

**DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS  
SOLICITATION**

CONTRACT NO.	SOLICITATION NO.	TYPE OF SOLICITATION	DATE ISSUED
	405-20- R0050120	NEGOTIATED (RFO)	September 8, 2020

**REQUEST FOR OFFERS (RFO) – Luminex Software Support**

<p>Respondent must submit sealed responses no later than 3:00 P.M. local time on September 29, 2020 to the following address <a href="mailto:team3@dps.texas.gov">team3@dps.texas.gov</a></p> <p>Department of Public Safety (DPS) Procurement and Contract Services Attention: 405-20-R0050120</p>	<p>FOR INFORMATION CONTACT:</p> <p>Gracie Perez, CTPM CTCM Contract Administrator PHONE: (512) 424-5628 EMAIL: <a href="mailto:gracie.perez@dps.texas.gov">gracie.perez@dps.texas.gov</a></p>
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**RESPONSE (Respondent must fully complete)**

DISCOUNT FOR PROMPT PAYMENT:➔	10 DAYS %	20 DAYS %	30 DAYS %	___ DAYS %	
ACKNOWLEDGMENT OF ADDENDA: (Respondent acknowledges receipt of Solicitation addenda and related documents numbered and dated:	ADDENDUM NO.	DATE	ADDENDUM NO.	DATE	
NAME AND ADDRESS OF RESPONDENT:➔					
RESPONSE DATE			TELEPHONE NO. (Include area code)		
SIGNATURE OF AUTHORIZED REPRESENTATIVE			NAME AND TITLE OF AUTHORIZED REPRESENTATIVE		

**CERTIFICATION, DISQUALIFICATION, and REMEDIES**

Failure to sign will disqualify response. DPS may pursue and enforce any available remedies against the Vendor for making false statements, including disqualifying the Vendor's response, immediately cancelling any Contract awarded to Vendor, or recommending State of Texas debarment.

**TERM, PRICING, and FUNDING**

The initial contract term is effective on the effective date stated in the notice of award (or purchase order if there is no notice of award) and expires 36 months from that effective date. Additionally, this contract has no optional renewal periods available, which DPS solely reserves the right to exercise one optional renewal period at a time.

If necessary at the end of the last optional renewal period, DPS may also extend the Contract as described in the terms and conditions section entitled "Option to Extend Services."

DPS will not allow changes after Date of Award to terms or pricing during either the initial term of the Contract or any optional renewal period. The continuation of this Contract for any period is subject to the availability of DPS's funding source for the Contract.

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## SECTION A—DEFINITIONS

The following terms and acronyms used in this Contract have the meanings given in this section unless the context indicates otherwise.

**“BAFO”** means best and final offer.

**“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. Central Time.

**“Contract”** means this formal, written, and legally enforceable agreement between DPS and Contractor.

**“Contractor”** means the individual, business entity, or organization awarded this Contract. In the context of submitting a response, “Contractor” also means “Respondent” and “Vendor.”

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

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

**“DPS”** means the Department of Public Safety of the State of Texas, a state agency in the executive branch created under Tex. Gov’t Code Ch. 411.

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

**“Parties”** means Contractor and DPS.

**“Respondent”** means the individual, business entity, or organization that submits a response in response to this solicitation with intent to contract with DPS.

**“Vendor”** means the individual, business entity, or organization at any stage in the procurement or contracting process (prior to response, during response, and after contract award).

## **SECTION B—SERVICES AND PRICES**

### **B.1 PRICING REQUIREMENTS**

#### **B.1.1 Pricing Instructions**

- A. DPS seeks a Contractor will provide the services described in Section C, Statement of Work. Pricing is firm fixed price for the services requested and authorized by DPS as provided under this Contract.
- B. Respondent must offer pricing on this basis. DPS will negotiate pricing prior to award of this Contract if the pricing offered appears that it may not be best value to DPS.
- C. Contractor must deliver and provide the services in compliance with all requirements of this Contract on a turnkey basis, with associated payments to be processed by DPS after DPS's receipt, testing and written acceptance of the commodities.
- D. Respondent must submit proposed pricing that includes all costs, fees, licenses, and expenses for Contractor's services identified under this Contract and the final negotiated, contracted pricing will represent Contractor's sole compensation under this Contract. No minimum compensation is guaranteed under this Contract. No payments may be approved or made prior to DPS's written acceptance as provided in this Contract.
- E. Optional Features, Products, or Services.  
Respondent is encouraged to submit and describe in detail, within its response, optional features, products, or services that would benefit DPS, but are not part of the minimum requirements of this solicitation. In its response, Respondent must describe with specificity any proposed optional features, products, or services. For pricing associated with optional items that exceed the minimum requirements, Respondent must include the line item cost associated with each proposed optional feature, product, or service in the "Optional, Features, Products, or Services" pricing portion of the Mandatory Pricing Schedule.

#### **B.1.2 Financial Rating Report, Financial Resources, and Ability to Perform**

- A. Respondent must provide evidence of its financial resources and its ability to provide the commodities or perform the services for which Respondent is submitting a response. This includes information Respondent believes is pertinent to demonstrate its financial capability, financial solvency, and capacity to fulfill the requirements of this solicitation.
- B. At a minimum, 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 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.
- C. Respondent must provide information and any other financial information reasonably requested by DPS consistent with the services provided by Respondent or otherwise required by the then applicable DPS policies for similar contracts.

- D. If the contract is awarded to Respondent, Contractor must also submit to the Contract Administrator its financial rating information within 120 days after the end of Contractor's fiscal year.
- E. DPS reserves the right to investigate and determine the financial integrity and responsibility of a Respondent and to reject a response on the grounds of Respondent's lack of financial soundness, or if DPS reasonably concludes, after reviewing the information submitted by Respondent as well as all other relevant information obtained by DPS, that significant issues exist that could jeopardize Respondent's full and timely performance. DPS also reserves this same right throughout the life of the Contract, including before executing any optional renewal amendment with Contractor.

## **B.2 INVOICE REQUIREMENTS**

Invoices are Contractor's billing for goods or services rendered. DPS will pay Contractor on the basis of itemized invoices submitted to and approved by DPS. The invoices must show the actual deliverables provided and the attendant charge. Itemized invoices must clearly identify the project phase or title, deliverables delivered, the number of hours that each allocated employee worked if applicable, and the date range of work performance for this associated charge.

A. Contractor's invoice must include the following:

1. this Contract number;
2. remittance address; and
3. any prompt payment discount offered.

B. Contractor must send an email with the invoice copy to [apinvoices@dps.texas.gov](mailto:apinvoices@dps.texas.gov) and to the Contract Monitor.

An original, hard-copy invoice, if required by Contractor, will be submitted to the office designated below:

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

[apinvoices@dps.texas.gov](mailto:apinvoices@dps.texas.gov)

**The State of Texas will not incur any penalty for late payment if the invoice fails to conform to the requirements of this section or if Contractor did not mail the invoice to the appropriate email addresses identified in this section.**

## **B.3 PAYMENTS**

- A. DPS recommends that Contractor receive payments by electronic funds transfer (EFT), also known as direct deposit. If Contractor elects to be set up for direct deposit payment, Contractor must submit a completed Direct Deposit Authorization Form (Exhibit G.4).

- B. Regardless as to whether Direct Deposit is chosen, Contractor must submit a completed Texas Application for Payee Identification Number (Exhibit G.3) and Substitute W-9 Form (Exhibit G.5) to the following address:

**DPS—Accounts Payable**  
**P.O. Box 4087**  
**Austin, Texas 78773**  
[apinvoices@dps.texas.gov](mailto:apinvoices@dps.texas.gov)

**Reference: Contractor Set-up for Solicitation 405-20-R0050120**

Notes: Contact Gracie Perez (512) 424-5628 or [gracie.perez@dps.texas.gov](mailto:gracie.perez@dps.texas.gov)

- C. If Contractor has previously submitted a completed Contractor Direct Deposit Authorization and Substitute W-9 Form to DPS for another separate contract, another form is not required to be submitted.

