

**SOLICITATION AND STATEMENT OF QUALIFICATIONS**

<b>1. CONTRACT NO.</b>	<b>2. SOLICITATION NO.</b> 405-17-R087170	<b>3. TYPE OF SOLICITATION</b> <input checked="" type="checkbox"/> NEGOTIATED (RFQ)	<b>4. DATE ISSUED</b> 01/09/2018
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**REQUEST FOR QUALIFICATIONS (RFQ)  
GRANT MONITORING SERVICES**

<p>5. Sealed responses will be received by the Department until 3:00 P.M. local time on 01/31/2018 and submitted to the issuing office:</p> <p>Department of Public Safety Procurement and Contract Services Bureau 5805 North Lamar, Bldg. A, MC-0266 Austin, Texas 78752 Attention: 405-17-R087170</p>	<p>6. FOR INFORMATION CONTACT:</p> <p>Ashley Lindholm, CTPM, CTCM Contract Administrator PHONE: (512) 424-5272 E-MAIL: ashley.lindholm@dps.texas.gov</p>
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**RESPONSE (Must be fully completed by Respondent)**

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

<b>SOLICITATION AND STATEMENT OF QUALIFICATIONS.....</b>	<b>1</b>
<b>SECTION A – DEFINITIONS.....</b>	<b>9</b>
<b>SECTION B –SERVICES AND PRICES .....</b>	<b>12</b>
<b>B.1 DETERMINATION OF PRICING .....</b>	<b>12</b>
<b>B.1.1 Services Being Acquired .....</b>	<b>12</b>
<b>B.1.2 Fair and Reasonable Prices .....</b>	<b>12</b>
<b>B.1.3 Allowable Costs.....</b>	<b>13</b>
<b>B.1.4 Financial Rating and Audited Financial Statements.....</b>	<b>13</b>
<b>B.2 INTENTIONALLY LEFT BLANK .....</b>	<b>14</b>
<b>SECTION C - STATEMENT OF WORK .....</b>	<b>15</b>
<b>C.1 INTRODUCTION .....</b>	<b>15</b>
<b>C.2 GENERAL REQUIREMENTS .....</b>	<b>15</b>
<b>C.3 MINIMUM REQUIREMENTS.....</b>	<b>17</b>
<b>C.3.A.1 Grant Administration Activities .....</b>	<b>17</b>
<b>C.3.A.2 Qualifications.....</b>	<b>19</b>
<b>C.4 QUALIFICATIONS PROFILE.....</b>	<b>20</b>
<b>C.5 CONTRACTOR QUALIFICATIONS (INCLUDING ANY SUBCONTRACTOR).....</b>	<b>21</b>
<b>C.6 QUALIFICATIONS OF PROPOSED STAFF (INCLUDING ANY SUBCONTRACTORS).....</b>	<b>23</b>
<b>C.7 REFERENCES .....</b>	<b>23</b>
<b>C.8 REQUIRED INFORMATION .....</b>	<b>24</b>
<b>C.9 FEDERAL FUNDING REQUIREMENTS .....</b>	<b>24</b>
<b>C.10 TRAINING DEVELOPMENT AND TRAINING; SPECIAL ASSIGNMENTS .....</b>	<b>24</b>
<b>C.11 DEPARTMENT RECORDS.....</b>	<b>24</b>
<b>C.12 TRANSITION.....</b>	<b>25</b>
<b>SECTION D – REPORTS AND DELIVERABLES.....</b>	<b>28</b>
<b>D.1 CONTRACT COMPLIANCE REPORTS REQUIRED FROM CONTRACTOR .....</b>	<b>28</b>
<b>SECTION E - INSPECTION AND ACCEPTANCE .....</b>	<b>29</b>
<b>E.1 INSPECTION OF SERVICES.....</b>	<b>29</b>
<b>E.2 INSPECTION BY STATE EMPLOYEES .....</b>	<b>29</b>
<b>E.3 MONITORING CRITERIA .....</b>	<b>30</b>

<b>SECTION F – CONTRACT TERM</b> .....	<b>31</b>
<b>F.1 CONTRACT TERM</b> .....	<b>31</b>
<b>SECTION G - CONTRACT ADMINISTRATION DATA</b> .....	<b>32</b>
<b>G.1 AUTHORITY – AUTHORIZED REPRESENTATIVE, CONTRACT ADMINISTRATOR, CONTRACT MONITOR</b> .....	<b>32</b>
<b>G.1.1 Authorized Representative</b> .....	<b>32</b>
<b>G.1.2 Department Contract Administrator</b> .....	<b>32</b>
<b>G.1.3 Department Contract Monitor</b> .....	<b>33</b>
<b>G.1.4 Department Project Manager</b> .....	<b>33</b>
<b>G.1.5 Contractor Project Manager</b> .....	<b>33</b>
<b>G.2 INVOICE REQUIREMENTS</b> .....	<b>34</b>
<b>G.3 PAYMENTS</b> .....	<b>35</b>
<b>G.3.1 Billing and Payment</b> .....	<b>35</b>
<b>G.3.2 Payment Adjustment</b> .....	<b>35</b>
<b>G.3.3 Late Payment</b> .....	<b>35</b>
<b>G.3.4 Deductions for Unacceptable Compliance</b> .....	<b>36</b>
<b>G.3.5 Withholding of Payment</b> .....	<b>36</b>
<b>G.3.6 Debts and Delinquencies</b> .....	<b>36</b>
<b>G.3.7 Right to Offset</b> .....	<b>36</b>
<b>G.3.8 Annual Financial Rating</b> .....	<b>37</b>
<b>SECTION H – TERMS AND CONDITIONS</b> .....	<b>38</b>
<b>H.1 FUNDING OUT; revocation of authority</b> .....	<b>38</b>
<b>H.2 NEWS RELEASES, ADVERTISEMENTS, AND PUBLICITY</b> .....	<b>39</b>
<b>H.3 FURTHER OPPORTUNITY TO CURE</b> .....	<b>39</b>
<b>H.4 TERMINATION</b> .....	<b>40</b>
<b>H.4.1 Termination with Notification and Opportunity to Cure</b> .....	<b>40</b>
<b>H.4.2 Termination for Unavailability of Funds</b> .....	<b>40</b>
<b>H.4.3 Termination for Convenience</b> .....	<b>40</b>
<b>H.4.4 Termination by Mutual Agreement</b> .....	<b>40</b>
<b>H.4.5 Termination for Failure to Perform</b> .....	<b>40</b>
<b>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</b> .....	<b>41</b>
<b>H.4.7 General Termination Provisions; All Contracts are Non-Exclusive</b> .....	<b>41</b>
<b>H.5 DISPUTE RESOLUTION</b> .....	<b>42</b>
<b>H.6 INDEMNIFICATION</b> .....	<b>43</b>
<b>H.6.1 Acts or Omissions</b> .....	<b>43</b>
<b>H.6.2 Infringements</b> .....	<b>44</b>
<b>H.6.3 Taxes/Workers’ Compensation/Unemployment Insurance – Including Indemnity</b> .....	<b>44</b>
<b>H.7 NO WAIVER OF DEFENSES</b> .....	<b>45</b>
<b>H.8 INDEPENDENT CONTRACTOR</b> .....	<b>45</b>

H.9	APPLICABLE LAW; VENUE .....	46
H.10	ASSIGNMENT .....	46
H.11	MAINTENANCE OF CORPORATE EXISTENCE AND BUSINESS .....	46
H.12	APPROVAL OF CONTRACT.....	46
H.13	NON-DISCRIMINATION.....	46
H.14	AMENDMENTS; no amounts paid for unauthorized performances; No conflict with laws of the state of texas.....	47
H.15	OPTION TO EXTEND THE TERM OF THE CONTRACT .....	47
H.16	OPTION TO EXTEND SERVICES .....	47
H.17	SEVERABILITY; LIMITATIONS .....	47
H.18	IMMIGRATION .....	48
H.19	LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS .....	48
H.20	PUBLIC SAFETY COMMISSION CONTRACT REVIEW .....	48
H.21	STRICT COMPLIANCE.....	48
H.22	APPLICABLE LAW AND CONFORMING AMENDMENTS.....	48
H.23	COMPLIANCE WITH STATE, FEDERAL, AND LOCAL LAWS, RULES, AND REGULATIONS.....	49
H.24	FORCE MAJEURE.....	49
H.25	FORESEEABLE DELAY.....	50
H.26	NO SUBSTITUTIONS AND DELIVERY TIMES .....	50
H.27	TESTING; ACCEPTANCE; RETURN; REVOCATION .....	50
H.28	PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS.....	50
H.29	SURVIVAL.....	51
H.30	SUCCESSORS.....	51
H.31	EMPLOYEE NON-SOLICITATION .....	51
H.32	COMMENCEMENT OF WORK.....	51
H.33	ROLLING ESTOPPEL .....	51
H.34	TAXES; UNEMPLOYMENT; WORKERS COMPENSATION .....	52
H.35	NOTICES.....	53
H.36	MOST FAVORED CUSTOMER .....	53

H.37	STATE EXCULPATION .....	53
H.38	TITLE AND RISK OF LOSS.....	53
H.39	AVAILABILITY OF DEPARTMENT RESOURCES.....	53
H.40	INTERPRETATION AGAINST DRAFTER.....	54
H.41	MERGER .....	54
H.42	HEADINGS.....	54
H.43	ATTACHMENTS.....	54
H.44	UNACCEPTABLE CONTRACTOR TERMS.....	54
H.45	RECALL NOTICE.....	55
H.46	COMPETENCY ACKNOWLEDGEMENT .....	55
H.47	MULTIPLE CONTRACTS .....	55
H.48	LITIGATION; FELONY CRIMINAL CONVICTIONS.....	55
H.49	PROHIBITED USE OF APPROPRIATED OR OTHER FUNDS UNDER CONTROL OF STATE AGENCY; LOBBYING .....	55
H.50	FALSE STATEMENTS; CONTINUING DUTY TO AMEND, SUPPLEMENT AND CORRECT.....	56
H.51	PUBLIC INFORMATION ACT.....	56
H.52	APPROVAL OF EMPLOYEES .....	56
H.53	PERSONNEL.....	57
H.53.1	Qualifications of Personnel.....	57
H.53.2	Replacement of Personnel at the Department’s Request .....	57
H.53.3	Unauthorized Removal of Personnel.....	58
H.54	BUY TEXAS .....	58
H.55	BOOKS AND RECORDS.....	58
H.56	CONTRACTOR CHANGES .....	58
H.57	DEPARTMENT POLICIES AND PROCEDURES.....	59
H.58	CONTRACTOR ASSIGNMENTS.....	59
H.59	WARRANTIES.....	59
H.59.1	Third Party Warranties.....	59
H.59.2	Contractor Warranties .....	59
H.60	DRUG-FREE WORKPLACE.....	60
H.61	RIGHT TO AUDIT.....	60

H.62	FRAUD, WASTE, OR ABUSE .....	61
H.63	REDACTED DOCUMENTATION.....	61
H.64	ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS, AS REQUIRED BY 1 TAC CHAPTER 213.....	62
H.65	RIGHTS TO DATA, DOCUMENTS AND COMPUTER SOFTWARE (State Ownership).....	62
H.66	OWNERSHIP OF PROPERTY.....	62
H.67	CONTRACTOR’S STATEMENT OF QUALIFICATIONS.....	63
H.68	NOTICE UNDER GOVERNMENT CODE § 2261.252 .....	63
H.69	DISCLOSURE OF INTERESTED PARTIES.....	63
H.70	DISCLOSURE OF RESTRICTED EMPLOYMENT .....	63
H.71	THIRD PARTY CUSTODIANS OF STATE RECORDS.....	64
H.72	CONTRACTS WITH COMPANIES WHO BOYCOTT ISRAEL PROHIBITED.....	64
H.73	CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED.....	64
<b>SECTION I – SUPPLEMENTAL TERMS AND CONDITIONS .....</b>		<b>65</b>
I.1	INSURANCE REQUIREMENTS .....	65
I.1.1	ADDITIONAL PROVISIONS.....	67
I.1.2	SUBCONTRACTOR’S INSURANCE .....	68
I.2	SUBCONTRACTS.....	68
I.3	HISTORICALLY UNDERUTILIZED BUSINESSES (HUB) PARTICIPATION .....	69
I.4	OTHER CONTRACTS.....	70
I.5	SUSPENSION OF WORK.....	70
I.6	STOP-WORK ORDER .....	70
I.7	WORK MADE FOR HIRE.....	71
I.8	CYBER SECURITY CONTRACT REQUIREMENTS .....	71
<b>SECTION J - LIST OF EXHIBITS.....</b>		<b>73</b>
<b>SECTION K – DISCLOSURES, AFFIRMATIONS, GUARANTEES REPRESENTATIONS, CERTIFICATIONS, STATEMENTS AND WARRANTIES OF RESPONDENTS .....</b>		<b>74</b>
K.1	HISTORICALLY UNDERUTILIZED BUSINESS (HUB) REPRESENTATION.....	74
K.1.1	Definition.....	74
K.1.2	Representation .....	74

