

## SOLICITATION, PROPOSAL, AND AWARD

1. CONTRACT NO.	2. SOLICITATION NO.  405-15-R012702	3. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFO) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	4. DATE ISSUED August 8, 2016
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### SOLICITATION

### Emergency Response and Support Services (ERSS)

5. Sealed Proposals will be received by the Department until 3:00 P.M. local time on October 11, 2016 and submitted to the issuing office:  Texas Department of Public Safety Procurement and Contract Services Bureau 5805 North Lamar, Bldg. A, MC-0266 Austin, Texas 78752 Attention: 405-15-R012702	6. FOR INFORMATION CONTACT:  Jennifer Feliciano Contract Administrator PHONE: (512) 424-2096 E-MAIL: <a href="mailto:jennifer.feliciano@dps.texas.gov">jennifer.feliciano@dps.texas.gov</a>
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### PROPOSAL (Will be fully completed by Respondent)

7. DISCOUNT FOR PROMPT PAYMENT:➔	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	___ CALENDAR DAYS %
8. ACKNOWLEDGMENT OF AMENDMENTS: <small>(The Respondent acknowledges receipt of amendments to this Request for Proposal and related documents numbered and dated:</small>	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
9. NAME AND ADDRESS OF CONTRACTOR:➔	10. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN PROPOSAL ( <i>Type or Print</i> )			
11. TELEPHONE NO. (Include area code)	12. SIGNATURE		13. PROPOSAL DATE	

### TO BE COMPLETED AT TIME OF AWARD

**Document Type: S**

**Statutory Cite: Texas Government Code, Section 2156.121**

**NOTE TO RESPONDENTS: The Department reserves the right, in its sole discretion, to modify this language prior to award.**

This award document consummates the Contract which consists of the following documents: (a) this Proposal and Award document; (b) the State's solicitation, and solicitation amendments, such provisions, representations, certifications, specifications, and negotiated changes as hereby incorporated and attached to this award; and (c) the Contractor's Proposal, points of clarification, responses to clarification request and/or best and final offer (BAFO), and negotiated changes as hereby incorporated and attached to this award.

Any inconsistency or conflict in the Contract documents will be resolved by giving precedence in the following order: this Proposal and Award document; negotiated changes; BAFO; points of clarification; the Request for Proposal (RFP) as posted; and the Contractor's Proposal.

This Contract shall consist of a Base Period from Date of Execution through May 31, 2018 with (3) three (1) one year optional renewal options periods (June 1, 2018 through May 31, 2019, June 1, 2019 through May 31, 2020 and June 1, 2020 through May 31, 2021). The terms, conditions, and rates for all extensions shall remain as stated in this Contract.

This solicitation's Schedule of Events and instructions for preparation of Proposal may be found in Section L. Evaluation Criteria may be found in Section M.

**Contractor**

**Texas Department of Public Safety**

By: \_\_\_\_\_ By: \_\_\_\_\_

Name: \_\_\_\_\_ Name: Steven C. McCraw

Title: \_\_\_\_\_ Title: Director

Date: \_\_\_\_\_ Date: \_\_\_\_\_

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## SECTION A – DEFINITIONS

The following terms used in this Request for Proposals (RFP) will, unless the context indicates otherwise, have the meanings set forth below:

“Authorized Representative” means the person designated in writing to act for and on behalf of a party to this RFP and whose designation has been furnished to the other party as described in Section G.1.

“Contingent Services” means services activated only when requested by the Department.

“Contract” means the written agreement entered into by the Department and the Contractor, which will incorporate the contents of this RFP 405-15-R012702 and the Contractor's Proposal, negotiations, changes, BAFO, and modifications, except as specifically provided to the contrary, in this RFP.

“Contract Administrator” means the representative of the Department's Procurement & Contract Services Bureau who is responsible for general administration of this Contract, negotiation of any changes, and issuance of written changes/modifications of this Contract as referenced in Section G.1.2.

“Contract Term” means the duration of this Contract as specified in Section F.1.

“Contractor” means an individual, partnership, corporation, business association, trust, joint-stock company, educational institution, or other entity awarded this Contract. In the context of submitting a Proposal, “Contractor” also means all Respondents.

“CPA” means the Texas Comptroller of Public Accounts.

“CPI” means Consumer Price Index.

“Date of Award” means the date this Contract is fully executed.

“Days” means calendar days unless otherwise specified.

“Delivery Ticket” means a document signed by the Department to indicate acceptance of a delivery.

“The Department” and/or “TXDPS” means Texas Department of Public Safety.

“Department Policies” means all written policies, procedures, standards, guidelines, directives, and manuals of the Public Safety Commission (PSC) and the Department, applicable to providing the deliverables/services specified under this Contract.

“Director” means the Director of the Department.

“ECI” means Employment Cost Index.

“ERSS” means Emergency Response and Support Services.

“Event of Default” means any of the events or circumstances described in Section E.1.F.

“FEMA” means Federal Emergency Management Agency.

“Fiscal Year” means any of the one (1) year periods beginning September 1 and ending August 31, which are used for annual budgetary purposes by the State of Texas.

“Historically Underutilized Business (HUB)” means a business that is certified by the State of Texas that (1) is at least fifty-one (51%) owned by an Asian Pacific American, Black American, Hispanic American, Native American, American woman, or a Service Related Disabled Veteran, (2) is a for-profit entity that has not exceeded the size standards prescribed by 34 TAC § 20.23, and has its principal place of business in Texas, and (3) has an owner residing in Texas who has a proportionate interest in the business and who actively participates in the control, operations and management of the entity’s affairs. For further explanation, see the Texas Comptroller of Public Accounts HUB rule definitions at 34 TAC § 20.11.

“HUB Subcontracting Plan (HSP)” means the plan required by Texas Government Code, Chapter 2161.

“ICS” means Incident Command System.

“Invoice” means the Contractor’s invoice based on an approved delivery schedule and yielding the Contractor payment to be made by the Department, reference Sections G.2 and G.3.1.

“Non-Appropriation” means the failure by the Legislature of the State, as part of its budgetary process, to appropriate money to be used for the payments due hereunder; and/or a reduction or loss of federal grant funds to be used for the payments due hereunder.

“Payment(s)” means the amount(s) agreed to be paid by the Department to the Contractor for services rendered under this Contract.

“Person” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, court or other tribunal, or government or any agency or political subdivision thereof.

“Project Manager (PM)” means appointee, designee, or alternate designee if assigned by the Contractor and the Department, as referenced in Section G.1.4 and G.1.5.

“Proposal” means the Contractor’s response to this RFP.

“Purchase Order” means the document issued by the Department as documentation for payment purposes only.

“Purchase Order Change Notice” means the documented change to the Purchase Order issued by the Department.

“Respondent” means the individual, business, entity or organization that submits a Proposal in response to this RFP with the intent to contract with the Department.

“Responsive Proposal” means a Proposal submitted which conforms in all material respects to the RFP.

“RFP” means Request for Proposals.

“Recurring Services” means the ongoing services that continue throughout the term of the Contract.

“Solicitation” means this document, this Request for Proposals, issued by the Department inviting responses from interested and qualified Respondents.

“Shall” means mandatory.

“TDEM” means Texas Division of Emergency Management, a Division of the Department.

“TXDPS” means the Texas Department of Public Safety, also referred to as the Department.

“Texas Government Code Section 418.016. SUSPENSION OF CERTAIN LAWS AND RULES.” (a) The governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.

## **SECTION B - SERVICES AND PRICES/COSTS**

### **B.1 SERVICE AND PRICING REQUIREMENTS**

#### **B.1.1 Services Being Acquired**

The Department seeks the services described in Section C, the Statement of Work. The Contractor shall provide all services under this Contract on a no-minimum, non-exclusive, as needed, as requested and authorized by the Department, no minimum compensation, basis as provided by this Contract.

#### **B.1.2 Pricing Instructions**

**Each Respondent shall replicate the precise format in Section B.2, Pricing Schedule and submit two (2) original completed Pricing Schedules.**

- A. The Department will negotiate pricing prior to award of this Contract.
- B. The Department may, in its sole discretion, enter into one or more contracts with one or more contractors to provide all services as described herein.
- C. Any quantities referenced in this RFP are estimates based on historical information and may be increased or decreased during the term of this Contract. The current estimates will be used for evaluation purposes only and are not to be construed as either a minimum or a maximum that the Department will authorize in the manner described in this Contract.
- D. All compensation for the Contractor's performance under this Contract will be included in the Respondent's Pricing Schedule as detailed in its Cost and Pricing Proposal and addressed by the Respondent's Technical Proposal.
- E. The Respondent shall provide the following Cost and Pricing Proposal packages:
  - a. Section B.2, Pricing Schedule, for the Base Period and three (3) renewal, one (1) year option periods, to include the "a la carte" pricing table.
- F. **Optional Features, Products, or Services**  
The Respondent is encouraged to submit and describe in detail, within its Response, optional features, products or services that would benefit the Department but are not part of the minimum requirements of this solicitation. In its Response, the Respondent shall describe with specificity any proposed optional features, products, or services. For pricing associated with optional items that exceed the minimum requirements, the Respondent shall include the line item cost associated with each proposed optional feature, product, or service in the "Optional Additional Features" pricing portion of the Mandatory Pricing Schedule, in Section B.2 of this Solicitation.

#### **B.1.3 Financial Rating**

- A. The Respondent shall submit a copy of at least one rating from organizations such as Dun & Bradstreet (D&B) Business Information Report or Fitch Ratings. The report will include the Respondent's Viability Score and the Portfolio Comparison Score or similar

ratings. Failure to submit copies of the required financial ratings will result in disqualification.

- B. The Respondent shall provide information required by Section G.3.8 and any other financial information reasonably requested by the Department consistent with the services provided by the Contractor or otherwise required by the then applicable Department policies for similar contracts.
- C. The Respondent shall possess the ability to commence operations without financial assistance from the Department.

#### **B.1.4 Pricing Structure**

Pricing will remain firm through the first term of this Contract with pricing escalation potential based upon the percent change in the CPI or ECI Indices, as noted herein.

#### **B.1.5 Requests for Additional Payment**

The Contractor shall detail those services requiring additional payment, if any, for maintaining readiness levels as noted in C.5.B, Scope of Services – Recurring Deliverables with an explanation/justification included within its Proposal.

**B.2 PRICING SCHEDULE**

Respondent: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(Street address, city and zip code)

The Respondent shall include all-inclusive pricing on ALL services to be considered responsive.

**Emergency Response and Support Services:  
Pricing Schedules**

**B.2.1 Pricing for Base Period and Option Periods**

<b>RECURRING SERVICES</b> (see Section B.1.5, Requests for Additional Payment)		
<i>Service Description</i>	<i>Annual Cost</i>	<i>Explanation/Justification</i>

<b>STAFFING</b>	
<i>Position Title</i>	<i>Price per Hour, per Person</i>
CONTRACTOR'S REPRESENTATIVES	
Point of Contact	
INCIDENT COMMAND SUPPORT	
Incident Commander	
Information Officer	
Safety Officer	
Liaison Officer	
OPERATIONS SECTION	

Operations Section Chief	
Staging Area Manager	
Air Operations Branch Director	
Air Support Group Supervisor	
Air Tactical Group Supervisor	
Branch Director	
Division/Group Supervisor	
Strike Force/Team Leader	
Single Resource Leader	
Military Support Liaison	
PLANNING SECTION	
Planning Section Chief	
Resource Unit Leader	
Status Recorder	
Situation Unit Leader	
Documentation Unit Leader	
Demobilization Unit Leader	
Environmental Unit Leader	
Documentation Clerk	
Field Observers	
Technical Specialist Leader	
LOGISTICS SECTION	
Logistics Section Chief	
Service Branch Director	
Support Branch Director	
Communications Unit Leader	
Medical Unit Leader	
Food Unit Leader	
Supply Unit Leader	
Facilities Unit Leader	
Ground Support Unit Leader	
Ordering Manager	
Receiving & Distribution Manager	
Security Manager	
Base Camp Manager	

Vessel Support Unit Leader	
Equipment Manager	
Resource Support Team Leader	
Energy Team Coordinator (Generator)	
Transportation Coordinator	
Public Works Coordinator (Pumps and Light Tower)	
FINANCE/ADMINISTRATION SECTION <sup>1</sup>	
Finance/Administration Section Chief	
Time Unit Leader	
Cost Unit Leader	
Procurement Unit Leader	
Personnel Time Recorder	
Equipment Time Recorder	
MISCELLANEOUS SUPPORT PERSONNEL	
Forklift Operator, Certified	
General Warehouse Laborer	
Truck Driver, semi tractor-trailer rig	
Van Driver, Box Cargo, Express Cargo, and/or Truck Mounted 18-20 ft. Reefer	
Unarmed Security Officer	
Laundry Attendant (Responsible for laundering first responder's clothing)	
On-Site Facilities Superintendent	
OTHER CAPABILITIES (Respondent may list any other pertinent positions that it can provide)	

<sup>1</sup> The positions listed in this section are ICS positions in the field.



## A LA CARTE EQUIPMENT AND SUPPLIES

<i>Description</i>	<i>Unit of Measure</i>	<i>Cost</i>	<i>Mobilization/ Set-up Fee</i>	<i>Demobilization/ Tear Down Fee</i>
Badge /Photo Identification Equipment System, 5000 person capacity, with supplies	Each, per Day			
Bags, Garbage, for 44 gal. capacity can, (100/Lot)	Lot			
Barricade, Traffic, Type 1	Each, per Day			
Blankets, 80% wool/20% synthetic, flame retardant, 90 in. x 66 in., washable, (500/Lot)	Lot			
Board, Marker, Dry Erase, White, 4 ft. x 4 ft.	Each, per Day			
Can, Garbage, plastic, 44 gal. capacity, w/lid	Each, per Day			
Cart, Baggage Loading, Closed Type	Each, per Day			
Chair, Folding	Each, per Day			
Comfort Kits, for men and women, to include as appropriate, but not limited to: 1. Bath Soap/Body Wash 2. Shampoo and Conditioner 3. Toothbrush and Toothpaste 4. Comb and Brush 5. Facial Tissues 6. Disposable Razor and Shaving Cream or Gel 7. Deodorant 8. Sanitary Napkins/Tampons	Each (per kit)			
Cone, Traffic, Orange, 10 lb., 36 in. high, compliant with Texas Manual on Uniform Traffic Control Devices	Each, per Day			
Copier/Printer/Scanner, High Speed, 35 ppm minimum	Each, per Day			
Cord, Extension, Heavy Duty, 100 ft.	Each, per Day			
Cots, Folding, Standard and H/D Large, 60/40 ratio, (500 ea./Lot)	Lot			
Counter, Hand, (Hand Tally)	Each, per Day			
Dumpster, Solid Waste, 10 yard, rental	Each, per Day			
Dumpster, Solid Waste, 10 yard, dump	Each			
Dumpster, Solid Waste, 15 yard, rental	Each, per Day			

Dumpster, Solid Waste, 15 yard, dump	Each			
Dumpster, Solid Waste, 20 yard, rental	Each, per Day			
Dumpster, Solid Waste, 20 yard, dump	Each			
Dumpster, Solid Waste, 30 yard, rental	Each, per Day			
Dumpster, Solid Waste, 30 yard, dump	Each			
Dumpster, Solid Waste, 40 yard, rental	Each, per Day			
Dumpster, Solid Waste, 40 yard, dump	Each			
Fan, "Porta-Cool", 36 in.	Each, per Day			
Fan, Electric, Floor type, 36 inch	Each, per Day			
Fence to include Access Gate(s), Security, 6 ft. high minimum, per linear foot	Each, per Day			
Forklift, Rough Terrain, 6,000 to 12,000 lbs. Capacity	Each, per Day, Not Including Fuel			
Forklift, Rough Terrain, 5,000 to 6,000 lbs. Capacity	Each, per Day, Not Including Fuel			
Forklift, Warehouse, 3,000 to 5,000 lbs. capacity	Each, per Day, Including Fuel			
Forklift, 20,000 lb. capacity	Each, per Day, Including Fuel			
Generator, 50 kW	Each, per Day			
Generator, 200 kW	Each, per Day			
Hand Truck/Dolly, 2 Wheel, for Box Cargo Vans	Each, per Day			
Hand Washing Station, 4 sink unit, foot operated, hot and cold potable water with soap and paper towels	Each, per Day			
Ice Chest, 75 quart capacity	Each, per Day			
Ice Chest, 150 quart capacity	Each, per Day			
Light Tower	Each, per Day			
Pallet Jack	Each, per Day			

Paper, Copier, (10 cases/lot )	Lot			
Pencil, Grease, White, (100/Lot)	Lot			
Pillows, Institutional Grade, Disposable, (500 ea./Lot)	Lot			
Surge Suppressor Power Strip, 2000 Joule minimum	Each, per Day			
Public Address System	Each, per Day			
Ramps, Aircraft Loading	Each, per Day			
Sheets, Bed, Institutional Grade, 66 in. x 104 in., flat (500 ea./Lot)	Lot			
Table, 8 ft. x 3 ft.	Each, per Day			
Television set, 42" minimum	Each, per Day			
<b>Temporary/Portable HVAC System:</b>	<b>Unit of Measure</b>	<b>Cost</b>	<b>Mobilization/ Set-up Fee</b>	<b>Demobilization/ Tear Down Fee</b>
Temporary/Portable HVAC System capable of cooling a 500 to 999 square foot room	Each, per Day			
Temporary/Portable HVAC System capable of cooling a 1,000 to 4,999 square foot room	Each, per Day			
Temporary/Portable HVAC System capable of cooling a 5,000 to 9,999 square foot room	Each, per Day			
Temporary/Portable HVAC System capable of cooling a 10,000 to 19,999 square foot room	Each, per Day			
Temporary/Portable HVAC System capable of cooling a 20,000 to 60,000 square foot room	Each, per Day			
Tent, 40 ft. x 100 ft.	Each, per Day			
Tent Accessory, Walls, all-weather, for 40 ft. x 100 ft. tent	Each, per Day			
Tent Accessory, Flooring, 6 in., for 40 ft. x 100 ft. tent	Each, per Day			
Tent Accessory, HVAC system, for 40 ft. x 100 ft. size	Each, per Day			
Toilet, Portable, Wheel Chair Accessible, pumped and cleaned daily	Each, per Day			
Toilet, Portable, Standard, pumped and cleaned daily	Each, per Day			
Toilet, Portable, Family, pumped and cleaned daily	Each, per Day			

Tractor, Semi, to pull 53' trailer	Each, per Day			
Tractor, Semi, to pull 53' trailer	Per Mile			
Traffic Board, Arrow Type, Fixed or trailer mounted	Each, per Day			
Trailer, Dry Cargo Van, 53 feet long	Each, per Day			
Trailer, Dry Cargo Van, 53 feet long	Per Mile			
Trailer, Reefer, 48-53 feet long	Each, per Day			
Trailer, Reefer, 48-53 feet long	Per Mile			
Utility Vehicle, J/D, Gator, E-Z Go Electric Cart, or equal	Each, per Day			
Van, Box Cargo, Medium Duty, 32,000 GVWR, with lift gate	Each, per Day			
Van, Box Cargo, Medium Duty, 32,000 GVWR, with lift gate	Per Mile			
Van, Express Cargo, Expediter Vehicle	Each, per Day			
Van, Express Cargo, Expediter Vehicle	Per Mile			
Van, Reefer, 18 - 20 feet long, Truck Mounted	Each, per Day			
Van, Reefer, 18 - 20 feet long, Truck Mounted	Per Mile			
Handicapped Medical Walker, Standard, Heavy Duty	Each, per Day			
Wand, Metal Detector	Each, per Day			
Wheelchair, Standard, Folding Type	Each, per Day			

<b>FOOD SERVICE</b>					
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<i><b>Description</b></i>	<i><b>Unit of Measure</b></i>	<i><b>Cost if fuel provided by Contractor</b></i>	<i><b>Cost if fuel provided by the Department</b></i>	<i><b>Mobilization/ Set-up Fee</b></i>	<i><b>Demobilization/ Tear Down Fee</b></i>
Food Service	Per Person, per Day				

<b>TURNKEY FACILITIES</b>					
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<b>Description</b>		<b>Unit of Measure</b>	<b>Cost if fuel provided by Contractor</b>	<b>Cost if fuel provided by the Department</b>	<b>Mobilization / Set-up Fee</b>	<b>Demobilization/ Tear Down Fee</b>
<b>Office/Work Shelter</b>						
Soft-Sided, for 10 personnel		Per Structure, per Day				
Soft-Sided, for 50 personnel		Per Structure, per Day				
Hard-sided, for 10 personnel		Per Structure, per Day				
Hard-sided, for 50 personnel		Per Structure, per Day				
<b>Self-Contained Crew Quarters</b>						
Non-accessible Unit		Per Structure, per Day				
Handicap Accessible Unit		Per Structure, per Day				
<b>Sleeping Shelter</b>						
Soft-sided, for 50 personnel		Per Structure, per Day				
Soft-sided, for 100 personnel		Per Structure, per Day				
Soft-sided, for 200 personnel		Per Structure, per Day				
Hard-sided, for 50 personnel		Per Structure, per Day				
Hard-sided, for 100 personnel		Per Structure, per Day				
Hard-sided, for 200 personnel		Per Structure, per Day				
<b>Shower Facilities</b>	Handicap Accessible Y/N					
<i>List available units by number of shower heads</i>						
		Per Unit, per Day				

			Per Unit, per Day				
			Per Unit, per Day				
			Per Unit, per Day				
			Per Unit, per Day				
<b>Toilet Facilities</b>	Handicap Accessible Y/N						
<i>List available units by number of toilets</i>							
			Per Unit, per Day				
			Per Unit, per Day				
			Per Unit, per Day				
			Per Unit, per Day				
			Per Unit, per Day				
			Per Unit, per Day				
<b>Laundry Facilities</b>	Handicap Accessible Y/N						
<i>List available units by number of washers and number of dryers</i>							
			Per Unit, per Day				
			Per Unit, per Day				
			Per Unit, per Day				
			Per Unit, per Day				
<b>TECHNOLOGY SERVICES</b>							
<b>Description</b>	<b>Unit of Measure</b>	<b>Cost</b>	<b>Mobilization/ Set-up Fee</b>	<b>Demobilization/ Tear Down Fee</b>			
Data Service (Internet Access)	Per Drop, per Day						
Voice Service (Telephone)	Per Drop, per Day						

Television Service	Per Drop, per Day			
Facsimile Service	Per Unit, per Day			
Other, please list				
<b>ADDITIONAL AVAILABLE EQUIPMENT, SERVICES, SUPPLIES (Respondent may list any other pertinent equipment/services/or supplies that it can provide)</b>				
<b>Description</b>	<b>Unit of Measure</b>	<b>Cost</b>	<b>Mobilization/ Set-up Fee</b>	<b>Demobilization/ Tear Down Fee</b>

**B.3 AWARD AND PURCHASE ORDERS**

**A. Award Notice**

Any Contract resulting from this RFP will be awarded by the Department in its sole discretion. See page 1 of this RFP for award information.

**B. The Department Purchase Order**

**1. Recurring Services**

The Department shall issue a Purchase Order for required attendance at conferences and exercises and for any other recurring services for which the Contractor requested payment or reimbursement in the Contractor’s Proposal and that the Department has incorporated into this Contract. The Contractor will not perform any services for which the Contractor expects payment or reimbursement until issuance of a Purchase Order by the Department.

**2. Contingent Services**

Upon request for activation of contingent services, the Contractor shall submit staffing and resource recommendations for assigned tasks to the Department. The Department shall review and upon approval, issue Purchase Order(s). The Contractor will not provide any contingent services until issuance of a Purchase Order by the Department.