**B.3.1 Billing and Payment**

- A. One Lump Sum Payment: Notwithstanding anything else to the contrary in this Contract, DPS will not make any payments of any amount to Contractor or any other entity or person, and Contractor will not submit any invoices, until Contractor has received from DPS a written Final Acceptance Document exhibit signed by DPS's Contract Monitor specifically stating that DPS accepts the services, and Contractor is authorized to submit an invoice. This Contract provides for one lump sum payment for the services. This Contract will not involve progress payments. If the services are not accepted, this Contract will involve no payments of any type for any amount.
- B. Transition/Implementation/Go-Live: Notwithstanding anything else to the contrary in this Contract, DPS will not make any payments of any amount to Contractor or any other entity or person, and Contractor will not submit any invoices, until Contractor has received from DPS a written Final Acceptance Document exhibit signed by DPS CM specifically stating that DPS accepts the services and Contractor is authorized to submit an invoice. This Contract provides for one lump sum payments for the services. This Contract will not involve progress payments. If the services are not accepted, this Contract will involve no payments of any type for any amount.
- C. Maintenance and Support: Once DPS has notified Contractor that Standard Maintenance has begun and the corresponding pricing schedules are applicable Invoices are subject to DPS usual auditing and accounting procedures. Contractor compensation may be subject to proration or reimbursement for unforeseen situation at the discretion of DPS.
- D. Future Enhancements (Change Order Requests): Contractor must invoice DPS upon final acceptance of each completed Change Order Plan (COP). Copies of hardware and equipment invoices, related to any COP, will be submitted as documentation of costs. The executed Change Order Acceptance Document exhibit must be submitted with the

itemized invoice. Failure to include such required documentation will result in rejection of Contractor's invoice.

- E. Tex. Gov't Code Chapter 2251 (the Prompt Payment Act) will govern payment and accrual of interest on any overdue payments.
- F. If DPS, for any reason, including lack of supporting documentation, disputes any items in any invoices submitted by Contractor, DPS will place a hold on the disputed items and may pay the remaining amount of the invoice. DPS will timely notify Contractor of the dispute and request clarification or remedial action.
- G. If the dispute is resolved in Contractor's favor, DPS will pay the remaining portion of the original invoice in accordance with the Prompt Payment Act. If the dispute is resolved in DPS favor, Contractor must resubmit an invoice reflecting all corrections.

#### **B.3.2 Payment Adjustment**

- A. DPS may elect to deduct from Contractor payment as specified in this section or any amount specified in or any money determined to be due as specified in this Contract.
- B. If it is determined that the remaining amount of Contractor payment is not adequate to cover the money determined to be due to DPS, then all remaining Contractor payments will be withheld and an invoice issued to Contractor for the remaining amount due.
- C. Contractor must pay the invoiced amount within 30 days of receipt unless Contractor and DPS mutually agree on an alternative payment method.

#### **B.3.3 Late Payment**

Any amount owed to Contractor more than one day beyond the date such amount is due as described in this section will accrue interest each day that such amount is not paid at the rate specified by Tex. Gov't Code § 2251.025, provided; however, that this provision will not excuse failure by DPS to make payment in strict accordance with this Contract.

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

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

#### **B.3.5 Withholding of Payment**

- A. DPS will have the right to withhold Contractor's payment until the failures described below have been corrected.
  - 1. Failure to submit reports or other documentation required in Section D—Contract Compliance Reports and Data required from Contractor;
  - 2. Failure to comply with background check or security requirements;
  - 3. Failure to respond to audit reports; and



4. Failure to correct identified areas of non-compliance to the satisfaction of DPS within ten days upon receipt of written notification.
- B. DPS will not pay interest to Contractor for monies so withheld.
  - C. Contractor's withheld payment will be released upon DPS's satisfaction that compliance has been achieved for 30 consecutive days.
  - D. In the event that money is due to DPS for Contractor's failure to provide adequate maintenance or replacement of the property as required in this Contract, the amount required for DPS 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 DPS will not exceed 120 days from date of this Contract's termination.

#### **B.3.6 Debts and Delinquencies**

DPS 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. Contractor agrees and understands that, to the extent Contractor owes any debt or delinquent taxes to the State of Texas, DPS will apply any payments or other amounts Contractor is otherwise owed under this Contract toward the debt or delinquent taxes until the debt or delinquent taxes are paid in full. Contractor must comply with all applicable laws regarding satisfaction of debts or delinquencies to the State of Texas.

#### **B.3.7 Right to Offset**

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

#### **B.4 MANDATORY PRICING SCHEDULE**

Item No.	Description	QTY	UOM	MSRP Price	Unit Price	Extension
1	Support-P+ Platinum + Annual Software/Hardware Support CGX-1G-07 ; FICON-WC53092040 Node 1: HP-MXQ72805VB, FICON WC53091591 Node 2: HPMXQ72805V1	2	EA	\$	\$	\$

2	Support-P+ Platinum + Annual Software/Hardware Support CGREPMON-01	2	EA	\$	\$	\$
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#### **B.4.1 Initial Contract Term Pricing**

Respondent must submit initial contract term pricing within the table below replicating, as necessary, in this exact format.

### **SECTION C - STATEMENT OF WORK**

#### **C.1 INTRODUCTION**

DPS is seeking Software/Hardware Support for Gateway Channel and Replicator

#### **C.2 SCOPE**

Platinum Plus Service Level provides 24x7 on-site hardware maintenance coverage within four (4) hours of customer's request and 24x7 immediate, priority response to support inquiries by telephone to insure Channel Gateway Products to operate at peak performance with the latest enhancements and fixes. The following is a summary of the Platinum Plus Service (full terms are included in Luminex's Maintenance and Support Agreement).

##### **1. Product Support and Software Maintenance**

- a. Luminex will respond immediately, on a priority basis, to technical questions directed by telephone to Luminex's technical support staff, with a liver transfer to a trained software engineer, twenty-four (24) hours a day, seven (7) days a week in an effort to answer questions regarding use of Channel Gateway Products, diagnose and correct software bugs and problems.
- b. A Platinum Plus Customer has priority over all other service level customers
- c. Unlimited product updates and bug fixes
- d. Delivery of one copy per site of product documentation updates, either in the form of addenda or new documentation
- e. Delivery of a copy of any maintenance releases or software patches and one (1) copy of related documentation on the same schedule that they are generally released to Luminex's other customers

##### **2. On-Site 24x7 Hardware Maintenance**

- a. Maintenance includes all labor, travel expense and parts
- b. If a problem cannot be resolved over the phone, Luminex will dispatch a trained field engineer to the site, usually within four (4) hours, twenty-four hours a day, seven (7) days a week
- c. Unlimited calls

### **C.3 PROJECT SCHEDULE AND PLAN**

A draft project plan detailing how Respondent will provide or implement the requirements of this solicitation must be included within Respondent's response.

The draft project plan must detail how Respondent would address the following phases:

1. A description of the project organization;
2. A breakdown and detailed description of the different deliverables of the project;
3. Expected dependencies that exist within the project plan;
4. A schedule and work plan for the different deliverables of the project;
5. A Gantt chart illustrating a high-level timeline for the project, including task start and end dates and dependencies;
6. Delegation of duties to each party for each of the tasks;
7. Information regarding maintenance and support, along with standard project management components such as a risk management plan and a change management plan;
8. Tasks required for the migration of all DPS data;
9. Any proposed milestones and deliverables when the successful Respondent may submit invoices for payment;
10. Any dependencies, caveats, or risks associated with the schedule;
11. The methodology Respondent will employ to ensure the schedule is met; and
12. Provision or implementation of goods or services by MM/DD/YYYY, and subsequently provide support of these goods or services.

### **C.4 MINIMUM REQUIREMENTS**

- a. Vendor needs to provide Luminex Platinum+ level support.