K.2	CHILD SUPPORT REPRESENTATION AND CERTIFICATION .....	74
K.3	FRANCHISE TAX REPRESENTATION .....	75
K.4	TYPE OF BUSINESS ORGANIZATION .....	75
K.5	PREFERENCE CLAIM.....	76
K.5.1	Source and Specification Preferences .....	76
K.5.2	Tie-Bid Preferences.....	76
K.5.3	Additional Preferences .....	76
K.6	REPRESENTATIONS OF RESPONDENT .....	77
K.6.1	Organization and Qualification .....	77
K.6.2	Authorization .....	77
K.6.3	No Violation of Agreements, Articles of Incorporation or Bylaws .....	77
K.6.4	No Defaults under Agreements.....	78
K.6.5	Compliance with Laws.....	78
K.6.6	No Litigation .....	78
K.6.7	Taxes .....	79
K.6.8	WAIVER OF CERTAIN CLAIMS .....	79
K.6.9	RELIANCE; UPDATES.....	79
K.6.10	Disclosure .....	79
K.6.11	No Collusion; Antitrust .....	79
K.6.12	Ethics.....	80
K.6.13	Certification Concerning Financial Participation .....	80
K.6.14	Contracting With Executive Head of State Agency.....	80
K.6.15	Notification.....	81
K.6.16	Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.....	81
K.6.17	Certification Concerning Hurricane Relief .....	82
K.6.18	Deceptive Trade Practices; Unfair Business Practices .....	82
K.6.19	Relationships.....	82
K.6.20	OSHA .....	82
K.6.21	EEOC; NON DISCRIMINATION .....	83
K.6.22	Americans with Disabilities Act (ADA).....	83
K.6.23	Buy Texas .....	83
K.6.24	Texas Government Code Chapter 556 .....	83
K.6.25	Computer Equipment and Computer Recycling Program.....	83
K.6.26	Disclosure of Restricted Employment .....	84
K.6.27	Lawsuits, Court Actions .....	84
K.6.28	Agreement to Terms .....	84
K.7	AUTHORIZED NEGOTIATORS.....	85
K.8	PAYEE IDENTIFICATION NUMBER .....	85
K.9	POINT OF CONTACT .....	85
K.10	CERTIFICATION .....	85
	SECTION L - INSTRUCTIONS, CONDITIONS, AND NOTICES TO RESPONDENTS .....	87
L.1	STATEMENT OF QUALIFICATIONS PREPARATION INSTRUCTIONS.....	87

L.2	AMENDMENTS TO THE SOLICITATION .....	88
L.3	LATE SUBMISSIONS, MODIFICATIONS AND WITHDRAWALS OF RESPONSES .....	88
L.4	SIGNATURES ON STATEMENT OF QUALIFICATIONS SUBMITTED .....	88
L.5	STATEMENT OF QUALIFICATIONS ACCEPTANCE PERIOD .....	89
L.6	CONTRACT AWARD .....	89
L.7	RIGHTS OF DEPARTMENT .....	89
L.8	RESPONSE SUBMISSION INSTRUCTIONS .....	90
L.8.1	Volume One – Contract Forms and Required Response Information .....	90
L.8.2	Volume Two – Information Section .....	91
L.8.3	Volume Three – HUB Subcontracting Plan .....	93
L.9	ORAL PRESENTATION AND INTERVIEW .....	93
L.10	DISCUSSION AND CORRESPONDENCE .....	94
L.11	RESPONSES, RELEASE, POSTINGS .....	94
L.12	ANTICIPATED SCHEDULE OF EVENTS .....	95
L.13	PRE-PROPOSAL CONFERENCE .....	96
L.14	POST AWARD MEETING .....	96
	<b>SECTION M - EVALUATION FACTORS FOR AWARD .....</b>	<b>97</b>
M.1	SELECTION AND PAST PERFORMANCE .....	97
M.2	BEST VALUE EVALUATION .....	97



## SECTION A – DEFINITIONS

The following terms used in this Contract must, unless the context indicates otherwise, have the meanings set forth below:

**“Account level”** means the Disaster designation plus the Jurisdiction within the Grants Management System.

**“Business Days”** means Monday through Friday except for federal, state and legal holidays observed by the State of Texas.

**“Business Hours”** means 8:00 a.m. to 5:00 p.m. local Texas time.

**“Compliance Review Projects”** means projects for which compliance is audited at close-out as opposed to projects that are continuously monitored.

**“Continuously Monitored Projects”** means projects that are monitored for compliance throughout the project’s lifecycle, at each project transaction – Requests for Reimbursement, Scope Change, Extension, etc.

**“Contract”** means the written agreement entered into by the Department and the awarded Respondent.

**“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 Monitor”** means the employee within the Department who is responsible for the monitoring of this Contract as referenced in Section G.1.3.

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

**“Contractor”** means the individual, partnership, corporation, business association, trust, joint-stock company, education institution, or other entity awarded this Contract. In the context of submitting a Statement of Qualifications; “Contractor” also means “Respondent” and “Vendor”.

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

**“Days”** means calendar days unless otherwise specified.

**“Department”** means the Department of Public Safety (DPS).

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

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

**“Final Report”** means the final auditing report submitted by the Contractor as provided in Section C.

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

**“Hazard Mitigation Grant Administration Services”** means the actions and activities necessary to process a grant through its entire lifecycle, such as processing requests for extension, appeals, and closeouts, as well as providing support, guidance, and direction to assigned subrecipients and to the department, all in compliance with the appropriate federal regulations and FEMA Hazard Mitigation program policies and requirements.

**“Historically Underutilized Business (HUB)”** means a business that is certified by the State of Texas that (1) is at least 51% owned by an Asian Pacific American, a Black American, a Hispanic American, a Native American, an 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 § 20.294, 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 § 20.282.

**“HUB Subcontracting Plan (HSP)”** means the plan required by the Texas Government Code § 2161.252.

**“Invoice”** means Contractor’s billing for goods or services rendered.

**“Legislative Budget Board (LBB)”** means a permanent joint committee of the Texas Legislature that develops budget and policy recommendations for legislative appropriations, completes fiscal analyses for proposed legislation, and conducts evaluations and reviews to improve the efficiency and performance of state and local operations.

**“Parties”** means the Contractor and the Department.

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

**“Policies and Procedures”** means all written policies, procedures, standards, guidelines, directives, and manuals of the Public Safety Commission and the Department, applicable to providing the deliverables/services specified under this Contract (Refer to H.57 and Exhibit J.3, Cyber Security Contract Requirements).

**“Project Close-out”** means the processes performed to close the sub-award, to include determination of project overage or underrun and authoring the request to FEMA for additional obligation of funds or de-obligation of funds, with a summarization of compliance/eligibility.

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

**“PSC”** means the Public Safety Commission, the Department’s governing body.

**“Public Assistance Grant Administration Services”** means the actions and activities necessary to process a grant through its entire lifecycle, such as processing requests for extension, appeals, and closeouts, as well as providing support, guidance, and direction to assigned subrecipients and to the department, all in compliance with the appropriate federal regulations and FEMA Public Assistance program policies and requirements.

**“Regions”** means the geographic boundaries established by the Department that separate the state into operational units. The Regions encompass a number of districts, which are comprised of varying numbers of contiguous counties.

**“Requests for Reimbursement”** means the subrecipient’s request, with proper back-up documentation, to be reimbursed for expenditures against an approved project. The expenditures are evaluated for compliance and eligibility.

**“Respondent”** means the individual, business entity, or organization that submits a Statement of Qualifications in response to this Solicitation with intent to contract with the Department.

**“Single Audit”** means financial, internal control and compliance audits of a non-federal entity administering federal assistance awards including the financial statements of the entity as required by 2 CFR Part 200.501 as well as applicable FEMA and state policies and guides.

**“Solicitation”** means this document, this Request for Qualifications inviting Statements of Qualifications from interested and qualified Respondents.

**“Services”** means the Professional Services provided under this Contract.

**“Statement of Qualifications”** means the Respondent’s Statement of Qualifications incorporating all information required by Section C of this RFQ in order to document the Respondent’s Qualifications.

**“Subgrant”** means an award provided by the Department’s Division, the Texas Division of Emergency Management (TDEM) in its capacity as a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by TDEM.

**“Subrecipient”** means an Applicant for grant funding that receives a subaward from TDEM in its capacity as a pass-through entity.

**“Transition Plan”** means the creation of a documented plan that describes the steps necessary to turn the project’s product or service over to another business entity. The plan assures that all of the necessary steps for transitioning from one entity to another entity are identified and that each of these steps include representation of all those who have assignments or who are affected by the transition’s outcomes.

**“VPAT”** means a vendor-generated statement (using the required template) that provides relevant information on how a vendor’s product or service claims to conform to the Section 508 Standards.

## SECTION B –SERVICES AND PRICES

### B.1 DETERMINATION OF PRICING

#### B.1.1 Services Being Acquired

The Department of Public Safety (Department) is seeking an independent Certified Public Accounting firm to provide grant compliance monitoring services for grant administration activities related to federally funded disaster grant programs. The monitoring, compliance and other services will be performed in accordance with the specifications detailed in Section C of this Request for Qualifications (RFQ).

As provided in the Texas Government Code, Chapter 2254, Subchapter A, Professional Services Act, the Department will evaluate and award one contract under this RFQ on the basis of demonstrated competence and qualifications to perform the services, that is, the non-cost factors included in Section M of this RFQ. If at that point one contract award is still expected to result from this RFQ, the Department will tentatively select one contractor with which to proceed with negotiations and as part of that negotiations process, the Department will open and review the sealed pricing information to determine if the proposed fees by that tentatively selected contractor are fair and reasonable.

**The Respondents may not include any pricing information of any type in the technical part of its Statement of Qualifications.**

As part of the contract negotiations, the Department will, in its sole discretion, specify the approximate percentage of the work that it expects will be provided by each of the category of personnel; however, billing will be based on approved project budgets.

#### B.1.2 Fair and Reasonable Prices

- A. The successful Respondent will be determined solely by their Qualifications as detailed in the submitted Statement of Qualifications. Pricing must be included with the Statement of Qualifications on Exhibit J.10, Pricing Schedule, **in a separate sealed envelope that will not be opened until evaluations are completed and the most qualified Respondents are identified.**
- B. Under Texas Government Code § 2254.003, the Department may not select a provider of professional services or a group or association of providers or award a contract for professional services on the basis of competitive bids submitted for the contract or the services, but will make the selection and award:
  - (1) on the basis of demonstrated competence and qualifications to perform the services; and
  - (2) for a fair and reasonable price.

The professional fees under this Contract may not exceed any maximum provided by law.

The Department will negotiate fees with the successful Respondent.

### **B.1.3 Allowable Costs**

Upon successful negotiation and award of a contract resulting from this Solicitation, the approved invoices will only include costs that are reasonable, necessary, and allowable under State Statutes, Department Policies and Procedures, and Federal Cost Standards (2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) and this Contract. The Department will make the final decision of whether or not a cost is allowable.

### **B.1.4 Financial Rating and Audited Financial Statements**

- A. The Respondent must submit a copy of at least one rating from organizations such as Dun & Bradstreet (D&B) Business Information Report or Fitch Ratings. The report must 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. *See also Section G.3.8.*
- B. The Respondent must provide audited financial statements required by Section C.5.H.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.