The Purchase Order will reference the approved tasking message tracking number. This tasking message tracking number may be assigned either by a State of Texas Action Request (STAR) or another signed document authorizing the issuance of a Purchase Order on this Contract. The tasking message tracking number shall be referenced on both the delivery ticket and the invoice, see Section G.2.B.

## SECTION C - STATEMENT OF WORK

### C.1 DESCRIPTION

The Department solicits proposals from all interested and qualified Respondents to enter into a contract with the Department to provide and sustain Emergency Response and Support Services (ERSS) to manage response efforts or to support responders for all-hazards (natural / technological / adversarial / or human-caused) emergency events or incidents in accordance with any contract resulting from this RFP.

The Contractor shall provide the management staff, Incident Management Teams (IMTs), resources, credentials, functional expertise, and experience to deploy and operate or augment, a spectrum of teams or facilities for emergency incidents at multiple locations throughout the State of Texas prior to, during, and after an incident or event occurs.

The Contractor shall have the ability to sustain twenty-four (24) hour per day operations for a minimum of seven (7) days within sixty (60) hours of formal notification and remain operational for the duration of the event. The actual duration of the response will be dependent upon the scale and scope of the incident/event and services may be needed for shorter or longer durations. Payment for services provided will be based on the duration of deployment.

All personnel and services provided by the Contractor under this Contract will adhere to Incident Command System (ICS) principles, functions, and structure as developed and adopted by FEMA, as they exist on the date of execution of this Contract and as amended by FEMA throughout the term of this Contract.

In accordance with Texas Government Code 418.016 the Department, may in its discretion, issue solicitations for these or similar services during the term of this contract.

### C.2 OPERATIONS TO BE SUPPORTED BY THE CONTRACTOR

The Contractor shall have a proven track record of performance in providing and supporting disaster response at a statewide level. The Contractor shall have provided similar services as requested in this Contract for a minimum of three (3) state- or federally-declared disasters over the past ten (10) years and shall be in good standing with the awarding or utilizing entities.

As requested by the Department, the Contractor shall provide all resources for one or more of the following operations:

#### A. Emergency Operations Center (EOC)

An EOC, located anywhere within the State of Texas either within a local jurisdiction or at a state agency facility where emergency management activities are coordinated.

#### B. Incident Management Team (IMT)

The command, general staff, and technical support that operate an emergency facility such as an EOC or command post.

#### C. First Responder Site/Camp Operations

A geographical location equipped and staffed to provide work site, sleeping, food, water, and sanitary services to incident personnel.



#### **D. Distribution and Warehouse Operations**

Staffing for warehouse operations ranging from fifty thousand (50,000) to two hundred thousand (200,000) square feet at site(s) to be determined by the Department.

#### **E. Emergency Resource Staging Area (RSA)**

An area where materials, equipment, and supplies are collected, organized, or distributed.

#### **F. Transition Hubs**

A location where people transition from one (1) mode of transportation to another or from transportation mode to a temporary shelter location.

### **C.3 PRICE ADJUSTMENTS**

#### **C.3.1 Annual Price Adjustment Provisions**

The Contractor may request a price adjustment to be effective at the first renewal, and at each subsequent renewal as noted below:

##### **A. Staffing Costs**

Staffing costs may be adjusted by changes in the Employment Cost Index reflecting 12-month percentage increases.

To be considered for the ECI adjustment, the Contractor shall submit a request in writing to the Contract Monitor by the last business day in February of each contract year. The Department may accept, reject, or negotiate increases within sixty (60) calendar days after receipt of a properly submitted request. The maximum percent escalation allowable will be based on the 12-month percent change in the ECI, not seasonally adjusted, for wages and salaries for State and local government workers in all industries and occupations. The index may be obtained at the US Bureau of Labor Statistics website at [www.bls.gov/ECI](http://www.bls.gov/ECI), "State And Local Government, Wages And Salaries, 12-Month Percent Change, Not Seasonally Adjusted - CIU3020000000000A" (see Exhibit J.5.) Requests for price adjustments will utilize the 4th quarter rate for the most recent year.

Method of Calculation:

Utilize the percentage found in the table at the website noted above as the maximum percentage increase to apply to the current contract pricing. Approved price increase(s) will be effective on the first day of the contract renewal period.

The first eligible cost increase for this Contract will be June 1, 2018 based upon the percent change in the ECI from 4th quarter 2015 to 4th quarter 2016. For each succeeding year, the same procedure as outlined above will be used.

##### **B. Equipment, Supplies, Food Services, and Other Services**

Costs for equipment, supplies, meals, and other services may be adjusted by changes in the Consumer Price Index reflecting 12-month percentage increases.

To be considered for the CPI adjustment, the Contractor shall submit a request in writing to the Contract Monitor by the last business day in February of each contract year. The Department may accept, reject, or negotiate increases within sixty (60) calendar days after receipt of a properly submitted request. The maximum percent escalation allowable will be based on the 12-month percent change in the CPI, not seasonally adjusted, US city

average for all items, with the 1982-84=100 base period. The index may be obtained at the US Bureau of Labor Statistics website at [www.bls.gov/CPI](http://www.bls.gov/CPI), "Consumer Price Index All Urban Consumers 12-Month Percent Change" (see Exhibit J.6). Requests for price adjustments will use the December rate for the most recent year.

Method of Calculation:

Utilize the percentage found in the table at the website noted above as the maximum percentage increase to apply to the current contract pricing. Approved price increase(s) will be effective on the first day of the contract renewal period.

The first eligible cost increase for this Contract will be June 1, 2018 based upon the percent change in the CPI from December 2016 to December 2017. For each succeeding year, the same procedure as outlined above will be used.

### **C. Special Circumstance Price Adjustments**

The Contractor may request a price adjustment during an activation under this Contract for any items listed if special circumstances or conditions have caused the cost of providing the item to increase to a point that it would present an undue hardship on the Contractor to provide the item at the existing contract price.

When such a price adjustment request occurs for any of the contingent services obtained under this Contract, the price adjustment shall be reviewed for acceptance or denial by the Deputy Assistant Director of the Texas Division of Emergency Management (TDEM) or authorized designee. The Deputy Assistant Director of TDEM or authorized designee shall notify the Contractor of any approvals prior to the Contractor charging the Department the adjusted price(s). The Department shall then provide written confirmation of the temporary modified price(s) to the Contractor on the issued Purchase Order or Purchase Order Change Notice.

### **D. Price Decreases or Discount Increases**

The Contractor shall immediately implement any price decrease or discount increase that may become available during the term of this Contract. The Contractor shall notify the Department in writing of any such adjustments to this Contract.

## **C.4 RECURRING AND CONTINGENT SERVICES**

All deliverables unless otherwise specified will be provided on a contingent basis. The Department shall issue a Purchase Order against this Contract to engage the Contractor for any of the contingent services described in the Scope of Services – Contingent Deliverables, Section C.6. There is no guarantee that these services will be utilized during the term of this Contract.

Some deliverables will be required throughout the term of this Contract. Those are listed in the Scope of Services – Recurring Deliverables, Section C.5. The Contractor shall provide these recurring services to coordinate, plan, and demonstrate its readiness and ability to respond to and provide support for emergency incidents or events.

## **C.5 SCOPE OF SERVICES – RECURRING DELIVERABLES**

The Contractor shall provide the following recurring deliverables:

### **A. Contractor Point of Contact (POC)**

Within three (3) calendar days after the effective date of this Contract, the Contractor shall designate a point of contact and an alternate, each of whom shall be available on a twenty-

four (24) hour, seven (7) day per week basis. The Points of Contact (POC) shall be able to speak for, represent, and bind the Contractor and shall coordinate all Contractor-provided emergency response and support operations. The POC shall be knowledgeable in emergency operations and in the requirements of this Contract.

## **B. Readiness Planning and Reporting**

The Respondent shall include, within its Proposal, information to demonstrate its ability to coordinate, plan, and demonstrate readiness to respond to and provide support for emergency incidents or events. This information should include all items noted below in Section C.B.1. through C.B.4. The Respondent shall also include the three (3) reports referenced in Sections C.B.5, C.B.6 and C.B.7, within its Proposal.

By April 1st of each Contract year, on a date set by the Department, either in person or via tele- or video- conference, the Contractor shall meet with representatives from the Department to evaluate the Contractor's ability to coordinate, plan, and demonstrate its readiness to respond to and provide support for emergency incidents or events.

The Contractor shall provide to the Department, via presentation and in soft copy, the following information:

1. A summary of any organizational changes or restructuring since the previous reporting period.
2. Details of any changes to deployment procedures (means and methods of contacting employees, Sub-Contractors, Contractors, and suppliers and ensuring response within required timelines).
3. Details of any additional capabilities or changes in capabilities.
4. Details of any Command or General Staff personnel changes since the previous reporting period, to include resumes of new personnel establishing their experience and training.
5. Staffing Readiness Report (see Exhibit J.7), detailing the following information for all personnel available for POC, Command, and General Staff positions:
  - a. Position title
  - b. Name (Last, First)
  - c. Employment status (employee, subcontractor, etc.)
  - d. Employee's date of hire
  - e. Sub-Contractor's Contract term (Contract start and expiration dates)
  - f. Training successfully completed this reporting period
  - g. Certifications attained/renewed this reporting period
6. Equipment/Supplies Readiness Report (see Exhibit J.8), detailing the following information for all items listed on the a la carte equipment and supplies pricing sheet:
  - a. Description of item
  - b. Unit of measure
  - c. Quantity available on-site within seventy-two (72) hours of initial formal notification
  - d. Quantity owned by Contractor

- e. Quantity provided by other suppliers
- 7. Turnkey Facilities Readiness Report (see Exhibit J.9), detailing the following information for all items listed on the Turnkey Facilities Pricing Sheet:
  - a. Description of item
  - b. Unit of measure
  - c. Quantity available on-site within seventy-two (72) hours of initial formal notification
  - d. Quantity owned by Contractor
  - e. Quantity provided by other suppliers
  - f. Notation of handicap accessibility for portable shower, toilet, and laundry facilities
- 8. Price Adjustment Request, if desired, per the provisions noted above in Section C.3.

**C. Deployment Procedures**

Respondent shall provide deployment procedures which demonstrate the Contractor's methods of contacting employees, subcontractors, third-party contractors and suppliers to ensure response within required timelines.

**D. Representation at Conferences and Exercises**

- 1. The Contractor's POC and/or other Command and General Staff representatives may be required to attend State-sponsored conferences and exercises. The Contractor may be required to conduct a presentation relating to ERSS activities, capabilities, lessons learned, and best practices.
- 2. The Department shall pay the Contractor, at hourly rates noted on the Staffing Price List, Section B.2, for the Contractor's POC and/or other Command and General Staff representatives' time for travel and attendance at required conferences and exercises.
- 3. The Department shall reimburse the Contractor, as noted in Payment and Reimbursement, Section B.3.B, for meals, lodging, and travel expenses for attendance at required conferences and exercises.  
<https://fmx.cpa.texas.gov/fmx/travel/texttravel/rates/current.php>

**C.6 SCOPE OF SERVICES – CONTINGENT DELIVERABLES**

The Contractor may be required to provide any or all of the following deliverables for any given event. The Department shall specifically list all requested items on the Purchase Order.

**A. Staffing**

The Contractor shall provide trained, qualified, and experienced personnel for emergency response and support services. The Department shall have the latitude to establish its specific requirements when personnel are needed to support emergency operations and response activities.

The Contractor shall ensure the personnel filling the roles of the requested support have the necessary credentials for each job title to perform the job and are in compliance with all local, state, and federal requirements for training, licensure, and certification.

**The Command and General Staff shall possess the minimum training requirements for all FEMA courses:**

- IS-100: Introduction to ICS
- IS-200: Basic ICS
- ICS-300: Intermediate ICS
- ICS-400: Advanced ICS
- IS-700.a: NIMS, An Introduction
- IS-701.a: Multi-Agency Coordination System
- IS-703.a: NIMS Resource Management
- IS-800.b: National Response Framework, An Introduction

**All courses above are offered online (<http://training.fema.gov/IS/crslist.aspx>) except the ICS 300 and ICS 400 which are classroom only.**

The quantity and functional composition of the staff may vary based on the number of people needed for the specific incident. The Department reserves the right to supplement staffing with State-provided personnel.

The Contractor shall manage all performance, project management, and schedules for Contractor's personnel. The Contractor shall be solely responsible and accountable for the completion of all work for which the Contractor has committed.

**B. Office/Work Shelter**

The Contractor shall provide soft-sided structures (tents) or hard-sided structures, in sizes to accommodate a minimum of ten (10) or up to fifty (50) personnel for use as office/work shelter, to include:

1. A minimum of twenty-five (25) square feet per person;
2. Finished, non-slip flooring;
3. A non-slip handicap accessible ramp;
4. Protection from the elements (sun, wind, rain, sleet, snow, etc.);
5. Appropriately-sized, operational air conditioning/heating system;
6. Fire extinguishers, smoke alarms, and carbon monoxide detectors consistent with locally-adopted fire codes and/or building codes for each shelter/structure. If there are no locally adopted codes, the shelter/structure must be compliant with codes adopted by the Texas State Fire Marshal's Office;
7. Power for interior emergency lighting consistent with locally adopted fire codes and/or building codes for each shelter/structure. If there are no locally adopted codes, the shelter/structure must be compliant with codes adopted by the Texas State Fire Marshal's Office;
8. Interior lighting levels appropriate for environment: 300 – 500 lux maintained;

9. Adequate exterior lighting: Luminaire located within 20 feet of each exterior door; minimum of 1,000 lumens, maximum of 2,000 lumens per fixture; shielded luminaires preferred;
10. Reliable commercial or generator power source sufficient to support the facilities;
11. Daily janitorial cleaning and service of all facilities;
12. On-site 24/7 facilities superintendent per site;
13. Non-slip entrance floor covering (entry mat).

### **C. Self-Contained Crew Quarters**

The Contractor shall provide self-contained crew quarters, to include:

1. Twelve (12) persons per structure maximum;
2. Protection from the elements (sun, wind, rain, sleet, snow, etc.);
3. Appropriately-sized, operational air conditioning/heating system;
4. Fire extinguishers, smoke alarms, and carbon monoxide detectors consistent with locally adopted fire codes and/or building codes for each shelter/structure. If there are no locally adopted codes, the shelter/structure must be compliant with codes adopted by the Texas State Fire Marshal's Office;
5. Power for interior emergency lighting consistent with locally-adopted fire codes and/or building codes for each shelter/structure. If there are no locally adopted codes, the shelter/structure must be compliant with codes adopted by the Texas State Fire Marshal's Office;
6. Interior lighting levels appropriate for environment: 200 – 500 Lux maintained;
7. Adequate exterior lighting: Luminaire located within 20 feet of each exterior door; minimum of 1,000 lumens, maximum of 2,000 lumens per fixture; shielded luminaires preferred;
8. Reliable commercial or generator power source sufficient to support the facilities;
9. Daily janitorial cleaning and service of all facilities;
10. On-site 24/7 facilities superintendent per site;
11. Provision of potable water, both hot and cold, consistent with locally-adopted codes for each shelter/structure. If there are no locally-adopted codes, must be compliant with codes adopted by the Texas Commission on Environmental Quality;
12. Disposal of gray/black water consistent with locally-adopted codes for each shelter/structure. If there are no locally-adopted codes, must be compliant with codes adopted by the Texas Commission on Environmental Quality;
13. Ability to accommodate separation by gender;
14. Two (2) bedrooms, six (6) cots maximum each;

15. Two (2) bathrooms, complete with showers, toilets, and vanity (Optional);
16. One (1) locker for each cot provided;
17. Pillows and bed linens to outfit every cot provided;
18. Linens changed a minimum of every three (3) days;
19. Washer and dryer for each unit;
20. Non-slip Entrance floor covering (entry mat);
21. Refrigerator and microwave preferred;
22. Individual shower stalls for privacy;
23. Sinks supplied with fragrance free/sensitive skin soap and paper towels;
24. Showers supplied with fragrance free/sensitive skin soap/shampoo, and disposable or reusable cloth towels laundered daily;
25. Toilet Paper;
26. Toilets will be flushing type;
27. Fragrance free/sensitive skin laundry soap.

#### **D. Sleeping Shelter**

The Contractor shall provide soft-sided structures (tents) or hard-sided structures in sizes to accommodate fifty (50), one hundred (100), or two hundred (200) personnel for use as a sleeping shelter, to include:

1. A minimum of fifty (50) square feet per person;
2. Finished, non-slip flooring;
3. A non-slip handicap accessible ramp;
4. Protection from the elements (sun, wind, rain, sleet, snow, etc.);
5. Appropriately-sized, operational air conditioning/heating system;
6. Fire extinguishers, smoke alarms, and carbon monoxide detectors consistent with locally-adopted fire codes and/or building codes for each shelter/structure. If there are no locally-adopted codes, the shelter/structure must be compliant with codes adopted by the Texas State Fire Marshal's Office;
7. Power for interior emergency lighting consistent with locally-adopted fire codes and/or building codes for each shelter/structure. If there are no locally-adopted codes, the shelter/structure must be compliant with codes adopted by the Texas State Fire Marshal's Office;
8. Interior lighting levels appropriate for environment: 200 – 500 Lux maintained;
9. Adequate exterior lighting: Luminaire located within 20 feet of each exterior door; minimum of 1,000 lumens, maximum of 2,000 lumens per fixture; shielded luminaires preferred;

10. Reliable commercial or generator power source sufficient to support the facilities;
11. Daily janitorial cleaning and service of all facilities;
12. Ability to accommodate separation by gender;
13. Pillows and bed linens to outfit every cot provided;
14. Linens changed a minimum of every three (3) days;
15. Non-slip entrance floor covering (entry mat).

#### **E. Portable Shower Facilities**

The Contractor shall provide self-contained trailer(s) or container-configured shower facilities to include:

1. A non-slip handicap accessible ramp;
2. At least one handicap accessible stall/unit;
3. Protection from the elements (sun, wind, rain, sleet, snow, etc.);
4. Appropriately-sized, operational air conditioning/heating system;
5. Fire extinguishers, smoke alarms, and carbon monoxide detectors consistent with locally-adopted fire codes and/or building codes for each shelter/structure. If there are no locally-adopted codes, the shelter/structure must be compliant with codes adopted by the Texas State Fire Marshal's Office;
6. Power for interior emergency lighting consistent with locally-adopted fire codes and/or building codes for each shelter/structure. If there are no locally-adopted codes, the shelter/structure must be compliant with codes adopted by the Texas State Fire Marshal's Office;
7. Interior lighting levels appropriate for environment: 150 Lux maintained;
8. Adequate exterior lighting: Luminaire located within 20 feet of each exterior door; minimum of 1,000 lumens, maximum of 2,000 lumens per fixture; shielded luminaires preferred;
9. Reliable commercial or emergency power source sufficient to support the facilities;
10. Daily janitorial cleaning and service of all facilities;
11. Provision of potable water, both hot and cold, consistent with locally-adopted codes for each shelter/structure. If there are no locally-adopted codes, must be compliant with codes adopted by the Texas Commission on Environmental Quality;
12. Disposal of gray water consistent with locally-adopted codes for each shelter/structure. If there are no locally-adopted codes, must be compliant with codes adopted by the Texas Commission on Environmental Quality;
13. Ability to accommodate separation by gender;
14. Individual shower stalls for privacy;



15. Sinks supplied with fragrance free/sensitive skin soap and paper towels;
16. Showers supplied with fragrance free/sensitive skin soap/shampoo, and disposable or reusable cloth towels laundered daily.

#### **F. Toilet Facilities**

The Contractor shall provide self-contained trailer(s) or container-configured toilet facilities to include:

1. A non-slip handicap accessible ramp;
2. At least one handicap accessible stall/unit;
3. Protection from the elements (sun, wind, rain, sleet, snow, etc.);
4. Appropriately-sized, operational air conditioning/heating system;
5. Fire extinguishers, smoke alarms, and carbon monoxide detectors consistent with locally-adopted fire codes and/or building codes for each shelter/structure. If there are no locally-adopted codes, the shelter/structure must be compliant with codes adopted by the Texas State Fire Marshal's Office;
6. Power for interior emergency lighting consistent with locally-adopted fire codes and/or building codes for each shelter/structure. If there are no locally-adopted codes, the shelter/structure must be compliant with codes adopted by the Texas State Fire Marshal's Office;
7. Interior lighting levels appropriate for environment: 150 Lux;
8. Adequate exterior lighting: Luminaire located within 20 feet of each exterior door; minimum of 1,000 lumens, maximum of 2,000 lumens per fixture; shielded luminaires preferred;
9. Reliable commercial or generator power source sufficient to support the facilities;
10. Daily janitorial cleaning and service of all facilities;
11. Provision of potable water, both hot and cold, consistent with locally-adopted codes for each shelter/structure. If there are no locally-adopted codes, must be compliant with codes adopted by the Texas Commission on Environmental Quality;
12. Disposal of gray/black water consistent with locally-adopted codes. If there are no locally adopted codes, Contractor shall be compliant with codes adopted by the Texas Commission on Environmental Quality.
13. Ability to accommodate separation by gender;
14. Sinks supplied with fragrance free/sensitive skin soap and paper towels;
15. Toilet Paper;
16. Toilets will be flushing type.

## **G. Laundry Facility**

The Contractor shall provide portable laundry facilities, to include:

1. Protection from the elements (sun, wind, rain, sleet, snow, etc.);
2. Appropriately-sized, operational air conditioning/heating system;
3. Fire extinguishers, smoke alarms, and carbon monoxide detectors consistent with locally-adopted fire codes and/or building codes for each shelter/structure. If there are no locally-adopted codes, the shelter/structure must be compliant with codes adopted by the Texas State Fire Marshal's Office;
4. Power for interior emergency lighting consistent with locally-adopted fire codes and/or building codes for each shelter/structure. If there are no locally-adopted codes, the shelter/structure must be compliant with codes adopted by the Texas State Fire Marshal's Office;
5. Interior lighting levels appropriate for environment: 200 Lux maintained;
6. Adequate exterior lighting: Luminaire located within 20 feet of each exterior door; minimum of 1,000 lumens, maximum of 2,000 lumens per fixture; shielded luminaires preferred;
7. Reliable commercial or generator power source sufficient to support the facilities;
8. Daily janitorial cleaning and service of all facilities;
9. Provision of potable water, both hot and cold, consistent with locally-adopted codes for each shelter/structure. If there are no locally-adopted codes, must be compliant with codes adopted by the Texas Commission on Environmental Quality;
10. Disposal of gray water consistent with locally-adopted codes for each shelter/structure. If there are no locally-adopted codes, must be compliant with codes adopted by the Texas Commission on Environmental Quality;
11. Washers and dryers;
12. Fragrance free/sensitive skin laundry soap and fabric softener/dryer sheets.

## **H. Food Services**

The Contractor shall provide turnkey food services and support for up to fifteen thousand (15,000) meals and ten thousand (10,000) snacks per day, for an operational period up to twenty-four (24) hours for the duration of the event. Turnkey food services and support is defined as including all personnel, power, water, refrigeration and food service equipment, food, food service containers, utensils, and supplies necessary to operate this service. The Contractor shall provide meals consistent with the sample menu plans provided within its Proposal, see Section L.8.2.N.

1. Food Service Schedules

The following chart lists typical food service schedules. However, meal times may vary according to operational requirements and will be confirmed with the Base Camp Manager or the designated Department representative.