### **C.5 DELIVERABLES**

- a. Product Support and Software Maintenance
- b. On-Site 24x7 Hardware Maintenance

## **C.8 DPS PERSONNEL**

### **C.8.1 DPS's Contract Administrator**

- A. The Contract Administrator for administration of this Contract is Gracie Perez
- B. The telephone number for the Contract Administrator is 512-424-5628
- C. The email address is [gracie.perez@dps.texas.gov](mailto:gracie.perez@dps.texas.gov)

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

### **C.8.2 DPS's Contract Monitor**

- A. The Contract Monitor for this Contract is Roberto Rios
- B. The telephone number for the Contract Monitor is 512-424-0069
- C. The email address is [Roberto.rios@dps.texas.gov](mailto:Roberto.rios@dps.texas.gov)

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

The Contract Monitor does not have the authority to alter Contractor's obligations or to amend this Contract in any way.

If DPS and Contractor agree to amend this Contract, DPS will issue a written amendment signed by the Director or his Deputy Directors.

## **C.9 LIQUIDATED DAMAGES**

- A. DPS reserves the right to assess liquidated damages at an amount up to \$50.00 per day for each business day Contractor fails to meet the standards set out in [the Liquidated Damages Matrix] or [the Service Level Agreement] or misses the deadline for each deliverable or Change Order Plan, with such deadlines designated in this Contract or the deployment of Change Order Plans under Section(s) C of this Contract. The parties acknowledge that the harm that will be caused to DPS by such a delay is difficult to estimate; however, the amount of liquidated damages listed in this Contract is a reasonable estimate and is enforceable.
- B. Contractor will not be responsible and liquidated damages may not be assessed due to any delay caused by schedule amendments requested by DPS, delays as the result of activity that is the responsibility of DPS's Project Team, as long as Contractor timely files its deficiency report as required by the section entitled "Rolling Estoppel" or delays that DPS deems were outside the control of Contractor. The burden of proof that the delay is attributable to DPS rests with Contractor.
- C. Any liquidated damages assessed under this Contract may, at DPS's option, be deducted from any payments due to Contractor. DPS has the right to offset any liquidated damages payable

to DPS, as specified above, against any payments due to Contractor. If insufficient payments are available to offset such liquidated damages, then Contractor must pay to DPS any remaining liquidated damages within 15 days following receipt of written notice of the amount due.

#### **C.10 HISTORICALLY UNDERUTILIZED BUSINESSES (HUB) PARTICIPATION**

- A. An Historically Underutilized Business (HUB) is 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 established by 34 Tex. Admin. Code § 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. See also 34 Tex. Admin. Code § 20.282.
- B. Contractor must make a good faith effort to comply with all state HUB requirements under Tex. Gov't Code Chapter 2161 and the administrative rules, as applicable. Contractor must also comply with its approved HUB Subcontracting Plan (HSP).
- C. Contractor must submit an HSP as part of its response and must comply with implementation of the HSP. Contractor must seek written approval from DPS prior to making any modifications to its HSP.
- D. Contractor must submit a detailed description of the HSP and required forms with the response. Contractor's response will be disqualified if the agency forms are not completed in full or are missing from Contractor's original response.
- E. Contractor must provide notice to all subcontractors of their selection as a subcontractor for this Contract. The notice will specify, at a minimum, DPS'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.
- F. Contractor must submit to the Contract Administrator on a monthly basis (by the fifth day of the following month) the Prime Vendor Progress Assessment Report.

#### **C.11 INSURANCE REQUIRED UNDER THIS CONTRACT**

In its response, Respondent must provide a statement of its intent to obtain and maintain for the term of the Contract (and any renewal periods or additional extensions) the minimum insurance coverage specified. Respondent should also describe other insurance coverage maintained by Respondent in the ordinary course of business and provide proof of same in its response. Proof of insurance and bond coverage may be provided in the form of current certificates of insurance. DPS and the State of Texas do not accept "self-insurance" coverage.

The awarded Contractor is required, within five business days of Notice of Award, to provide DPS with current certificates of insurance or other proof acceptable to DPS. Failure to submit acceptable proof of insurance within such time period may result in DPS's revocation of the award. Contractor must maintain the required insurance during the initial term and any optional renewal period exercised. Contractor is responsible for ensuring its subcontractors' compliance with all insurance requirements.

<b>Minimum Required Amounts of Insurance Coverage</b>	
<b>Type of Insurance</b>	<b>Each Occurrence/Aggregate</b>
<i>Workers' Compensation</i>	Statutory Limits for the State of Texas or for any state Contractor's employee resides in
<i>Employer's Liability</i> Bodily Injury by Accident Bodily Injury by Disease Bodily Injury by Disease	\$1,000,000 Each Accident \$1,000,000 Each Employee \$1,000,000 Policy Limit
<i>Commercial General Liability</i> (occurrence based)	Bodily Injury and Property Damage \$1,000,000 Each Occurrence Limit \$2,000,000 Aggregate Limit \$2,000,000 Products/Completed Operations Aggregate Limit \$1,000,000 Personal Injury and Advertising Liability \$50,000 Damage to Premises Rented \$5,000 Medical Payments
<i>Automobile Liability</i> All Owned, Hired and Non-Owned Vehicles	\$1,000,000 Combined Single Limit (for each accident)
<i>Umbrella/Excess Liability</i>	\$1,000,000 Per Occurrence
<i>Commercial Crime</i>	\$50,000 Each Occurrence

All required insurance coverage must be issued from a company or companies with a Financial Strength Rating of "A" or better from A.M. Best Company, Inc.

All insurance policies for required coverage must be issued by companies authorized to do business under the laws of the State of Texas and in a form satisfactory to DPS. All required insurance contracts must: (1) be written on a primary and non-contributory basis with any other insurance coverages Respondent currently has in place; and (2) include a Waiver of Subrogation Clause.

All certificates of insurance for required coverage other than workers compensation and professional liability must name the Department of Public Safety of the State of Texas and its board, officers, employees, and agents as additional insureds.

Contractor must:

- A. provide all required written documentation under this section to the Contract Administrator;
- B. ensure all insurance policies and certificates of insurance for required coverage are written to include all products, services, and locations related to Contractor's performance under this Contract;

- C. ensure (and represents by executing a Contract) that all required policies contain endorsements prohibiting cancellation except upon at least 30 days' advanced written notice to DPS. The certificates of insurance must be addressed to the Department of Public Safety of the State of Texas as the certificate holder.
- D. deliver all copies of changes to insurance coverage (including extensions, renewals, cancellations, and revisions) at least ten calendar days prior to any expiration of a required policy. All renewal policies and corresponding certificates of insurance must meet all terms set forth in the Contract.
- E. ensure that all provisions of the Contract concerning liability, duty, and standard of care, together with the indemnification provision, are underwritten by contractual liability coverage sufficient to include Contractor's obligations under the Contract.
- F. obtain and maintain insurance policies that provide coverage for Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under this Contract.

#### **C.12 CRIMINAL HISTORY BACKGROUND CHECK**

- A. Contractor's project personnel must submit to a fingerprint-based Criminal History Background Investigation, if required by DPS at Contractor's expense. To facilitate this Criminal History Background Investigation, each person must complete DPS's Vendor Background Information form (HR-22), which will be provided by DPS.
- B. If required under this Contract, Contractor will not allow personnel who have not submitted to and successfully completed DPS's fingerprint-based Criminal History Background Investigation and who do not otherwise maintain a DPS security clearance to work on this Contract. DPS has the right to prevent Contractor's personnel from gaining access to DPS's building(s) and computer systems if DPS determines that such personnel do not pass the background check or fail to otherwise maintain DPS security clearance.
- C. When required, Contractor's Project Manager will provide the following to DPS's Project Manager within seven days of executing this Contract:
  - 1. the completed Vendor Background Information form (HR-22) for all proposed personnel; and
  - 2. acceptable fingerprints for all proposed personnel.
- D. Throughout the term of this Contract, DPS may require Contractor personnel to submit an annual DPS fingerprint-based Criminal History Background Investigation to DPS.
- E. Throughout the term of this Contract, Contractor will promptly notify DPS of any activity or action by Contractor's personnel that may affect that individual's ability to continue to work under this Contract.

