firearms Laws Prohibited**. In accordance with House Bill 957, Acts 2021, 87th Leg., R.S., if Texas Government Code, Section 2.101 is applicable to Respondent, Respondent certifies that it is not ineligible to receive state grant funds pursuant to Texas Government Code, Section 2.103.

50. **Prohibition on Abortions.** Respondent understands, acknowledges, and agrees that, pursuant to Article II of the General Appropriations Act, (1) no funds shall be used to pay the direct or indirect costs (including marketing, overhead, rent, phones, and utilities) of abortion procedures provided by contractors of HHSC; and (2) no funds appropriated for Medicaid Family Planning, Healthy Texas Women Program, or the Family Planning Program shall be distributed to individuals or entities that perform elective abortion procedures or that contract with or provide funds to individuals or entities for the performance of elective abortion procedures. 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 II.

51. **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."

52. **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.

53. **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.

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

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

Signature Page Follows

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

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

Signature of Authorized Representative	**Date Signed**
Printed Name of Authorized Representative **First, Middle Name or Initial, and Last Name**	**Title of Authorized Representative**
Physical Street Address	**City, State, Zip Code**
Mailing Address, if different	**City, State, Zip Code**
Phone Number	**Fax Number**
Email Address	**DUNS Number**
Federal Employer Identification Number	**Texas Payee ID No. – 11 digits**
Texas Franchise Tax Number	**Texas Secretary of State Filing Number**

Health and Human Services (HHS)

Uniform Terms and Conditions - Vendor

Version 3.2

Effective: April 2021

Responsible Office: Chief Counsel

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ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

1.1 DEFINITIONS

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

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

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

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

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

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

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

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

"GAAP" means Generally Accepted Accounting Principles.

"GASB" means the Governmental Accounting Standards Board.

"Goods" means supplies, materials, or equipment.

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

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

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

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

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

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

"Parties" means the System Agency and Contractor, collectively.

"Party" means either the System Agency or Contractor, individually.

"Project" means the goods or Services described in the Signature Document or a Work Order of this Contract.

"Scope of Work" means the description of Services and Deliverables specified in the Contract and as may be amended.

"Services" means the tasks, functions, and responsibilities assigned and delegated to Contractor under the Contract.

"Signature Document" means the document executed by both Parties that specifically sets forth all of the documents that constitute the Contract.

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

"Solicitation Response" means Contractor's full and complete response (including any Attachments and addenda) to the Solicitation, which is incorporated by reference for all purposes in its entirety.

"State Fiscal Year" means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

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

"Subcontract" means any written agreement between Contractor and a third party to fulfill the requirements of the Contract. All Subcontracts are required to be in writing.

"Subcontractor" means any individual or entity that enters a contract with the Contractor to perform part or all of the obligations of Contractor under this Contract.

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

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

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

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

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

1.2 Interpretive Provisions

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

ARTICLE II. PAYMENT PROVISIONS

2.1 PROMPT PAYMENT

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

2.2 ANCILLARY AND TRAVEL EXPENSES

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

2.3 NO QUANTITY GUARANTEES

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

2.4 TAXES

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

ARTICLE III. STATE AND FEDERAL FUNDING

3.1 EXCESS OBLIGATIONS PROHIBITED

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

3.2 NO DEBT AGAINST THE STATE

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

3.3 Debt and Delinquencies

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

3.4 Refunds and Overpayments

A. At its sole discretion, the System Agency may:
   i. withhold all or part of any payments to Contractor to offset overpayments, unallowable or ineligible costs made to the Contractor, or if any required financial status report(s) is not submitted by the due date(s); or,
   ii. require Contractor to promptly refund or credit - within thirty (30) calendar days of written notice - any funds erroneously paid by System Agency which are not expressly authorized under the Contract.

B. "Overpayments," as used in this Section, include payments:
   i. made by the System Agency that exceed the maximum allowablerates;
   ii. that are not allowed under applicable laws, rules, or regulations; or,
   iii. that are otherwise inconsistent with this Contract, including any unapproved expenditures. Contractor understands and agrees that it will be liable to the System Agency for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Contractor further understands and agrees that reimbursement of such disallowed costs shall be paid by Contractor from funds which were not provided or otherwise made available to Contractor under this Contract.

ARTICLE IV. Warranty, Affirmations, Assurances, and Certifications

4.1 Warranty

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

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

4.2 General Affirmations

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

4.3 Federal Assurances

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

4.4 Federal Certifications

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

ARTICLE V. Intellectual Property

5.1 Ownership of Work Product

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

5.2 CONTRACTOR'S PRE-EXISTING WORKS

A. To the extent that Contractor incorporates into the Work Product any works of Contractor that were created by Contractor or that Contractor acquired rights in prior to the Effective Date of this Contract ("**Incorporated Pre-existing Works**"), Contractor retains ownership of such Incorporated Pre-existing Works.
B. Contractor hereby grants to System Agency an irrevocable, perpetual, non-exclusive, royalty-free, transferable, worldwide right and license, with the right to sublicense, to use, reproduce, modify, copy, create derivative works of, publish, publicly perform and display, sell, offer to sell, make and have made, the Incorporated Pre-existing Works, in any medium, with or without the associated Work Product.
C. Contractor represents, warrants, and covenants to System Agency that Contractor has all necessary right and authority to grant the foregoing license in the Incorporated Pre-existing Works to System Agency.