A. 24-hour operational period:

TIME	MEAL	PERSONNEL PARTAKING
0300	Snack	Night Shift
0700	Breakfast	Night Shift and Day Shift
1000	Snack	Day Shift
1200	Lunch	Day Shift
1500	Snack	Day Shift
1900	Supper	Day Shift and Night Shift
2100	Snack	Night Shift
2400	Lunch	Night Shift

B. 12-hour operational period:

TIME	MEAL
0700	Breakfast
1000	Snack
1200	Lunch
1500	Snack
1900	Supper

2. Catering

- A. All meals are to be served at location(s) designated by the Department.
- B. Meals will include a hot breakfast and hot supper. A hot lunch will be provided for personnel at the base camp, but a boxed lunch will be provided for personnel who deploy away from the base camp.
- C. Meals will be visually appealing, appetizing, and nutritionally sound.
- D. Meals will include the USDA recommended servings of protein, grains, fruits, and vegetables and be portioned to ensure a minimum of two thousand (2,000) calorie daily intake.
- E. Boxed meals will be packaged to prevent damage during transport to the service location.
- F. Boxed meals will be prepared no more than twelve (12) hours prior to serving and stored appropriately to prevent spoilage and to ensure freshness.

- G. The Contractor shall provide a 24-hour beverage station serving water, tea, coffee, milk, assorted soft and sports drink products, and ice. The station will also stock creamer, sugar, and artificial sweeteners.

**I. Technology Services**

The Contractor shall make a reasonable effort to provide continuous voice and data communications with its emergency field operation staff to ensure proper execution of responsibilities and tasks when the local communications infrastructure (land phones, mobile devices that depend on local cell phone antenna networks, and internet connectivity) is disabled and main power is unavailable. The Contractor shall demonstrate an ability to send and receive telephone, fax, and e-mail communication and provide access to local television channels and at least one (1) national news channel throughout the duration of an event. Satellite communication capability is recommended.

**J. Other Equipment and Supplies**

The Contractor shall provide all items specifically requested on the Purchase Order.

**K. Incidental Items**

All incidental items for which the Contractor charges the Department will have prior approval by the Deputy Assistant Director or Authorized Designee in the State Operations Center.

**C.7 REQUIREMENTS FOR CONTINGENT SERVICES**

The Contractor shall meet/perform the following requirements for services requested under this Contract:

**A. Mobilization and Demobilization**

1. When notified, the Contractor shall mobilize the POC(s) within twelve (12) hours so as to arrive on-site at the Department's coordination center, no later than twenty-four (24) hours after the notification.
2. For all other services, mobilization will occur within twelve (12) hours after formal notification via purchase order so as to be fully functional at assigned location within sixty (60) hours after the initial formal notification.
3. All requested services for additional assignments for the same incident will be fully functional within twenty-four (24) hours of formal notification via purchase order.
4. Demobilization instructions will be provided twenty-four (24) hours in advance by the Department. The end of service period will be determined by the Department's approval of the Contractor's demobilization plan.

**B. Administrative and Office Supplies and Equipment**

The Contractor shall provide and/or procure at the Contractor's expense, all administrative supplies and equipment needed to support operations and response activities at an emergency facility with the exception of copier paper and rental of a copier/scanner which are specifically listed on the attached price sheet.

**C. Daily Reports**

During a deployment, the Contractor shall provide record keeping and reports, as directed by the Department requirements, to monitor costs and resources utilized under this Contract. Examples of required reports:

1. Daily Burn Rate;
2. Resources Assigned;
3. Resources Available;
4. Anticipated Shortfalls;
5. Inventory Activity.

Acceptable formats for these reports will be provided to the Contractor upon Contract award.

Additional reports may be required. Any additional reporting requirements will be coordinated between the Contractor and the Department in a mutually-agreed-upon format.

#### **D. After Action Reviews**

The Contractor shall participate in any after-action-reviews of a disaster or emergency response by providing specialized input, including a written After Action Report concerning any services delivered under this Contract.

#### **E. Site Cleaning, Refuse, and Waste Disposal**

The Contractor shall maintain the site, at a minimum, in accordance with Government Code 341, "Minimum Standards of Sanitation and Health Protection Measures". The Contractor shall properly dispose of all refuse and waste created by the Contractor's operations to include gray water, black water, cooking oils, and other by-products and, at demobilization, leave the site in same or better condition as when Contractor arrived on site.

#### **F. Vehicles**

All vehicles supplied under this Contract will be insured as detailed in the "Insurance Requirements", Section I1, and have current vehicle registrations/inspections.

#### **G. Service Locations**

The Contractor may be required to provide simultaneous services in multiple locations around the state.

#### **H. Issue Log Book**

The Contractor will maintain a separate Issue Log Book for each activation under this Contract. The Issue Log Books will contain all issues and complaints raised to the Contractor and subcontractor employees and all actions taken to address, rectify and final status of any filed issues and complaints.

### **C.8 FEDERAL CONTRACTING REQUIREMENTS**

The Respondent shall comply with the Federal Contracting Requirements as provided in Exhibit J.10 to this solicitation and shall also complete and return the forms attached to the Exhibit within its Proposal.

## SECTION D – REPORTS AND DATA

### D.1 CONTRACT COMPLIANCE REPORTS REQUIRED FROM CONTRACTOR

The Contractor shall submit the reports in this Section during the course of this Contract. These reports may be revised or additional reports may be required at the Department's sole discretion.

FREQUENCY	DUE DATE	REPORT ITEM	AUTHORITY
Monthly	Last business day	Invoices for Recurring services provisioned for previous month.	Contract, Sections G.2 and G.3
Weekly	7 <sup>th</sup> Day	Invoices for Contingent goods and services during an activation period.	Contract, Sections G.2 and G.3
Monthly	5 <sup>th</sup> business day to Contract Administrator	HUB Subcontracting Plan (HSP) Prime Vendor Progress Assessment Report	Contract, Section I.3 and Exhibit J.1
Other	Each instance	Copy of each subcontract	Contract, Section I.2.D
Other	Within twenty-four (24) hours of receipt of notification of non-compliant performance	Corrective Action for Items of Non-Compliance identified	Contract, Section E.1.F
Other	Prior to Execution of Contract and upon renewal or replacement	Insurance Requirements	Contract, Section I.1
Annual	Prior to Execution of Contract and again within one-hundred twenty (120) calendar days after the end of the Contractor's fiscal year	Financial Rating	Contract, Sections B.1.3 and G.3.8
Annual	Last business day in February	Request for Price Adjustment for Staffing	Contract, Section C.3.1 and Exhibit J.5
Annual	Last business day in February	Request for Price Adjustment for Goods and Services	Contract, Section C.3.1 and Exhibit J.6
Annual	By April 1 <sup>st</sup>	Staffing Readiness Report	Contract, Section C.5.B and Exhibit J.7
Annual	By April 1 <sup>st</sup>	Equipment/Supplies Readiness Report	Contract, Section C.5.B and Exhibit J.8
Annual	By April 1 <sup>st</sup>	Turnkey Facilities Readiness Report	Contract, Section C.5.B and Exhibit J.9
Upon Deployment	Daily throughout the deployment	Daily Reports	Contract, Section C.7.C

## **SECTION E - INSPECTION AND ACCEPTANCE**

### **E.1 INSPECTION OF SERVICES**

- A. The Department has the right to inspect and validate all products, services and deliverables called for by this Contract, to the extent practicable at all times and places during this Contract. The Department shall perform inspections in a manner that will not unduly interfere with the Contractor's performance of this Contract. The Contractor shall furnish, and shall require subcontractors to furnish, at no additional charge, all reasonable assistance for the safe and convenient performance of these duties.
- B. If any deliverables do not conform to this Contract's requirements, the Department shall require the Contractor to perform the deliverables or services in conformity with this Contract's requirements, at no additional charge, in addition to all other legal and equitable remedies.
- C. The Department shall, subject to limitations provided by law with respect to rights of privacy, have the right to reasonably prompt access and to examine all records of the Contractor, including financial records, maintenance records, employee records including time, and attendance records generated by the Contractor and its subcontractors in connection with performance of this Contract.
- D. If subject to the outcome of an audit, it is determined that the Contractor is in non-compliance with any provisions of this Contract and/or that money is owed to the Department by the Contractor, then the Department shall exercise its rights of recovery of money owed as authorized in Section G.3.6 of this Contract.
- E. If any services are non-compliant with this Contract's requirements, the Contractor shall be notified in writing describing specific areas of non-compliance. Contractor shall immediately address any areas of non-compliance. Payment will not be made for services or items not provided or in non-compliance. If an item of non-compliance cannot be resolved between the Contractor and the Department, and such item remains unaddressed for a period of twenty-four (24) hours after written notification to the Contractor, then such item shall be declared to be an Event of Default.

### **E.2 INSPECTION BY STATE EMPLOYEES**

- A. The Contractor shall provide and maintain all documentation pertaining to quality testing, acceptance of deliverables, maintenance and warranty records, inventories of equipment per location, and all reports necessary as per the terms of this Contract, in a manner acceptable to the Department for the deliverables provided under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Department during this Contract's performance and for a period of seven (7) years after the termination of this Contract.
- B. The Contractor shall provide entry at all times to the Department, the Public Safety Commission, any authorized employee/agent for inspections and other official purposes. The Governor, members of the Legislature, and all other members of the Executive and Judicial Departments of the State, as well as any other persons designated by the Department including Office of the Inspector General, shall be admitted to monitor the delivery of deliverables.

### **E.3 MONITORING CRITERIA**

- A. The Department shall devise its own procedures for monitoring the quality of the Contractor's performance under this Contract and the Department's Policies.
- B. The Contractor shall cooperate fully with the Department in obtaining the requisite information needed to complete such audits and to assess the quality of the Contractor's performance.
- C. Monitoring will include, but is not limited to, document reviews and on-site audits conducted by Authorized Representatives of the Department. Such monitoring by the Department shall not relieve the Contractor of any of its obligations under this Contract.
- D. The Contract Monitor and other Department staff shall provide written findings regarding non-compliant conditions, processes, procedures and observations that could, if not addressed by the Contractor, become an item of non-compliance as described in Section E.1.



## **SECTION F - DELIVERIES OR PERFORMANCE PERIOD**

### **F.1 CONTRACT TERM**

This Contract shall consist of a Base Period from date of award through May 31, 2018 with three (3) one (1) year renewal Option Periods (June 1, 2018 through May 31, 2019; June 1, 2019 through May 31, 2020, and; June 1, 2020 through May 31, 2021). The terms, conditions, and rates for all extensions shall remain as stated in this Contract.

The Department reserves the right, in its sole discretion, to exercise its option to renew this Contract for one or more of the above Option Periods, one Option Period at a time.

This Contract may also be extended as per Section H.16, Option to Extend Service.

The terms, conditions, and rates for all extensions will remain as stated in this Contract. The continuation of this Contract for any period of time is subject to the availability of federal and any other applicable funding.

## SECTION G - CONTRACT ADMINISTRATION DATA

### G.1 AUTHORITY – AUTHORIZED REPRESENTATIVE, CONTRACT ADMINISTRATOR, CONTRACT MONITOR

#### G.1.1 Authorized Representative

- A. In reference to the Contractor, its President or any Vice President shall designate the Authorized Representative in writing. The designation of the Contractor's initial Authorized Representative will be delivered to the Department no later than the effective date of this Contract. The Contractor's Authorized Representative may designate other persons to assist such Authorized Representative in the performance of certain obligations required by this Contract.
- B. The Director is hereby designated as the Department's Authorized Representative.
- The Director has established designee authority on his behalf for matters requiring signature approval of the Authorized Representative. The Department's Authorized Representatives may designate other persons to assist such Authorized Representatives in the performance of certain obligations of this Contract.
- C. Any party may designate any person as its Authorized Representative, at any time, by delivering to the other party a written designation signed, if on behalf of Contractor by its President or any Vice President, or if on behalf of the Department by the Director. Such designations will remain effective until new written instruments are filed with or such notice is given to the other party that such designations have been revoked.
- D. The Department's Authorized Representative or his designated Representative is the only person authorized to make or approve changes in any Contract requirements, and notwithstanding any clauses contained elsewhere in this Contract, the said authority remains solely with the Director or his designated Representative. In the event Contractor makes any change at the direction of any person other than the Director or his designated Representative, the change will be considered to have been made without authority and no adjustment will be made in this Contract price to cover any increase in cost incurred as a result thereof.

#### G.1.2 Department Contract Administrator

- A. The Contract Administrator for administration of this Contract is Jennifer Feliciano.
- B. The telephone number for the Contract Administrator is (512) 424-2096.
- C. The e-mail address is [Jennifer.Feliciano@dps.texas.gov](mailto:Jennifer.Feliciano@dps.texas.gov)

The Contract Administrator is responsible for general administration of this Contract, negotiation of any changes and issuance of written changes/modifications to this Contract.

#### G.1.3 Department Contract Monitor

- A. The Contract Monitor for this Contract is Brad Jacobs.
- B. The telephone number for the Contract Monitor is (512) 424-2394.

C. The e-mail address is [Bradley.Jacobs@dps.texas.gov](mailto:Bradley.Jacobs@dps.texas.gov)

The Contract Monitor is not authorized to make any representations or commitments of any kind on behalf of the Director of the Department or the State of Texas.

The Contract Monitor does not have the authority to alter the Contractor's obligations or to change this Contract's specifications, price, terms or conditions.

If, as a result of technical discussions, it is desirable to modify this Contract, changes will be issued in writing in a contract modification and signed by the Department's Authorized Representative or his designee.

#### **G.1.4 Department Project Manager**

A. The Project Manager for this Contract is Eric Shuey.

B. The telephone number for the Project Manager is (512) 424-7106.

C. The e-mail address is [Eric.Shuey@dps.texas.gov](mailto:Eric.Shuey@dps.texas.gov)

The Department Project Manager for this Contract who shall be responsible for the overall management and coordination of this Contract and shall act as the central point of contact for the Department. The Project Manager shall have full authority to act for the Department in the performance of this Project. The Project Manager or a designated representative shall meet with the Contractor Project Manager to discuss problems as they occur.

#### **G.1.5 Contractor Project Manager**

A. The Contractor Project Manager for this Contract is \_\_\_\_\_

B. The telephone number for the Contractor Project Manager is \_\_\_\_\_

C. The e-mail address is \_\_\_\_\_

The Contractor shall provide a Project Manager for this Contract who shall be responsible for the overall management and coordination of this Contract and shall act as the central point of contact with the State. The Contractor Project Manager shall report to the Department Project Manager or their designee. The Contractor Project Manager shall have full authority to act for the Contractor in the performance of this Contract. The Contractor Project Manager or a designated representative shall meet with the Contract Monitor and Department Project Manager to discuss problems as they occur. The Contractor Project Manager or designated representative shall respond within three (3) business days after notification of the existence of a problem.

#### **G.2 INVOICE REQUIREMENTS**

The Department shall pay the Contractor on the basis of itemized invoices submitted to and approved by the Department, showing the actual deliverables provided and the attendant charge. Itemized invoices will clearly identify the project phase or title, deliverables delivered, the number of hours that each allocated employee worked, and the date range of work performance for this associated charge.

- A. The Contractor's Invoice will include the following:
1. This Contract Number
  2. Purchase Order Number(s);
  3. Remittance Address; and
  4. Prompt Payment Discount: the Contractor may offer a prompt payment discount, i.e., 1%, fifteen (15) days (refer to page 1, block 7 of this Contract) if the Contractor desires expedited Payment).
- B. Invoice Supporting Documentation
- Original documentation that validates the charges will be attached to each invoice to ensure timely payment and may include, but is not limited to, the following:
1. Delivery tickets (the tasking message tracking number from the Purchase Order must be noted on the delivery ticket)
  2. Personnel time reports, showing hours worked, and including supervisor's signature
  3. Pick-up tickets
  4. Service tickets
  5. Equipment hour or mileage logs
- C. An invoice copy will be sent electronically to [apinvoices@dps.texas.gov](mailto:apinvoices@dps.texas.gov) with a copy to [TDEM.OMB@dps.texas.gov](mailto:TDEM.OMB@dps.texas.gov). An original, hard-copy invoice, if required by Contractor, shall be submitted to the office designated below:

**TXDPS - Accounts Payable  
P.O. Box 4087  
Austin, Texas 78773**

**The State will not incur any penalty for late payment if the invoice was not mailed to the appropriate address identified herein.**

### **G.3 PAYMENTS**

- A. It is recommended that the Contractor receive Payments via Electronic Funds Transfer (EFT), also known as Direct Deposit. If the Contractor elects to be set up for Direct Deposit payment, the Contractor shall submit a completed Direct Deposit Authorization form.
- B. Regardless as to whether Direct Deposit is chosen, the Contractor will submit a completed Texas Application for Payee Identification Number (Exhibit J.2) and Substitute W-9 form (Exhibit J.4) to the following address:

**TXDPS - Accounts Payable  
P.O. Box 4087  
Austin, Texas 78773  
Attention: Mary Hamilton  
Reference: Contractor Set-up for RFP 405-16-R012702**

- C. Notes: NAME OF PURCHASER when completed (512-424-2096 or [jennifer.feliciano@dps.texas.gov](mailto:jennifer.feliciano@dps.texas.gov)). If the Contractor has previously submitted a completed Contractor Direct Deposit Authorization and Substitute W-9 Form to the Department for another separate contract, another form is not required to be submitted. However, the Contractor is required to provide their eleven (11) digit Texas Identification Number (TINS) previously provided to Contractor by the Texas Comptroller of Public Accounts.

TINS: \_\_\_\_\_

- D. In the event the Contractor elects to decline Direct Deposit on the Contractor Direct Deposit Authorization and Substitute W-9 Form, the payment will be mailed to the following remittance address:

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

**G.3.1 Billing and Payment**

- A. The Texas Government Code, Chapter 2251 (the "Prompt Payment Act") will govern payment and accrual of interest on any overdue payments.
- B. If the Department, for any reason, including lack of supporting documentation, disputes any items in any invoices submitted by the Contractor, the Department shall place a hold on the disputed items and pay the remaining amount of the invoice. The Department shall timely notify the Contractor of the dispute and request clarification and/or remedial action.
- C. If the dispute is resolved in the Contractor's favor, the Department shall pay the remaining portion of the original invoice in accordance with the Prompt Payment Act. If the dispute is resolved in the Department's favor, the Contractor shall resubmit an invoice reflecting all corrections.
- D. The Purchase Order will reference the approved tasking message tracking number. This tasking message tracking number may be assigned either by a State of Texas Action Request (STAR) or another signed document authorizing the issuance of a Purchase Order on this Contract. The tasking message tracking number shall be referenced on both the delivery ticket and the invoice, see Section G.2.B.
- E. The Contractor shall bill the Department for each calendar month, one (1) calendar month in arrears for the amount due for the recurring services. Each invoice is subject to the Department's usual auditing and accounting procedures, and shall pay such invoice within thirty (30) days after receipt of an accurate Contractor's invoice.
- F. The Contractor shall bill the Department weekly, during deployments, beginning on the 7<sup>th</sup> day of the deployment for contingent goods and services as requested on a Purchase

Order from the Department. Each invoice is subject to the Department's usual auditing and accounting procedures, and shall pay such invoice within thirty (30) days after receipt of an accurate Contractor's invoice.

### **G.3.2 Payment Adjustment**

- A. The Department may elect to deduct from the Contractor Payment as specified in Section G.3.4, Deductions for Unacceptable Compliance and Section G.3.5, Withholding of Payment, any amount specified in or any money determined to be due as specified in Section E.1.E.
- B. If it is determined that the remaining amount of the Contractor Payment is not adequate to cover the money determined to be due to the Department, then all remaining Contractor Payment will be withheld and an invoice issued to the Contractor for the remaining amount due.
- C. The Contractor shall pay the invoiced amount within thirty (30) calendar days of receipt unless the Contractor and the Department mutually agree on an alternative payment method.

### **G.3.3 Late Payment**

Any amount owed to the Contractor more than one (1) calendar day beyond the date such amount is due as described in Section G.3 hereof will accrue interest each day that such amount is not paid at the rate specified by Texas Government Code, §2251.025, provided, however, that this provision will not excuse failure by the Department to make payment in strict accordance with this Contract.

### **G.3.4 Deductions for Unacceptable Compliance**

- A. The Contractor's failure to meet the listed specifications of this Contract will result in a deduction to the Contractor payment.
- B. Non-compliance could result in the Department purchasing or replacing services or deliverables and deducting the cost from the Contractor payment.

### **G.3.5 Withholding of Payment**

- A. The Department shall have the right to withhold the Contractor Payment until the failures described below have been corrected.
  - 1. Failure to submit reports required in Section D.1 Contract Compliance Reports required from Contractor;
  - 2. Failure to respond to audit reports; and
  - 3. Failure to correct identified areas of non-compliance to the satisfaction of the Department within ten (10) calendar days upon receipt of written notification.
- B. The Department will not pay interest to the Contractor for monies so withheld.
- C. The Contractor Payment withheld will be released upon the Department's satisfaction that compliance has been achieved for thirty (30) consecutive days.

- D. In the event that money is due to the Department for the Contractor's failure to provide adequate maintenance or replacement of the property as required in this Contract, the amount required for the Department to correct deficiencies and replace property will be withheld from the final Payment.
- E. With the exception of disputed issues, such withholding of final Payment by the Department will not exceed one-hundred twenty (120) calendar days from date of this Contract's termination.

### **G.3.6 Debts and Delinquencies**

The Department is prohibited from issuing any payment to a person or entity that has been reported as having an indebtedness or delinquency to the State of Texas. The Contractor agrees and understands that, to the extent the Contractor owes any debt or delinquent taxes to the State of Texas, the Department shall apply any payments or other amounts the Contractor is otherwise owed under this Contract toward the debt or delinquent taxes until the debt or delinquent taxes are paid in full. The Contractor shall comply with all applicable laws regarding satisfaction of debts or delinquencies to the State of Texas.

### **G.3.7 Right to Offset**

In the event the Department determines that the Contractor owes money to the Department under any contract or purchase order, the Department, upon providing the Contractor with written notice of its intent to offset, will have the right to withhold monies due to the Contractor with respect to this Contract or purchase order or with respect to any other contract or purchase order with the Department and apply such monies to the money due to the Department.

### **G.3.8 Annual Financial Rating**

- A. The Contractor shall submit to the Contract Administrator financial rating information acceptable to the Department as described in Section B.1.3 within one hundred twenty (120) calendar days after the end of the Contractor's fiscal year.
- B. In the disclosure of its financial affairs, the Contractor shall allow the Department or its representative's access to all its corporate books relative to the services provided hereunder, to cooperate in any audits thereof.
- C. Notwithstanding anything else in this Section G.3 or any other provision of this Contract to the contrary, the Contractor shall fully cooperate with state and federal representatives in audits of the Contractor's performance and receipt of funds under this Contract or applicable law, including, but not limited to, the audits described in Section H of this Contract.

## SECTION H – TERMS AND CONDITIONS

Any contract resulting from this RFP will include the following Standard Terms and Conditions. Subcontractors shall also comply with these provisions.

### H.1 FUNDING OUT; REVOCATION OF AUTHORITY

- A. All obligations of the Department are subject to the availability of appropriations of the Texas Legislature, and when the Department is expending federal funds, to the availability of the federal funds applicable to this Contract.
- B. The Contractor understands that the ability of the Department to make payments or authorize work under this Contract is contingent upon the continued availability of funds.
  - 1. The Contractor further acknowledges that funds may not be specifically appropriated for this Contract and the Department's continual ability to make payments under this Contract is contingent upon the funding levels appropriated to the Department.
  - 2. The Department will use all reasonable efforts to ensure that such funds are available. The Contractor understands that if future levels of funding for the Department are not sufficient to continue operations without any operational reductions, the Department, in its discretion, may terminate this Contract or a pending order or work under this Contract, either in whole or in part.
  - 3. In the event of such termination, the Department will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination. The Department shall make best efforts to provide reasonable written advance notice to the Contractor of any such Contract or order termination. In the event of such a termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination, either on the particular order if an order is being terminated, or this Contract, if this Contract is being terminated. The Department shall be liable for payments limited only to the portion of work the Department authorized in writing and which the Contractor has completed, delivered to the Contractor, and which has been accepted by the Department in writing in accordance with all requirements of this Contract. All such work shall have been completed, tested and accepted in writing, per the requirements of this Contract, prior to the effective date of termination.
  - 4. The Department may immediately terminate this Contract, in whole or in part, without penalty to, or any liability whatsoever on the part of the Department, the State of Texas, and the United States if the Department and/or the subject matter of this Contract become subject to a legislative or regulatory change or the revocation of statutory or regulatory authority that would render the deliverables to be provided under this Contract impossible, unnecessary, void, or substantially amended or that would terminate the appropriations for this Contract. The Department is not required to provide thirty (30) calendar days written notice as termination under this section is immediate.