#### **C.13 GENERAL CONFIDENTIALITY REQUIREMENTS**

- A. All information provided by DPS or subrecipients to Contractor, created by Contractor, or overheard, seen, or otherwise obtained by Contractor in performing the obligations under this Contract is confidential and will not be used by Contractor or disclosed to any person or entity,

unless such use or disclosure is required for Contractor to perform work under this Contract. The requirements in this section also apply to subcontractors. The obligations of this section do not apply to information that Contractor can demonstrate:

1. Is publicly available;
  2. Contractor received from a third party without restriction on disclosure and without breach of contract or other wrongful act;
  3. Contractor independently developed without regard to DPS confidential information; or
  4. Is required to be disclosed by law or final order of a court of competent jurisdiction or regulatory authority, provided that Contractor will furnish prompt written notice of such required disclosure and will reasonably cooperate with DPS at DPS' cost and expense, in any effort made by DPS to seek a protection order or other appropriate protection of its confidential information.
- B. Contractor must notify DPS in writing of any unauthorized release of confidential information within two business days of when Contractor knows or should have known of such unauthorized release.
- C. Contractor must notify subrecipients in writing of any unauthorized release of confidential information within two business days of when Contractor knows or should have known of any unauthorized release of confidential information obtained from sub-recipient(s).
- D. Contractor must maintain all confidential information, regardless whether obtained from DPS or from sub-recipient(s) in confidence during the term of this Contract and after the expiration or earlier termination of this Contract.
- E. If Contractor has any questions or doubts as to whether particular material or information is confidential information, Contractor must obtain the prior written approval of DPS prior to using, disclosing, or releasing such information.
- F. Contractor acknowledges that DPS's and sub-recipient(s)' confidential information is unique and valuable, and that DPS and sub-recipient(s) may have no adequate remedy at law if Contractor does not comply with its confidentiality obligations under this Contract. Therefore, DPS will have the right, in addition to any other rights it may have, to seek in any Travis County court of competent jurisdiction temporary, preliminary, and permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any confidentiality obligations of Contractor if Contractor fails to perform any of its confidentiality obligations under this Contract.
- G. Contractor must immediately return to DPS all confidential information when this Contract terminates, at such earlier time as when the confidential information is no longer required for the performance of this Contract or when DPS requests that such confidential information be returned.
- H. Information, documentation and other material in connection with this Contract, including Contractor's response, may be subject to public disclosure under the Tex. Gov't Code Chapter 552.



- I. The FBI and DPS have computer security requirements. Contractor's and subcontractor's employees working on this assignment must sign and submit appropriate agreements and abide by these security requirements, within five days of DPS's request.

#### **SECTION D—CONTRACT COMPLIANCE REPORTS AND DATA**

Contractor must submit the reports and all additional Contractor documentation requirements in this section during the course of this Contract. These deliverables may be revised or additional ones may be required at DPS's sole discretion.

FREQUENCY	DUE DATE	REPORT ITEM	AUTHORITY	DPS PERSONNEL TO RECEIVE REPORT
Upon receipt of services	7 Days After receipt of services are received and accepted	Invoicing – Specific to the Contract	Section B	<a href="mailto:APInvoices@dps.texas.gov">APInvoices@dps.texas.gov</a> with a copy to Contract Monitor

## **SECTION E—INSTRUCTIONS, CONDITIONS, AND NOTICES TO RESPONDENTS**

### **E.1 RESPONSE 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 Bidder's response.
- B. Responses must be prepared in accordance with these instructions providing all required information in the format specified.
- C. 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 responses

- A. Responses will be typed or printed using a sans serif 12-point font (such as Arial or Calibri) on standard letter paper (8-1/2" x 11") (except for graphic information being requested). Bidder's response must be paginated, contain a full table of contents, and have component sections clearly identified by tabs (hard copy) or bookmarks (electronic).
- B. Electronic responses must be received by DPS no later than the deadline established and submitted to via email:

Department of Public Safety  
Procurement and Contract Services  
Attention: Gracie Perez, CTPM, CTCM  
Solicitation 405-20-R0050120  
Email: [Team3@dps.texas.gov](mailto:Team3@dps.texas.gov)

- C. Bidder must demonstrate that bidder's operations conform to applicable DPS, state, and federal policies and standards.
- D. Bidder must submit only material directly pertinent to the requirements of this solicitation. Extraneous narrative, elaborate brochures, uninformative public relations material, including Bidder's policies, procedures, and post orders for which no deviation to DPS Policy is being requested, and other similar documents will not be submitted.

### **E.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. Respondent must submit the acknowledgement to DPS by the time specified for receipt of responses.
- D. Failure to acknowledge amendment(s) by Respondent may subject its response to rejection.

### **E.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 of this solicitation.
- B. Any response received at the designated location after the specified date and time will not be considered.
- C. Responses cannot be altered, amended or modified by email, fax or otherwise after closing date and time.
- D. Alterations made before closing time will be initialed by Respondent or its authorized representative.
- E. No responses can be withdrawn after closing date and time without approval by DPS. Should a Respondent, after closing time, request its response be withdrawn, the request must be made in writing.
- F. DPS is not responsible for submissions delivered to DPS after the date and time stated on the first page of this solicitation. This includes delays associated with courier delivery services. It is the Respondent's responsibility to ensure that it submits, and that DPS receives, its complete response timely. DPS recommends that Respondent submit their complete response well in advance of the due date and time stated on the first page of this solicitation.
- G. DPS takes no responsibility for electronic responses that are captured, blocked, filtered, quarantined, or otherwise prevented from reaching the proper destination server by any DPS anti-virus or other security software.

### **E.4 SIGNATURES ON RESPONSE 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 response, dated and executed by all partners in the firm.
- C. Responses from a corporation will have the correct legal corporate name 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 response a copy of the joint venture agreement evidencing that the response is signed by the member with authority to bind the joint venture.

#### **E.5 RESPONSE ACCEPTANCE PERIOD**

- A. All responses will be valid for 180 days after the solicitation opening date and will constitute an irrevocable response to DPS for the 180-day period.
- B. Such period may be extended beyond the 180 days upon mutual written agreement of both parties.

#### **E.6 CONTRACT AWARD**

- A. DPS may award one Contract resulting from this solicitation to the responsible Respondent, whose response, meeting or exceeding specifications and will be most advantageous to DPS, cost or price and other factors, specified elsewhere in this solicitation, will be considered.
- B. A written award or acceptance of Response mailed or otherwise furnished to successful Respondent(s) within the time for acceptance specified in the response will result in a binding contract without further action by either party.

#### **E.7 DPS'S RIGHTS**

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

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

## **E.8 RESPONSE SUBMISSION INSTRUCTIONS**

### **E.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, Page 1 (with amendment(s) noted on this page or signed amendment(s) attached to this form);
- B. Information and Certifications Form
- C. Financial Rating and Solvency Information;

- D. The name and address of 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 Respondent. For the purpose of responding to this solicitation, Respondent will not be required to purchase insurance, but must show the ability to provide such insurance as specified in the section entitled "Insurance Requirements," if Respondent's response is selected.
- E. A Redacted Solicitation and Contract response if applicable;
- F. Exhibit G.4, Direct Deposit Authorization Form, completed if choosing direct deposit as a possible payment option;
- G. Exhibit G.5, Request for Taxpayer Identification Number and Certifications (W-9);
- H. Exhibit G.3, Application for Texas Identification Number;
- I. Documentation from the appropriate state entity that indicates that 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 Account Status from the Comptroller of Public Accounts).

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

- A. Cover Page: List name and address of Respondent, date of response, solicitation identifier, and signature of authorized official.
- B. Introduction: Clear expression of who 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 Respondent and any subcontractors.
  - 1. Name and address (including telephone number) of Respondent and all subcontractors.
  - 2. Business form of 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: 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 or deliverables to be provided under this Contract.