### **B.1.5 Cost Instructions**

- A. The Contract resulting from this solicitation will include two basic types of services to be provided: Project-related work (compliance monitoring or review of Public Assistance (PA) and Hazard Mitigation (HM) projects) and special assignments, which could include training development and provision, policy and procedure development, and so on.
- B. For project-related work, the Respondent is to offer a percentage rate for provision of those services. This percentage rate is all-inclusive – labor, travel, overhead, etc. The calculation of the budget (Respondent's fee) per project is noted below. However, while the budget for project-related work is a flat percentage rate, the Respondent must provide back-up documentation for the work in compliance with FEMA's requirements for Direct Administrative Costs and for State Management Costs. Therefore, in addition to the percentage rate for provision of project-related services, the Respondent must also provide the hourly rates of the labor categories for work performed on projects.
  - a. Public Assistance Projects
    - i. New Projects (all projects obligated after contract inception): The project monitoring budget is calculated by multiplying the percentage rate by the pre-deduction value of eligible project amount at initial obligation (project version 0), as shown in the "Project Amount" field in Emergency Management Mission Integrated Environment (EMMIE). The pre-deduction value is the anticipated total cost of the project, prior to any deductions, such as for local share and insurance, being taken.
    - ii. Existing Continuously Monitored Projects (projects that are already underway at contract inception): The project monitoring budget is calculated

by multiplying the percentage of the federal share remaining to be disbursed multiplied by the pre-deduction value of eligible project amount at initial obligation (project version 0) and then multiplied by the percentage rate.

b. Hazard Mitigation Projects

i. New Projects (all projects obligated after contract inception): The project monitoring budget is calculated by multiplying the percentage rate by the initial project eligible amount.

ii. Existing Continuously Monitored Projects (projects that are already underway at contract inception): The project monitoring budget is calculated by multiplying the percentage of the federal share remaining to be disbursed multiplied by the initial project eligible amount and then multiplied by the percentage rate.

c. Compliance Review Projects, PA and HM, new and already in progress: The project monitoring budget is calculated by multiplying the percentage rate by the pre-deduction value of the eligible project amount at initial obligation (project version 0) for PA and by the initial project eligible amount for HM (the same process as for New Projects).

C. Project budgets will not increase or decrease in response to future adjustments to project values. However, Respondent may request consideration of recalculation of the project budget when there is a significant change in project value or complexity.

D. No other expenses will routinely be charged; any overhead, profits, or other administrative expenses must be included in the hourly rates as shown in Exhibit J.10, Pricing Schedule. Respondent must not invoice for amounts greater than those identified above.

E. For Special Assignments, the Department will pay the Contractor on a fixed fee basis negotiated between the Department and the Contractor, but subject to final approval by the Department. This fixed fee must include overhead, travel, and any other ancillary costs.

## **B.2 INTENTIONALLY LEFT BLANK**

## SECTION C - STATEMENT OF WORK

### C.1 INTRODUCTION

- A. The Department is an executive agency of the State of Texas with a large variety of public functions including law enforcement, traffic and driver regulation and recordkeeping. The Department is also the state agency responsible for coordinating Emergency Management activities in Texas. This effort is led within the Department by TDEM. One of TDEM's roles is to coordinate federal disaster-related funding coming into Texas. TDEM receives disaster-related grants from the Federal Emergency Management Agency (FEMA) to help Texas pay for response, recovery, and mitigation efforts related to federally-declared events. TDEM then passes much of that grant funding through to local jurisdictions, other state agencies and other eligible entities.
- B. Disaster grant funding fluctuates significantly depending on the size and number of disasters experienced by the state. TDEM employs a core team of staff to handle these activities but augments the monitoring and administrative functions of these grants through contracting services due to the large number of disasters that have affected and likely will continue to affect Texas. Since the first federal disaster declaration in 1953, Texas has incurred a total of 344 major disaster declarations, far more than any other state or territory within the United States. The costs of these disasters range from less than four million dollars on the lower end of the scale such as for FM-5116 (Texas Hidden Pines Fire), to over 160 million dollars for a mid-range disaster such as for DR-4223 (Texas Severe Storms, Tornadoes, Straight-line Winds, and Flooding), to multi-billion dollar events associated with large scale disasters such as for DR-1791 (Hurricane Ike) and DR-4332 (Hurricane Harvey), projected to be the highest cost disaster to hit the US so far.
- C. Under this RFQ, the Department solicits Statements of Qualifications from all interested, qualified, and independent certified public accounting firms to provide the professional services described in this RFQ.
- D. The Department anticipates that one award will be made for statewide service for all seven TDEM geographic regions. These seven geographic regions of the state identified within the TDEM Field Staff Map can be found at the following URL: <http://www.dps.texas.gov/dem/DDC/districtMap.htm>. Regions one through six are defined by boundaries encompassing multiple counties, whereby region seven is defined as consisting of State Agencies.

### C.2 GENERAL REQUIREMENTS

- A. The Respondent's and its subcontractor's proposed personnel will be required to maintain the qualifications as outlined in Section C.5 and a standard Department Criminal History Background Check during the term of any resulting contract as well as any approved and executed renewals/extensions.
- B. Disclosures: Conflict of Interest

In submitting a Statement of Qualifications to this RFQ, the Respondent represents and warrants that it and its proposed personnel have no actual or potential conflicts of interest in providing the Services to the Department under the Contract. Each

Respondent also represents and warrants that its provision of the Services under the Contract would not create the appearance of impropriety. In its Statement of Qualifications, the Respondent must disclose any existing or potential conflict of interest that the Respondent might have in providing Services to the Department under the Contract.

As part of this disclosure requirement, each Respondent must include in its Statement of Qualifications all past and present contractual, business, financial or personal relationships between the Respondent and the Department and between the Respondent's proposed subcontractors, if any, and the Department. For purposes of this disclosure requirement, "past" is defined as within the two calendar years prior to the deadline for submission of the Statement of Qualifications. For purpose of this disclosure requirement, the "Department" is defined as the appointed Public Safety Commission that heads the agency as well as the Department's employees or recent former employees. For each item, the Respondent must provide a detailed explanation of why the Respondent does or does not believe such item poses a conflict of interest, potential conflict of interest, or appearance of impropriety issue relative to the Respondent's submission of a Statement of Qualifications, possible selection as the Contractor or its performance of the Contract.

For purposes of this RFQ, "personal relationship" is defined as a current or past connection other than a clearly contractual, business, financial or similar relationship and includes family relationships or other connections outside simply providing a Statement of Qualifications to this RFQ. For this purpose, "family relationship" means a relationship within the third degree of consanguinity or second degree of affinity; see *Chapter 573, Texas Government Code*, which defines these degrees of consanguinity and affinity. Connections other than such family relationships fall within this definition and must be disclosed if a reasonable person could expect the connection to diminish the Respondent's independence of judgment or effectiveness in the performance of the Respondent's responsibilities to the Department or the state under the Contract. Connections also fall within this definition if a reasonable person could expect connection, within the overall context of the Respondent's submission of a Statement of Qualifications, possible selection as the Contractor or its performance of the Contract, to create an issue for the agency's consideration relative to a potential appearance of impropriety or conflict with interest. Connections also fall within this definition if the relationship is with the Department or other State of Texas employees with authority to make decisions or recommendations on state contracting or procurement or this RFQ. For purposes of this provision, those persons with authority to make decisions or recommendations are those persons who fall within the definition of "purchasing personnel" in Section 2262.004(a)(2) of the Texas Government Code.

In submitting a Statement of Qualifications in response to this RFQ, the Respondent affirms that it has not given, 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 or any employee or representative of same, in connection with this RFQ.

In the Statement of Qualifications, the Respondent must disclose any proposed personnel under the Contract who are current or recent former employees of the Department or the State of Texas. Recent former employees are defined above.



Disclosures under these provisions are information that will be evaluated by the Department; however all information provided will not necessarily lead to a restriction or disqualification. Issues will be considered on a case by case basis in the best interest of the State of Texas.

If a Respondent is in doubt about whether information should be disclosed, the Respondent may submit a question during the official period for submission of questions. Failure to disclose any required information under these provisions may be cause for disqualification or termination of any contract resulting from this RFQ. The Department reserves the right, in its sole discretion, to determine if any issue should result in disqualification or termination of any resulting contract.

During the term of any contract resulting from this RFQ, the Respondents will have the continuing responsibility to promptly provide the Department with information about any actual or potential conflicts of interest or appearance of impropriety issues between the Respondent or any of its subcontractors and any entities or persons the Respondent is assigned or may be assigned to monitor or review.

If circumstances change or additional information is obtained subsequent to submission of the Statement of Qualifications, the Respondent's duty to promptly disclose information to the Department under these provisions continues under the term of the resulting contract and does not end with submission of a Statement of Qualifications or receipt of contract award.

### **C.3 MINIMUM REQUIREMENTS**

In the technical part of the Statement of Qualifications, the Respondent must clearly address the requirements listed in Section L.8, Response Submission Instructions, separately to support the possibility of an award. The award of Regional Services is on a no-minimum, non-exclusive, as-needed, as requested basis. No specific amount of compensation is guaranteed to a Respondent under any contract resulting from this RFQ.

#### **C.3.A.1 Grant Administration Activities**

The awarded Contractor must:

1. Perform complex (journey-level) grant coordination, financial and programmatic compliance, technical assistance, and administration work to plan, organize, and monitor federally funded disaster sub-grant awards within the State of Texas.
2. Conduct applicant briefings and other outreach and training activities, ensure grant applications are processed properly, and monitor both the programmatic and financial aspects of awarded projects.
3. Ensure deadlines are met, applications or other documentation are complete and correct before submission to federal authorities, monitoring activities are conducted in accordance with the project guidelines, and payment requests are promptly and correctly processed.
4. Review progress reports, payment requests, and provide guidance and assistance to grant recipients on documentation requirements and resolution of project related problems.

5. Perform compliance monitoring services including budget monitoring and project site inspections, and document progress and completion of projects, causes for delays in project completion from established timelines, or deviations from the scope of work to ensure procurement and contracting compliance. In addition to performing a compliance review of all procurements, the Contractor must sample and test a minimum of 10% of transactions, by item and by amount claimed per Summary Category, for each Request for Reimbursement. For exceptional circumstances, the sampling and testing percentage may increase or decrease as mutually agreed to by Department and Contractor. See Attachment #4 (Summary of Documentation in Support of Claimed Amount) of Exhibit J.9, SOW Guidance and Sample Documents Related to Compliance Monitoring and Review.
6. Assist local jurisdictions with requests for project extensions or project change requests, if needed.
7. Provide reports related to assigned projects, by subrecipient, and by project.
8. Identify and flag potential duplicate service contacts and provide for fraud, waste, and abuse identification and remediation.
9. Perform compliance reviews of subrecipient projects, which will entail examining subrecipient support documentation for subgrant expenditures, evaluating compliance with relevant statutes, regulations, including Uniform Grant Guidance and grant agreements and report the results. In addition to performing a compliance review of all procurements, Contractor must sample and test a minimum of 10% of transactions, by item and by amount claimed per Summary Category, for each Project. For exceptional circumstances, the sampling and testing percentage may increase or decrease as mutually agreed to by Department and Contractor. See Attachment #4 (Summary of Documentation in Support of Claimed Amount) of Exhibit J.9, SOW Guidance and Sample Documents Related to Compliance Monitoring and Review.
10. Perform peer review analysis on projects assigned to other contractors or agency staff.
11. Assist in training Department staff and in conducting programmatic policy and procedure reviews.
12. Provide subrecipient assistance to include the development of appropriate project financial controls and reports and training/assistance on use of applicable grants management applications.
13. Perform other grant administration related duties as assigned.

The Department anticipates that the contracted grant administration work will be performed by technical and administrative staff well versed in the public assistance and hazard mitigation programs, applicable requirements and regulations, and governmental auditing principles, particularly those related to disaster grant awards.

The Department anticipates that the Contractor's review of complex financial or regulatory issues will be performed by grants/accounting staff well-versed in the public assistance and hazard mitigation programs, applicable requirements and regulations, and governmental accounting principles, particularly those related to disaster grant awards.

The Department anticipates that administrative and technical task assignments may require some combination of staff, certified professionals, paraprofessionals and Partner/Senior Manager depending on the nature and scope of the assignment. Not all levels of staff will be required for all transactions within a project.

### **C.3.A.2 Qualifications**

Previous experience monitoring federal grants is a minimum qualification for further consideration for award as a result of this RFQ.