5. The Department is a state agency receiving grant funding from State or Federal Grantor sources. The Department may immediately terminate this Contract, in whole or in part, without penalty to, or any liability whatsoever on the part of the Department, the State of Texas, and the United States if the State or Federal Grantor terminates or reduces the funding necessary for performance of this Contract. The Department is not required to provide thirty (30) calendar days written notice as termination under this Section is immediate.
6. The Department may, upon thirty (30) calendar days written notice to Contractor, reduce the deliverables in such manner and for such periods of time as the Department may elect if funding or appropriations for this Contract are reduced by law, the statutory amount of compensation authorized for the Contractor is reduced by law, or the Legislative Budget Board requests the Department to reduce the Department budget by a certain percentage.

## **H.2 NEWS RELEASES, ADVERTISEMENTS, AND PUBLICITY**

- A. The Contractor will not make any news releases, public announcements or public disclosures, nor will it have any conversations with representatives of the news media, pertaining to this Contract, without the express, prior written approval of the Department, and then only in accordance with explicit written instructions from the Department.
- B. The Contractor will not use the name of the State of Texas or the Department in any advertisement, promotion or otherwise for any purpose regarding this Contract without the express prior written consent of the Department. The Department is not authorized to provide endorsements.
- C. Notwithstanding the foregoing, the Contractor may make any disclosure required by law or regulation without the approval of the Department.

## **H.3 FURTHER OPPORTUNITY TO CURE**

- A. If an Event of Default of the type specified in Section H.4.1 occurs and if the Contractor reasonably believes that such Event of Default cannot be addressed in twenty-four (24) hours allowed in Section E.1.F but that such Event of Default can be cured through a documented effort on the part of the Contractor, within a reasonable period, to be solely defined by the Department, then the Contractor may, within the 24-hour cure period, submit a detailed plan for curing the Event of Default to the Department.
- B. The Department shall promptly review Contractor's plan for curing an Event of Default and may, at its discretion, allow the Contractor to pursue such plan of cure.
- C. The Department's decision will be communicated in writing to the Contractor.
- D. The Department may not exercise its remedies hereunder with respect to such Event of Default while the Contractor diligently, conscientiously, and timely undertakes to cure the Event of Default in accordance with the approved plan.
- E. The 24 hour time period will be tolled during the time the request was pending, if the Department does not allow the Contractor an extension of the cure period.

## **H.4 TERMINATION**

This Contract may be terminated or cancelled in any of the following circumstances:

### **H.4.1 Termination with Notification and Opportunity to Cure**

The Department shall notify the Contractor in writing of any failure, cause or default if the Contractor fails to carry out or comply with any requirements of this Contract (including but not limited to any statement, affirmation, disclosure, certification, representation or warranty in this Contract that is false, misleading, or erroneous in any material respect). The Department's notification will demand that the failure, cause or default be addressed within twenty-four (24) hours. The Department shall have the right to cancel this Contract with proper written notice if the Contractor fails to address such failure, cause or default within the twenty-four hour period.

### **H.4.2 Termination for Unavailability of Funds**

This Contract may be terminated as provided in Section H.1 herein entitled "Availability of Funds for Next Fiscal Year and Legislative Actions." The Parties understand and agree that the obligations of the Department under this Contract are contingent upon the availability of funds to meet the Department's liabilities hereunder. The Department may immediately terminate this Contract without penalty to or any liability whatsoever on the part of the Department, the State of Texas, and the United States, if these funds become unavailable to the Department.

### **H.4.3 Termination for Convenience**

The Department reserves the right to terminate this Contract any time, in whole, or in part, without cost or penalty, by providing thirty (30) calendar days' advance written notice of such termination to the Contractor, the Department determines that such termination is in the best interest of the State. .

### **H.4.4 Termination by Mutual Agreement**

This Contract may be terminated upon mutual written agreement.

### **H.4.5 Termination for Failure to Perform**

This Contract may be terminated by the Department if the Contractor fails to perform as agreed or is otherwise in default, without the necessity of complying with the requirements in Section H.4.1 herein entitled "Termination by Default." The Department shall provide the Contractor with written notice to terminate this Contract, which termination will become effective immediately upon the Contractor's receipt of the notice.

If Contractor fails to provide the deliverables or other performances in accordance with the provisions of this Contract, or fails to comply with any of the terms or conditions of this Contract, the Department may, upon written notice of default to the Contractor, immediately terminate all or any part of this Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the Contract.

The Department may exercise any other right, remedy or privilege which may be available to it under applicable law of the State and any other applicable law or may proceed by appropriate court action to enforce the provisions of this Contract, or to recover damages for the breach of this Agreement. The exercise of any of the foregoing remedies will not constitute a termination of this Contract unless the Department notifies the Contractor in writing prior to the exercise of such remedy. The Contractor shall remain liable for all covenants and indemnities under this Contract. The Contractor shall be liable for all costs and expenses, including court costs, incurred by the Department with respect to the enforcement of any of the remedies listed in this Contract.

#### **H.4.6 Termination for Listing on Federal Excluded Party List, the Terrorism List (Executive Order 13224) or on the State of Texas Debarred Contractor List**

The Department shall have the absolute right to terminate this Contract without recourse as follows: a) if the Contractor becomes listed on the prohibited Contractor list authorized by Executive Order #13224 "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of Treasury, Office of Foreign Assets Control; or b) if the Contractor becomes suspended or debarred from doing business with the federal government as listed in the System for Award Management ("SAM") maintained by the General Services Administration; or c) if the Contractor becomes listed on the State of Texas Debarred Vendor List. The Department shall provide the Contractor with written notice to terminate this Contract, which termination shall become effective immediately upon the Contractor's receipt of the notice.

#### **H.4.7 General Termination Provisions; All Contracts are Non-Exclusive**

1. The termination of this Contract, under any circumstances whatsoever, will not affect or relieve the Contractor from any obligation or liability that may have been incurred pursuant to this Contract, and such cancellation by the Department will not limit any other right or remedy available to the Department at law or in equity.
2. This Contract does not grant the Contractor a franchise or any other vested property right. The Department reserves the right, in its sole discretion, to solicit or contract with other contractors for similar subject matter, services, or deliverables to those under this Contract at any time. Except as expressly authorized by the Department under this Contract during the term of this Contract by reference to this Section H.4.7, this Contract and the Contractor's performance under this Contract for the subject matter, services or deliverables under this Contract are not exclusive to the Contractor. In all events, no minimum amount of compensation is guaranteed.
3. The Department will not be considered in default or breach of this Contract, nor will it give rise to any liability whatsoever on the part of the Department whether such claims of the Contractor are for compensation of anticipated profits, unabsorbed overhead, interest on borrowing, or for any other reason in the event of termination hereunder.
4. The Contractor shall, unless mutually agreed upon in writing, cease all work immediately upon the effective date of termination. The Department shall be liable for payments limited only to the portion of the work the Department authorized in writing and which the Contractor has completed, delivered to the Department, and which have been accepted by the Department. All such work will have been completed, per this Contract's requirements, prior to the effective date of termination.

5. The Contractor shall deliver to the Department all completed, or partially completed work and any and all documentation or other products and results of these services no later than the first calendar day after the termination of this Contract, or at the Department's request. Failure to timely deliver such work or any and all documentation or other products and results of the services will be considered a material breach of this Contract. The Contractor will not make or retain any copies of the work or any and all documentation or other products and results of the services without the prior written consent of the Department.
6. The Department reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to the Department under this Contract or under applicable law, including, but not limited to, attorneys' fees and court costs, if termination is at the Contractor's request or if termination is for cause. This right is in addition to any other remedies available to the Department under this Contract or applicable law. The Department reserves the right to pursue any and all applicable rights and remedies if this Contract is terminated for any reason and the Department expressly waives no such rights or remedies.
7. The Department reserves the right to cancel this Contract without notice and either re-solicit or re-award this Contract to the next best responsive and responsible Contractor if the Contractor defaults on this Contract. The Department will not consider the defaulting Contractor in the re-solicitation and the Department may not consider the defaulting Contractor in future solicitations for the same type of work, unless the specification or scope of work significantly changes. The Department will determine the period of suspension based on the seriousness of the default.
8. The Department and the State of Texas will not be liable to the Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination if this Contract is terminated for any reason. However, the Contractor may be entitled to the remedies provided in Texas Government Code, Chapter 2260.

## **H.5 DISPUTE RESOLUTION**

- A. Any dispute arising under this Contract, which is not disposed of by mutual agreement between the Department and the Contractor will be resolved as follows:
  1. The dispute resolution process provided for in Texas Government Code, Chapter 2260, shall be used, as further described herein, by the Contractor to attempt to resolve all disputes or contract claims arising under this Contract.
  2. The Contractor's claim for breach of this Contract that the parties cannot resolve in the ordinary course of business will be submitted to the negotiation process provided in Texas Government Code, Chapter 2260, Subchapter B.
  3. The Contractor shall initiate the process by submitting written notice, as required by Subchapter B, to the Procurement and Contract Services Director or designee, at 5805 North Lamar Blvd, Bldg. A, Austin, Texas 78752.
  4. Said notice will specifically state that the provisions of the Texas Government Code, Chapter 2260, Subchapter B, are being invoked, and will also be given to all other representatives of the Department and the Contractor otherwise entitled to notice under this Contract.

5. Compliance by the Contractor with the Texas Government Code, Chapter 2260, Subchapter B, is a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C.
  6. The contested case process provided in Texas Government Code, Chapter 2260, Subchapter C, is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of this Contract by the Department if the parties are unable to resolve a dispute under this subparagraph (A).
  7. Compliance with the contested case process provided in the Texas Government Code, Chapter 2260, Subchapter C, is a condition precedent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code.
  8. Neither the execution of this Contract by the Department nor any other conduct of any representative of the Department related to this Contract will be considered a waiver of sovereign immunity to suit.
- B. In addition to complying with Texas Government Code, Chapter 2260, the Contractor shall comply with the Department administrative rules published in the Texas Administrative Code, Title 37, Public Safety and Corrections, Part I, Texas Department of Public Safety, Chapter 34, Subchapter C, Mediation of Certain Contract Disputes.
- C. The Contractor shall continue providing the deliverables as directed, in a diligent manner and without delay, and shall conform to Department directives, decisions, or orders, be governed by all applicable provisions of this Contract, unless directed otherwise in writing by the Department at all times during the course of the dispute resolution process. 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.

## **H.6 INDEMNIFICATION**

### **H.6.1 Acts or Omissions**

**THE CONTRACTOR SHALL DEFEND INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE DEPARTMENT, 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 THE CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THIS CONTRACT. THE DEFENSE WILL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND THE CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. THE CONTRACTOR AND THE DEPARTMENT SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

## **H.6.2 Infringements**

- A. THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE DEPARTMENT, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF THE CONTRACTOR PURSUANT TO THIS CONTRACT. THE CONTRACTOR AND THE DEPARTMENT SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. THE CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE WILL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.**
  
- B. THE CONTRACTOR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (I) USE OF THE PRODUCT OR SERVICE FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED, (II) ANY MODIFICATIONS MADE TO THE PRODUCT WITHOUT THE CONTRACTOR'S WRITTEN APPROVAL, (III) ANY MODIFICATIONS MADE TO THE PRODUCT BY THE CONTRACTOR PURSUANT TO THE DEPARTMENT'S SPECIFIC INSTRUCTIONS, (IV) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO THE DEPARTMENT, OR (V) ANY USE OF THE PRODUCT OR SERVICE BY THE DEPARTMENT THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT.**
  
- C. IF THE CONTRACTOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR THE DEPARTMENT PROVIDES THE CONTRACTOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, THE CONTRACTOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST THE DEPARTMENT, SHALL), AT THE CONTRACTOR'S SOLE OPTION AND EXPENSE; (I) PROCURE FOR THE DEPARTMENT THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR (II) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT THE DEPARTMENT'S USE IS NON-INFRINGEMENT.**

## **H.6.3 Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity**

- A. THE CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF THE CONTRACTOR'S AND THE CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES UNDER THIS CONTRACT. THE CONTRACTOR SHALL COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE DEPARTMENT AND/OR THE STATE WILL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE**

**PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY.**

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

**H.7 NO WAIVER OF DEFENSES**

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

**H.8 INDEPENDENT CONTRACTOR**

The Contractor and its employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the deliverables or otherwise in its performance under this Contract. The Contractor and its employees, representatives, agents and any subcontractors will not be employees of the Department. Should the Contractor subcontract any of the services provided under this Contract, the Contractor expressly understands and acknowledges that in entering into such subcontracts, the Department is in no manner liable to any subcontractor(s) of the Contractor. In no event will this provision relieve the Contractor of the responsibility for ensuring the services rendered under all subcontracts are rendered in compliance with this Contract.

**H.9 APPLICABLE LAW; VENUE**

This Contract will be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit arising under this Contract is fixed in any court of competent jurisdiction in Travis County, Texas.

## **H.10 ASSIGNMENT**

The Contractor will not assign or transfer any interest in or duty under this Contract without the express, prior written consent of the Department, with the Department providing such consent at its sole discretion. An attempted assignment in violation of this clause is null and void. Any approved assignment will not relieve the assignor of any liability or obligation under this Contract.

## **H.11 MAINTENANCE OF CORPORATE EXISTENCE AND BUSINESS**

- A. The Contractor, if incorporated, shall at all times maintain its corporate existence and authority to transact business and be in good standing in its jurisdiction of incorporation and the State of Texas.
- B. The Contractor shall maintain all licenses, permits and franchises necessary for its businesses where the failure to so maintain may have a material adverse effect on the Contractor's ability to perform its obligations under this Contract.

## **H.12 APPROVAL OF CONTRACT**

This Contract is subject to written approval of the Department Director or the Director's designated representative and will not be binding on the Department until so approved.

The Contractor has reviewed and understands Texas Government Code Sections 2261.254 and 2261.255 on prior approvals required for certain contracts entered into by the Department.

## **H.13 NON-DISCRIMINATION**

- A. In the performance of this Contract, the Contractor warrants that it will not discriminate against any person, employee, subcontractor, participant or provider on the basis of race, color, disability or perceived disability, religion, sex, sexual orientation, national origin, creed, political belief, genetic information, or age, and in accordance with the following:
- B. The Contractor will not discriminate against employees, subcontractors, participants or providers who have or are perceived to have a disability because of AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. The Contractor shall post notices setting forth the provisions of this non-discrimination clause in conspicuous places, available to employees and applicants for employment.
- C. The Contractor shall state that it is an equal opportunity employer in all solicitations or advertisements for employees and/or the purchase of services, provided however, that notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for the purpose of meeting this requirement.
- D. The Contractor shall include the provisions of the foregoing paragraphs in every subcontract so that such provisions will be binding upon each subcontractor or the Contractor.
- E. The Contractor shall comply with all related provisions in Section K.



**H.14 AMENDMENTS; NO AMOUNTS PAID FOR UNAUTHORIZED PERFORMANCES; NO CONFLICT WITH LAWS OF THE STATE OF TEXAS**

The Department and the Contractor may amend this Contract through a written amendment signed by an authorized signatory on behalf of the respective party. The Contractor will not receive compensation or any other amounts for performances not authorized under this Contract, including without limitation, for any such performances by the Contractor prior to the effective date of a written amendment signed by both parties. Any such performances are at the sole risk of the Contractor.

Any amendment of this Contract that conflicts with the laws of the State of Texas is void.

**H.15 OPTION TO EXTEND THE TERM OF THE CONTRACT**

- A. The Department may, at its sole discretion, extend the term of this Contract by written Contract modification to the Contractor prior to this Contract's expiration.
- B. The preliminary notice does not commit the Department to an extension.
- C. If the Department exercises this option, the extended Contract will be considered to include this option provision.

**H.16 OPTION TO EXTEND SERVICES**

- A. The Department may require continued performance of any services within the limits and at the rates specified in this Contract.
- B. The Department reserves the right to extend this Contract for a ninety (90) calendar day period at the end of this Contract and/or extension period for the purpose of re-advertising the service, awarding a new Contract, and transitioning into a new Contract.
- C. This option provision may be exercised more than once, but the total extension of performance hereunder will not exceed six (6) months.
- D. The Department may exercise this option by written notice to the Contractor.

**H.17 SEVERABILITY; LIMITATIONS**

Any provision of this Contract that conflicts with the laws of the State of Texas is void.

If any provision of this Contract is determined to be unenforceable, the rest of it remains in full force and effect

The Department and the Contractor are aware that there may be constitutional and statutory limitations on the authority of the Department to enter into certain terms and conditions of this Contract, including, but not limited to, those terms and conditions relating to disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively in this Section, the "Limitations"), and terms and conditions related to the Limitations will not be binding on the Department except to the extent authorized by the laws and Constitution of the State of Texas.

## **H.18 U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM**

By entering into this Contract, the Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

1. All persons employed to perform duties within Texas, during the term of the Contract; and
2. All persons (including subcontractors) assigned by the Contractor to perform work pursuant to the Contract, within the United States of America.

The Contractor shall provide, upon request of the Department an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the Department and at no fault to the Department, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the Department must undertake to replace the terminated Contract.

## **H.19 LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS**

The Contractor shall have no authority to act for or on behalf of the Department or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. The Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or the Department.

## **H.20 PUBLIC SAFETY COMMISSION CONTRACT REVIEW**

The Texas Public Safety Commission or the Commission's designee (Commission) will receive notification of the following contracts awarded by the Texas Department of Public Safety (Department) since the last Commission meeting:

- A. Contracts valued at one-million and no/100 dollars (\$1,000,000.00) or more, including available renewal options;
- B. Contract amendments (other than exercise of available renewal options) valued at one-hundred thousand and no/100 dollars (\$100,000.00) or more that increase the value of the original contracts by 50% or more; and
- C. Contract amendments (other than exercise of available renewal options) valued at five hundred thousand and no/100 dollars (\$500,000.00) or more.

The Assistant Director, Administration, shall submit these reports to the Commission. The Commission shall review contracts prior to or after award by the Department if required by applicable law.

## **H.21 STRICT COMPLIANCE**

Time is of the essence in the performance of this Contract. The Contractor shall strictly comply with all of the timelines, deadlines, requirements, and provisions of this Contract.

## **H.22 APPLICABLE LAW AND CONFORMING AMENDMENTS**

The Contractor shall comply with all laws, regulations, requirements and guidelines applicable to a contractor providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. The Department reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for the Department or the Contractor's compliance with all applicable State and federal laws, and regulations.

## **H. 23 COMPLIANCE WITH STATE, FEDERAL, AND LOCAL LAWS, RULES, AND REGULATIONS**

- A. The Contractor shall comply with all applicable state, federal and local laws and ordinances in providing deliverables to the Department under this Contract. Without limiting the generality of the foregoing, the Contractor shall be able to demonstrate compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of W-2s to common law employees. The Contractor shall provide both federal and state unemployment insurance coverage and standard workers' compensation insurance coverage. The Contractor shall comply with all federal and state tax laws and withholding requirements. The Department will not be liable to the Contractor/subcontractor(s) or its employees for any unemployment insurance or workers' compensation coverage or federal or state tax withholding requirements. The Contractor may be required to demonstrate compliance with such laws at the written request of the Department.
- B. Except as stated otherwise in this Contract, the Contractor shall provide all labor and equipment necessary to furnish the deliverables under this Contract. All employees of the Contractor will be a minimum of seventeen (17) years of age and experienced in the type of work to be performed. Absent prior, written permission from the Department, no visitors or relatives of the Contractor's employees and subcontractor(s) will be allowed on State property unless they are bona fide employees or subcontractor(s) of the Contractor performing work under this Contract.
- C. The Contractor shall ensure that at all times its personnel shall observe and comply with all laws, regulations and rules pertaining to state facilities, including but not limited to parking and security regulations and non-smoking policies. Additionally, the Contractor and the Contractor's personnel shall comply with all relevant Department policies and requirements that relate to the security of data and confidentiality of information, which requirements may include the Federal Bureau of Investigation Criminal Justice Information Services ("CJIS) Security Policy and Security Addendum, as they now exist and as they may thereafter be amended.
- D. The Department shall have the right to require the Contractor to remove any of the Contractor's personnel from involvement in this Contract who have failed to comply with such laws, regulations or rules.

## **H.24 FORCE MAJEURE**

Neither the Contractor nor the Department shall be liable to the other for any delay in, or failure of performance, of any requirement included in this 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. Each party shall inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

## **H.25 FORESEEABLE DELAY**

If a delay in delivery of a deadline or other performance under this Contract is foreseeable and the delay is not caused by a Force Majeure event, the Contractor shall give written notice to the Department. The Department has the right, in its sole discretion, to extend the delivery date if the Department determines the reasons for the delay are acceptable to the Department. The Contractor shall keep the Department advised at all times of the status of the delay.

The Contractor's failure to perform under this Contract and failure to meet the requirements of this Contract, including Contractor delays not accepted by the Department, may result in the Department issuing a new solicitation or entering into another contract for the subject matter of this Contract.

The Contractor shall pay all costs to the Department due to a re-solicitation or contracting under this Section.

## **H.26 NO SUBSTITUTIONS AND DELIVERY TIMES**

No substitutes or cancellations are permitted without the prior written approval of an authorized representative of the Department. Delivery will be made during normal business hours only, unless prior written approval for late delivery has been obtained from the Department's authorized representative.

## **H.27 TESTING; ACCECTANCE; RETURN; REVOCATION**

All samples will be subject to inspection and testing by the Department or the State of Texas. The Department reserves the right to test items/samples upon request and all costs of such testing will be paid by the Contractor. After award and prior to payment, the Department may conduct acceptance testing on the requested items delivered under this Contract. If the delivered and installed items fail to meet the acceptance criteria or any other requirements, the Department may refuse to accept such items. Upon the Department's acceptance of deliverable(s) that meet or exceed all requirements, the Department shall notify the Contractor in writing that the Contractor may submit an invoice to the Department's Accounts Payable Division for such deliverables. The Department reserves the right to revoke prior acceptance for, among other things, latent defects. The Contractor must have a separate Production, Quality Assurance (QA) and User Acceptance (UAT)

testing environment. Updates shall be tested and approved by the Department prior to deployment to production.