- D. Respondent must identify and provide in its response a minimum of three references relating to past contracts or projects that are similar in size and scope. Respondent must provide, at a minimum, the name, email address, phone number, and title for each reference provided. Additionally, Respondent must provide project begin and end dates, brief descriptions of deliverables, overall costs, and scope of work performed.
- E. Organizational, biographical, and Financial Rating information for the Respondent and all third-party / subcontractors proposed to fulfill service requirements.
- F. Project Schedule and Plan: A plan detailing how Respondent must have fully implemented the services no later than xx/xx/xx and subsequently provide support of these services.
- G. Respondent must specifically address, within its response, the following requests for information as detailed throughout this solicitation. DPS has endeavored to include a complete listing of such submittal requests; however, in the event DPS omitted a requirement, Respondent is responsible for ensuring that all such information is included within its response.
  1. B.1.2 Financial Ratings
  2. B.4 Mandatory Pricing Schedule
  3. Business Continuity and Disaster Recovery Plan as noted under the Standard Terms and Conditions in the section entitled, "Business Continuity and Disaster Recovery Plan"
  4. C.11 Insurance
  5. C.10 HSP
  6. Exhibit G.6 Cyber Security Contract Requirements, Sections 3 and 13
  7. All required submittals under Section E.8.1, Contract Forms and Required response information and this section E.8.2, Information Section.
- H. 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 Respondent's compliance with all requirements of this solicitation, both technical and administrative. Supplemental justification or documentation can be

provided as attachments. 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.

- I. **Electronic and Information Resources (EIR) Accessibility.** Respondent must provide documentation of the voluntary product accessibility template (VPAT) (<https://www.section508.gov/content/sell/vpat>) (including accessibility conformance reports or vendor accessibility development services questionnaire as applicable) and Section 508 and EIR compliance for all components of the proposed goods or services. See Tex. Gov't Code Chapter 2054, Subchapter M; 1 Tex. Admin. Code Chapter 213; and 1 Tex. Admin. Code Chapter 206; and [WCAG 2.0 AA \(current and as subsequently amended\)](#). VPAT is 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.
- J. **Business Continuity and Disaster Recovery Plan.** Respondent must submit, with its response, descriptions of its business continuity and disaster recovery plan and processes. If DPS awards a Contract under this solicitation, Contractor must submit, within ten days from Contract award, its plans regarding how Respondent will protect DPS's vital state records throughout the life of the Contract and for any record retention period required beyond the life of the Contract. The plans must include specific actions Contractor will take to meet DPS's essential function recovery times and the related artifacts for the methodologies, tests, and exercises used to validate its business continuity and disaster recovery plan. DPS may reasonably require Contractor to amend its business continuity and disaster recovery plan (based on DPS's dependence or necessity on the particular good or service).
- K. **Assumptions.** No assumptions should be included in a response. All issues or questions that might be advanced or addressed by way of assumption should be submitted to DPS. *The inclusion of assumptions in a proposal may result in a Respondent not being awarded a contract.*
- L. **Exceptions.** No exceptions should be included in a response. Respondent is encouraged, in lieu of including exceptions in its response, to address all issues that might be advanced by way of exception by submitting questions to DPS during the question and answer period. Respondent must identify any exception it takes to the solicitation for which it requests approval.

**For every instance where Respondent does not propose to comply or agree to a requirement or term in this solicitation, Respondent must clearly 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 DPS. Respondent waives a requested exception if the exception deviates in any way from these requirements or the specific exception is not submitted with Respondent's response. DPS will not consider any exception that does not meet these requirements and the exception will be rejected without consideration.**



A Respondent that takes any exceptions may result in its response being disqualified and deemed non-responsive to the solicitation. In this event, DPS will remove Respondent's response from further consideration. Additionally, DPS is prohibited by law from accepting certain exceptions, such as indemnifying vendors. This is another reason why DPS strongly discourages Respondents from submitting exceptions.

**If Respondent agrees to the terms of this solicitation in its entirety, Respondent should explicitly state that it takes no exceptions. If Respondent takes any exceptions, Respondent must complete the Exceptions Summary Form exhibit and follow all requirements noted in this section.**

### **E.8.3 Volume Three – HUB Subcontracting Plan (HSP)**

Respondent must provide a completed HSP as required.

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

### **E.10 DISCUSSION AND CORRESPONDENCE**

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

Gracie Perez, CTPM, CTCM, Contract Administrator  
Email: Team3@dps.texas.gov

- B. Written responses to the questions will then be provided to all parties requesting copies of this solicitation through DPS's Procurement and Contract Services.
- C. Bidder should rely only on the written information provided in this manner. Bidder is specifically cautioned against relying on any oral information.
- D. All Bidders are specifically barred from making contact with any DPS personnel involved in this solicitation for the purpose of discussing its responses.
- E. Bidder may; however, seek clarifications of the solicitation through the written process described above.
- F. Bidder is reminded that 09/14/2020 at 5:00 P.M. Central Time is the last day to submit written questions for clarification by DPS.
- G. Unauthorized contacts with DPS personnel by any Bidder may result in Bidder's response being rejected in its entirety.

### **E.11 SUBMISSIONS SUBJECT TO THE TEXAS PUBLIC INFORMATION ACT**

DPS is a governmental body subject to the Texas Public Information Act (PIA), Tex. Gov't Code DPS is a governmental body subject to the Texas Public Information Act (PIA), Tex. Gov't Code Chapter 552. The response and other information submitted to DPS by Bidder are subject to release as public information by DPS. 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 Bidder to include proprietary or otherwise confidential information in its response or other submitted information, Bidder 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 Bidder to be proprietary or confidential must be clearly labeled as described above. Any information which is not clearly identified by Bidder as proprietary or confidential will be deemed subject to disclosure under the PIA. Bidder will irrevocably be deemed to have waived, and Bidder agrees to fully indemnify the State of Texas and DPS against any claim of infringement by DPS regarding the intellectual property rights of Bidder or any third party for any materials appearing in the response.

If Bidder's response contains any information which Bidder claims is confidential and not subject to release under the PIA, Bidder must prepare and deliver to DPS two copies of its response containing the following information.

- A. A complete copy of all of Bidder's submissions under this solicitation. Bidder must mark this copy's documents with "Complete Response Documents, [Bidder's Name], DPS SOLICITATION 405-20-R0050120. CONTAINS CONFIDENTIAL INFORMATION."
- B. A complete copy of all of Bidder's submissions with all information claimed as confidential excised, blacked out, or otherwise redacted. This copy must also contain an Appendix, which contains clear references to all redacted information including a general description of the redacted information. Respondent must mark this copy's documents with "For Public Release: Redacted Version of [Bidder's Name], DPS SOLICITATION NUMBER 405-20-R0050120."

#### **E.12 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 under the Public Information Act.

Without prior written notice to Respondent, the redacted response may be posted on DPS's website as part of this Contract per Tex. Gov't Code § 2261.253(a).

#### **E.13 ANTICIPATED SCHEDULE OF EVENTS**

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

DATE	TIME	DESCRIPTION OF EVENTS
September 8, 2020		Solicitation Posted to ESDB
September 14, 2020	5:00 PM CST.	Last day to submit written questions for clarification to DPS
September 17, 2020	5:00 PM CST.	Estimated date for DPS to post Question and Answer (Q&A) document to ESDB
September 29, 2020	3:00 PM CST.	Deadline for DPS to receive responses
Date of Award		Anticipated date of Contract Award

DPS 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://www.txsmartbuy.com/sp>. Respondent should check the ESDB frequently for updates. 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 ESDB 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 must be in writing and must be submitted to DPS's Contract Administrator by the date and time noted in the table listed in this solicitation. Telephone inquiries will not be accepted. Questions may be submitted by either facsimile or email. DPS intends to post answers to these questions on the ESDB on or before the date and time noted in the table listed in this solicitation. Respondent is solely responsible for verifying DPS's timely receipt of its questions by the stated deadlines.