1. When each subgrant or project is assigned to the Contractor, the Contractor fee/budget (as calculated per paragraph B.1.5 above) will accompany the assignment. Any changes to the budget must be approved in advance by the TDEM Project Manager or designee. No charges outside of the approved budget will be paid. All subrecipient monitoring or other project related activities will be performed in accordance with applicable CFR titles including 2 CFR 180, 2 CFR, 200, 215, 220, 225, and 230, 44 CFR Parts 13, 17, 18, 201, 204, and 206, as well as applicable FEMA policies and guidelines located at:

<http://www.fema.gov/grants>  
<https://www.fema.gov/public-assistance-policy-and-guidance>  
<https://www.fema.gov/hazard-mitigation-assistance-grants-policy>  
[https://www.fema.gov/media-library-data/1394820975537-a279bff2a4a300676b870154acec922b/FMAG Guide Feb 2014 508.pdf](https://www.fema.gov/media-library-data/1394820975537-a279bff2a4a300676b870154acec922b/FMAG_Guide_Feb_2014_508.pdf)

2. The Contractor will submit a weekly progress report summary by email to the Department Project Manager or designee in a format approved by the Contract Monitor. Contractor staff time will be documented and included as part of the weekly report.
3. TDEM and FEMA currently use separate grant management system packages. The Contractor must provide reports utilizing the data within the grant management system currently in use by TDEM or in use by FEMA, as appropriate, at the time the report is due (see *Section D.1, Contract Compliance Reports*). FEMA's grant management systems are web-based applications that track project activities through the project lifecycle. TDEM's grant management system is a web-based application utilized to account for and process all grant management related actions for awarded disaster grants. The Contractor will be provided login credentials to both grant management systems following award of the contract. All files and data will be the sole property of the Department, or FEMA, depending on system, and the Contractor must promptly return all files and data to the Department or FEMA, as appropriate, once the Contract is closed or upon request by the Contract Monitor.

4. The Contractor must be able to handle all actions related to sub-recipient monitoring with the subrecipient and with FEMA in accordance with the Department's policies and procedures and in compliance with all federal policies, regulations, and requirements. All communications and supporting documentation will be input into the appropriate grant management system.
5. The Department reserves the right to suspend or place on hold the agreed upon projects assigned to the Contractor if the subrecipient has a new disaster/emergency or the Department authorizes postponement or reassignment of projects for other reasons. Suspension of work under this Contract will be solely at the discretion of the Department. In the event of long-term suspension or reassignment of work under this Contract, the Contractor must invoice for actual costs incurred within 30 days of suspension or reassignment, subject to the fee limitations as defined in B.1.5 above.

#### **C.4 QUALIFICATIONS PROFILE**

- A. Each Respondent must provide a detailed profile with its Statement of Qualifications describing how it is qualified to accomplish the Services identified in this RFQ. Through this profile, the Respondents must demonstrate extensive experience in and understanding of the nature of the work required. The Respondents must demonstrate appropriate credentials and experience regarding the services under this RFQ. The profile must include any responsibilities for the Department and any Department designee.
- B. The Statement of Qualifications should assume that the Grant Administration Activities listed in Section C.3.A.1 will be performed by the Contractor's staff in the following categories.
  1. Partner
    - a. Directs all contract-related activities.
    - b. Responsible for primary client communication.
    - c. Provides overall team direction and procedural guidance.
    - d. Subject matter expert as relates to Stafford Act/2 C.F.R Part 200 compliance.
  2. Senior Manager
    - a. Reports directly to a Partner.
    - b. Responsible for some program level client and subgrantee communication.
    - c. Provides direction and procedural guidance for managers and supervisors in the execution of day-to-day project operations. Capable of independently resolving highly complex Stafford Act/2 C.F.R Part 200 compliance issues.
  3. Manager
    - a. Responsible for some client and subgrantee communication.
    - b. Manages day-to-day project operations.
    - c. Works with a team of supervisors to manage daily project work flow and resolve highly complex Stafford Act/2 C.F.R. Part 200 compliance issues.
    - d. Reports to a Partner or Senior Manager.
  4. Supervisor
    - a. Responsible for some client or subgrantee communication.
    - b. Supervises grant administration staff in conducting daily procedures.
    - c. Capable of independently resolving complex Stafford Act/ 2 C.F.R. Part 200 compliance issues.
    - d. Reports to a Manager.

5. Senior Grant Administrator
    - a. Works within a grant administration team to conduct day-to-day Stafford Act/ 2 C.F.R. Part 200 compliance procedures.
    - b. Capable of independently resolving some Stafford Act/ 2 C.F.R. Part 200 compliance issues.
    - c. May lead a team of accounting technicians performing routine monitoring and reporting activities.
    - d. Reports to a supervisor.
  6. Junior Grant Administrator
    - a. Works within a grant administration team to conduct day-to-day Stafford Act/ 2 C.F.R. Part 200 compliance procedures.
    - b. Reports to a supervisor.
  7. Accounting Technician
    - a. Performs general accounting functions using established systems and procedures.
    - b. Works within a grant administration team to conduct day-to-day Stafford Act/ 2 C.F.R. Part 200 compliance procedures.
    - c. Responsibilities include coding and data entry.
  8. Administrative Assistant
    - a. Performs day-to-day support functions for a project using established systems and procedures.
    - b. May provide direction to other administrative staff.
    - c. Detail-oriented with excellent organizational and communication skills.
- C. Complex financial or regulatory issues related to subrecipient projects and other special projects or assignments may require more involvement by certified professionals and therefore Partner review.
- D. Based on the volume of work anticipated under this Contract, Contractor may need subcontractors to assist it with accomplishing the Services identified in this RFQ. The Department must pre-approve the use of any subcontractor. If any subcontractor does not perform to the Department's satisfaction, Contractor will replace that subcontractor with a new pre-approved subcontractor. *See also Section H.53, Personnel.*

### **C.5 CONTRACTOR QUALIFICATIONS (INCLUDING ANY SUBCONTRACTOR)**

- A. The Respondent must possess a minimum of three years, experience in providing Public Assistance and Hazard Mitigation grant administration services in the recipient (State) role.
- B. The Respondent must identify three past events that are similar in size and scope to the events listed in Section C.1.B. Identified projects must include:
  1. project begin and end dates;
  2. contact name, email (if available), and telephone number;
  3. brief description of deliverables; and
  4. scope of work performed.
- C. The Respondent must possess the ability to commence and maintain operations without financial assistance from the Department for an extended period of time. The

Respondent must demonstrate overall readiness to begin services immediately under an award.

D. The Respondent must demonstrate the ability to provide upper level management personnel to operate and manage the solicited services that meet or exceed the Department's minimum standards, to include:

1. Name;
2. Title; and
3. Specific work to be performed and/or services to be provided.

E. Respondent's demonstrated experience should include:

1. Project Description;
2. Time Period of Project(s); and
3. Project Role.

F. The Respondent must provide a work plan, within its Statement of Qualifications, that identifies what qualified staffing will be available to provide services under this Contract and when they will be available, including having all necessary monitoring, compliance, or administrative grant training.

C. See Attachment #4 (Summary of Documentation in Support of Claimed Amount) of Exhibit J.9, SOW Guidance and Sample Documents Related to Compliance Monitoring and Review.

G. Each Respondent must demonstrate in its Statement of Qualifications that it has the necessary facilities, ability, and financial resources to provide the services on an as needed, as requested basis.

Higher scores will be given to the Respondents that are experienced, fully trained and ready to receive and begin assignments as of the expected effective date of any contract resulting from this RFQ. In addition to hiring and training staff, readiness includes having established internal procedures/applications for reporting, tracking, or other processes related to the project. **Documentation of readiness level must be outlined in the submission.**

H. Respondent Information (including any subcontractors):

1. Name and address of the Respondent firm or individual submitting the Statement of Qualifications.
2. Type of business entity (e.g., corporation, partnership, Limited Liability Company).
3. State of incorporation or organization and principal place of business.
4. Name and location of major offices and other facilities that will relate to Respondent's performance under this RFQ.
5. The Respondent's Federal Employer Identification Number and Texas Tax Identification/Registration Number.
6. License number of the Respondent's firm issued by the State Board of Public Accountancy.
7. A statement regarding the financial stability of the Respondent, including the ability of the Respondent to perform the services under any Contract resulting from the RFQ.

8. Last three audited financial statements of the Respondent (and separate audited financial statements of any proposed subcontractors).

## **C.6 QUALIFICATIONS OF PROPOSED STAFF (INCLUDING ANY SUBCONTRACTORS)**

- A. Contractor staff must possess the experience and qualifications to perform duties as listed in Section C.4.B.
  1. Partner
  2. Manager (Senior)
  3. Manager
  4. Supervisor
  5. Senior Grant Coordinator
  6. Junior Grant Coordinator
  7. Accounting Technician
  8. Administrative Assistants
- B. The Partner must hold a Certified Public Accountant designation. The Senior Manager may hold either a CPA or a Project Management Professional designation.
- C. The Respondent must provide current résumés for all partners/managers/supervisors proposed to work on the awarded contract, along with a list stating the proposed job responsibilities, areas of expertise, expected percentage of time the person will dedicate to this Contract, and the title and role of the partner/manager/supervisor. The résumés must contain at a minimum the following information:
  1. A full name (including full middle name).
  2. A five-year employment history.
  3. A specific description of relevant experience, education, certifications, areas of specialization, and qualifications the person has with the scope of work.
  4. Any additional helpful information to indicate the individual's ability to aid the Respondent in successfully completing the required deliverables.
- D. The Respondent must designate a person as the Contractor Project Manager with whom the Department Contract Monitor or designee may communicate to arrange and coordinate the creation and delivery of deliverables throughout the contract period. The response must list the name, title, work address, cell phone, work phone, fax number, email address and any other pertinent contact information of this coordinator, as outlined in Section G.1.5.
- E. Staff résumés must be identical in format and presentation. Résumés must present sufficient detail to provide the Department with a convincing indication that the personnel involved can successfully provide the services. The key personnel, as identified in the Statement of Qualifications, are considered to be essential and no substitutions will be made without prior written consent of the Contract Monitor. The Department reserves the right, in its sole discretion, to approve each member of the team and to request substitutions.

## **C.7 REFERENCES**

- A. The Department will contact the Respondent's prior clients for references. The Department reserves the right to contact the Respondent's prior clients for references, even if such clients are not listed in the Respondent's Statement of Qualifications.

- B. The Respondent must provide the Department with a signed release from the three most recent references listed in the Statement of Qualifications authorizing a point of contact. Additional releases from clients may be supplied at the Respondent's option.

## **C.8 REQUIRED INFORMATION**

The Respondent must include all the required information in its Statement of Qualifications for the Services as outlined in this RFQ. Responses without all of this information may be disqualified; however, the Department reserves the right, in its sole discretion, to waive minor technicalities and errors in the best interest of the State.

## **C.9 FEDERAL FUNDING REQUIREMENTS**

This Contract is funded with federal grant funds, and as such, the Respondent agrees to comply with all applicable rules, regulations, and guidelines. In particular, the following laws and regulations are incorporated by reference. Additionally, any contract clauses required by 2 C.F.R. § 200.326 and the Appendix II to Part 200 are intended to be incorporated by reference into this Contract even if the language in this Contract is worded differently than noted.

- (1) Title 42 U.S.C. §§ 5121-5206 (Stafford Act)  
([https://www.fema.gov/media-library-data/1383153669955-21f970b19e8eaa67087b7da9f4af706e/stafford\\_act\\_booklet\\_042213\\_508e.pdf](https://www.fema.gov/media-library-data/1383153669955-21f970b19e8eaa67087b7da9f4af706e/stafford_act_booklet_042213_508e.pdf))
- (2) Title 44 of the CFR  
(<https://www.gpo.gov/fdsys/pkg/CFR-2007-title44-vol1/pdf/CFR-2007-title44-vol1.pdf>)
- (3) 2 CFR, Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards)  
(<https://www.gpo.gov/fdsys/pkg/CFR-2014-title2-vol1/pdf/CFR-2014-title2-vol1-part200.pdf>)

## **C.10 TRAINING DEVELOPMENT AND TRAINING; SPECIAL ASSIGNMENTS**

In addition to the grant monitoring compliance services provided under this Contract, the Department may also require Contractor to develop training for and give training to subrecipient jurisdictions as necessary or to perform other special services. The Department will pay the Contractor for this development and training on a fixed rate basis negotiated between the Department and the Contractor, but subject to final approval by the Department. This fixed rate must include overhead, travel, and any other ancillary costs.