## **H.28 PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS**

**THE CONTRACTOR SHALL DEFEND, INDEMNIFY, SAVE AND HOLD HARMLESS THE STATE OF TEXAS FROM AND AGAINST CLAIMS OF PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHTS, VIOLATIONS OR INFRINGEMENTS ARISING FROM THE DEPARTMENT'S OR THE CONTRACTOR'S USE OF OR ACQUISITION OF ANY SERVICES OR OTHER ITEMS PROVIDED TO THE DEPARTMENT BY THE CONTRACTOR OR OTHERWISE TO WHICH THE DEPARTMENT HAS ACCESS AS A RESULT OF THE CONTRACTOR'S PERFORMANCE UNDER THIS CONTRACT, PROVIDED THAT THE DEPARTMENT SHALL NOTIFY THE CONTRACTOR OF ANY SUCH CLAIM WITHIN A REASONABLE TIME OF THE DEPARTMENT'S RECEIVING NOTICE OF ANY SUCH CLAIM. IF THE CONTRACTOR IS NOTIFIED OF ANY CLAIM SUBJECT TO THIS SECTION, THE CONTRACTOR SHALL NOTIFY THE DEPARTMENT OF SUCH CLAIM WITHIN FIVE (5) BUSINESS DAYS OF SUCH NOTICE. NO SETTLEMENT OF ANY SUCH CLAIM WILL BE MADE BY THE CONTRACTOR WITHOUT THE DEPARTMENT'S PRIOR WRITTEN APPROVAL. THE CONTRACTOR SHALL REIMBURSE THE DEPARTMENT FOR ANY CLAIMS, DAMAGES, LOSSES, COSTS, EXPENSES, JUDGMENTS OR ANY OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. THE CONTRACTOR SHALL PAY ALL REASONABLE COSTS OF THE STATE'S COUNSEL AND SHALL ALSO PAY COSTS OF MULTIPLE COUNSEL, IF REQUIRED TO AVOID CONFLICTS OF INTEREST. THE CONTRACTOR REPRESENTS THAT IT HAS DETERMINED WHAT LICENSES, PATENTS AND PERMITS ARE REQUIRED UNDER THIS CONTRACT AND HAS ACQUIRED ALL SUCH LICENSES, PATENTS AND PERMITS.**

## **H.29 SURVIVAL**

Termination of this Contract for any reason will not release the Contractor from any liability or obligation set forth in this Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, warranty, transition, records, audit, property rights, dispute resolution, invoice and fees verification, and any other provisions of this Contract that impose continuing obligations on either of the parties or that govern the rights and limitations of either of the parties after the expiration or termination of this Contract.

## **H.30 SUCCESSORS**

This Contract will be binding upon and will inure to the benefit of the parties hereto and their respective successors, heirs, administrators, personal representatives, legal representatives, and permitted assigns.

## **H.31 EMPLOYEE NON-SOLICITATION**

The Contractor will not, during the term of this Contract and for a period of twelve (12) months thereafter, solicit for employment any person who is a Department employee or was a Department employee during the previous twelve (12) months with whom the Contractor

had substantial contact in the course of performing its obligations under this Contract. Indirect solicitations, such as newspaper and internet announcements, are not prohibited by this section.

### **H.32 COMMENCEMENT OF WORK**

Work performed before final execution of this Contract will be at the Contractor's sole risk and if a cost reimbursement contract, that work will not be reimbursed without prior written authorization from the Department for the Contractor to begin work.

### **H.33 ROLLING ESTOPPEL**

- A. The Department will be conclusively deemed to have fulfilled its obligations under this Contract, unless the Department receives a deficiency report from the Contractor within five (5) business days of the occurrence of the alleged deficiencies and the Contractor identifies specific deficiencies in the Department's fulfillment of its obligations in that report. Deficiencies will be described in terms of how they have impacted the specific performance requirements of the Contractor. The Contractor is estopped from claiming that a situation has arisen that might otherwise justify changes in the project timetable, the standards of performance under this Contract, or the project cost, if the Contractor knew of that problem and failed to include it in the applicable report. The deficiency report will be sent to the Department's Contract Monitor.
- B. In the event the Contractor identifies a situation wherein the Department is impairing the Contractor's ability to perform for any reason, the Contractor's deficiency report will contain the Contractor's suggested solutions to the situation(s). These suggestions should be in sufficient detail so that the Department Contract Monitor can make a prompt decision as to the best method of dealing with the problem and continuing the project in an unimpeded fashion.

### **H.34 TAXES; UNEMPLOYMENT; WORKERS' COMPENSATION**

The Department, as an agency of the State of Texas, qualifies for exemption from state and local sales and use taxes pursuant to the provisions of the Texas Limited Sales, Excise, and Use Tax Act. The Contractor may claim exemption from payment of applicable state taxes by complying with such procedures as may be prescribed by the Texas Comptroller of Public Accounts.

The Department makes no representation to the Contractor that it may claim any exemptions from any taxes of any type including without limitation any federal, state, local or any other taxes based on the Contractor entering into this Contract with the Department or its performances under this Contract.

The Department will not be responsible for any taxes of any type under or as a result of this Contract. The Department shall not pay any taxes of any type under or as a result of this Contract. All such taxes are the sole responsibility of the Contractor without any contribution by the Department.

The Contractor represents and warrants that it shall pay all taxes or similar amounts for the Contractor and its employees. The Contractor represents and warrants that it will comply with all federal, state and local tax laws and withholding requirements.

The Contractor shall demonstrate on-site compliance with all applicable tax provisions, including without limitation, the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, including without limitation the issuance of Form W-2s to the Contractor's employees.

The Contractor shall comply with all federal and state requirements regarding unemployment insurance coverage and workers compensation insurance coverage.

The Contractor shall comply with all laws, regulations, requirements and guidelines applicable to this Section as those laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. The Department reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for the Department's or the Contractor's compliance with all applicable laws, regulations, requirements and guidelines.

### **H.35 NOTICES**

Any notice required or permitted under this Contract will be directed to the Contractor's Project Manager or the Department's Contract Administrator as specified in Section G and will be deemed received:

1. When delivered in hand and a receipt granted;
2. Three (3) days after it is deposited in the United States mail by certified mail, return receipt requested; or
3. When received if sent by confirmed facsimile or confirmed electronic mail.

Either of the parties may change its address or designated individual(s) to receive notices by giving the other party written notice as provided above, specifying the new address and/or individual and the date upon which it will become effective.

### **H.36 MOST FAVORED CUSTOMER**

The Contractor represents and warrants that all prices, charges, benefits, warranties and terms granted to the Department pursuant to this Contract are comparable to, or more favorable to, the Department than the price, charges, benefits, warranties, and terms that the Contractor has heretofore offered to any person or entity for the products and/or services covered under any other agreement. If at any time during the term of this Contract, the Contractor shall contract with any other person or entity for prices, charges, benefits, warranties and terms more favorable to such person or entity, the Contractor shall notify the Department of such more favorable terms and the Department, in its sole discretion, may require that such more favorable prices, charges, benefits, warranties or other terms be available to the Department under this Contract immediately, and be retroactive to the effective date of this Contract.

### **H.37 STATE EXCULPATION**

The Department will not be liable to the Contractor for any increased costs or expenses that may be incurred by the Contractor, or for any other damages that may be suffered by the

Contractor as a result of any act or omission of any other Contractor to the State of Texas or the Department.

#### **H.38 TITLE AND RISK OF LOSS**

Title and risk of loss for deliverables will not pass to the Department until the Department actually receives, takes possession, and accepts the deliverables at the point or points of delivery (F.O.B. Destination).

#### **H.39 AVAILABILITY OF DEPARTMENT RESOURCES**

All of the Department's obligations and requirements in this Contract are subject to the availability of the Department's resources and are subject to the practicability of the Department to perform such obligations and requirements. The determination regarding availability of the Department's resources and the practicability of the Department to perform such obligations and requirements is within the sole discretion of the Department's management.

#### **H.40 INTERPRETATION AGAINST DRAFTER**

Ambiguities in this Contract or the language at issue will not be interpreted against the drafting party regardless of which party drafted this Contract or the language at issue.

#### **H.41 MERGER**

This Contract contains the entire agreement between the Contractor and the Department regarding its subject matter, and there have been and are no oral or written covenants, agreements, understandings, representations, warranties or restrictions between the parties on the matters contained herein. No modification, alteration, or waiver of any term, covenant, or condition of this Contract and any attachments shall be valid unless in writing and executed by the Department and the Contractor in a written amendment to this Contract.

#### **H.42 HEADINGS**

The headings, captions, and arrangements used in this Contract are, unless specified otherwise, for reference and convenience only and do not alter the interpretation of this Contract.

#### **H.43 ATTACHMENTS**

The Department reserves the right, in its sole discretion, to reject any of the Contractor's terms and conditions or other documents or attachments as part of the Contractor's Proposal.

#### **H.44 UNACCEPTABLE CONTRACTOR TERMS**

No Department action, including, but not limited to, issuance of this Contract, will constitute an acceptance of conflicting terms and conditions, if any, that are expressly identified as such within the Contractor's Response unless negotiated and reflected as such within this Contract. Such negotiated terms and conditions will take precedence over the other documents that collectively constitute this Contract as specifically provided in this Contract.



Contractor terms and conditions that may violate Texas law or may be unacceptable to the Department for inclusion in this Contract include:

- A. Incorporation of laws of a State other than Texas;
- B. Requirements for prepayment;
- C. Limitations on the Department's remedies;
- D. Requirements that the Department indemnify the Contractor;
- E. Requirements that the Contractor's documents control in case of conflict;
- F. Requirements that the Contractor's documents control even if the Contractor accepts or acknowledges this Contract; and
- G. Disclaimer of warranties.

#### **H.45 RECALL NOTICE**

The Contractor shall immediately upon discovery of same, advise the Department of any or all required replacements or modifications to any equipment or hardware provided under this Contract or the withdrawal of any such equipment or hardware by reason of safety hazard or recall regardless of the nature of same. Verbal notification will be confirmed in writing within twenty-four (24) hours of such verbal notification. The Contractor shall submit all such formal notices to the Department Contract Monitor.

#### **H.46 COMPETENCY ACKNOWLEDGEMENT**

The Contractor has read and fully understands this Contract between the Department and the Contractor. The Contractor is legally competent to execute this Contract and has done so with the Contractor's own free will and accord, without reliance on any representation of any kind or character by the Department which is not expressly set forth herein. The Contractor understands that it has an opportunity to consult with a lawyer prior to signing this Contract.

#### **H.47 MULTIPLE CONTRACTS**

This Contract may be executed in a number of identical counterparts, each of which will be deemed an original for all purposes. In making proof of this Contract, it will not be necessary to produce or account for more than one (1) such counterpart.

#### **H.48 LITIGATION: FELONY CRIMINAL CONVICTIONS**

The Contractor represents and warrants that it is not aware of and has received no notices of any court or governmental actions, proceedings, or investigations, etc., pending or threatened against the Contractor that would or could impair the Contractor's performance under this Contract or would otherwise be relevant to the Department entering into this Contract.

The Contractor represents and warrants that the Contractor has not and the Contractor's employees and subcontractors have not been convicted of a felony criminal offense, or that,

if such a conviction has occurred, the Contractor has fully advised the Department as to the facts and circumstances surrounding the conviction.

The Contractor shall amend, supplement, or correct both representations and warranties in this Section in writing to the Department not later than ten (10) calendar days after discovering additional information relating to either of these representations or warranties.

The Contractor will not allow any employee convicted of a felony criminal offense to perform work under or related to this Contract without such disclosure to the Department and the prior written approval of the Department for the employee to perform work under or related to this Contract.

**H.49 PROHIBITED USE OF APPROPRIATED OR OTHER FUNDS UNDER CONTROL OF STATE AGENCY; LOBBYING**

The Contractor represents and warrants that the Department payments to the Contractor and the Contractor's receipt of appropriated or other funds under this Contract are not prohibited by the Texas Government Code, Sections 556.005 and 556.008.

**H.50 FALSE STATEMENTS; CONTINUING DUTY TO AMEND; SUPPLEMENT AND CORRECT**

By signature to this Contract, the Contractor makes all the representations, warranties, guarantees, disclosures, certifications, statements and affirmations included in this Contract. If the Contractor signs this Contract, including without limitation, Schedule K, with a false statement or it is subsequently determined that the Contractor has violated any of the representations, warranties, guarantees, disclosures, statements, certifications, or affirmations included in this Contract, the Contractor will be in default under this Contract and the Department may terminate or void this Contract for cause and pursue other remedies available to the Department under this Contract and applicable law.

The Contractor shall amend, supplement, or correct any such representations, warranties, guarantees, disclosures, certifications, statements and affirmations in writing to the Department not later than ten (10) calendar days after discovering additional information relating to any of same.

**H.51 PUBLIC INFORMATION ACT**

A. Notwithstanding any provisions of this Contract to the contrary, the Contractor understands that the Department is subject to and shall comply with the Texas Public Information Act, Texas Government Code, Chapter 552, as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. The Department shall notify the Contractor in writing within a reasonable time from receipt of a request for information related to the Contractor's work under this Contract. The Contractor shall cooperate with the Department in the production of documents responsive to the request. The Department shall make a determination whether to submit a Public Information Act request to the Attorney General. The Contractor shall notify the Department within twenty-four (24) hours of receipt of any third party requests for information that was provided by the Department for use in performing this Contract. This Contract and all data and other information generated or otherwise obtained in its

performance may be subject to the Texas Public Information Act. Contractor shall maintain the confidentiality of information received from the Department during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers.

- B. The Contractor shall make any information created or exchanged with the state pursuant to this Contract, and not otherwise exempt 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.

## **H.52 APPROVAL OF EMPLOYEES**

- A. The Contractor shall retain no upper level management personnel for administration of the Services without prior approval of each selection by the Department's Authorized Representative or his designee which approval will not be unreasonably withheld.
- B. The Contractor shall provide the name of the employee, all pending investigations and disciplinary actions and previous disciplinary actions upon request by the Department.

## **H.53 PERSONNEL**

### **H.53.1 Qualifications of Personnel**

- A. The Contractor warrants that all persons assigned to this Contract are employees or subcontractors of the Contractor, and meet all qualifications as defined herein to perform the work required.
- B. Replacement of personnel, if approved by the Department, shall be with personnel of equal or greater ability and qualifications. The Department will be the arbiter of whether the replacement personnel have equal or greater ability and qualifications than the personnel being replaced.
- C. The Contractor shall assign all personnel identified in this Contract to complete all of its planned and assigned responsibilities in connection with performance of this Contract. The Department shall have the right to approve the assignment and replacement by the Contractor of all personnel assigned to provide deliverables or to provide on-site representation of the Contractor.
- D. The Contractor shall notify the Department before assigning a replacement individual for any of the personnel commitments identified herein. The Contractor shall notify the Department of the proposed assignment, shall introduce the individual to the appropriate representatives of the Department, shall provide a transfer of knowledge validation and shall provide to the Department a resume and any other information about the individual reasonably requested by the Department. The Department reserves the right to interview the individual before granting approval. The Contractor shall obtain prior written approval for any replacement personnel before beginning any work assignments.

### **H.53.2 Replacement of Personnel at The Department's Request**

- A. The Department reserves the right to require the Contractor to replace the Contractor's personnel whom the Department judges to be incompetent, careless, unsuitable or

otherwise objectionable, or whose continued use is deemed contrary to the best interests of the Department or the State of Texas. Before a written request is issued, representatives of the Department and the Contractor shall discuss the circumstances of the proposed personnel replacement. Upon receipt of a written request from the Department's Contract Administrator, the Contractor shall be required to proceed with the replacement. The replacement request will include the desired replacement date and the reason for the request. The Contractor shall use its best efforts to effect the replacement in a manner that does not degrade deliverable quality. The Contractor shall also provide the Department with evidence of a sufficient transfer of knowledge to the proposed replacement.

- B. This provision will not give the Department the right to require the Contractor to terminate any Contractor employee's employment. Rather, this provision gives the Department the right to require the Contractor to discontinue using particular personnel in the performance of deliverables for the Department.

### **H.53.3 Unauthorized Removal of Personnel**

It is critical to the overall success of the project that the Contractor not remove or reassign, without the Department's prior written approval, any of the assigned personnel until such time as the personnel have completed all of their planned and assigned responsibilities in connection with performance of the Contractor's obligations under this Contract. Without prior written approval from the Department, personnel shall only be changed in the event of death, personal injury, debilitating illness, or termination of employment with the Contractor. The unauthorized removal of personnel by the Contractor will be considered by the Department as a material breach of this Contract and grounds for termination.

### **H.54 BUY TEXAS**

The Contractor shall comply with Texas Government Code, Section 2155.4441, in the performance of this Contract. In performing services under this Contract, the Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside of Texas.

### **H.55 BOOKS AND RECORDS**

The Contractor shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances under this Contract. The Contractor shall retain these records for a period of seven (7) years after the expiration of this Contract, or until the Department or the State Auditor's Office (SAO) is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Contractor shall grant access to all books, records, and documents pertinent to this Contract to the Department, the SAO, and any federal governmental entity that has authority to review records due to federal funds being spent under this Contract.

### **H.56 CONTRACTOR CHANGES**

The Contractor shall submit written notification to the Department of any changes in the Contractor, including without limitation, changes in the Contractor's name, organizational structure, ownership, affiliated entities, principals, mergers, acquisitions, address, telephone number, facsimile number and/or email address with an effective date of such change. The Contractor shall submit to the Department a copy of any registration "to do business as,"

“DBA” or “also known as, “AKA” and any legal corporate name change filed with the Secretary of State.

The Contractor shall provide written notification to the Department of all such changes no later than ten (10) business days after such change; however, assignment of this Contract and performances under this Contract are limited as provided in Section H.10 of this Contract.

The Contractor shall provide detailed information requested by the Department, including without limitation the tax identification number of the proposed new contractor.

Notwithstanding the Department’s receipt of written notification by the Contractor under this Section, the Department may, in its sole discretion, terminate this Contract due to any change that the Department believes materially alters the Contractor’s ability to perform under this Contract in accordance with all terms and conditions.

#### **H.57 INTENTIONALLY LEFT BLANK**

#### **H.58 CONTRACTOR ASSIGNMENTS**

The Contractor assigns to the State of Texas all of Contractor’s rights, title, and interest in and to all claims and causes of action the Contractor may have under the antitrust laws of Texas or the United States for overcharges associated with this Contract.

#### **H.59 WARRANTIES**

##### **H.59.1 Third Party Warranties**

If, under this Contract, the Contractor procures any materials or products for the Department, the Contractor shall assign or otherwise transfer to the Department, or afford the Department the benefits of, any manufacturer’s warranty for such materials or products.

##### **H.59.2 Contractor Warranties**

The Contractor/subcontractor(s) make the following representations and warranties, including without limitation, the following:

- A. The Contractor/subcontractor(s) shall create and deliver all services and deliverables in accordance with applicable professional standards of a Contractor providing emergency response support services. The Contractor represents and warrants it has the requisite qualifications, experience, personnel and other resources to perform in the manner required by this Contract.
- B. The Contractor/subcontractor(s) shall assign only qualified personnel to this Contract.
- C. The Contractor/subcontractor(s) shall efficiently supply all resources or services necessary to provide the deliverables that are required under this Contract.
- D. The Contractor/subcontractor(s) shall use its best efforts to create and deliver the deliverables in the most cost-effective manner consistent with the required level of quality and performance.

- E. The Contractor/subcontractor(s) shall create and deliver the deliverables in a manner that does not infringe the proprietary rights of any third party.
- F. The Contractor/subcontractor(s) shall create and deliver the deliverables in a manner that complies with all applicable laws and regulations.
- G. The Contractor has duly authorized the execution, delivery, and performance of this Contract.
- H. The Contractor/subcontractor(s) has not provided any gifts, payments, or other inducements to any officer, employee, or agent of the Department.
- I. The Contractor/subcontractor(s) will not infringe any intellectual property right of any third party. In the course of performing work under this Contract, the Contractor/subcontractor(s) will not use or copy any intellectual property owned by a third party without paying any required license fees or royalties.

#### **H.60 DRUG-FREE WORKPLACE**

The Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. Sections 8101-8106) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 182) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the Contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

#### **H.61 RIGHT TO AUDIT**

- A. Pursuant to Texas Government Code Section 2262.154, the State Auditor's Office, or successor agency, may conduct an audit or investigation of the Contractor or any other entity or person receiving funds from the State directly under this Contract or indirectly through a subcontract under this Contract.

The Contractor understands that acceptance of funds by the Contractor or any other entity or person directly under this Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, 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, the Contractor or other entity that is the subject of an audit or investigation must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

The Contract may be amended unilaterally by the Department to comply with any rules and procedures of the State Auditor's Office in the implementation and enforcement of Texas Government Code Section 2262.154.

The Contractor shall ensure that these Section H.61 provisions concerning the authority to audit funds received either directly or indirectly by subcontractors through the

Contractor and the requirement to cooperate is included in any subcontract the Contractor awards.

- B. The Contractor shall ensure that this clause concerning the authority to audit funds, received either directly or indirectly, and the requirement to cooperate fully with the State Auditor's Office is included in any subcontract it awards.
- C. The Contractor shall reimburse the State of Texas for all costs associated with enforcing this provision.
- D. The Department reserves the right to audit the Contractor's records and documents regarding compliance with this Contract. The Contractor is also subject to audit by any other department or agency, including federal agencies, responsible for determining that the Department and the Contractor have complied with the applicable laws, procedures, policies and best practices.
- E. Federally funded contracts will also require the Contractor to comply with the following clauses:
  - 1) The Contractor shall provide the Department's Contract Monitor, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
  - 2) The Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
  - 3) The Contractor shall provide the FEMA Administrator or his authorized representative's access to construction or other work sites pertaining to the work being completed under this Contract."
- F. In the event such an audit reveals any errors by the Department or the Contractor, the Contractor shall refund the Department the full amount of such overpayments within thirty (30) calendar days of the Contractor's receipt of notice of such audit findings. The Department reserves the right, in its sole discretion, to deduct such amount owing to the Department from any payments to the contractor.

## **H.62 FRAUD, WASTE OR ABUSE**

- A. In accordance with the Texas Government Code, Chapter 321, the State Auditor's Office is authorized to investigate specific acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt or use of state funds.
- B. If there is a reasonable cause to believe that fraud, waste or abuse has occurred at the Department, it can be reported to the State Auditor's Office by calling 1-800-892-8348 or on that agency's website at [www.sao.state.tx.us](http://www.sao.state.tx.us). It can also be reported to the Department's Office of the Inspector General at (512) 424-2015, the Department Chief Auditor's Office at 512-424-4403, or Crime Stoppers at 1-800-832-8477.
- C. Fraud is a serious violation of law that will not be tolerated in the Department. Fraud offenses can be found in Chapter 32 of the Texas Penal Code. Generally, (for purposes of this policy) it is theft of, or any means used to misappropriate state

property or resources. Employees or Contractors who suspect fraud is occurring in the workplace should immediately notify their supervisors or the Contract Monitor as applicable. If for some reason the employee or Contractor is uncomfortable with notifying their supervisor or Contract Monitor, they may notify Office of Inspector General (OIG) or the State Auditor's Office.

- D. Federally funded contracts will require the Contractor's acknowledgement of the following:

31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.

### **H.63 REDACTED DOCUMENTATION**

The Contractor shall provide an electronic copy of the Contractor's Proposal with specified private information removed, plus an overview of the nature of the information removed per Section L.8.1.

### **H.64 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS, AS REQUIRED BY 1 TAC CHAPTER 213**

Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC, Chapter 213 and 1 TAC, Chapter 206 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

### **H.65 RIGHTS TO DATA, DOCUMENTS AND COMPUTER SOFTWARE (STATE OWNERSHIP)**

- A. Any biographic data, demographic data, image data inclusive of fingerprints, photograph and signatures or any other data or metadata in any form acquired or accessed by the Contractor in the performance of its obligations under this Contract will be the exclusive property of the State of Texas and all such data will be delivered to the Department by the Contractor upon completion, termination, or cancellation of this Contract.
- B. The Contractor will not use, willingly allow, or cause to have such data used for any purpose other than the performance of the Contractor's obligations under this Contract without the prior written consent of the Department.
- C. The ownership rights described herein will include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.
- D. The Contractor shall provide, at no additional charge, appropriate licenses for the Department to use and access the System and the Contractor's pre-existing software or other intellectual or proprietary property that the Contractor determines is necessary to facilitate the performance of the Contractor's obligations under this Contract.



#### **H.66 CONTRACTOR'S RESPONSE**

The Contractor's Response to the Solicitation is incorporated into this Contract only to the extent expressly accepted by the Department in writing as part of this Contract. Reference Section H.44 of this Contract.