## **SECTION G—LIST OF EXHIBITS**

G.1 Standard Terms and Conditions

G.2 Information and Certifications

G.3 Application for Texas Identification Number

G.4 Direct Deposit Authorization Form

G.5 Request for Taxpayer Identification Number and Certifications (W-9)

G.6 Cyber Security Contract Requirements

G.7 Cloud Security Alliance, Cloud Control Matrix

G.8 HUB Subcontracting Plan (HSP)

# STANDARD TERMS AND CONDITIONS

Department of Public Safety of the State of Texas

OGC Approved 9/10/2019

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### **Article 1. Introduction**

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

#### **1.1 GLOBAL DRAFTING CONVENTIONS**

1.1.1 "Includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration. Use of the terms does not create a presumption that components not expressed are excluded.

1.1.2 Any references to laws, rules, regulations, and guidance in this Contract are references as they exist at the time of execution and as they may be amended, modified, or supplemented during the life of the Contract.

#### **1.2 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.

#### **1.3 AUTHORIZED REPRESENTATIVES**

1.3.1 Contractor must designate its authorized representative in writing to DPS no later than the effective date of this Contract. Contractor's authorized representative may designate other people (such as a contract manager or project manager) to assist in the performance of certain obligations required by this Contract.

1.3.2 DPS's authorized representative is the only person authorized to make or approve changes in any Contract requirements. If Contractor makes any change at the direction of any person other than the Director or his legally designated representatives (his Deputy Directors), DPS will consider the change 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.

#### **1.4 SEVERABILITY**

The parties acknowledge that if a dispute between the parties arises out of this Contract or the subject matter of this Contract, including a dispute over possibly ambiguous language, they would want the court to interpret this Contract as follows:

1.4.1 With respect to any provision that it holds to be unenforceable, by modifying that provision to the minimum extent necessary to make it enforceable or, if that modification is not permitted by law, by disregarding that provision;

1.4.2 If an unenforceable provision is modified or disregarded in accordance with this section, by holding that the rest of the Contract will remain in effect as written;

1.4.3 By holding that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable; and

1.4.4 If modifying or disregarding the unenforceable provision would result in failure of an

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essential purpose of this Contract, by holding the entire Contract unenforceable.

### 1.5 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.

## Article 2, Remedies and Disputes

### 2.1 TERMINATION

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

#### 2.1.1 Termination with Notification and Opportunity to Cure

DPS will notify Contractor in writing of any failure, cause, or default if Contractor fails to carry out or comply with any requirements of this Contract (including any statement, affirmation, disclosure, certification, representation, or warranty in this Contract that is false, misleading, or erroneous in any material respect). DPS's notification will demand that the failure, cause, or default be remedied within ten days. DPS will have the right to cancel this Contract upon ten days from written notice if Contractor fails to remedy such failure, cause, or default within the ten days' period.

#### 2.1.2 Termination for Unavailability of Funds

1. The parties understand and agree that the obligations of DPS and its liabilities under this Contract are subject to the availability of funds given to DPS: (1) through appropriations from the Texas Legislature, (2) through federal funds, or (3) both.
2. If DPS is unable to perform its obligations under this Contract as a result of the suspension, termination, or withdrawal of funding to DPS, the failure to fund DPS, or lack of sufficient funding of DPS for any activities or functions contained within the scope of this Contract, DPS may immediately terminate this Contract without prior notice and without penalty to or any liability whatsoever on the part of DPS, the State of Texas, and the United States, if these funds become unavailable to DPS. Contractor will have no right of action against DPS.
3. DPS will make its best efforts to provide reasonable written advance notice to Contractor. In the event of a termination under this section, Contractor must, 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. DPS will be liable for payments limited only to the portion of work DPS authorized in writing and which Contractor has completed, delivered to DPS, and which has been accepted by DPS 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



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termination.

### **2.1.3 Termination for Convenience**

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

### **2.1.4 Termination by Mutual Agreement**

This Contract may be terminated upon mutual written agreement.

### **2.1.5 Termination for Failure to Perform**

This Contract may be terminated by DPS if Contractor fails to perform as agreed or is otherwise in default, without the necessity of complying with the requirements in the section entitled "Termination with Notification and Opportunity to Cure." DPS will provide Contractor with written notice to terminate this Contract, which termination will become effective immediately upon Contractor's receipt of the notice.

If Contractor fails to provide the deliverables or other performance in accordance with the provisions of this Contract, or fails to comply with any of the terms or conditions of this Contract, DPS may, upon written notice of default to 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.

DPS 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 Contract. The exercise of any of the foregoing remedies will not constitute a termination of this Contract unless DPS notifies Contractor in writing prior to the exercise of such remedy. Contractor must remain liable for all covenants and indemnities under this Contract. Contractor must be liable for all costs and expenses, including court costs, incurred by DPS with respect to the enforcement of any of the remedies listed in this Contract.

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

DPS will have the absolute right to terminate this Contract without recourse as follows: (a) if 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; (b) if 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 Contractor becomes listed on the Texas Debarred Vendor List. DPS will provide Contractor with written notice to terminate this Contract, which termination will become effective immediately upon Contractor's receipt of the notice.

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### **2.1.7 Termination by Change of Law**

DPS may immediately terminate this Contract, in whole or in part, without penalty to, or any liability whatsoever on the part of DPS, the State of Texas, and the United States if DPS 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. DPS is not required to provide 30 days' written notice as termination under this section is immediate.

### **2.1.8 General Termination Provisions; All Contracts are Non-Exclusive**

The termination of this Contract, under any circumstances, will not affect or relieve Contractor from any obligation or liability that may have been incurred under this Contract, and such cancellation by DPS will not limit any other right or remedy available to DPS at law or in equity.

This Contract does not grant Contractor a vested property right and Contractor has no guarantee of exclusivity. DPS 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. Additionally, Contractor is not guaranteed any minimum amount of compensation.

DPS will not be considered in default or breach of this Contract, nor will it give rise to any liability whatsoever on the part of DPS whether such claims of Contractor are for compensation of anticipated profits, unabsorbed overhead, interest on borrowing, or for any other reason in the event of termination.

Contractor must, unless mutually agreed upon in writing, cease all work immediately upon the effective date of termination. DPS will be liable for payments limited only to the portion of the work DPS authorized in writing and which Contractor has completed, delivered to DPS, and which have been accepted by DPS. All such work will have been completed, per this Contract's requirements, prior to the effective date of termination.

Contractor must deliver to DPS all completed, or partially completed work and any and all documentation or other products and results of these services no later than the first day after the termination of this Contract, or at DPS'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. 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 DPS.

DPS reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to DPS under this Contract or under applicable law, including, attorneys' fees and court costs, if termination is at Contractor's request or if termination is for cause. This right is in addition to any other remedies available to DPS under this Contract or applicable law. DPS reserves the right to pursue any and all applicable rights and remedies if this Contract is

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terminated for any reason and DPS expressly waives no such rights or remedies.

DPS 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 Contractor defaults on this Contract. DPS will not consider the defaulting Contractor in the re-solicitation and DPS may not consider the defaulting Contractor in future solicitations for the same type of work, unless the specification or scope of work significantly changes. DPS will determine the period of suspension based on the seriousness of the default.

DPS and the State of Texas will not be liable to 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, Contractor may be entitled to the remedies provided in Tex. Gov't Code Chapter 2260.

The transition duties of Contractor survive the termination of this Contract, regardless of the reason for the termination.

## **2.2 CURE; DISPUTE RESOLUTION**

### **2.2.1 FURTHER OPPORTUNITY TO CURE**

- A. If an Event of Default of the type specified in section entitled "Termination with Notification and Opportunity to Cure" occurs and if Contractor reasonably believes that such Event of Default cannot be cured within the ten business days allowed in the section entitled "Inspection of Services" but that such Event of Default can be cured through a diligent, on-going, and conscientious effort on the part of Contractor, within a reasonable period not to exceed three months, then Contractor may, within the ten-day cure period, submit a detailed plan for curing the Event of Default to DPS.
- B. DPS will promptly review Contractor's plan for curing an Event of Default and may, at its discretion, allow Contractor to pursue such plan of cure.
- C. DPS will communicate its decision in writing to Contractor.
- D. DPS may not exercise its remedies hereunder with respect to such Event of Default while Contractor diligently, conscientiously, and timely undertakes to cure the Event of Default in accordance with the approved plan.
- E. The ten-day time period will be tolled during the time the request was pending, if DPS does not allow Contractor an extension of the cure period.