5.3 THIRD PARTY IP

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

5.4 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS

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

5.5 DELIVERY UPON TERMINATION OR EXPIRATION

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

5.6 SURVIVAL

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

5.7 SYSTEM AGENCY DATA

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

ARTICLE VI. PROPERTY

6.1 USE OF STATE PROPERTY

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

ii. all charges attributable to Contractor's use of State Property that exceeds the Contract scope. Contractor shall fully reimburse such charges to System Agency within ten (10) calendar days of Contractor's receipt of System Agency's notice of amount due. Use of State Property for a purpose not authorized by the Contract shall constitute breach of contract and may result in termination of the Contract and the pursuit of other remedies available to System Agency under contract, at law, or in equity.

6.2 Damage to Government Property

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

6.3 Property Rights upon Termination or Expiration of Contract

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

ARTICLE VII. Work Orders

7.1 Work Orders

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

7.2 Proposals

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

7.3 Responsibility

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

7.4 Termination

If this Work Order is in effect on the day the Contract would otherwise expire, the Contract will remain in effect until this Work Order is terminated or expires; and the Contract and this Work Order may be amended after such termination or expiration to

extend the performance period or add ancillary deliverables or services, only to the extent necessary.

ARTICLE VIII. RECORD RETENTION, AUDIT, AND CONFIDENTIALITY

8.1 RECORD MAINTENANCE AND RETENTION

A. Contractor shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the System Agency, the Texas State Auditor's Office, the United States Government, and their authorized representatives sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes.

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

8.2 AGENCY'S RIGHT TO AUDIT

A. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, supporting documents kept current by Contractor pertaining to the Contract for purposes of inspecting, monitoring, auditing, or evaluating by System Agency and the State of Texas.

B. In addition to any right of access arising by operation of law, Contractor and any of Contractor's affiliate or subsidiary organizations, or Subcontractors shall permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that shall have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that shall have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority.

C. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Contractor shall produce original documents related to this Contract.

D. The System Agency and any duly authorized authority shall have the right to audit billings both before and after payment, and all documentation that substantiates the billings.

E. Contractor shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

8.3 Response/Compliance with Audit or Inspection Findings

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

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

8.4 State Auditor's Right to Audit

A. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

B. The Contractor shall comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.

8.5 Confidentiality

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

ARTICLE IX. Contract Remedies and Early Termination

9.1 Contract Remedies

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

i. suspending all or part of the Contract;
ii. requiring the Contractor to take specific actions in order to remain in compliance with the Contract;

iii. recouping payments made by the System Agency to the Contractor found to be in error;
iv. suspending, limiting, or placing conditions on the Contractor's continued performance of Work; or
v. imposing any other remedies, sanctions, or penalties authorized under this Contract or permitted by federal or state law.

9.2 Termination for Convenience

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

9.3 Termination for Cause

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

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

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

9.4 Contractor Responsibility for System Agency's Termination Costs

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

ARTICLE X. Indemnity

10.1 General Indemnity

A. CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND SYSTEM AGENCY, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL

RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT.

B. **THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE SYSTEM AGENCY FOR ANY CLAIMS OR LIABILITIESRESULTING FROM THE NEGLIGENT ACTS OF OMISSIONS OF THE SYSTEM AGENCY OR ITS EMPLOYEES.**

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

10.2 Intellectual Property

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

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

10.3 Additional Indemnity Provisions

A. **CONTRACTOR AND SYSTEM AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY INDEMNITY CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES.**

B. **THE DEFENSE SHALL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL.**

C. **CONTRACTOR SHALL REIMBURSE SYSTEM AGENCY AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS'**

FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF THE SYSTEM AGENCY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF SYSTEM AGENCY IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, SYSTEM AGENCY WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR SHALL PAY ALL REASONABLE COSTS OF SYSTEM AGENCY'S COUNSEL.

ARTICLE XI. GENERAL PROVISIONS

11.1 AMENDMENT

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

11.2 INSURANCE

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

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

11.3 LIMITATION ON AUTHORITY

A. The authority granted to Contractor by the System Agency is limited to the terms of the Contract.

B. Contractor shall not have any authority to act for or on behalf of the System Agency or the State of Texas except as expressly provided for in the Contract; no other authority, power, or use is granted or implied. Contractor may not incur any debt, obligation, expense, or liability of any kind on behalf of System Agency or the State of Texas.