#### **H.67 NOTICE UNDER GOVERNMENT CODE 2261.252**

Pursuant to Government Code 2261.252 the Department may not enter into a contract for the purchase of goods or services with a private vendor if members of the Public Safety Commission or certain positions within the Department including the Executive Director, the General Counsel or the Procurement Director or their covered family members have a financial interest in the vendor. Any contract found to violate Government Code 2261.252 is void.

#### **H.68 NOTICE UNDER GOVERNMENT CODE 2252.908**

Pursuant to Government Code 2252.908 the Department may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the Department at the time the business entity submits the signed contract to the Department. The Texas Ethics Commission has adopted rules and procedures under these provisions:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

Any contract found to violate Government Code 2252.908 is void.

#### **H.69 NOTICE UNDER GOVERNMENT CODE 572.069**

Pursuant to Government Code 572.069 the Respondent certifies that it has not employed and will not employ a former Department or state officer who participated in a procurement or contract negotiation for the Department involving the Respondent within two (2) years after the state officer or employee left state agency employment or service.

This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.

#### **H.70 FORMAT OF CERTAIN INFORMATION, TEXAS PUBLIC INFORMATION ACT**

The Contractor shall make any information created or exchanged with a state governmental entity [as defined by Texas Government Code Section 2252.907(d)] pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in at least one of the following formats that is accessible by the public at no additional charge to the State of Texas, Department : portable document format (pdf) compatible with the latest version of Adobe Acrobat®; Microsoft Word®; Microsoft Excel®; or, hard copy (paper).

## SECTION I – SUPPLEMENTAL TERMS AND CONDITIONS

Any contract resulting from this RFP will include the following Supplemental Terms and Conditions. Subcontractors shall also comply with these provisions.

### I.1 INSURANCE REQUIREMENTS

- A. Prior to the execution of this Contract, the Contractor shall provide the Department with proof of insurance coverage(s) and shall maintain the insurance coverage(s) listed herein throughout the term of this Contract.
- B. The insurance coverage(s) will be evidenced by immediate delivery to the Department upon its request of certificates of insurance executed by the insurer, or its authorized agent, stating the coverage, limits, expiration dates and compliance with all applicable required provisions.
- C. Copies and changes to insurance coverage(s), including extensions, renewals, cancellations and revisions will be submitted to the Contract Administrator within thirty (30) calendar days of the effective date.
- D. The Contract represents and warrants all required policies contain endorsements prohibiting cancellation except upon at least thirty (30) calendar day's prior written notice to the Department. The Certificate(s) will be addressed to the Texas Department of Public Safety as the Certificate holder.
- E. The Contractor represents and warrants that, within five (5) business days of receipt of notice of tentative contract award, it shall provide the Department with proof of coverage and represents and warrants that it shall maintain the following coverage throughout the term of this Contract, at the Contractor's sole expense:
  1. **Workers' Compensation and Employers' Liability:** The Contractor shall maintain Workers' Compensation insurance coverage in accordance with statutory limits and maintain such coverage throughout the life of this Contract.

**Coverage A – Workers' Compensation (WC) Statutory limits for the State of Texas or for any state the Contractor's employee resides in.**

**Coverage B – Employer's Liability (EL) \$1,000,000 each accident limit / \$1,000,000 Disease Policy / \$1,000,000 Disease each employee limit.**

The Contractor shall waive all rights against the Department, its board, trustees, officers, employees, agents, and volunteers for recovery of damages to the extent they are covered by WC and EL.

2. **Business Automobile Liability Insurance:** The Contractor shall maintain Business Automobile insurance coverage for all owned, hired, and non-owned vehicles, with a minimum **combined single limit of \$1,000,000** for each accident for bodily injury and property damage. Such insurance will include coverage for loading and unloading hazards.

If Contractor will carry pollutants or hazardous materials, endorsements for Pollution Liability Coverage for Automobile and Motor Carrier Act will be included.

The Contractor shall waive all rights against the Department, its board, trustees, officers, employees, agents, and volunteers for recovery of damages to the extent they are covered by the business auto liability insurance (or any other applicable auto physical damage coverage.)

3. **Commercial General Liability Insurance Coverage:** The Contractor shall maintain Commercial General Liability coverage that will include, but not be limited to, premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability.

1. \$1,000,000 each occurrence
2. \$2,000,000 General Aggregate limit
3. \$2,000,000 Products and Completed Products
4. \$1,000,000 Personal/Advertising injury
5. \$50,000 Damage to Premises
6. \$5,000 Medical Payments

- a. If this insurance is written on a claims-made form, coverage will be continuous (by renewal or extended reporting period) for not less than sixty (60) months following completion of this Contract and acceptance by the Department.
- b. Coverage, including any renewals, will have the same retroactive date as the original policy applicable to this Contract. Civil Rights Liability will be provided with the same liability limits. It may be included within the General Liability policy or written on a separate policy.
- c. Liability coverage will include coverage for damage to property and injury to persons caused by boiler and/or other equipment malfunction. The policy will contain an endorsement to include coverage for the property of third parties.
- d. The Department will be named as an additional insured by using endorsement CG2026 or broader.
- e. The Contractor's coverage will include an endorsement for waiver of subrogation and a 30 Day Notice of Cancellation to the Department. The Contractor shall waive all rights against the Department, its board, trustees, officers, employees, agents, and volunteers.

F. **Professional Liability:** The Contractor shall maintain Professional Liability insurance coverage (including Errors and Omissions [required only for contracts for Professional Services] including coverage for the rendering of, or failure to render, professional services with minimum limits:

1. \$1,000,000 per occurrence,
2. \$2,000,000 annual aggregate.

- a. If this insurance is written on a claims-made form, coverage will be continuous (by renewal or extended reporting period) for not less than twenty-four (24) months following completion of this Contract and acceptance by the Department.
  - b. Coverage, including any renewals, will have the same retroactive date as the original policy applicable to this Contract.
- G. **Commercial Crime Insurance:** The Contractor shall maintain Commercial Crime insurance coverage to cover losses from Employee Dishonesty with a minimum limit of: **\$50,000 each occurrence.** Coverage will be endorsed to cover third party property and the Department will be a joint loss payee.
- H. **Cyber Insurance:** If applicable, the Contractor shall maintain Cyber insurance to cover any and all losses, security breaches, privacy breaches, unauthorized distributions, or releases or uses of any data transferred to or accessed by Contractor under or as a result of this Contract. This insurance shall provide sufficient coverage(s) for the Contractor, the Department, and affected third parties for the review, repair, notification, remediation and other response to such events, including but not limited to, breaches or similar incidents under Chapter 521, Texas Business and Commerce Code. The Department may, in its sole discretion, confer with the Texas Department of Insurance to review such coverage(s) prior to approving them as acceptable under this Contract. The Contractor shall obtain modified coverage(s) as reasonably requested by the Department within ten (10) calendar days of the Contractor's receipt of such request from the Department.
- I. **Umbrella / Excess Liability:** The Contractor may combine its primary and Excess / Umbrella Liability limits to meet the minimum required coverage for any line of coverage; however, if it chooses this option, the coverage will be written at least as broad as those requirements defined above. **\$1,000,000 Minimum Limit.**

### I.1.1 ADDITIONAL PROVISIONS

The Contractor shall ensure that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

- A. Name the Department and its board, trustees, officers, employees, agents, representatives and volunteers as additional insured to all applicable policies.
- B. Waiver of subrogation against the Department and its board, trustees, officers, employees, agents, and volunteers, for bodily injury (Including death), property damage or any other loss to all policies.
- C. The Contractor's insurance will be the primary insurance in regards to the Department and its board, trustees, officers, employees, agents, and volunteers.
- D. All provisions of this Contract concerning liability, duty and standard of care, together with the indemnification provision, will be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

- E. All Certificates of Insurance will identify the service or product being provided and the name of the responsible party.
- F. No “self-insurance” coverage will be acceptable.
- G. The Contractor’s insurance coverage will continue in full force and effect during the term of this Contract. No Contract will be entered into between the Contractor and the Department unless acceptable insurance certificates are received by the Department by the date scheduled for the execution of this Contract. Proof of insurance policies in a form acceptable to the Department will be delivered prior to the effective date of this Contract.
- H. All insurance coverage will be provided by insurance carrier(s) duly licensed, admitted and authorized to do business in Texas. All insurance carriers will be, at a minimum, rated “A” or better by A.M. Best or equivalent rating by a similar insurance rating service.
- I. The Contractor may choose the amount of deductible for any other insurance coverage required (above) to be obtained by the Contractor; however except as it relates to professional liability insurance, in no event will such deductible for each occurrence exceed five (5) percent of the required yearly aggregate limit of coverage.
- J. The Contractor shall be responsible for the first dollar defense coverage. All general liability and professional liability policies will provide defense in addition to the policy limits.
- K. The limits required herein are the minimum acceptable limits. These limits will not to be construed as being the maximum the Contractor may wish to purchase for its own benefit.
- L. As respect to the total limits of liability required, any combination of primary and/or umbrella / excess liability coverage may satisfy those totals. However, if an umbrella / excess liability policy is used, coverage will be at least as broad as the primary coverage.

### **I.1.2 SUBCONTRACTOR’S INSURANCE**

The Contractor’s insurance policies will provide coverage for the Contractor’s principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under this Contract.

### **I.2 SUBCONTRACTS**

- A. The Contractor shall assume full responsibility for all deliverables and performances under this Contract. The Department shall consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges under this Contract. If any part of this Contract is planned to be subcontracted, the Contractor shall include a list of all subcontractors, including the firm name, address, and contact person of each subcontractor and a complete description of the deliverables or other work to be subcontracted.

- B. The Contractor will not delegate any duties under this Contract to a subcontractor unless the Department has given prior written consent to the delegation. The Department shall approve all subcontractors and to require the Contractor to replace any subcontractor found, in the opinion of the Department, either initially or based on performance, to be unacceptable.
- C. The management of any subcontractor shall be the sole responsibility of the Contractor, and failure by a subcontractor to perform will be deemed to be failure of the Contractor. The Contractor shall make all payments to subcontractors and suppliers. The Department will not direct payments for deliverables acquired in connection with this Contract other than to the Contractor, nor shall the Department release the Contractor from having to perform any obligations under this Contract, notwithstanding the fact that a subcontractor may have been engaged by the Contractor to perform those obligations.
- D. The Contractor will furnish to the Department copies of all subcontracts. All subcontracts will include all applicable provisions contained in this Contract and any provisions required by law.
- E. The Contractor is solely responsible and accountable for the completion of all work for which the Contractor has subcontracted.

### **I.3 HISTORICALLY UNDERUTILIZED BUSINESSES (HUB) PARTICIPATION**

- A. The Contractor shall make a good faith effort to comply with all state Historically Underutilized Business (HUB) requirements pursuant to Texas Government Code, Chapter 2261 and administrative rules, if applicable. The Contractor shall also comply with the approved HUB Subcontracting Plan (HSP).
- B. The Contractor shall submit a HSP as part of its Proposal and shall comply with implementation of the HSP. The Contractor shall seek written approval from the Department prior to making any modifications to its HSP.
- C. The Contractor shall submit a detailed description of the HSP and required forms with the Response which is included as Exhibit J.1, HSP. The Contractor's Proposal will be disqualified if the agency forms are not completed in full or are missing from the Contractor's original Response.
- D. The Contractor shall provide notice to all subcontractors of their selection as a subcontractor for this Contract. The notice will specify, at a minimum, Department's name, the name of the Contract Administrator, this Contract's assigned contract number, the subcontracting opportunity the subcontractor will perform, the approximate dollar value of the subcontract and the expected percentage of this Contract's total value that the subcontract represents. A copy of the notice will be provided to the Contract Administrator no later than ten (10) business days after the effective date of this Contract.
- E. The Contractor shall submit to the Contract Administrator on a monthly basis (by the 5th day of the following month) the Prime Vendor Progress Assessment Report, which is included as Exhibit J.1, HSP.

- F. The Contractor shall include the non-discrimination clauses in Section H.13 of this Contract in all subcontracts.

#### **I.4 LIQUIDATED DAMAGES**

- A. The Department reserves the right to assess liquidated damages at an amount up to \$10,000.00 per day for each calendar day the Contractor fails to meet the standards set out in this Contract or misses the deadline for each deliverable or Purchase Order Change Notice, with such deadlines designated in this Contract or the deployment of Purchase Order Change Notice under Section(s) C of this Contract. The parties acknowledge that the harm that will be caused to the Department by such a delay is difficult to estimate; however, the amount of liquidated damages listed herein is a reasonable estimate and is enforceable.
- B. The Contractor will not be responsible and liquidated damages may not be assessed due to any delay caused by schedule amendments requested by the Department, delays as the result of activity that is the responsibility of the Department's Project Team, as long as the Contractor timely files its deficiency report as required by the Section H.33 herein entitled "Rolling Estoppel" or delays that the Department deems were outside the control of the Contractor. The burden of proof that the delay is attributable to the Department rests with the Contractor.
- C. Any liquidated damages assessed under this Contract may, at the Department's option, be deducted from any payments due to the Contractor. The Department has the right to offset any liquidated damages payable to the Department, as specified above, against any payments due to the Contractor. If insufficient payments are available to offset such liquidated damages, then Contractor shall pay to the Department any remaining liquidated damages within fifteen (15) calendar days following receipt of written notice of the amount due.

#### **I.5 OTHER CONTRACTS**

During the course of this Contract, the Department may award additional contracts to other contractors for similar services. The Department shall provide notification to the Contractor regarding the additional contractor and the scope of work that the additional contractor will be performing. The Contractor shall work cooperatively with the additional contractor in order to ensure that the performance of the services and/or capital improvements is not unnecessarily delayed. The Contractor will not commit or permit any act that would unduly interfere with the performance of work by any other contractor(s).

#### **I.6 SUSPENSION OF WORK**

- A. The Department may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of this Contract for the period of time that the Contract Monitor determines appropriate for the convenience of the Department.
- B. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted:
  - 1. By an act of the Contract Monitor in the administration of this Contract, or

2. By the Contract Monitor's failure to act within the time specified in this Contract (or within a reasonable time if not specified), an adjustment will be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly.

C. A claim under this clause will not be allowed:

1. For any costs incurred more than twenty (20) calendar days before the Contractor will have notified the Contract Administrator in writing of the act or failure to act involved (but this requirement will not apply as to a claim resulting from a suspension order; and
2. Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under this Contract.

## **I.7 STOP-WORK ORDER**

- A. The Contract Administrator may at the request of the Department, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, or the work called for by this Contract for a period of up to ninety (90) calendar days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order will be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall, at the Department's expense, immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost allocable to the work covered by the order during the period of work stoppage. Within a period of up to ninety (90) calendar days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contract Administrator may either:
1. Cancel the stop-work order; or
  2. Terminate the work covered by the order as provided in the stop-work order of this Contract.
- B. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Department will make an equitable adjustment in the delivery completion schedule, the estimated cost, or both, and this Contract will be modified, in writing accordingly, if:
1. The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and
  2. The Contractor asserts its right to the adjustment within thirty (30) calendar days after the end of the period of work stoppage; provided that the Contract Administrator decides the facts justify the action, the Contract Administrator may receive and approve the claim submitted at any time before final payment under this Contract.



- C. If a stop-work order is not canceled and the work covered by the order is terminated, the Contract Administrator may allow reasonable cost resulting from the stop-work order in arriving at the termination settlement.
- D. An appropriate equitable adjustment may be made in any related contract of the Contractor that provides for adjustment and is affected by any stop-work order under this clause. The Department will not be liable to the Contractor for damages or loss of profits because of a stop-work order issued under this clause.

## **I.8 WORK MADE FOR HIRE**

For the purposes of this Contract, the term "Work" is defined as all reports, statistical analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research, materials, intellectual property or other property developed, produced, or generated in connection with this Contract. All Work performed pursuant to this Contract is made the exclusive property of the Department. All rights, title and interest in and to said property will vest in the Department upon creation and will be deemed to be a Work for Hire and made in the course of the services rendered pursuant to this Contract. To the extent that title to any such Work may not, by operation of law, vest in the Department, or such Work may not be considered a Work made for hire, all rights, title and interest therein are hereby irrevocably assigned to the Department. The Department shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. The Contractor shall give the Department and/or the State of Texas, as well as any person designated by the Department and/or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to the Contractor for services rendered under this Contract.

## **I.9 CRIMINAL HISTORY BACKGROUND CHECKS**

### **I.9.1 Background Checks for Contractor's Points of Contact**

- A. The Contractor shall have its project personnel submit to the Department a fingerprint-based Criminal History Background Investigation, if required by the Department, at the Contractor's expense. To facilitate this Criminal History Background Investigation, each person shall complete the Department's Vendor Background Information form (HR-22), which will be provided by the Department.
- B. If the Department requires a fingerprint-based Criminal History Background Investigation, the Contractor will not allow personnel to work on the project who have not successfully completed the Department's fingerprint-based Criminal History Background Investigation and who do not otherwise maintain the Department's security clearance. The Department has the right to prevent the Contractor's personnel from gaining access to the Department's building(s) and computer systems if the Department determines that such personnel do not pass the background check or fail to otherwise maintain the Department security clearance.
- C. When required, the Contractor's Project Manager shall provide the following to the Department's Project Manager within 10 calendar days of the effective date of this Contract:

1. The completed Vendor Background Information form (HR-22) for all proposed personnel; and
  2. Acceptable fingerprints for all proposed personnel.
- D. Throughout the term of this Contract, the Department may require the Contractor personnel to submit an annual Department fingerprinted-based Criminal History Background Investigation to the Department.
- E. Throughout the term of this Contract, the Contractor shall promptly notify the Department of any activity or action by the Contractor's personnel that may affect that individual's ability to continue to work under this Contract.
- F. A Department issued identification card will be work at all times and will be worn in a visible location.

### **I.9.2 Background Checks for Contractors On-Site Personnel**

- A. The Contractor, at its expense, must conduct a background check for each of its employees, as well as for the employees of its subcontractors, who will provide services under this Contract (collectively "Contractor Employees"). Contractor Employees, for the purpose of this requirement, include the titles listed in Exhibit J.7. Contractor Employees do not include routine delivery workers. Background checks are to be conducted via either the current Department's background check vendor or the Contractor's background check vendor based on the Department's process. The Department's minimum background check process shall include, but not be limited to, the following:
1. Social Security Number (SSN) Trace;
  2. Driver License/ Driver Record Check;
  3. Fingerprint Level Criminal Records (County and State Criminal Felony and Misdemeanor, National Criminal Database, Federal Criminal); and
  4. National Sex Offender Registry.
- B. The background check shall be conducted prior to initial access by the Contractor Employees. Contractor Employees, who have separated employment from the Contractor, shall undergo another background check prior to renewed access to the site. The Department has a right to require routine background checks of the Contractor Employees and to require that the Contractor provide background check results to the Department. The Department also has the authority to audit the Contractor's background check process, to ensure compliance with Department standards at any time and to run its own background checks on Contractor Employees. Additionally, all Contractor Employees have the responsibility to self-disclose any misdemeanor or felony arrest that occurs while assigned to the Project within three (3) business days of the arrest or upon return to a Contractor assignment. The arrest shall be reported to the Contractor and to the Department's Project Manager. If reported to the Contractor, the Contractor shall notify the Department's Project Manager within three (3) business days of learning of the arrest. If at any time it is discovered that any Contractor Employee has a criminal record that includes a felony or misdemeanor the Contractor shall inform the Department's Project Manager. The Department shall then assess the circumstances surrounding the arrest, time frame, nature, gravity and

relevancy of the arrest to the assigned job duties to determine whether the Contractor Employee must be removed from his/her assignment. The Department may withhold consent at its sole discretion. Failure of the Contractor to comply with the terms of this paragraph may result in the termination of this Contract.

- C. The Department considers the following items to be disqualifiers; persons whose background investigation shows any of the following may not perform services under this Contract.
1. Conviction for a felony.
  2. An entering of an order of deferred adjudication for a felony, until five (5) years after court supervision ceased and the case was dismissed.
  3. A conviction of driving while intoxicated during the five (5)-year period immediately prior to the date of application.
  4. A finding by a court of competent jurisdiction that the applicant was a delinquent child during the five (5)-year period immediately prior to the date of application. If the applicant's record in the proceeding is ordered sealed, the incident should be disregarded and treated as though it did not exist.
  5. The applicant's driver license has been suspended, including a probated suspension, by the Department during the last three (3) years as a habitual violator.
  6. The applicant's driver license has been suspended for refusal to submit to a chemical test within the last ten (10) years.
  7. There may be additional disqualifiers for specific positions.

## SECTION J - LIST OF EXHIBITS

EXHIBIT NO.	TITLE	NUMBER OF	PAGES
J.1	HUB Subcontracting Plan (HSP)		11
J.2	Application for Texas Identification Number		2
J.3	Direct Deposit Form		2
J.4	Request for Taxpayer Identification Number and Certifications		4
J.5	Employment Cost Index		1
J.6	Consumer Price Index		2
J.7	Staffing Readiness Report		3
J.8	Equipment/Supplies Readiness Report		5
J.9	Turnkey Facilities Readiness Report		2
J.10	Federal Contracting Requirements		4

**SECTION K – DISCLOSURES, AFFIRMATIONS, GUARANTEES,  
REPRESENTATIONS, CERTIFICATIONS, STATEMENTS AND WARRANTIES  
OF RESPONDENTS**

**K.1 HISTORICALLY UNDERUTILIZED BUSINESS (HUB) REPRESENTATION**

**K.1.1 Definition**

A. “Historically Underutilized Business” means an entity with its principal place of business in this State that is:

1. A corporation formed for the purpose of making a profit in which fifty-one (51) percent or more of all classes of the shares of stock or other equitable securities are owned by one or more economically disadvantaged persons who have a proportionate interest and actively participate in the corporation’s control, operation and management;
2. A sole proprietorship created for the purpose of making a profit that is completely owned, operated and controlled by an economically disadvantaged person;
3. A partnership formed for the purpose of making a profit in which fifty-one (51) percent or more of the assets and interest in the partnership are owned by one or more economically disadvantaged persons who have a proportionate interest and actively participate in the partnership’s control, operation, and management;
4. A joint venture in which each entity in the venture is a Historically Underutilized Business, as determined under another paragraph of this subdivision; or
5. A supplier contract between a Historically Underutilized Business as determined under another paragraph of this subdivision and a prime contractor under which the historically underutilized business is directly involved in the manufacture or distribution of the goods or otherwise warehouses and ships the goods.

B. “Economically disadvantaged person” means a person who is economically disadvantaged because of the person’s identification as a member of a certain group including Black Americans, Hispanic Americans, Women, Asian Pacific Americans, Native Americans and Service Related Disabled Veterans, and who has suffered the effects of discriminatory practices or other similar insidious circumstances over which the person has no control.

**K.1.2 Representation**

The Respondent represents and certifies as part of its Proposal that it [ ] is, or [ ] is not, a HUB certified by the Texas Procurement and Support Services (TPASS).

**K.2 CHILD SUPPORT REPRESENTATION AND CERTIFICATION**

A. Under the Texas Family Code, Section 231.006, a child support obligor who is more than thirty (30) days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder or owner with an ownership interest of at least twenty-five (25) percent is not eligible to receive payments from State funds under a contract to provide property, materials or services.

B. Governmental entities and any business entity, including a non-profit corporation, that does not have a majority shareholder who is a natural person capable of being a child support obligor, are not subject to Section 231.006.

Check ONE:

\_\_\_\_\_ The Respondent DOES NOT have a sole proprietor, majority stockholder or substantial owner who is a natural person capable of being a child support obligor therefore IS NOT subject to Section 231.006.

\_\_\_\_\_ The Respondent DOES have a sole proprietor, majority stockholder or substantial owner who is a natural person capable of being a child support obligor therefore IS subject to Section 231.006.

If subject to Section 231.006, a Proposal will include names and social security numbers of each person with at least a twenty-five (25) percent ownership of the business entity submitting the Proposal.