### **2.2.2 DISPUTE RESOLUTION**

- A. Any dispute arising under this Contract, which is not disposed of by mutual agreement between DPS and Contractor will be resolved as follows:
  - 1. The dispute resolution process provided for in Tex. Gov't Code Chapter 2260 must be used, as further described in this section, by Contractor to attempt to resolve all

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disputes or contract claims arising under this Contract.

2. Contractor's claim for breach of this Contract that the parties cannot resolve in the ordinary course of business must be submitted to the negotiation process provided in Tex. Gov't Code Chapter 2260, Subchapter B.
  3. Contractor must 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 Tex. Gov't Code Chapter 2260, Subchapter B, are being invoked, and will also be given to all other representatives of DPS and Contractor otherwise entitled to notice under this Contract.
  5. Compliance by Contractor with the Tex. Gov't 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 Tex. Gov't Code Chapter 2260, Subchapter C, is Contractor's sole and exclusive process for seeking a remedy for an alleged breach of this Contract by DPS if the parties are unable to resolve a dispute under this subparagraph (A).
  7. Compliance with the contested case process provided in the Tex. Gov't Code Chapter 2260, Subchapter C, is a condition precedent to sue from the Legislature under Tex. Civ. Prac. & Rem. Code Chapter 107.
  8. Neither the execution of this Contract by DPS nor any other conduct of any representative of DPS related to this Contract will be considered a waiver of sovereign immunity to suit.
- B. In addition to complying with Tex. Gov't Code Chapter 2260, Contractor must comply with DPS administrative rules published in 37 Tex. Admin. Code Chapter 34, Subchapter C, Mediation of Certain Contract Disputes.
- C. Contractor must continue providing the deliverables as directed, in a diligent manner and without delay, and must conform to DPS directives, decisions, or orders, be governed by all applicable provisions of this Contract, unless directed otherwise in writing by DPS at all times during the course of the dispute resolution process. Contractor may suspend performance during the pendency of such claim or dispute if Contractor has complied with all provisions of Tex. Gov't Code § 2251.051 and such suspension of performance is expressly applicable and authorized under that law.

### 2.3 ROLLING ESTOPPEL

- A. DPS will be conclusively deemed to have fulfilled its obligations under this Contract,

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unless DPS receives a deficiency report from Contractor within five business days of the occurrence of the alleged deficiencies and Contractor identifies specific deficiencies in DPS's fulfillment of its obligations in that report. Deficiencies will be described in terms of how they have impacted the specific performance requirements of Contractor. 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 Contractor knew of that problem and failed to include it in the applicable report. The deficiency report will be sent to DPS's Contract Monitor.

- B. In the event Contractor identifies a situation in which DPS is impairing Contractor's ability to perform for any reason, Contractor's deficiency report will contain Contractor's suggested solutions to the situation(s). These suggestions should be in sufficient detail so that the DPS 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.

### 2.4 SURVIVAL OF OBLIGATIONS

Termination of this Contract for any reason will not release 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.

### 2.5 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. DPS does not waive any privileges, rights, defenses, or immunities available to DPS by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

### 2.6 FORCE MAJEURE

Neither Contractor nor DPS 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,

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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 must 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.

### **2.7 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, Contractor must give written notice to DPS. DPS has the right, in its sole discretion, to extend the delivery date if DPS determines the reasons for the delay are acceptable to DPS. Contractor must keep DPS advised at all times of the status of the delay.

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

Contractor must pay all costs to DPS due to a re-solicitation or contracting under this section.

### **2.8 NOTICES**

Any notice required or permitted under this Contract will be directed to Contractor's Project Manager and DPS's Contract Administrator 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 email.

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 or individual and the date upon which it will become effective.

### **2.9 NO LIABILITY FOR INCREASED COSTS OR DAMAGES**

DPS will not be liable to Contractor for any increased costs or expenses that may be incurred by Contractor, or for any other damages that may be suffered by Contractor as a result of any act or omission of any other contractor to the State of Texas or DPS.

## **Article 3, Amendments and Contractor Changes**

### **3.1 AMENDMENTS**

DPS and Contractor may amend this contract through a written amendment signed by an authorized signatory on behalf of the respective party.

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### **3.2 NO AMOUNTS PAID FOR UNAUTHORIZED PERFORMANCE**

Contractor will not receive compensation for performance not authorized under the Contract, including any performance prior to the effective date of a written Contract amendment signed by both parties. Any such performance is at the sole risk of Contractor.

### **3.3 NO CONFLICT WITH LAWS OF THE STATE OF TEXAS**

Any subsequent addition to the solicitation or amended language to this Contract that conflicts with the laws of the State of Texas is void.

### **3.4 OPTION TO EXTEND THE TERM OF THE CONTRACT**

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

### **3.5 OPTION TO EXTEND SERVICES**

- A. DPS may require continued performance of any services within the scope and at the rates specified in this Contract.
- B. DPS reserves the right to extend this Contract by written Contract amendment for a 90-day period at the end of this Contract or extension period for the purpose of re-advertising the commodity or service, awarding a new Contract, or transitioning into a new Contract.
- C. DPS may exercise this optional provision more than once, but the total extension of performance may not exceed six months.

### **3.6 CONTRACTOR CHANGES (INCLUDES SUCCESSORS AND ASSIGNEES)**

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

Contractor must submit timely written notification to DPS of any changes in Contractor status, including changes in Contractor's name, organizational structure, ownership, affiliated entities, principals, mergers, acquisitions, address, telephone number, facsimile number, or email address with an effective date of such change. Contractor must submit to DPS a copy of any "DBA" registration and any legal corporate name change filed with the Secretary of State.

Contractor must provide written notification to DPS of any contractor changes prior to the change; however, assignment of this Contract and performance under this Contract are limited as provided under this Contract.

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Contractor must provide detailed information requested by DPS, including without limitation the tax identification number of the proposed new contractor. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of Contractor or successor entity, as applicable, to maintain its status as a party to this Contract.

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

DPS may require a novation agreement dependent upon the change, but especially in the event of a merger or acquisition. DPS may have to amend the Contract dependent upon the change.

### Article 4, Indemnification

#### **4.1 INDEMNIFICATION (GENERAL)**

CONTRACTOR MUST DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND DPS, AND THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THIS CONTRACT. THE DEFENSE MUST BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. CONTRACTOR AND DPS AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

#### **4.2 INDEMNIFICATION (INTELLECTUAL PROPERTY)**

CONTRACTOR MUST DEFEND, INDEMNIFY, AND HOLD HARMLESS DPS AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS, OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS OR OTHER INTANGIBLE PROPERTY, PUBLICITY, OR PRIVACY RIGHTS OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF CONTRACTOR UNDER THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE, OR OTHER SERVICE PROVIDED UNDER THIS CONTRACT; OR DPS'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO DPS BY CONTRACTOR OR OTHERWISE TO WHICH DPS HAS ACCESS AS A RESULT OF CONTRACTOR'S PERFORMANCE UNDER THE CONTRACT. CONTRACTOR AND DPS AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR WILL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE WILL BE COORDINATED BY CONTRACTOR WITH OAG WHEN TEXAS STATE AGENCIES ARE NAMED



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DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, CONTRACTOR WILL REIMBURSE DPS AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES, OR OTHER AMOUNTS, INCLUDING ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF DPS DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF DPS IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, DPS WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR WILL PAY ALL REASONABLE COSTS OF DPS'S COUNSEL.

### Article 5, Contract Performance

#### **5.1 MOST FAVORED CUSTOMER**

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

#### **5.2 NO SUBSTITUTIONS AND DELIVERY TIMES**

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

#### **5.3 TITLE AND RISK OF LOSS**

Title and risk of loss for deliverables will not pass to DPS until DPS actually receives, takes possession, and accepts the deliverables at the point or points of delivery.