Any training that the Contractor develops is subject to final review and approval by the Department and the Department reserves the right to change the training as necessary.

## **C.11 DEPARTMENT RECORDS**

- A. Upon conclusion of the resulting contract, the Department will own the complete files, notes, charts, and drawings related to the execution of the Services. The Contractor will



keep any copies that are needed for its records and future planning for renewal/extension terms.

- B. Records must be labeled in a manner satisfactory to the Department as well as organized and retained in the original folder. The Contractor must comply with additional instructions pertaining to Department records as detailed in Section H.55, Books and Records of this RFQ.
- C. All documents written to fulfill any resulting contract will be the property of the Department; the Department may use, update, and distribute the documents as the Department deems appropriate.
- D. Plans developed for any resulting contract are considered confidential and proprietary and are not to be distributed to unauthorized parties.
- E. In the event the Contractor requires copies of any non-confidential records after conclusion of the contract or contract expiration and management transition, the Department will furnish copies to the Contractor at the Contractor's expense.
- F. Records must be maintained in accordance with the Department Records Retention Schedule and all Contract requirements.
- G. The Department will own the copyright for all materials created as part of this RFQ and resulting contract.

## **C.12 TRANSITION**

### **A. Transition Plan/Procedures**

- 1. Example Transition Plan RFQ Requirement** – The Respondent must provide with its Statement of Qualifications an example of a Transition Plan for a 90 calendar day transition period that will meet industry and best practice standards and must include, at a minimum, step by step processes, timelines, involved parties' responsibilities, knowledge transfer, training and functional requirements.
- 2. Transition Plan Contract Requirement** – Upon Contract award, the Contractor with the assistance of the Department will be required to provide a detailed plan for transitioning ("Transition Plan") all data, in whole or in part, to a subsequent contractor, the Department or other entity. The Contractor must provide a hardcopy and a softcopy of the Transition Plan.
  - a) The Contractor will be required to provide the Draft Transition Plan to the Department with 30 calendar days of Contract award. *See Draft Transition Plan Contract Requirement, Section C.12.A.3, below.*
  - b) Upon receipt of the Draft Transition Plan from the Contractor, the Department will review it within 15 business days. The Department and the Contractor will negotiate any issues, requirements or concerns in order to meet the Department's transition needs prior to finalizing the Transition Plan.
  - c) As a result of such discussion, the Contractor must modify the Draft Transition Plan and return the Draft Transition Plan to the Department for review and

written acceptance within 15 business days. Upon receipt of the updated Draft Transition Plan, the Department will have 15 business days to review it.

- d) This 15 business day cycle, at a maximum, will continue between the Department and the Contractor until it is determined the Transition Plan achieves the Department's satisfaction. Upon the Department's approval, the Department will notify the Contractor of its written acceptance of the Transition Plan and upon such written acceptance, the Transition Plan will be incorporated by reference into this Contract.

**3. Updated Transition Plan Contract Requirement** – The Contractor must update the Transition Plan with 15 calendar days following any changes. Updates to the Transition Plan will follow the same Department review and approval process as stated in the Transition Plan Contract Requirement section.

**4. Transition Procedures** – The Department will ensure cooperation on the part of any subsequent Contractor, other entity or Department personnel, depending on the entity to which the Department directs all or part of this Contract will be transitioned; however, the Contractor will maintain responsibilities for all tasks, deliverables and performances under this Contract during the transition period. At the end of the 90 calendar day transition period, or earlier, depending on Department approvals, the subsequent Contractor, other entity or the Department will assume full responsibility for all tasks, deliverables and performances as directed by the Department.

- a) During this Contract term, additional updates to the Transition Plan may be required due to information, processes or issues that originally were not included or addressed in the Transition Plan. Updates to the Transition Plan will follow the same Department review and approval process as stated in the Transition Plan Contract Requirement section.
- b) Knowledge transfer must occur over the entirety of the 90 calendar day transition period. The knowledge transfer will take place via various methods as mutually agreed upon. The Contractor must, at a minimum, coordinate and conduct two formal classroom training sessions at a location mutually agreed upon by the Department and the Contractor. These sessions will focus on the specific Transition Plan requirements and any other tasks or activities identified by the Contractor and the Department as needed to ensure a successful transition to continue operations. Training sessions will be completed no later than 60 calendar days prior to the end of the transition period. The Contractor, the Department and the subsequent contractor or other entity will meet a minimum of once per week to determine if further training or knowledge transfer is required.
- c) The Department will make the determination of when the transition is complete and will provide the Contractor and the subsequent contractor or other entity with formal written acceptance indicating such transfer of responsibilities. The formal transfer of duties will be documented, in writing, via a contract modification to include acceptance signatures from the Department, the Contractor and the subsequent contractor or other entity.
- d) Activation of the Transition Plan approved by the Department under these provisions (the beginning of the 90 calendar day transition period), will begin on

the Contractor's receipt of written notification from the Department that this Contract, in whole or in part, is being transitioned. The Contractor must comply with these provisions and the Transition Plan. The Contractor's failure to comply with these provisions and Transition Plan will constitute a material breach of this Contract.

## SECTION D – REPORTS AND DELIVERABLES

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

The Contractor will 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 - DELIVERABLE	AUTHORITY	DEPT. PERSONNEL TO RECEIVE REPORT
Monthly	Monthly billing based on negotiated hourly rates and approved time sheets and travel vouchers.	Invoice with billing forms	Contract, Section G	apinvoices@dps.texas.gov, Project Manager, and Contract Monitor
Monthly	5 <sup>th</sup> working day to Contract Administrator.	HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report	Contract, Section I.3.E and Exhibit J.1	DPSHUB@dps.texas.gov and Contract Administrator
After Award	Five calendar days after award.	Negotiated date post-award meeting.	Contract, Section L.14	Project Manager
After Award	Ten business days after the scheduled post-award meeting.	Department Contractor Background Information form (HR-22)	Contract, Section H.57	Project Manager
Weekly	5PM (CT) Wednesday.	Weekly Progress Report Summary	Contract, Section C.3.A.2.3	Project Manager
Other	Prior to service commencement date and upon renewal or replacement.	Insurance certificates	Contract, Section I.1 and Exhibit J.3, Cyber Security Contract Standards,	Contract Administrator
Quarterly	21 days after the end of the Federal Quarter.	FEMA Quarterly Report Information.	Contract	Project Manager
Quarterly	To be determined	Listings of litigation	Contract, Section K.6.6.D.3	Project Manager
Upon Completion of Compliance Review	Ten business days after completion and acceptance of draft Compliance Review	Compliance Review Final Report	Contract, Section C.3.A.1, and Exhibit J.9	Project Manager

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

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

- A. Acceptance criteria for all deliverables under this Contract may be found in Section C, Statement of Work.
- B. 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 will perform inspections in a manner that will not unduly interfere with the Contractor's performances of this Contract. The Contractor must furnish, and will require subcontractors to furnish, at no increase in this Contract's price, all reasonable assistance for the safe and convenient performance of these duties.
- C. If any deliverables do not conform to this Contract's requirements, the Department will require the Contractor to perform the deliverables or services again in conformity with this Contract's requirements, at no increase in this Contract's amount, in addition to all other legal and equitable remedies.
- D. The Department will, 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.
- E. 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 will exercise its right to offset as authorized in Section G.3.7 of this Contract.
- F. If any services are non-compliant with this Contract's requirements, the Contractor will be notified describing specific areas of non-compliance. The Contractor will have a ten calendar day period to file a written response detailing corrective action taken to all such items of non-compliance. The response will include supporting documentation. Unless otherwise specified, or previously agreed to by the Department, the submission of a corrective action plan will not be accepted as corrective action. For all items of non-compliance satisfactorily resolved by agreement between the Contractor and the Department, no further action regarding such items will be taken. If an item of non-compliance cannot be resolved between the Contractor and the Department, and such item remains uncorrected for a period of ten calendar days or longer after written notification to the Contractor, then such item will be declared to be an Event of Default.

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

- A. The Contractor must 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 must be maintained and made available to the Department during this Contract's performance and for a period of seven years after the termination of this Contract.

- B. The Contractor must 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, will be admitted to monitor the delivery of deliverables.

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

- A. The Department will devise its own procedures for monitoring the quality of the Contractor's performance under this Contract, and the Department's Policies.
- B. The Contractor must 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 may include, but is not limited to, document reviews and on-site audits conducted by the Department. Such monitoring by the Department will not relieve the Contractor of any of its obligations under this Contract.
- D. The Contract Monitor and other Department staff will 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, Inspection of Services.

## **SECTION F – CONTRACT TERM**

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

This Contract will consist of a Base Period from the date of award through 08/31/2019 with three optional one year renewal periods; Option Period One (September 1, 2019 through August 31, 2020); Option Period Two (September 1, 2020 through August 31, 2021); and Option Period Three (September 1, 2021 through August 31, 2022).

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 will designate the Authorized Representative in writing. The designation of the Contractor's initial Authorized Representative must 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 Ashley Lindholm.

B. The telephone number for the Contract Administrator is 512 424-5272.

C. The e-mail address is ashley.lindholm@dps.texas.gov.

The Contract Administrator is responsible for general administration of this Contract, negotiation of any changes and issuance of written contract amendments.



### **G.1.3 Department Contract Monitor**

- A. The Contract Monitor for this Contract is Monica Presson.
- B. The telephone number for the Contract Monitor is 512 424-7048.
- C. The e-mail address is monica.presson@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 discussions, it is desirable to amend this Contract, changes will be issued in writing in a contract amendment and will be signed by the Department's Authorized Representative or his designee.

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

- A. The Project Manager for this Contract is Steve Cottle.
- B. The telephone number for the Project Manager is 512-424-2488.
- C. The e-mail address is steve.cottle@dps.texas.gov.

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

## G.2 INVOICE REQUIREMENTS

For Continuously Monitored Projects, both PA and HM, the Department will pay the Contractor on the basis of itemized invoices detailing Requests for Reimbursement (RFR) processed and Project Close-outs completed and submitted to the Department. Itemized invoices will clearly identify, at a minimum, the grant project number, subrecipient, the number of hours that each employee worked, a description of the work performed, and the date the work was performed for this associated charge. Amount due to the Contractor for RFR completion will be calculated by multiplying the amount available for the RFR completion (project budget minus retainage for Close-out) by the percentage of RFR amount to the Federal Share.

For all advances of funds to subrecipients, the Contractor's payment will be calculated as above and will be triggered by the completion of the RFR that offsets the advance.

A retainage of 20% of amount calculated above will be withheld until completion of project close-out. At project close-out, the Contractor may invoice for the remaining 20% retainage.

For Compliance Review Projects and small (PA) projects, the Department will pay the Contractor on the basis of itemized invoices detailing the projects closed with the State. Itemized invoices will clearly identify, at a minimum, the grant, project number, subrecipient, the number of hours that each employee worked, a description of the work performed and the date the work was performed for this associated charge. Amount due to Contractor will be calculated by multiplying the percentage rate by the pre-deduction value of the eligible project amount at initial obligation (project version 0) for PA and, for HM Projects, by the initial project eligible amount. Invoice detail to be provided as specified by the Department.

A. The Contractor's Invoice will include the following:

1. This Contract number;
2. Remittance Address; and
3. 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. An invoice copy will be sent electronically to [apinvoices@dps.texas.gov](mailto:apinvoices@dps.texas.gov) and the Contract Monitor.

An original, hard-copy invoice, if required by the Contractor, will 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 fails to conform to the requirements of this Section or was not mailed to the appropriate address identified herein.**

### **G.3 PAYMENTS**

- A. The Respondent will submit a completed Texas Application for Payee Identification Number (Exhibit J.4) and Substitute W-9 Form (Exhibit J.6) to the following address:

**TXDPS - Accounts Payable  
P.O. Box 4087  
Austin, Texas 78773  
Attention: Mary Hamilton**

**Reference: Contractor Set-up for Solicitation 405-17-R087170**

Notes: Contact Ashley Lindholm when completed (512) 424-5272 or Ashley.lindholm@dps.texas.gov.