_____	_____	_____	_____
Print Name	SSN	Print Name	SSN
_____	_____	_____	_____
Print Name	SSN	Print Name	SSN

Under Texas Family Code § 231.006, (relating to child support) the Respondent, by submitting its Proposal, certifies that it is not ineligible to receive payments under this Contract and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

### **K.3 FRANCHISE TAX REPRESENTATION**

In submitting its Proposal, the Respondent certifies that it is exempt or not delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Texas Tax Code.

If the Respondent is a qualifying business entity type per Texas Comptroller of Public Accounts guidelines and is not set up in the Texas Franchise Tax system, the Respondent must do so prior to contracting with the State of Texas.

### **K.4 TYPE OF BUSINESS ORGANIZATION**

The Respondent, by checking the applicable box, represents that:

- A. It operates as  a corporation incorporated under the laws of the State of \_\_\_\_\_,  an individual,  a partnership,  a nonprofit organization or  a joint venture; or
- B. If the Respondent is a foreign entity, it operates as  an individual,  a partnership,  a nonprofit organization,  a joint venture, or  a corporation, registered for business in \_\_\_\_\_ (country).

**K.5 PREFERENCE CLAIM**

In accordance with 34 TAC Rule 20.38, the Respondent shall check below if claiming a preference. If the appropriate line is not marked, a preference will not be granted unless other documents included in the Proposal show a right to the preference.

**K.5.1 Source and Specification Preferences**

- Products of persons with mental or physical disabilities.
- Products made of recycled, remanufactured, or environmental sensitive materials including recycled steel.
- Energy efficient products.
- Rubberized asphalt paving material.
- Recycled motor oil and lubricants.
- Disabled Veterans – with at least twenty (20) percent disability

**K.5.2 Tie-Bid Preferences**

- 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 produced or grown in Texas.
- Agricultural products or services offered by Texas Bidders.\*
- Services offered by a Texas bidder that is owned by a Texas resident serviced-disabled veteran.\*
- Services offered by a Texas bidder that is not owned by a Texas resident serviced-disabled veteran.
- Texas Vegetation Native to the Region.
- USA produced supplies, materials, equipment or agricultural products.

### **K.5.3 Additional Preferences**

- Products produced at facilities located on formerly contaminated property.
- Products and services from economically depressed or blighted areas.
- Contractors that meet or exceed air quality standards.
- Recycled or reused computer equipment of other manufacturers.
- Foods of higher nutritional value (for consumption in a public cafeteria only).
- Commercial production company or advertising agency located in Texas.

\*By signing this Proposal, the Respondent certifies that if a Texas address is shown as the address of the Respondent, the Respondent qualifies as a Texas Resident Bidder as defined in 34 TAC Rule 20.32 (68).

### **K.6 REPRESENTATIONS OF RESPONDENT**

References to the “representations” of the Respondent include without limitation all disclosures, affirmation, guarantees, certifications, statements and warranties of the Respondent in submitting a Proposal to this RFP and will become such representations of the Contractor if the Respondent is selected for award under this Contract.

The Respondent represents and warrants to and for the benefit of the Department, with the intent that the Department will rely thereon for the purposes of the Respondent submitting a Proposal to be considered for award of this Contract, and for entering into this Contract, as follows in this Section K.6 and otherwise in this Section K:

#### **K.6.1 Organization and Qualification**

If the Respondent operates as a corporation incorporated under the laws of any state outside Texas, it is duly qualified to do business as a foreign corporation in good standing in Texas.

#### **K.6.2 Authorization**

This Contract has been duly authorized, executed and delivered by the Contractor and the successful Respondent, assuming due execution and delivery by the Department, constitutes a legal, valid and binding agreement enforceable against the Contractor in accordance with its terms.

#### **K.6.3 No Violation of Agreements, Articles of Incorporation or Bylaws**

The consummation of the transactions contemplated by this Contract and the fulfillment of the terms hereof will not conflict with, or result in a breach of any of the terms and provisions of, or constitute a default under any indenture, mortgage, deed of trust, lease, loan agreement, license, security agreement, contract, governmental license or permit or other agreement or instrument to which the Respondent is a party or by which its properties are bound, or any order, rule or regulation of any court or any regulatory body, administrative agency or other governmental body applicable to the Respondent or any of its properties, except any such conflict, breach, or default which would not materially and



adversely affect the Respondent's ability to perform its obligations under this Contract, and will not conflict with, or result in a breach of any of the terms and provisions of, or constitute a default under, the Articles of Incorporation (or other corresponding charter document) or Bylaws of the Respondent.

#### **K.6.4 No Defaults under Agreements**

The Respondent is not in default, nor is there any event in existence which, with notice or the passage of time or both, would constitute a default by the Respondent under any indenture, mortgage, deed of trust, lease, loan agreement, license, security agreement, contract, governmental license or permit or other agreement or instrument to which it is a party or by which any of its properties are bound and which default would materially and adversely affect the Respondent's ability to perform its obligations under this Contract.

#### **K.6.5 Compliance with Laws**

Neither the Respondent nor its officers and directors purporting to act on its behalf have been advised or have reason to believe that the Respondent or such officers and directors have not been conducting business in compliance with all applicable laws, rules and regulations of the jurisdictions in which the Respondent is conducting business, including all safety laws and laws with respect to discrimination in hiring, promotion or pay of employees or other laws affecting employees generally, except where failure to be in compliance would not materially and adversely affect the Respondent's ability to perform its obligations under this Contract.

#### **K.6.6 No Litigation**

- A. The Respondent certifies that there is not now pending, or to its knowledge threatened, any action, suit or proceeding to which the Respondent, or any of its employees, are a party, before or by any court or governmental agency or body, which may result in any material adverse change in the Respondent's ability to perform its obligations under this Contract, or any such action, suit or proceeding related to environmental or civil rights matters.
- B. The Respondent further certifies that no labor disturbance by the employees of the Respondent exists or is imminent which may be expected to materially and adversely affect the Respondent's ability to perform its obligations under this Contract.
- C. Prior to the execution of this Contract, the Department may require the Respondent to recertify the representations set forth above. The Department, in its sole discretion, may disqualify any Respondent that in the opinion of the Department is a party, or who has any employees that are a party, to any action, suit or proceeding that may result in any material adverse change in the Respondent's ability to perform its obligations under this Contract.
- D. During the term of this Contract, to include extensions hereof, the Respondent shall notify Department in writing within five (5) business days of the Respondent having received knowledge of any actions, suits or proceedings filed against the Respondent, or any of its employees, or to which the Respondent, or any of its employees, are a party, before or by any court or governmental agency or body, which:

1. May result in any material adverse change in the Respondent's ability to perform its obligations under this Contract;
2. Filed in any federal court, state court, or federal or state administrative hearing within the State of Texas regardless as to any anticipated material adverse change in the Respondent's ability to perform its obligations under this Contract;
3. The Respondent shall provide in writing, to the Contract Administrator, a quarterly report listing litigation identified in the above requirements.

#### **K.6.7 Taxes**

- A. The Respondent has filed all necessary federal, state and foreign income and franchise tax returns and has paid all taxes as shown to be due thereon.
- B. The Respondent has no knowledge of any tax deficiency which has been or might be asserted against it and which would materially and adversely affect the Respondent's ability to perform its obligations under this Contract.

#### **K.6.8 Waiver of Certain Claims**

The Respondent waives any claim against and releases the Department, its officers, employees, agents, and attorneys from liability with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by the Respondent and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act.

#### **K.6.9 Reliance; Updates**

The Respondent acknowledges that all of its disclosures, affirmations, guarantees, representations, certifications, statements and warranties contained in any part of this Contract, including without limitation, the Respondent's Proposal, are material and have been relied upon by the Department in considering the Respondent for the award of this Contract. Further, the Respondent warrants and represents that all of its disclosures, affirmations, guarantees representations, certifications, statements and warranties made to the Department prior to being awarded this Contract, and those made during the negotiation of this Contract, are material, true, complete and correct.

The Respondent shall notify the Department in writing by reference to this Section no later than ten (10) business days that any of the disclosures, affirmations, guarantees, representations, certifications, statements, and warranties provided in its Proposal or otherwise in this Contract are no longer true, complete and correct.

#### **K.6.10 Disclosure**

There is no material fact which materially and adversely affects or in the future will (so far as the Respondent can now reasonably foresee) materially and adversely affect its ability to perform its obligations under this Contract which has not been accurately set forth in this Contract or otherwise accurately disclosed in writing to the Department by the Respondent prior to the date hereof.

### **K.6.11 No Collusion; Antitrust**

- A. The Respondent represents and certifies its employees, agents and representatives have not and will not discuss or disclose the terms of its Proposal and its submission or response thereto with any third party other than the persons or entities, which the Respondent engaged to assist it with respect to such response or submission.
- B. Neither the Respondent nor the firm, corporation, partnership or institution represented by the Respondent or anyone acting for such firm, corporation or institution has (1) violated the antitrust laws of the State of Texas under Business Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated the contents of this Response either directly or indirectly to any competitor or any other person engaged in such line of business during the procurement process for this RFP.

### **K.6.12 Ethics**

#### **K.6.12.1 Conflict of Interest**

Pursuant to Texas Government Code, Section 572.051, any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established. In Texas Government Code, Section 572.051, outlines the ethical standards required of state officers and employees who interact with public purchasers in the conduct of state business.

Specifically, a Department employee may not have an interest in, or in any manner be connected with a contract or proposal for a purchase of goods or services by an agency of the state; or in any manner, including by rebate **or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation.** Entities who are interested in seeking business opportunities with the state shall be mindful of these restrictions when interacting with public purchasers of the Department or purchasers of other state agencies.

**Per the State of Texas Contract Management Guide, State Ethics Policy, page 21, 01-Mar-2016 Version 1.15:**

It is the policy of the State of Texas that a state officer or state employee may not have a direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur any obligation of any nature that is in substantial conflict with the proper discharge of the officer's or employee's duties in the public interest per Texas Government Code, Section 572.001.

**The State of Texas Contract Management Guide, page 22, 01-Mar-2016 Version 1.15:**

State agencies may not use appropriated funds to compensate a state employee who violates a standard of conduct set out in Texas Government Code, Section 572.051.

**The State of Texas Contract Management Guide, Conflict of Interest, General, Disclosures by Potential Contractors, page 23, 01-Mar-2016 Version 1.15:**

All Respondents shall disclose in their Proposals to this RFP, any actual or potential conflicts of interest in their proposed provision of services or other performances under this Contract.

In its Proposal to this RFP, the Respondent shall disclose any existing or potential conflicts of interest or possible issues that might create appearances of impropriety relative to Respondent's (and its proposed subcontractors') submission of a Proposal and possible selection as the Contractor or its performance of this Contract. A description of some conflicts of interest is included in this Schedule K, but this list should not be considered exhaustive or limiting.

By submitting a Proposal, the Respondent represents and warrants that neither it nor its employees and subcontractors have an actual or potential conflict of interest in entering a Contract with the Department. Respondent also represents and warrants that entering into this Contract or any contract with the Department will not create the appearance of impropriety.

In its Proposal, Respondent must disclose any existing or potential conflict of interest that it might have in contracting with the Department. The requirement to disclose any actual or potential conflict of interest will continue during the term of this Contract, and will survive until the end of the recordkeeping requirements of this Contract. The Department will decide, in its sole discretion, whether an actual or perceived conflict should result in disqualification of the Proposal or termination of this Contract.

In addition to the other disclosures required in this Schedule K or otherwise, the Respondent shall also disclose any of its personnel who are current or former officers or employees of the Department or who are related, within the third degree by consanguinity (as defined by Texas Government Code Section 573.023) or within the second degree by affinity (as defined by Texas Government Code Section 573.025), to any current or former officers or employees of the Department.

Respondents shall also comply with all applicable Texas and federal laws and regulations relating to the hiring of former state employees (see e.g., Texas Government Code Chapters 572 and 573). Such "revolving door" provisions generally restrict former agency heads from communicating with or appearing before the agency on certain matters for two years after leaving the agency. The revolving door provisions also restrict some former employees from representing clients on matters that the employee participated in during state service or matters that were in the employees' official responsibility. The Respondent, by signing this Proposal, certifies that it has complied with all applicable laws and regulations regarding former state employees.

Respondent shall identify each employee who works for more than one staffing company at any facility and ensure that the employee's cumulative weekly hours worked at all state facilities through any one staffing company does not exceed 40 hours per week.

See also Section H.69, Disclosure of Restricted Employment, Government Code Section 572.069.

If the circumstances certified by the Respondent change or additional information is obtained subsequent to submission of Proposals, by submitting a Proposal, the Respondent shall be under a continuing duty to supplement its Proposal under this

provision, and the Respondent shall submit updated information as soon as reasonably possible upon learning of any change to Respondent's affirmation.

In addition to other disclosures required by this section Respondents shall identify in their Proposals to this RFP:

any principals of debarred vendors (such as an owner, proprietor, sole or other majority shareholder, director, president, or managing partner) to ensure such vendors/principals are not awarded, extended or renewed any contract;

any current or former employees of the Respondent and any proposed subcontractors who are current or former employees of the State; and

any proposed personnel who are related to any current or former employees of the State.

Contractors shall also update all such information throughout the term of this Contract.

Under Texas Government Code, Section 2252.901, state agencies may not enter into employment contracts, professional services contracts under Chapter 2254, or consulting services contracts under Chapter 2254 with former or retired employees before the first anniversary of the last date on which the individual was employed by the agency if appropriated funds are used to make payments under the contract.

Additionally, pursuant to Texas Government Code, Section 2113.014, a state agency may not use appropriated money to compensate a state employee who violates a standard of conduct set out in Texas Government Code, Section 572.051.

**The State of Texas Contract Management Guide, Conflict of Interest, Disclosure by State Officials and Employees; Certain Contracts Prohibited, page 23, 01-Mar-2016 Version 1.15:**

A state agency employee or official who is involved in procurement or in contract management for a state agency must disclose to the agency any potential conflict of interest specified by state law or agency policy that is known by the employee or official with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency. State agencies should evaluate any disclosed potential conflict of interest when contracting for goods or services and eliminate or otherwise adequately address the effect of disclosed conflicts. See Texas Government Code, Section 2261.252.

A state agency may not enter into a contract for the purchase of goods or services with a private vendor with whom any of the following agency employees or officials have a financial interest: (1) a member of the agency's governing body; (2) the governing official, executive director, general counsel, chief procurement officer, or procurement director of the agency; (3) a family member related to an employee or official described above in (1) or (2) within the second degree by affinity or consanguinity.

A state agency employee or official has a financial interest in a person as described in Texas Government Code, Section 2262.252(c)(1)(2) if the employee or official (1) owns or

controls, directly or indirectly, an ownership interest of at least one percent in the person, including the right to share in profits, proceeds, or capital gains; or (2) could reasonably foresee that a contract with the person could result in a financial benefit to the employee or official.

In submitting a Proposal to this RFP, the Respondent represents and warrants that it has no actual or potential conflicts of interest in entering into this Contract or its performances under this Contract and that its entering into this Contract or performances under this Contract would not reasonably create an appearance of impropriety.

The Respondent certifies that it has disclosed or does not employ any personnel who are current or former officers or employees of the Department or who are related, within the third degree of consanguinity (as defined by Texas Government Code Section 573.023) or within the second degree of affinity (as defined by Texas Government Code Section 573.025) to any current or former officers or employees of the Department.

**K.6.12.2 No Gratuities**

The Respondent represents that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Proposal.

**K.6.13 Certification Concerning Financial Participation**

Texas Government Code Section 2155.004, the Respondent certifies that the Respondent is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate. Section 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation or specifications for the contract. The Respondent certifies that it has not received compensation for participation in the preparation of the specifications for this Contract.

**K.6.14 Contracting With Executive Head of State Agency**

- A. Pursuant to Texas Government Code Section 669.003, the Department may not enter into a contract with a person who employs a current or former Executive Head of a state agency until four (4) years have passed since that person was the executive head of the state agency. By submitting a Proposal, the Respondent certifies that it does not employ any person who was the Executive Head of a state agency in the past four (4) years.
- B. If the Respondent has a disclosure to make regarding the prohibition in Section 669.003 or otherwise employs a current or former Executive Head of a state agency, the Respondent shall complete the following information in order for the Proposal to be evaluated:

Name of Former Executive: \_\_\_\_\_

Name of State Agency: \_\_\_\_\_

Date of Separation from State Agency: \_\_\_\_\_

Date of Employment with Respondent: \_\_\_\_\_

#### **K.6.15 Notification**

If any of the information provided in the above representations changes during the term of this Contract, the Contractor shall submit an updated representation as soon as is reasonably possible.

#### **K.6.16 Certification Regarding Debarment, Ineligibility, and Voluntary Exclusion**

- A. The Department is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's System for Award Management (SAM), <https://www.sam.gov>, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.
- B. The Respondent certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and the Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that the Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov>.

##### **State of Texas Debarment**

In the event that Respondent has repeated unfavorable Vendor Performance Tracking System (VPTS) performance reviews, repeated unfavorable VPTS grading classifications, or has more than two contract terminations within the preceding three (3) years for unsatisfactory performance, the Texas Comptroller of Public Accounts may bar a vendor from participating in state contracts for a period commensurate with the seriousness of Respondent's action and the damage to the state's interests.

- C. This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the contractors, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- D. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, Subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- E. This certification is a material representation of fact relied upon by the Department. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of

subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

- F. The Respondent shall comply with the requirements of 2 C.F.R. pt. 180, Subpart C and 2 C.F.R. pt. 3000, Subpart C while this Proposal is valid and throughout the period of any contract that may arise from this RFP. The Respondent further shall include a provision requiring such compliance in its lower tier covered transactions.

#### **K.6.17 Certification Concerning Hurricane Relief**

A state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five (5) year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

Under Texas Government Code Section 2261.053, the Respondent certifies that the individual or business entity named in this Proposal or this Contract is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

Under Texas Government Code Section 2155.006, the Respondent certifies that the individual or business entity named in this Proposal or this Contract is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

#### **K.6.18 Deceptive Trade Practices; Unfair Business Practices**

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

#### **K.6.19 Relationships**

The Contractor represents and warrants that no relationship, whether by relative, business associate, capital funding contract or by any other such kinship exist between the Contractor and an employee of the Department, and the Contractor has not been an employee of the Department within the immediate twelve (12) months prior to the Contractor's Proposal.



#### **K.6.20 OSHA**

The Respondent represents and warrants that all performances under this Contract meet or exceed the safety standards established and promulgated under the *Federal Occupational Safety and Health Law* and its regulations in effect or proposed as of the effective date of this Contract.

#### **K.6.21 EEOC**

The Contractor represents and warrants its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.

During the performance of this Contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- C. The Contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted

construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- G. The Contractor shall include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### **K.6.22 Americans with Disabilities Act (ADA)**

The Respondent represents and warrants its compliance with the requirements of the Americans with Disabilities Act (ADA).

#### **K.6.23 Buy Texas**

In accordance with the Texas Government Code Section 2155.4441, the Respondent shall, in performing any services under this Contract, purchase products and materials produced in Texas when they are available at a comparable price and comparable period of time to products and materials produced outside the state.

#### **K.6.24 Texas Government Code Chapter 556**

The Respondent represents and warrants that the Comptroller of Public Accounts' payments to the Respondent and the Respondent's receipt of appropriated or other funds under this Contract are not prohibited by Texas Government Code, Sections 556.005 or 556.008.

The Respondent has complied with the Texas Government Code Section 556.0055 restriction on lobbying expenditures.

#### **K.6.25 Computer Equipment and Computer Recycling Program**

If the Respondent is submitting a Proposal for the purchase or lease of computer equipment, then the Respondent certifies its compliance with Subchapter Y, Chapter 361, Texas Health and Safety Code and the Texas Commission on Environmental Quality rules, 30 TAC, Chapter 328.

For acquisition of computer equipment, state agencies must comply with 1 TAC Sections 217.10 and 217.11 related to the computer equipment and computer recycling programs offered by the Respondents.

#### **K.6.26 DISCLOSURE OF RESTRICTED EMPLOYMENT**

Pursuant to Texas Government Code Section 572.069 the Respondent certifies that it has not employed and will not employ a former Department or state officer who participated in a procurement or contract negotiation for the Department involving the Respondent within two (2) years after the state officer or employee left state agency employment or service.

This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.

#### **K.6.27 Lawsuits, Court Actions**

By signature hereon, and by checking or initialing either Subsection (A) or Subsection (B), as applicable, the Respondent represents and warrants the following:

- A.  The Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against the Respondent or any of the individuals or entities included in Section H.8, Independent Contractor, of this Contract that would or could impair the Respondent's performance under this Contract, related to the subject matter of this Contract, or otherwise be relevant to the agency's consideration of the Respondent's Proposal. The Respondent represents and warrants that it is not aware of any such court or governmental agency actions, proceedings or investigations, etc. against the Respondent or any of these individuals or entities within the five (5) calendar years immediately preceding the submission of the Respondent's Proposal in response to this RFP. In addition, the Respondent represents and warrants that it shall notify the Department in writing within five (5) business days of any changes to the representations or warranties in this Subsection (A) and understands that failure to so timely update the Department shall constitute breach of contract and may result in immediate termination of this Contract.
- B.  The Respondent is unable to make the representation and warranty in Subsection (A) above and instead represents and warrants that it has included as a detailed attachment in its Proposal, which expressly references this Subsection (B), a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc., and specifically addresses whether any of such past, pending or threatened actions, proceedings or investigations, etc., would or could (1) impair the Respondent's performance under this Contract; (2) relate to the solicited or similar goods or services or this Contract; or (3) be otherwise relevant to the Department's consideration of the Respondent's Proposal. In addition, the Respondent represents and warrants that it shall notify the Department in writing within five (5) business days of any changes to the representations or warranties in this Subsection (B) or attachments in response to Subsection (B) and understands that failure to so timely update the Department shall constitute breach of contract and may result in immediate termination of the purchase order / contract.

**K.6.28 Agreement to Terms**

The Respondent represents and warrants that it has read and agrees to all terms and conditions of this RFP, unless the Respondent specifically takes an exception and proposes an alternative provision in the Respondent's Proposal as provided in Section L.8.2.S. Inclusion of such conflicting terms may result in disqualification of the Proposal in the Department's sole discretion.

**K.7 AUTHORIZED NEGOTIATORS**

The Respondent represents that the following persons are authorized to negotiate on its behalf with the Department in connection with this RFP: (list names, titles and telephone numbers of the authorized negotiators).

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

**K.8 PAYEE IDENTIFICATION NUMBER**

The Payee ID number is the taxpayer number assigned and used by the Comptroller of Public Accounts of Texas. The Respondent shall provide its payee identification number in the space provided below. If this number is not known, the Respondent shall provide the Federal Taxpayer Identification number.

Payee Identification Number: \_\_\_\_\_.

Federal Taxpayer Identification Number: \_\_\_\_\_.

**K.9 POINT OF CONTACT**

The Respondent shall provide the name, address and phone number of a point-of-contact for questions concerning the submitted Proposal.

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Phone Number: (\_\_\_\_)\_\_\_\_\_ Fax Number: (\_\_\_\_)\_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Email Address: \_\_\_\_\_

**K.10 CERTIFICATION**

By signature hereon, the Respondent represents and warrants that the individual signing this document and the documents made part of the submitted Proposal is authorized to sign such documents on behalf of the company and to bind the company under any purchase order / contract which may result from the submission of this Proposal.

By signing hereon, the Respondent represents and warrants that all statements and information prepared and submitted in response to this RFP are current, complete and accurate.

To be completed by the Respondent: (The Respondent shall check or complete all appropriate boxes or blanks in the Representations and Certifications, on the preceding pages). The Representations and Certifications will be executed below by an individual authorized to bind the Respondent.

The Respondent makes the foregoing Representations and Certifications as part of its Proposal.