C. Contractor may not rely upon implied authority and is not granted authority under the Contract to:

   i. Make public policy on behalf of the System Agency;

   ii. Promulgate, amend, or disregard administrative regulations or program policy decisions made by State and federal agencies responsible for administration of a System Agency program; or

   iii. Unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of the System Agency regarding System Agency

programs or the Contract. However, upon System Agency request and with reasonable notice from System Agency to the Contractor, the Contractor shall assist the System Agency in communications and negotiations regarding the Work under the Contract with state and federal governments.

11.4 Legal Obligations

Contractor shall comply with all applicable federal, state, and local laws, ordinances, and regulations, including all federal and state accessibility laws relating to direct and indirect use of information and communication technology. Contractor shall be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them.

11.5 Change in Laws and Compliance with Laws

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

11.6 E-Verify Program

Contractor certifies that for Contracts for Services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the Contract to determine the eligibility of:

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

11.7 Permitting and Licensure

At Contractor's sole expense, Contractor shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or Services required by this Contract.

Contractor shall be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Contractor shall be responsible for payment of any such government obligations not paid by its Subcontractors during performance of this Contract.

11.8 Subcontractors

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

ensuring that the services performed under all Subcontracts are rendered in compliance with the Contract.

11.9 INDEPENDENT CONTRACTOR

Contractor and Contractor's employees, representatives, agents, Subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under the Contract. Neither Contractor nor System Agency is an agent of the other and neither may make any commitments on the other party's behalf. Contractor shall have no claim against System Agency for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The Contract shall not create any joint venture, partnership, agency, or employment relationship between Contractor and System Agency.

11.10 GOVERNING LAW AND VENUE

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

11.11 SEVERABILITY

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

11.12 SURVIVABILITY

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

11.13 FORCE MAJEURE

Neither Contractor nor System Agency shall be liable to the other for any delay in, or failure of performance of, any requirement included in the Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to

avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

11.14 Dispute Resolution

A. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the Contract. If the Contractor's claim for breach of contract cannot be resolved informally with the System Agency, the claim shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Contractor shall submit written notice, as required by Chapter 2260, to the individual identified in the Contract for receipt of notices. Any informal resolution efforts shall in no way modify the requirements or toll the timing of the formal written notice of a claim for breach of contract required under §2260.051 of the Texas Government Code. Compliance by the Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.
B. The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of contract by the System Agency if the Parties are unable to resolve their disputes as described above.
C. Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the System Agency, the Contractor shall continue performance and shall not be excused from performance during the period of any breach of contract claim or while the dispute is pending. However, the Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

11.15 No Implied Waiver of Provisions

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

11.16 Media Releases

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

11.17 No Marketing Activities

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

11.18 Prohibition on Non-compete Restrictions

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

11.19 Sovereign Immunity

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

11.20 Entire Contract and Modification

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

11.21 Counterparts

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

11.22 Civil Rights

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

B. Contractor agrees to comply with all amendments to the above-referenced laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any aid, care, service or other benefits provided by Federal or State funding, or otherwise be subjected to discrimination.
C. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. State and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Contractor agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.
D. Contractor agrees to post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for the HHS Civil Rights Office. The posters are available on the HHS website at: https://hhs.texas.gov/about-hhs/your-rights/civil-rights-office/civil-rights-posters
E. Contractor agrees to comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
F. Upon request, Contractor shall provide HHSC's Civil Rights Office with copies of the Contractor's civil rights policies and procedures.
G. Contractor must notify HHSC's Civil Rights Office of any complaints of discrimination received relating to its performance under this Contract. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this section must be directed to:
HHSC Civil Rights Office
701 W. 51st Street, Mail CodeW206
Austin, Texas 78751
Phone Toll Free: (888) 388-6332
Phone: (512) 438-4313
Fax: (512) 438-5885
Email: HHSCivilRightsOffice@hhsc.state.tx.us

11.23 Enterprise Information Management Standards

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

11.24 Disclosure of Litigation

A. The Contractor must disclose in writing to the contract manager assigned to this Contract any material civil or criminal litigation or indictment either threatened or pending involving the Contractor. "Threatened litigation" as used herein shall include governmental investigations and civil investigative demands. "Litigation" as used herein shall include administrative enforcement actions brought by governmental agencies. The Contractor must also disclose any material litigation threatened or pending involving Subcontractors, consultants, and/or lobbyists. For purposes of this section, "material" refers, but is not limited, to any action or pending action that a reasonable person knowledgeable in the applicable industry would consider relevant to the Work under the Contract or any development such a person would want to be aware of in order to stay fully apprised of the total mix of information relevant to the Work, together with any litigation threatened or pending that may result in a substantial change in the Contractor's financial condition.

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

11.25 No Third-Party Beneficiaries

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

11.26 Binding Effect

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