- B. If the Respondent 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 Respondent must provide its 11 digit Texas Identification Number (TINS) previously provided to the Respondent by the Texas Comptroller of Public Accounts.

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

#### **G.3.1 Billing and Payment**

The Contractor will bill the Department for Projects completed and accepted according to Section G.2, Invoice Requirements. The Contractor invoices will be subject to the Department's usual auditing and accounting procedures, which will be paid within 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 Payments will be withheld and an invoice issued to the Contractor for the remaining amount due.
- C. The Contractor will pay the invoiced amount within 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 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, which will be paid in accordance with Texas Government Code, Section 2251.025.

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

If Contractor fails to comply with the terms of the Contract, the Department may withhold the Contractor's Payment. If non-compliance results in the Department purchasing goods or services from another entity to remedy the non-compliance, the Department will deduct those costs from the Contractor's Payment.

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

- A. The Department will 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 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 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 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 will 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 will 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 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 must submit to the Contract Administrator financial rating information acceptable to the Department as described in Section B.1.4 within 120 calendar days after the end of the Contractor's fiscal year.
- B. In the disclosure of its financial affairs, the Contractor will 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.3.8 or any other provision of this Contract to the contrary, the Contractor will 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 RFQ will include the following Standard Terms and Conditions. Subcontractors must 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.
- C. 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.
- D. 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.
- E. In the event of such termination, the Department will not be considered to be in default or breach under this Contract, nor will it be liable for any further payments ordinarily due under this Contract, nor will it be liable for any damages or any other amounts which are caused by or associated with such termination. The Department will 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 will, 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 will 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 Department, and which has been accepted by the Department in writing in accordance with all requirements of this Contract. All such work must have been completed, tested and accepted in writing, per the requirements of this Contract, prior to the effective date of termination.
- F. 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 30 calendar days written notice as termination under this section is immediate.

- G. 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 30 calendar days written notice as termination under this Section is immediate.
- H. The Department may, upon 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 or any state insignia 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.

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 cured within the ten business days allowed in Section E.1.F but that such Event of Default can be cured through a diligent, on-going, and conscientious effort on the part of the Contractor, within a reasonable period not to exceed three months, then the Contractor may, within the ten calendar day cure period, submit a detailed plan for curing the Event of Default to the Department.
- B. The Department will 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 ten calendar day 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 will 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 remedied within ten calendar days. The Department will have the right to cancel this Contract upon ten calendar days from written notice if the Contractor fails to remedy such failure, cause or default within the ten calendar day 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 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 with Notification and Opportunity to Cure." The Department will 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 will remain liable for all covenants and indemnities under this Contract. The Contractor will 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 will 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 will provide the Contractor with written notice to terminate this Contract, which termination will become effective immediately upon the Contractor's receipt of the notice.

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

- A. 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.
- B. 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.
- C. 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.
- D. The Contractor must, unless mutually agreed upon in writing, cease all work immediately upon the effective date of termination. The Department will 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.

- E. The Contractor will 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.
- F. 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.
- G. 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.
- H. 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.
- I. The Transition duties of the Contractor survive the termination of this Contract, regardless of the reason for the termination.

## **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 will 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 will 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 must 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 will continue providing the deliverables as directed, in a diligent manner and without delay, and must 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 MUST 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 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 WILL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

#### **H.6.2 Infringements**

- A. THE CONTRACTOR MUST 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 WILL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. THE CONTRACTOR WILL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. 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 MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.**
  
- B. THE CONTRACTOR WILL 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, MUST), 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 WILL 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 MUST 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 MUST 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 WILL 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 WILL 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 will serve as an independent contractor in providing 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, will 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 will 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 will post notices setting forth the provisions of this non-discrimination clause in conspicuous places, available to employees and applicants for employment.
- C. The Contractor will 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 will 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 must 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 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 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 IMMIGRATION**

Contractor represents and warrants that it will comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.

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

The Contractor will 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 \$1,000,000.00 or more, including available renewal options;
- B. Contract amendments (other than exercise of available renewal options) valued at \$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 \$500,000.00 or more.

The Division Director, Administration, will submit these reports to the Commission. The Commission will 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 must strictly comply with all of the timelines, deadlines, requirements, and provisions of this Contract.

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

The Contractor must 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 must 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 must 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 will provide both federal and state unemployment insurance coverage and standard workers' compensation insurance coverage. The Contractor will 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 will provide all labor and equipment necessary to furnish the deliverables under this Contract. All employees of the Contractor will be a minimum of 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 must ensure that at all times its personnel 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 must 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 will 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 will 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 will 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

will inform the other in writing, with proof of receipt, within three 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 will 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 will 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 must pay all costs to the Department due to a resolicitation 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; ACCEPTANCE; 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 must 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.

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

**THE CONTRACTOR MUST DEFEND, INDEMNIFY, SAVE AND HOLD HARMLESS THE DEPARTMENT 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 MUST 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 MUST 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 MUST 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 MUST PAY ALL REASONABLE COSTS OF THE DEPARTMENT'S COUNSEL AND MUST 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 12 months thereafter, solicit for employment any person who is a Department employee or was a Department employee during the previous 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 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 will 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 will 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 will 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 must comply with all federal and state requirements regarding unemployment insurance coverage and workers compensation insurance coverage.

The Contractor must 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 and the Department's Contract Administrator as specified in Section G and will be deemed received:

- A. When delivered in hand and a receipt granted;
- B. Three days after it is deposited in the United States mail by certified mail, return receipt requested; or
- C. 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 will contract with any other person or entity for prices, charges, benefits, warranties and terms more favorable to such person or entity, the Contractor must 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, 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.

Reference also the funding out provisions of this Contract.

#### **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 will 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 response.

#### **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 will 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 24 hours of such verbal notification. The Contractor must 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.

#### **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 will amend, supplement, or correct both representations and warranties in this Section in writing to the Department not later than ten 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 will amend, supplement, or correct any such representations, warranties, guarantees, disclosures, certifications, statements and affirmations in writing to the Department not later than ten 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 must 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 may notify the Contractor in writing within a reasonable time from receipt of any request for information related to the Contractor's work under this Contract. The Contractor must cooperate with the Department in the production of documents responsive to the request. The Department will make a determination whether to submit a Public Information Act request to the Attorney General. The Contractor will notify the Department within 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 will 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 will 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).

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

- A. The Contractor will retain no upper level management (Manager & above) 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 will 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, will 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 will 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 will 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 will notify the Department before assigning a replacement individual for any of the personnel commitments identified herein. The Contractor will notify the Department of the proposed assignment, introduce the individual to the appropriate representatives of the Department, 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 will 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 will discuss the circumstances of the proposed personnel replacement. Upon receipt of a written request from the Department's Contract Administrator, the Contractor will be required to proceed with the replacement. The replacement request will include the desired replacement date and the reason for the request. The Contractor will use its best efforts to effect the replacement in a manner that does not degrade deliverable quality. The Contractor will 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 will 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 must comply with Texas Government Code, Section 2155.4441, in the performance of this Contract. In performing services under this Contract, the Contractor will 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 will retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances under this Contract. The Contractor will retain these records for a period of seven 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 will 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 will 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 will 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 will provide written notification to the Department of all such changes no later than ten 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 will 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 DEPARTMENT POLICIES AND PROCEDURES**

- A. The Contractor's Authorized Representative will provide the following to the Department's Contract Monitor/Project Manager within ten calendar days after the post-award meeting:
  - 1. The completed Department Contractor Background Information form (HR-22) for all proposed personnel; and
  - 2. Acceptable fingerprints for all proposed personnel.
- B. The Contractor will not allow any personnel to work on the project that have not submitted to and successfully completed a Department fingerprint-based Criminal History Background Investigation. 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 did not pass the background check or failed to otherwise maintain a security clearance. Reference Section I.8 entitled "Cyber Security Contract Requirements" for details on this requirement.
- C. The Department issued identification cards will be worn at all times and will be worn in a visible location.

## **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 will 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) will create and deliver all services and deliverables in accordance with applicable professional standards of a Contractor providing testing 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) will assign only qualified personnel to this Contract.
- C. The Contractor/subcontractor(s) will efficiently supply all resources or services necessary to provide the deliverables that are required under this Contract.

- D. The Contractor/subcontractor(s) will 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) will create and deliver the deliverables in a manner that does not infringe the proprietary rights of any third party.
- F. The Contractor/subcontractor(s) will 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 must comply with the applicable provisions of the Drug-Free Workplace Act of 1988.

#### **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 will 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 will reimburse the State for all costs incurred by the State associated with enforcing this provision.
- C. 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.
- D. In the event such an audit reveals any errors by the Department or the Contractor, the Contractor will refund the Department the full amount of such overpayments within 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.texas.gov](http://www.sao.texas.gov). 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. The Contractor represents and warrants that it has read and understood, will comply with, and take reasonable steps to ensure that Contractor's employees and subcontractors are notified of the Department's Anti-Fraud Policy and their responsibility to comply with it. The policy reads as stated below and may be amended throughout the term of this Contract.

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 the Office of Inspector General (OIG) or the State Auditor's Office.

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

The Contractor must provide an electronic copy of the Contractor's response with specified private information removed, plus an overview of the nature of the information removed per Section L.11.

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

State agencies and institutions of higher education will 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 in this Contract will include the right to copy, publish, display, transfer, prepare derivative Work (as defined by Section I.7) , or otherwise use the Work.
- D. The Contractor must 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 OWNERSHIP OF PROPERTY**

As used in this Section, the term "Contractor's Technology" means all intellectual property of the Contractor created by the Contractor prior to this Contract and used by the Contractor, in its discretion, in performing services to the Department under this Contract. Notwithstanding anything else in this Contract to the contrary, the Compliance Review Reports delivered by the Contractor to the Department under this Contract will be the exclusive property of the Department and the State of Texas. The Department is not procuring and will not acquire ownership of any of the Contractor's Technology under this Contract and therefore, the Contractor will not deliver to the Department under this Contract Compliance Review Reports which include the Contractor's Technology or otherwise creates or could create issues of ownership and use for the Department of the State of Texas.

The Contractor will include its name and logo on the Compliance Review Reports but the Contractor will not copyright the Compliance Review Reports. The Contractor understands that the Compliance Review Reports will be subject to the Texas Public Information Act, the Professional Services Act, and other law applicable to professional services of the type requested and delivered to the State of Texas.

An example of a Compliance Review report is included in Exhibit J.9, SOW Guidance and Sample Documents Related to Compliance Monitoring and Review.

#### **H.67 CONTRACTOR'S STATEMENT OF QUALIFICATIONS**

The Contractor's Statement of Qualifications to this RFQ 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.68 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 agency 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.69 DISCLOSURE OF INTERESTED PARTIES**

If DPS determines that Texas Government Code § 2252.908 may apply to any contract awarded as a result of this solicitation, DPS will advise Vendor of its obligation to disclose interested parties to the Texas Ethics Commission (TEC) and DPS as specified in the statute.

To execute a contract with DPS, Vendor must submit the required disclosures to TEC by completing TEC Form 1295, Certificate of Interested Parties. Even if Vendor has no interested parties to disclose, Vendor must still complete the TEC Form 1295 process to affirmatively declare that it has no interested parties.

TEC Form 1295 is an online form available at TEC's website: [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm).

Upon completion, Vendor must submit the form online to TEC and then print the completed form that includes the Certificate Number automatically assigned by TEC. Vendor's authorized agent must sign the printed form, have the form notarized, and submit the form to DPS. The address for submission will be provided to the potential awardee(s).

For further information, see *Texas Government Code § 2252.908 and 1 Texas Administrative Code Ch. 46* as well as TEC's website.

If Vendor does not timely submit a completed, signed, and notarized TEC Form 1295 to DPS, DPS is prohibited by law from executing a contract to Vendor, even if Vendor is otherwise eligible for award. DPS may award the contract to the next successful potential awardee, which will then be subject to this procedure.

#### **H.70 DISCLOSURE OF RESTRICTED EMPLOYMENT**

Under Tex. Gov't Code § 572.069, Vendor certifies that it has not employed and will not employ a former Department employee or state officer who participated in a procurement or

contract negotiation for the Department involving the Vendor before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.