\_\_\_\_\_  
Name of Respondent

\_\_\_\_\_  
Solicitation No.

\_\_\_\_\_  
Signature of Authorized Individual

\_\_\_\_\_  
Date

\_\_\_\_\_  
Typed Name of Authorized Individual

Note: The penalty for making false statements shall void the submitted Proposal or any resulting contracts, and the Respondent shall be removed from all bid lists.

## SECTION L - INSTRUCTIONS, CONDITIONS, AND NOTICES TO RESPONDENTS

### L.1 PROPOSAL PREPARATION INSTRUCTIONS

#### Purpose of Instructions

- A. These instructions are designed to assure the submission of information essential to the understanding and the comprehensive evaluation of the Respondent's Proposal.
- B. The Respondent shall be available twenty-four (24) hours a day, seven (7) days a week to include weekends and holidays to provide clarification responses, attend requested meetings and / or demonstrations throughout the Request for Proposal evaluation phase.
- C. Proposals will be prepared in accordance with these instructions providing all required information in the format specified.
- D. Failure of a proposal to show compliance with these instructions and submit all documentation may be grounds for disqualification of the proposal from further consideration unless stated otherwise within this solicitation.

#### Submission of Proposals

- A. Proposals will be typed or printed using Arial twelve (12) point font on standard letter paper (8-1/2" x 11") (except for graphic information being requested). The Respondent's Proposal will be paginated, contain a full table of contents, and have component sections clearly identified via tabs.
- B. Sealed proposals will be received by the Department no later than the deadline established and submitted to:

Texas Department of Public Safety  
Procurement and Contract Services  
5805 North Lamar Boulevard, Building A  
Austin, Texas 78752  
Attention: Jennifer Feliciano  
Request for Proposal No. 405-15-R012702

- C. The Respondent shall ensure that its Proposal is clearly labeled on the outside of the package(s). If a delivery service is utilized that prohibits such markings on the outside of the package, this information shall be placed in plain view on the outside of an interior envelope or package.
- D. The Respondent shall submit each volume in one (1) unbound original (suitable for photocopying) with five (5) additional bound copies and one non-rewritable CD/DVD.
- E. Proposals will demonstrate that the Respondent's operations conform to applicable State and Federal Standards and the Department Policies and Standards.
- F. The Respondent shall submit only material directly pertinent to the requirements of the solicitation. Extraneous narrative, elaborate brochures, uninformative public relations

material, including the Respondent's policies, procedures, and post orders for which no deviation to Department Policy is being requested, and other similar documents will not be submitted.

## **L.2 AMENDMENTS TO THE RFP**

- A. If this RFP is amended all terms and conditions which are not modified remain unchanged.
- B. Respondents shall acknowledge receipt of all amendment(s) to this RFP by signing and returning the amendment(s), identifying the amendment number and date in the space provided for this purpose on the form for submitting a proposal or by letter.
- C. The Respondent shall submit the acknowledgement to the Department by the time specified for receipt of proposals.
- D. Failure to acknowledge amendment(s) by the Respondent may subject its Proposal to rejection.

## **L.3 LATE SUBMISSIONS, MODIFICATIONS AND WITHDRAWALS OF PROPOSALS**

- A. Proposals will be timed stamped at the office designated in the RFP on or before the date and time on Page 1, Solicitation, Proposal and Award.
- B. Any proposal received at the designated location after the specified time will not be considered.
- C. Proposals cannot be altered, amended or modified by e-mail, fax or otherwise after opening time.
- D. Alterations made before closing time will be initialed by the Respondent or its authorized agent.
- E. Should a Respondent, after closing time, request its Proposal be withdrawn, the request shall be made in writing. No response can be withdrawn after closing time unless approved in writing by the Department.

## **L.4 SIGNATURES ON PROPOSAL SUBMITTED**

- A. Proposals from a partnership will be signed in the firm name by at least one general partner or in the firm name by an Attorney-in-fact.
- B. Proposals signed by an Attorney-in-fact, will include a Power of Attorney evidencing the authority to sign proposal, dated and executed by all partners in the firm.
- C. Proposals from a corporation will have the correct corporate name thereon and the signature of an authorized officer of the corporation.
- D. The title of office held by the person signing for the corporation will appear below the signature of the officer.
- E. Proposals from an individual doing business under a firm or fictitious name will be signed in the same name of the individual doing business under the proper firm name.

- F. Joint venture proposals will be signed by all members or by a member of the joint venture if there is attached to the proposal a copy of the Joint Venture Agreement evidencing that the proposal is signed by the member with authority to bind the Joint Venture.

**L.5 PROPOSAL ACCEPTANCE PERIOD**

- A. All proposals will be valid for one-hundred eighty (180) calendar days after the RFP opening date and will constitute an irrevocable proposal to the Department for the one-hundred eighty (180), calendar day period.
- B. Such period may be extended beyond the one-hundred eighty (180) calendar days upon mutual written agreement of both parties.

**L.6 CONTRACT AWARD**

- A. The Department may award multiple Contract(s) resulting from this RFP to the responsible Respondent(s), who's Proposal(s), meeting or exceeding specifications and will be most advantageous to the Department, cost or price and other factors, specified elsewhere in this Contract, will be considered. The awarded Contract(s) will be non-exclusive and in accordance with Texas Government Code 418.016 the Department may, in its discretion, issue solicitations for these or similar services during the term of this contract.
- B. A written award or acceptance of Proposal mailed or otherwise furnished to the successful Contractor(s) within the time for acceptance specified in the Proposal(s) will result in a binding contract(s) without further action by either party.

**L.7 RIGHTS OF THE DEPARTMENT**

- A. The Department reserves the right to waive, change, add or delete any terms or conditions of this RFP.
- B. The Department may:
  - 1. reject any or all proposals if such action is in the public interest;
  - 2. accept other than the lowest priced proposal; and
  - 3. waive minor informalities and minor irregularities in proposals received.
- C. Waiver of deviations in any proposals will not constitute a modification of this RFP and will not preclude the Department from asserting all rights against the Respondent for failure to fully comply with all terms and conditions of this RFP. Copyrighted proposals are unacceptable and are subject to disqualification as non-responsive. The Department reserves the right to make any corrections or include additional requirements in the resulting contract prior to issuance which are necessary for the Department's compliance, as an agency of the State of Texas, with all state and federal requirements. The Department reserves the right to disqualify any proposal which asserts any copyright on any Department-created form which is specifically designated by this RFP to be a form that will be completed and included in a proposal submitted in response to this RFP.



- D. The Department reserves the right to reject any one proposal and/or all proposals or portions of proposals submitted in response to this RFP.
- E. The submission of a proposal has the effect of waiving proprietary rights or confidentiality, subject to the exceptions listed in Sections H and L.
- F. All proposals and any content provided by the Respondent are considered the property of the Department for utilization for the life of any resulting contract as determined by the Department with respect to the scope of the project.
- G. The Department reserves the right to use for its benefit ideas contained in the proposals submitted.
- H. The Department is not liable for any costs or damages that may be incurred by Respondents or prospective contractors in the preparation, formulation, or presentation of a proposal.
- I. In case of ambiguity or lack of clarity, the Department may adopt such interpretations as may be advantageous to the Department.
- J. Upon review of proposals, the Department may select the Respondent's Proposal(s) most advantageous to the Department, in its judgment, with whom to negotiate a final definitive contract(s).
- K. Such determination will be solely at the discretion of the Department. All representations made by the Department are subject to the availability of legislative appropriations and do not represent an obligation on the part of the State of Texas, the Department or the Public Safety Commission.
- L. The Department reserves the right to withdraw this RFP at any time for any reason.
- M. The Department reserves the right to award no contract and to solicit additional Proposals at a later time.
- N. The Department incurs no obligation regarding this RFP unless and until a contract is fully executed by the parties. However, all proposals received by the Department will remain confidential until the evaluation process is complete.
- O. The Department will not hold a public proposal closing event.

## **L.8 PROPOSAL SUBMISSION INSTRUCTIONS**

### **L.8.1 Volume One – Contract Forms and Required Response Information**

This section will contain the following completed contract sections (on original forms) with original signatures, where applicable:

- A. Solicitation, Proposal and Award Form (with amendment(s) noted on this page or signed amendment(s) attached to this form), page one of this RFP;
- B. Section B.1.3, Financial Rating;
- C. Section G.1.5, Contractor's Project Manager;

- D. Section G.3.D, Payments, remittance address (if not electing to receive direct deposit);
- E. Section I.1, Insurance; the name and address of the Respondent's insurance carrier(s), along with a statement of liability from the carrier(s) issuing the policies saying that such policies are available to the Respondent. For the purpose of responding to this RFP, the Respondent will not be required to purchase insurance, but shall show the ability to provide such insurance as specified in Section I.1, Insurance Requirements, if the Respondent's Proposal is selected.
- F. Section H.61, Right to Audit, Redacted RFP response if applicable;
- G. Exhibit J.3, completed Direct Deposit Form if choosing direct deposit as a possible payment option;
- H. Exhibit J.4, completed Request for Taxpayer Identification Number and Certifications;
- I. Section K (ALL), Representations, Certifications and Other Statements (on original forms); and,
- J. Documentation from the appropriate state entity that indicates that the Respondent is properly certified to conduct business in the State of Texas (e.g., The Certificate of Existence from the Texas Secretary of State and the Certificate of Good Standing from the Texas Comptroller of Public Accounts) per Section K.6.1, Organization and Qualification.

**L.8.2 Volume Two – Information Section**

- A. Cover Page: List name and address of the Respondent, date of Proposal, RFP identifier, and signature of authorized official.
- B. Introduction: Clear expression of who the Respondent is, to include an outline of organizational capabilities, goals, project management process approach, business process management design, other previous accolades, and a listing of all subcontractors.
- C. Information Sheet: Including all information required of the Respondent and any subcontractors.
  - 1. Name and address (including telephone number) of the Respondent and all subcontractors.
  - 2. Business form of the Respondent and its subcontractors (e.g., corporation, partnership, etc.).
  - 3. Date and state of incorporation.
  - 4. Names and addresses of principal officers, directors, or partners.
  - 5. A brief resume of key personnel who will be providing services in any resulting contract, both Respondent and subcontractor employees. These resumes should include the percentage of time each person will dedicate to any resulting contract. The Proposal will include Key Project Personnel as follows:

- a) Demonstrated experience in providing the services requested in this RFP for each key project personnel.
  - b) Resumes for key personnel assigned to any resulting contract will include, but not be limited to: project management experience, emergency management, response and preparation, supervisory experience and business process experience as applicable.
    - 1) Name
    - 2) Title (current)
    - 3) Education
    - 4) Experience related to projects the staff member was directly involved in:
    - 5) Project(s) Scope
      - a) Role
      - b) Related specific technical qualification experience
      - c) Start and completion dates (shall include MM/DD/YYYY)
      - d) Specific work to be performed and/or deliverables to be provided under this Contract.
- D. The Respondent shall have provided similar services as requested in this solicitation for a minimum of three (3) state or federally declared disasters, over the past ten (10) years and must be in good standing with the awarding or utilizing entities.
- E. Verification\_of Experience – Proof of experience for similar services listed in Section L.8.2.D shall include, but is not limited to:
- a) Contracts
  - b) Purchase Orders
  - c) Letters of Agreement/Memorandum of Understanding/Memorandums of Agreement
  - d) Invoices
- F. Description of Experience – Respondent shall provide a synopsis of activities performed for services documented in Section L.8.2.E. which shall include, but is not limited to:
- a) Project Description
  - b) Time Period of Project(s)
  - c) Project Role
- G. Organizational Structure – Respondents shall provide a final organizational structure that depicts its concept of operations for the requested capabilities, functional responsibilities of key personnel, supporting staff, and logistical support. Respondents shall also provide the names, credentials and resumes of personnel in Command and General Staff positions and the personnel designated as the Respondent’s POC and

alternate. Resumes for the Respondent's POC and alternate shall note the positions those persons hold within the Respondent's organization.

- H. Staffing Readiness Report in accordance with Section C.5.B.5 and Exhibit J.7.
- I. Turnkey Facilities Readiness Report in accordance with Section C.5.B.7 and Exhibit J.9.
- J. Equipment/Supplies Readiness Report in accordance with Section C.5.B.6 and Exhibit J.8.
- K. Deployment procedure plan listed in Section C.5.C.
- L. Shortfalls – Any shortfalls in personnel, equipment, supplies, facilities, or other logistical support shall be clearly noted in the Respondent's Proposal.
- M. Personnel Qualifications and Outfitting – Respondents shall provide position titles, job descriptions, and equipment to be provided by the successful Respondent to support the following staffing positions:
  - 1. Contractor's POC and Alternate POC(s)
  - 2. Command and General Staff
- N. Sample Menu/Meal Plan – Respondents shall provide a seven (7) day sample menu or meal plan detailing food and drink options to be served as listed in Section C.6.H. The menu must include a low-sodium and a vegetarian option. The menu must list, with descriptions, the entrées, sides, desserts and note any other food items or condiments included. Pricing (as specified in Section B.2.1) should be based upon the sample menu provided. However, at activation of the contract, the vendor may recommend menu items other than those shown on the sample menu, but pricing per person per day will remain as specified in Section B.2.1 and as accepted in the contract.
- O. Sample Issue Log Book – Respondents shall provide a sample issue log template as listed in Section C.7.H.
- P. The Respondent is encouraged to provide a response narrative for each Section and Subsection, in the format in which requirements are presented, in sufficient detail to clearly demonstrate the Respondent's compliance with all requirements of this RFP, both technical and administrative. Supplemental justification and / or documentation can be provided as attachments. The Respondent shall ensure that all material submitted should be directly pertinent to the requirements of this RFP and will be formatted as to the specific requirement The Respondent shall specifically address within its Proposal, the following requests for information as detailed throughout this RFP. The Department has endeavored to include a complete listing of all such submittal requests; however, in the event the Department omitted a requirement, the Respondent is responsible for ensuring that all such requests are included within its Proposal.
  - 1. B.1.2 Pricing Instructions
  - 2. B.1.3 Financial Rating
  - 3. B.2.1 Pricing for Base Period and Option Period

- 4. C.5 Scope of Services – Recurring Deliverables
- 5. C.6 Scope of Services – Contingent Deliverables
- 6. C.7 Requirements for Contingent Services
- 7. C.8 Minimum Requirements
- 8. H.65 Note to Contractor
- 9. Exhibit J.7 Staffing Readiness Report
- 10. Exhibit J.8 Equipment/Supplies Readiness Report
- 11. Exhibit J.9 Turnkey Facilities Readiness Report
- 12. Exhibit J.10 Federal Contracting Requirements

- Q. If applicable, Section H.64 Electronic and Information Resources Accessibility Standards, as required by 1 TAC Chapter 213. The Respondent shall provide documentation of compliance with the stated TAC Chapters.
- R. The Respondent shall identify all exceptions it takes to the technical requirements stated in this RFP and all deviations from the RFP for which it requests approval.

**For the purpose of facilitating discussions, for every instance where the Respondent does not propose to comply or agree to a requirement, the Respondent shall identify the specific section and language to which it takes exception, propose specific alternative language, and describe its reasoning for requesting the exception. Respondent shall provide this information in the excel format prescribed by the Department.**

**Responses from Respondents that take exception to many of the provisions of the RFP may result in disqualification of the Response from further consideration for award as non-responsive to the RFP. For example, the Department is prohibited from indemnifying vendors and Respondents are discouraged from submitting exceptions requesting that the Department indemnify the Respondents.**

**Reference Section H.44 of this Contract.**

**NOTE THE FOLLOWING IF TAKING EXCEPTIONS:**

**It is not necessary to respond on a Section by Section basis except as required for clarity. For example, if the Respondent agrees to the terms of Sections D through K of this RFP in its entirety. A single statement to that effect will suffice.**

**L.8.3 Volume Three – HUB Subcontracting Plan**

- A. The Respondent shall provide a completed HSP as required per Section I.3 and Exhibit J.1.

NOTE: Failure to submit the HUB Subcontracting Plan with the appropriate forms will subject the Respondent's Proposal to rejection from further consideration.

**L.8.4 Volume Four – Cost and Pricing Proposal**

Respondents shall complete the Pricing Schedule, Section B.2.1, detailing all compensation and fees for personnel, services, and equipment provided under this Contract.

Overhead or indirect costs are to be included in each line item, not separately priced or invoiced.

#### **L.9 DISCUSSION AND CORRESPONDENCE**

- A. All communications and questions concerning this RFP, including any of a technical nature, will be made in writing only to:

Jennifer Feliciano, Contract Administrator  
Texas Department of Public Safety  
Procurement and Contract Services  
5805 North Lamar Blvd., Bldg. A  
Austin, Texas 78752  
E-mail: jennifer.feliciano@dps.texas.gov

- B. Written responses to the questions will then be provided to all parties requesting copies of this RFP through the Department's Procurement and Contract Services Bureau, Major Contracts Branch.
- C. The Respondent shall rely only on the written information provided in this manner. The Respondent is specifically cautioned against relying on any oral information.
- D. All Respondents are specifically barred from making contact with any Department personnel involved in this RFP for the purpose of discussing their proposals.
- E. The Respondent may; however, seek clarifications of the RFP through the written process described above.
- F. The Respondent is reminded that August 23, 2016 at 3:00 P.M. Central Time is the last day to submit written questions for clarification by the Department.
- G. The responsiveness of each Proposal will be evaluated upon the written instructions provided by throughout this RFP and as described in Section M, Evaluation Criteria.
- H. Unauthorized contacts with Department personnel by any Respondent may result in the Respondent's Proposal being rejected in its entirety.

#### **L.10 RESPONSES, RELEASE, POSTINGS**

The Department is a governmental body subject to the Texas Public Information Act (PIA), Texas Government Code Chapter 552. The Proposal and other information submitted to the Department by the Respondent are subject to release as public information by the Department. The Proposal and other submitted information is presumed subject to disclosure unless a specific exception to disclosure under the PIA applies. If it is necessary for the Respondent to include proprietary or otherwise confidential information in its Proposal or other submitted information, the Respondent shall clearly label that proprietary or confidential information and identify the legal basis for confidentiality. Merely making a blanket claim that the entire Proposal is protected from disclosure because it contains some proprietary information is not acceptable, and will make the entire Proposal subject to release under the PIA. In order to trigger the process of seeking an Attorney General opinion on the release of proprietary or confidential information, the specific provisions of the Proposal that are considered by the Respondent to be proprietary or confidential must

be clearly labeled as described above. Any information which is not clearly identified by the Respondent as proprietary or confidential will be deemed subject to disclosure pursuant to the PIA. The Respondent will irrevocably be deemed to have waived, and Respondent agrees to fully indemnify the State of Texas, the Department any claim of infringement by the Department regarding the intellectual property rights of the Respondent or any third party for any materials appearing in the Proposal.

If Respondent's Proposal contains any information which Respondent claims is confidential and not subject to release under the PIA, Respondent must prepare and deliver to the Department four non-rewritable CDs/DVDs containing the following information:

1. Two non-rewritable CDs/DVDs containing complete copies of all of Respondent's submissions pursuant to this Solicitation. Respondent must mark these "Complete Response Documents, [Respondent's Name], [DEPARTMENT] SOLICITATION [SOLICITATION Number]. CONTAINS CONFIDENTIAL INFORMATION."
2. Two non-rewritable CDs/DVDs, each containing copies of all of Respondent's submissions with all information claimed as confidential excised, blacked out, or otherwise redacted. Each of these CDs/DVDs must also contain an Appendix which contains clear references to all redacted information including a general description of the redacted information. Respondent shall mark these CDs/DVDs "For Public Release: Redacted Version of [Respondent's Name], [DEPARTMENT SOLICITATION] SOLICITATION [SOLICITATION Number]."

**Agency Posting of Contracts**

Without prior written notice to the Respondent, the redacted Proposal may be posted on the Department's website as part of this Contract per Texas Government Code § 2261.253(a).

**L.11 ANTICIPATED SCHEDULE OF EVENTS**

The Department currently anticipates that the selection of successful Respondents and award of this Contract will proceed according to the following schedule:

08/08/2016		RFP Posted to ESBD
08/18/2016	10:00 AM	Non-Mandatory Pre-proposal Conference (5805 N. Lamar Blvd. Austin, TX. Building A, Lobby).
08/23/2016	3:00 PM	Last day to submit written questions for clarification to the Department
08/30/2016	Close of Business	Estimated date for Department to post Question and Answer (Q&A) document to ESBD
10/11/2016	3:00 PM	Deadline for Department to receive Proposals
12/01/2016		Anticipated date of Contract Award
12/01/2016		Contract Begins

The Department reserves the right, in its sole discretion, to change the above date(s). Notices of changes to items directly impacting the original RFP or Proposal process will be posted on the Electronic State Business Daily (ESBD) located at: <http://esbd.cpa.state.tx.us>. The Respondent should check the ESBD frequently for updates. The Respondent is solely responsible for verifying receipt of its questions, if applicable, and

responding by the deadlines stated. A Respondent's failure to periodically check the ESD for updates will in no way release the awarded Respondent from compliance with any requirements in posted "addenda or additional information" although such compliance may result in additional costs to meet the requirements.

Questions regarding this RFP will be in writing and will be submitted to the Department's Contract Administrator as specified in Section G.1.2, no later than August 23, 2016, 3:00 P.M., Central Time. Telephone inquiries will not be accepted. Questions may be submitted by either facsimile or e-mail. The Department intends to post answers to these questions on the ESD by the close of business on August 30, 2016. The Respondent is solely responsible for verifying the Department's timely receipt of its questions by the stated deadlines.

#### **L.11.1 Pre-Proposal Conference**

A non-mandatory pre-proposal conference will be held at the Texas Department of Public Safety Headquarters, Bldg. A at 10:00 a.m. on August 18, 2016. The purpose of the pre-proposal conference is to review the RFP and HUB-Subcontracting Plan and to answer any questions regarding completing and submitting the Proposal. There will be no technical questions answered at this conference.

#### **L.12 PUBLIC INFORMATION**

After award, information, documentation, and other material in connection with this RFP or this Contract may be subject to public disclosure pursuant to Texas Government Code, Chapter 522 (the "Public Information Act"). **See L.11 for additional requirements.**



## SECTION M - EVALUATION FACTORS FOR AWARD

### M.1 OVERALL RELATIVE IMPORTANCE OF EVALUATION CRITERIA

- A. Selection of a Proposal will be based on "Best Value" to the Department. The Department shall solely determine the "Best Value" through evaluation of each Proposal.
- B. A Contractor's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of Texas Government Code, Sections 2155.074 and 2155.75, 2156.007, 2157.003, and 2157.125. Respondents may fail this selection criteria for any of the following conditions: a) a score of less than 90% in the Vendor Performance System; b) currently under an action plan through the Texas Comptroller of Public Accounts (CPA); c) having repeated negative Vendor Performance Reports for the same reason; or d) having purchase orders that have been cancelled in the previous 12 months for non-performance (i.e., late delivery, etc.). Contractor performance information is located on the CPA website at:

[http://www.window.state.tx.us/procurement/prog/vendor\\_performance/](http://www.window.state.tx.us/procurement/prog/vendor_performance/)

The Department may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 Texas Administrative Code, § 20.108), the Department may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of the Department, and any negative findings, as determined by the Department, may result in non-award to the Respondent.

### M.2 DETAILED EVALUATION CRITERIA

The following are evaluation criteria. While negotiations may be held, Respondents are advised to submit their most competitive cost and technical Proposals.

#### M.2.1 Price (30 possible points)

The evaluated score for cost will be weighted in comparison to other Proposals.

#### M.2.2 Technical Evaluation (70 possible points)

- A. Qualifications of Command and General Staff Personnel
- B. Experiences and References
- C. Readiness Requirements
- D. Sample Menu Plan

**Total: 100 points**