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

#### **H.71 THIRD PARTY CUSTODIANS OF STATE RECORDS**

As required by 13 Tex. Admin. Code § 6.94(a)(9), the Department must require a third-party custodian of state records to provide the Department with descriptions of its business continuity and disaster recovery plans regarding how the custodian will protect the Department's vital state records. In its Statement of Qualifications, Respondent must submit descriptions of its business continuity and disaster recovery plans regarding how it will protect the Department's vital state records throughout the life of any Contract and for any record retention period required beyond the life of the Contract. If the Department awards a contract under this Solicitation, Contractor must again submit these descriptions no later than ten days after contract award and annually until the required retention period ends (even if this is after the Contract expires or is terminated).

#### **H.72 CONTRACTS WITH COMPANIES WHO BOYCOTT ISRAEL PROHIBITED**

Under Tex. Gov't. Code § 2270.002, the Department may not enter into a contract with a company (as defined by Tex. Gov't Code § 808.001) that boycotts Israel. By responding to this solicitation, Vendor (if defined as a company under Tex. Gov't Code § 808.001) certifies that it does not boycott Israel and will not boycott Israel during the term of any contract resulting from this solicitation.

#### **H.73 CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED**

Under Tex. Gov't. Code § 2252.152, the Department may not enter into a contract with a company (as defined by Tex. Gov't Code § 806.001) that is identified on a list prepared and maintained by the comptroller under Tex. Gov't Code §§ 806.051, 807.051, or 2252.153. By responding to this solicitation, Vendor (if defined as a company under Tex. Gov't Code § 806.001) certifies that it is not identified on a list prepared and maintained by the comptroller under Tex. Gov't Code §§ 806.051, 807.051, or 2252.153.



## SECTION I – SUPPLEMENTAL TERMS AND CONDITIONS

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

### I.1 INSURANCE REQUIREMENTS

- A. Prior to the execution of this Contract, the Contractor must provide the Department with proof of insurance coverage(s) and must 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 30 calendar days of the effective date.
- D. The Contract represents and warrants all required policies contain endorsements prohibiting cancellation except upon at least 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 business days of receipt of notice of tentative contract award, it will provide the Department with proof of coverage and represents and warrants that it will maintain the following coverage throughout the term of this Contract, at the Contractor's sole expense:
  - 1. **Workers' Compensation and Employers' Liability:** The Contractor must 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 will 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 must 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 must 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:** The Contractor must 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 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 must waive all rights against the Department, its board, trustees, officers, employees, agents, and volunteers.

- 4. Professional Liability:** The Contractor must 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 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.

5. **Commercial Crime Insurance:** The Contractor must 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.**

6. **Cyber Insurance:**

*See Cyber Security Contract Requirements, Exhibit J.3.*

7. **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 must 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 percent of the required yearly aggregate limit of coverage.
- J. The Contractor will 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.
- M. All lines of coverage must be endorsed to provide a 30 day notice of cancellation to the Department as Certificate Holder.

**I.1.2 SUBCONTRACTOR'S INSURANCE**

The Contractor's insurance policies must 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 must assume full responsibility for all deliverables and performances under this Contract. The Department will 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 must include a list of all subcontractors, including the firm name, address, and contact person of each subcontractor, a complete description of the deliverables or other work to be subcontracted, financial statements for each subcontractor, and descriptive information concerning each subcontractor's qualifications.
- 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 will 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 will 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 must 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 will 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 must 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 which the Contractor has subcontracted.

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

- A. The Contractor must 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 will also comply with the approved HUB Subcontracting Plan (HSP).
- B. The Contractor must submit an HSP as part of its response and will comply with implementation of the HSP. The Contractor must seek written approval from the Department prior to making any modifications to its HSP.
- C. The Contractor must submit a detailed description of the HSP and required forms with the response which is included as Exhibit J.1, HSP. The Contractor's response will be disqualified if the agency forms are not completed in full or are missing from the Contractor's original response.
- D. The Contractor must 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 business days after the effective date of this Contract.
- E. The Contractor must 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 must include the non-discrimination clauses in Section H.13 of this Contract in any subcontracts.

#### **I.4 OTHER CONTRACTS**

During the course of this Contract, the Department may award additional contracts to other contractors for similar services. The Department will provide notification to the Contractor regarding the additional contractor and the scope of work that the additional contractor will be performing. The Contractor will 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.5 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 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.6 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 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 will, 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 90 calendar days after a stop-work order is

delivered to the Contractor, or within any extension of that period to which the parties 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 will 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 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.7 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 WILL 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 WILL 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.8 CYBER SECURITY CONTRACT REQUIREMENTS**

The Contractor must comply with the requirements found in Exhibit J.3, Cyber Security Contract Requirements.



## SECTION J - LIST OF EXHIBITS

EXHIBIT NO.	TITLE
J.1	HUB Subcontracting Plan (HSP)
J.2	Final Acceptance Form
J.3	Cyber Security Contract Requirements
J.4	Application for Texas Identification Number
J.5	Direct Deposit Authorization Form
J.6	Request for Taxpayer Identification Number and Certifications (W-9)
J.7	Exceptions Summary Form
J.8	TDEM Regions and Districts Map
J.9	SOW Guidance and Sample Documents Related to Compliance Monitoring and Review
J.10	Pricing Schedule
J.11	State of Texas Fire Management Assistance Grant Program Annex to 2017 SAP
J.12	Administrative Plan for Hazard Mitigation Grant Program Funding
J.13	State of Texas Administrative Plan for Public Assistance

**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 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 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 response that it [ ] is, or [ ] is not, a HUB certified by the Comptroller’s Statewide Procurement Division (SPD).

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

A. Under the Texas Family Code, Section 231.006, a child support obligor who is more than 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 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 response will include names and social security numbers of each person with at least a 25 percent ownership of the business entity submitting the response.

_____	_____	_____	_____
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 response, certifies that it is not ineligible to receive a 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 response, 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 Tex. Admin. Code § 20.207, the Respondent will 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 response 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 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 response, the Respondent certifies that if a Texas address is shown as the address of the Respondent, the Respondent qualifies as a Texas Resident Bidder.

## **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 response to this RFQ and will come 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 response 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, the Successful Respondent, and, 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 will notify the Department in writing within five 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; and

3. The Respondent must 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 Statement of Qualifications, 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 must notify the Department in writing by reference to this Section no later than ten business days that any of the disclosures, affirmations, guarantees, representations, certifications, statements, and warranties provided in its response 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 response 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 Solicitation.

## **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. 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 offer 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 must be mindful of these restrictions when interacting with public purchasers of the Department or purchasers of other state agencies.

The Respondent must also comply with the Conflict of Interest provisions and disclosure requirements as listed in the Texas Contract Management Guide found on pages 23-25: <https://comptroller.texas.gov/purchasing/docs/contract-management-guide.pdf>.

### **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 response.

### **K.6.13 Certification Concerning Financial Participation**

Under 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 years have passed since that person was the executive head of



the state agency. By submitting a Statement of Qualifications, the Respondent certifies that it does not employ any person who was the Executive Head of a state agency in the past four 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 must complete the following information in order for the response to be evaluated:

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

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

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

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

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

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

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

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.

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/portal/SAM/#1>.

##### ***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 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.

#### **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 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 response 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 response 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 that such 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 12 months prior to the Contractor's response.

#### **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; NON DISCRIMINATION**

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

The Respondent agrees that no person will, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. The Respondent must comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor."

The Respondent has also reviewed Section H.13 of this Contract and represents and warrants that it is in compliance and will be in compliance under this Contract.

#### **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 must, 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 response 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**

Under Tex. Gov't Code § 572.069, Vendor certifies that it has not employed and will not employ a former Department employee or state officer who participated in a procurement or contract negotiation for the Department involving the Vendor before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.

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 response. 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 calendar years immediately preceding the submission of the Respondent's response in response to this Solicitation. In addition, the Respondent represents and warrants that it must notify the Department in writing within five business days of any changes to the representations or warranties in this Subsection (A) and understands that failure to so timely update the Department must 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 response, 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 response. In addition, the Respondent represents and warrants that it must notify the Department in writing within five 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 must 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 Solicitation, unless the Respondent specifically takes an exception and offers an alternative provision in the Respondent's response as provided in Section L.8.2.

Inclusion of such conflicting terms may result in disqualification of the response 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 Solicitation: (list names, titles and telephone numbers of the authorized negotiators).

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**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 must provide its payee identification number in the space provided below. If this number is not known, the Respondent must provide the Federal Taxpayer Identification number.

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

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

**K.9 POINT OF CONTACT**

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

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

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

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

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

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

**K.10 CERTIFICATION**

By signature on page 1 of this document, the Respondent represents and warrants that the individual signing this document and the documents made part of the submitted response 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 response.

By signing on page 1 of this document, the Respondent affirms that the execution of a Contract between the Respondent and the Department will not create a conflict of interest or cause an appearance of a conflict of interest. In its response, the Respondent must 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 Statement of Qualifications and possible selection as Contractor or its performance of the Contract. A description of some conflicts of interest may be found in Section K, Paragraph 6.12.1, but this list should not be considered exhaustive or limiting.

If the circumstances certified by Respondent change or additional information is obtained subsequent to submission of Proposals, by submitting a Statement of Qualifications Respondent agrees that it is under a continuing duty to supplement its response under this provision, and Respondent must submit updated information as soon as reasonably possible upon learning of any change to Respondent's affirmation .

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

### L.1 STATEMENT OF QUALIFICATIONS 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 Statement of Qualifications.
- B. The Respondent must be available during regular business hours of 8:00 am to 5:00 pm, Monday through Friday, to provide clarification responses, attend requested meetings and / or demonstrations throughout the Solicitation evaluation phase.
- C. Statement of Qualifications will be prepared in accordance with these instructions providing all required information in the format specified.
- D. Failure of a response to show compliance with these instructions and submit all documentation may be grounds for disqualification of the response from further consideration unless stated otherwise within this Solicitation.

#### Submission of Statement of Qualifications

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

Department of Public Safety  
Procurement and Contract Services  
5805 North Lamar Boulevard, Building A  
Austin, Texas 78752  
Attention: Ashley Lindholm, CTPM  
Solicitation No. 405-17-R087170

- C. The Respondent must ensure that its response 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 will be placed in plain view on the outside of an interior envelope or package.
- D. The Respondent must submit each volume in one unbound original (suitable for photocopying) with five additional bound copies and a non-rewritable CD/DVD.
- E. Statement of Qualifications will demonstrate that the Respondent's operations conform to applicable State and Federal Standards and the Department Policies and Standards.
- F. The Respondent must submit only material directly pertinent to the requirements of this 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 SOLICITATION**

- A. If this Solicitation is amended all terms and conditions which are not modified remain unchanged.
- B. Respondents must acknowledge receipt of all amendment(s) to this Solicitation 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 response or by letter.
- C. The Respondent must submit the acknowledgement to the Department by the time specified for receipt of responses.
- D. Failure to acknowledge amendment(s) by the Respondent may subject its response to rejection.

**L.3 LATE SUBMISSIONS, MODIFICATIONS AND WITHDRAWALS OF RESPONSES**

- A. Responses will be time stamped at the office designated in the Solicitation on or before the date and time on Page 1, Solicitation, Statement of Qualifications and Award.
- B. Any response received at the designated location after the specified time will not be considered.
- C. Responses cannot be altered, amended or modified by e-mail, fax or otherwise after closing time.
- D. Alterations made before closing time will be initialed by the Respondent or its authorized agent.
- E. No responses can be withdrawn after closing time without approval by Department. Should a Respondent after closing time request its response be withdrawn, the request must be made in writing. No response can be withdrawn after closing time unless approved in writing by Department.

**L.4 SIGNATURES ON STATEMENT OF QUALIFICATIONS SUBMITTED**

- A. Responses 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. Responses signed by an Attorney-in-fact, will include a Power of Attorney evidencing the authority to sign Statement of Qualifications, dated and executed by all partners in the firm.
- C. Responses 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. Responses 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 responses will be signed by all members or by a member of the joint venture if there is attached to the Statement of Qualifications a copy of the Joint Venture Agreement evidencing that the response is signed by the member with authority to bind the Joint Venture.

**L.5 STATEMENT OF QUALIFICATIONS ACCEPTANCE PERIOD**

- A. All Statement of Qualifications will be valid for 180 calendar days after the Solicitation opening date and will constitute an irrevocable response to the Department for the 180, calendar day period.
- B. Such period may be extended beyond the 180 calendar days upon mutual written agreement of both parties.

**L.6 CONTRACT AWARD**

If a Contract is awarded from this solicitation, a written award or acceptance of response mailed or otherwise furnished to the successful Respondent within the time for acceptance specified in the Statement of Qualifications will result in a binding contract without further action by either party.

**L.7 RIGHTS OF DEPARTMENT**

- A. The Department reserves the right to waive, change, add or delete any terms or conditions of this Solicitation.
- B. The Department may waive minor informalities and minor irregularities in responses received.
- C. Waiver of deviations in any Statement of Qualifications will not constitute a modification of this Solicitation 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 Solicitation. Copyrighted responses 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 response which asserts any copyright on any Department-created form which is specifically designated by this RFQ to be a form that will be completed and included in a Statement of Qualifications submitted in response to this RFQ.
- D. The Department reserves the right to reject any one response and/or all responses or portions of responses submitted in response to this RFQ.
- E. The submission of a Statement of Qualifications has the effect of waiving proprietary rights or confidentiality.
- F. All Statement of Qualifications 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 Statement of Qualifications 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 Statement of Qualifications.
- 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 Statement of Qualifications, the Department may select the Respondent's Statement of Qualifications 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 Solicitation at any time for any reason.
- M. The Department reserves the right to award no contract and to solicit additional responses at a later time.
- N. The Department incurs no obligation regarding this Solicitation unless and until a contract is fully executed by the parties. However, all responses received by the Department will remain confidential until the evaluation process is complete.
- O. The Department will not hold a public response closing event.

## **L.8 RESPONSE 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, Response and Award Form (with amendment(s) noted on this page or signed amendment(s) attached to this form);
- B. Section B.1.5, Financial Rating and Audited Financial Statements;
- 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 H.63, a Redacted Solicitation / Contract response if applicable;
- F. Section I.1, 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 Solicitation, the Respondent will not be required to purchase insurance, but must show

the ability to provide such insurance as specified in Section I.1, Insurance Requirements, if the Respondent's response is selected.

- G. Exhibit J.5, Direct Deposit Authorization Form, completed if choosing direct deposit as a possible payment option;
- H. Exhibit J.6, Request for Taxpayer Identification Number and Certifications (W-9);
- I. Exhibit J.4, Application for Texas Identification Number;
- J. Section K (ALL), Disclosures, Affirmations, Guarantees Representations, Certifications, Statements And Warranties Of Respondents; and,
- K. 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.

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

- A. Cover Page: List name and address of the Respondent, date of response, Solicitation 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).
  - 3. Date and state of incorporation.
  - 4. Names and addresses of principal officers, directors, or partners.
  - 5. A résumé of key personnel who will be providing services in any resulting contract, both Respondent and subcontractor employees. These résumés should include the percentage of time each person will dedicate to any resulting contract. The response will include Key Project Personnel as follows:
    - a. Demonstrated experience in providing the services requested in this Solicitation for each key project personnel.
    - b. Résumés for key personnel assigned to any resulting contract will include, but not be limited to: project management experience, supervisory experience, business process experience, application languages, hardware installation

abilities, software upgrade experience, programming skills/abilities, data formats for each qualifying project.

- 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 (must include MM/DD/20YY)
    - d) Specific work to be performed and/or deliverables to be provided under this Contract.
- D. The Respondent must identify a minimum of three references and provide them in the response. The Respondent must provide, at a minimum, the name, email address, phone number, and title for each reference provided.
- E. Organizational, biographical, and Financial Rating information for the Respondent and all third-party / subcontractors proposed to fulfill service requirements.
- F. The Respondent must specifically address, within its response, the following requests for information as detailed throughout this Solicitation. The Department has endeavored to include a complete listing of such submittal requests; however, in the event the Department omitted a requirement, the Respondent is responsible for ensuring that all such information is included within its response.
1. B.1.4 Financial Ratings and Audited Financial Statements
  2. C.3 Minimum Requirements
  3. C.5 Contractor Qualifications (Including and Subcontractor)
  4. I.1 Insurance Requirements
  5. Exhibit J.3, Cyber Security Contract Standards, Sections 3 and 13.
  6. All required submittals under Section L.8.1, Contract Forms and Required Response Information and Section L.8.2, Information Section.
  7. Exhibit J.10, Pricing Schedule in a separate sealed envelope
- G. 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 Solicitation, both technical and administrative. Supplemental justification and / or documentation can be provided as attachments. The Respondent must ensure that all material submitted should be directly pertinent to the requirements of this Solicitation and will be formatted as to the specific requirement as delineated in this Solicitation.

- H. The Respondent must provide documentation of VPAT compliance for all components of the proposed goods or services as stated in 1 Tex. Admin. Code Chapter 213 and 1 Tex. Admin. Code Chapter 206 as per Section H.64, Electronic and Information Resources Accessibility Standards.
- I. The Respondent must identify any exception it takes to the Solicitation for which it requests approval.

**For every instance where the Respondent does not propose to comply or agree to a requirement, the Respondent must identify the specific section and language to which it takes exception, propose specific alternative language, and describe its reasoning for requesting the exception. Respondent must provide this information in the format prescribed by the Department. Respondent waives a requested exception if the exception deviates in any way from these requirements and the Department will not consider it.**

Responses from Respondents that take exceptions may result in disqualification of the Response from further consideration for award as non-responsive to the Solicitation. 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:**

**IF THE RESPONDENT AGREES TO THE TERMS OF THIS SOLICITATION IN ITS ENTIRETY, A SINGLE STATEMENT TO THAT EFFECT WILL SUFFICE. IF THE RESPONDENT TAKES ANY EXCEPTIONS, THE RESPONDENT MUST COMPLETE EXHIBIT J.7, EXCEPTIONS SUMMARY FORM.**

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

- A. The Respondent must 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 RESPONSE TO REJECTION FROM FURTHER CONSIDERATION.**

**L.9 ORAL PRESENTATION AND INTERVIEW**

At the discretion of the Department, after evaluation of the Statements of Qualifications, the Department may invite certain qualified Respondents to provide an oral presentation and to answer questions at the Department's headquarters located in Austin, Texas. The Respondent's representatives attending the demonstration must be technically qualified to respond to all questions related to the proposed services. All costs associated with participation in the demonstration are the Respondent's responsibility. The Department may provide the Respondent(s) with data connectors(s), internet connection, video conferencing capability (WebEx), a meeting room, and power outlets.

## **L.10 DISCUSSION AND CORRESPONDENCE**

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

Ashley Lindholm, CTPM, CTCM, Contract Administrator  
Texas Department of Public Safety  
Procurement and Contract Services  
5805 North Lamar Blvd., Bldg. A  
Austin, Texas 78752  
E-mail: Ashley.lindholm@dps.texas.gov

2. Written responses to the questions will then be provided to all parties requesting copies of this Solicitation through the Department's Procurement and Contract Services Bureau.
3. The Respondent must rely only on the written information provided in this manner. The Respondent is specifically cautioned against relying on any oral information.
4. All Respondents are specifically barred from making contact with any Department personnel involved in this Solicitation for the purpose of discussing its responses.
5. The Respondent may; however, seek clarifications of the Solicitation through the written process described above.
6. The Respondent is reminded that 01/19/2018 at 2:00 P.M. Central Time is the last day to submit written questions for clarification by the Department.
7. The responsiveness of each response will be evaluated upon the written instructions provided by throughout this Solicitation and as described in Section M, Evaluation Criteria.
8. Unauthorized contacts with Department personnel by any Respondent may result in the Respondent's response being rejected in its entirety.

## **L.11 RESPONSES, RELEASE, POSTINGS**

The Department is a governmental body subject to the Texas Public Information Act (PIA), Texas Government Code Chapter 552. The response and other information submitted to the Department by the Respondent are subject to release as public information by the Department. The response 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 response or other submitted information, the Respondent must clearly label that proprietary or confidential information and identify the legal basis for confidentiality. Merely making a blanket claim that the entire response is protected from disclosure because it contains some proprietary information is not acceptable, and will make the entire response 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 response 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 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 response.

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

- A. 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], GRANT MONITORING SOLICITATION 405-17-R087170. CONTAINS CONFIDENTIAL INFORMATION."
- B. Two non-rewritable CDs/DVDs, each containing copies of all of the 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 must mark these CDs/DVDs "For Public Release: Redacted Version of [Respondent's Name], GRANT MONITORING SOLICITATION 405-17-R087170."

### Agency Posting of Contracts

After award, information, documentation, and other material in connection with this Solicitation or this Contract may be subject to public disclosure pursuant to Texas Government Code, Chapter 522 (the "Public Information Act").

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

### L.12 ANTICIPATED SCHEDULE OF EVENTS

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

01/09/2018	Solicitation Posted to ESB
01/16/2018	Pre-Response Conference (5805 N. Lamar Blvd. Austin, TX. Building C, Classroom H).
01/19/2018	Last day to submit written questions for clarification to the Department
01/24/2018	Estimated date for Department to post Question and Answer (Q&A) document to ESB
01/31/2018	Deadline for Department to receive responses
02/06/2018	Interviews conducted
02/23/2018	Anticipated date of Contract Award

The Department reserves the right, in its sole discretion, to change the above date(s). Notices of changes to items directly impacting the original Solicitation 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 ESBD 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 Solicitation will be in writing and will be submitted to the Department's Contract Administrator as specified in Section G.1.2, by the date and time noted in the table above. 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 ESBD on or before the date and time noted in the table above. The Respondent is solely responsible for verifying the Department's timely receipt of its questions by the stated deadlines.

#### **L.13 PRE-PROPOSAL CONFERENCE**

A non-mandatory pre-proposal conference will be held at the Texas Department of Public Safety Headquarters, Bldg. A Lobby at 10:00 a.m. on 01/16/2018. The purpose of the pre-proposal conference is to review the Solicitation and HUB-Subcontracting Plan and to answer any questions regarding completing and submitting the response. There will be no technical questions answered at this conference.

#### **L.14 POST AWARD MEETING**

Following Contract award, the Contractor will be required to attend a post-award meeting with TDEM to discuss points of contact; organizational structure; policies, processes and procedures; roles and responsibilities; and invoicing and reporting requirements. The Department will schedule by the meeting .



## SECTION M - EVALUATION FACTORS FOR AWARD

### M.1 SELECTION AND PAST PERFORMANCE

- A. Selection of a response will be based on Chapter 2254, Subchapter A, Texas Government Code.
- B. A Respondent's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of §§ 2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Bidders may fail this selection criterion for any of the following conditions:
- A score of less than a C or Legacy Unsatisfactory in the Vendor Performance System,
  - Currently under a Corrective Action Plan through the CPA,
  - Having repeated negative Vendor Performance Reports for the same reason,
  - Having a record of repeated non-responsiveness to Vendor Performance issues
  - Having purchase orders that have been cancelled in the previous 12 months for non-performance (late delivery, etc.).

Contractor performance information is located on the CPA website at:  
<http://www.txsmartbuy.com/vpts>.

The Department may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System, 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. Such sources of vendor performance may include any governmental entity, whether an agency or political subdivision of the State of Texas, another state, or the Federal government. Further, the Department may initiate such examinations of vendor performance based upon media reports. 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 BEST VALUE EVALUATION

The Department will review and evaluate all responses on the basis of demonstrated competence and qualifications for the requirements described in this RFQ for the most highly qualified provider of the services.

Responses should only include any information regarding Respondent's proposed fees, pricing, or other compensation considerations in the separate, sealed Pricing Schedule. This information should not be included in any other portion of the Response. This information will not be a factor in the selection of the most qualified Respondent and will only be used after the selection to determine a fair and reasonable price.

The Department may evaluate qualifications based on the anticipated completion of all or any portion of a project. The Department reserves the right to divide a project into multiple

parts, to reject any and all qualifications, to re-solicit for new qualifications, or to reject any and all submissions and temporarily or permanently abandon a project.

By submitting its response to this RFQ, Respondent accepts the evaluation process as well as acknowledges and accepts that determination of the “most qualified” Respondent will require subjective judgments by the Department.