#### **5.4 RECALL NOTICE**

Contractor must immediately upon discovery of same, advise DPS 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. Contractor must submit all such formal notices to the DPS Contract Monitor.

#### **5.5 TESTING; ACCEPTANCE; RETURN; REVOCATION**

All samples will be subject to inspection and testing by DPS or the State of Texas. DPS reserves the right to test items/samples upon request and all costs of such testing will be paid by Contractor. After award and prior to payment, DPS may conduct acceptance testing on the requested items delivered under this Contract. If the delivered and installed items fail to meet

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the acceptance criteria or any other requirements, DPS may refuse to accept such items. Upon DPS's acceptance of deliverable(s) that meet or exceed all requirements, DPS will notify Contractor in writing that Contractor may submit an invoice to DPS's Accounts Payable Division for such deliverables. DPS reserves the right to revoke prior acceptance for, among other things, latent defects.

If relevant to the type of services provided under this Contract, Contractor must have a separate Production, Quality Assurance (QA), and User Acceptance (UAT) testing environment. Updates must be tested and approved by DPS prior to deployment to production. If incorporated, reference the exhibit entitled DPS Testing Entry/Exit Criteria.

### 5.6 INSPECTION OF SERVICES

- A. Acceptance criteria for all deliverables under this Contract may be found in the solicitation.
- B. DPS 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. DPS will perform inspections in a manner that will not unduly interfere with Contractor's performance of this Contract. Contractor must furnish, and must 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, DPS will require 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. DPS 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 Contractor, including financial records, maintenance records, employee records including time, and attendance records generated by Contractor and its subcontractors in connection with performance of this Contract.
- E. If subject to the outcome of an audit, it is determined that Contractor is in non-compliance with any provisions of this Contract or that money is owed to DPS by Contractor, then DPS will exercise its rights of recovery of money owed as authorized by this Contract.
- F. If any services are non-compliant with this Contract's requirements, Contractor will be notified describing specific areas of non-compliance. Contractor will have a ten-day period to file a written response detailing corrective action taken to address all such items of non-compliance. The response will include supporting documentation. Unless otherwise specified, or previously agreed to by DPS, the submission of a corrective action plan will not be accepted as corrective action. For all items of non-compliance

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satisfactorily resolved by agreement between Contractor and DPS, no further action regarding such items will be taken. If an item of non-compliance cannot be resolved between Contractor and DPS, and such item remains uncorrected for a period of ten days or longer after written notification to Contractor, then such item will be declared to be an "event of default."

### 5.7 INSPECTION BY STATE EMPLOYEES

- A. 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 under the terms of this Contract, in a manner acceptable to DPS for the deliverables provided under this Contract. Complete records of all inspection work performed by Contractor must be maintained and made available to DPS during this Contract's performance and for a period of seven years after the termination of this Contract.
- B. Contractor must provide entry at all times to DPS, the Public Safety Commission, or any authorized employee or 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 of Texas, as well as any other persons designated by DPS, including the Office of the Inspector General, will be admitted to monitor the delivery of deliverables.

### 5.8 APPROVAL OF EMPLOYEES

- A. Contractor must retain no upper level management personnel for administration of the contracted services without prior approval of each selection by DPS's authorized representative or his designee. DPS will not unreasonably withhold approval.
- B. Contractor must provide the name of the employee, all pending investigations and disciplinary actions and previous disciplinary actions upon request by DPS.

### 5.9 PERSONNEL

#### 5.9.1 Qualifications of Personnel

- A. Contractor warrants that all persons assigned to this Contract are employees or subcontractors of Contractor and meet all qualifications as defined within this Contract to perform the work required.
- B. Replacement of personnel, if approved by DPS, must be with personnel of equal or greater ability and qualifications. DPS will be the arbiter of whether the replacement personnel have equal or greater ability and qualifications than the personnel being replaced.
- C. Contractor must assign all personnel identified in this Contract to complete all of its planned and assigned responsibilities in connection with performance of this Contract. DPS will have the right to approve the assignment and replacement by Contractor of all

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personnel assigned to provide deliverables or to provide on-site representation of Contractor.

- D. Contractor must notify DPS before assigning a replacement individual for any of the personnel commitments identified in this Contract. Contractor must notify DPS of the proposed assignment, must introduce the individual to the appropriate representatives of DPS, must provide a transfer of knowledge validation, and must provide to DPS a résumé and any other information about the individual reasonably requested by DPS. DPS reserves the right to interview the individual before granting approval. Contractor must obtain prior written approval for any replacement personnel before beginning any work assignments.

### 5.9.2 Replacement of Personnel at DPS's Request

- A. DPS reserves the right to require Contractor to replace Contractor's personnel whom DPS judges to be incompetent, careless, unsuitable or otherwise objectionable, or whose continued use is deemed contrary to the best interests of DPS or the State of Texas. Before a written request is issued, representatives of DPS and Contractor will discuss the circumstances of the proposed personnel replacement. Upon receipt of a written request from DPS's Contract Administrator, Contractor will be required to proceed with the replacement. The replacement request will include the desired replacement date and the reason for the request. Contractor must use its best efforts to effect the replacement in a manner that does not degrade performance of deliverable quality. Contractor must also provide DPS with evidence of a sufficient transfer of knowledge to the proposed replacement.
- B. This provision will not give DPS the right to require Contractor to terminate any Contractor employee's employment. Rather, this provision gives DPS the right to require Contractor to discontinue using particular personnel in the performance of deliverables for DPS.

### 5.9.3 Unauthorized Removal of Personnel

It is critical to the overall success of the project that Contractor not remove or reassign, without DPS'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 Contractor's obligations under this Contract. Without prior written approval from DPS, personnel must only be changed in the event of death, personal injury, debilitating illness, or termination of employment with Contractor. DPS will consider the unauthorized removal of personnel by Contractor as a material breach of this Contract and grounds for termination.

## 5.10 WARRANTIES

### 5.10.1 Third-Party Warranties

If, under this Contract, Contractor procures any materials or products for DPS, Contractor must assign or otherwise transfer to DPS, or afford DPS the benefits of, any manufacturer's warranty

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for such materials or products. Contractor must create and deliver the deliverables in a manner that does not infringe the intellectual property or proprietary rights of any third party. In the course of performing work under this Contract, Contractor/subcontractor(s) will not use or copy any intellectual property owned by a third party without paying any required license fees or royalties.

### 5.10.2 Contractor Warranties

Contractor and any subcontractor represent and warrant that it has the requisite qualifications, experience, personnel, and other resources to provide goods or services in the manner required by the Contract.

### 5.11 SUSPENSION OF WORK

- A. DPS may order 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 DPS.
- 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 provision will not be allowed:
  - 1. For any costs incurred more than 20 days before 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.

### 5.12 STOP-WORK ORDER

- A. The Contract Administrator may at the request of DPS, at any time, by written order to Contractor, require Contractor to stop all, or any part, of the work called for by this Contract for a period of up to 90 days after the order is delivered to 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 provision. Upon receipt of the order, Contractor must, at DPS's expense, immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost allocable to the work covered by

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the order during the period of work stoppage. Within a period of up to 90 days after a stop-work order is delivered to Contractor, or within any extension of that period to which the parties must 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 provision is canceled or the period of the order or any extension thereof expires, Contractor must resume work. DPS 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 Contractor's cost properly allocable to, the performance of any part of this Contract; and
  2. Contractor asserts its right to the adjustment within 30 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 Contractor that provides for adjustment and is affected by any stop-work order under this provision. DPS will not be liable to Contractor for damages or loss of profits because of a stop-work order issued under this provision.

### 5.13 MONITORING CRITERIA

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

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### 5.14 SUBCONTRACTS

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

### 5.15 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. Work does not mean that which was developed, produced, or generated prior to Contract award, but does include prior Work developed, produced, or generated for DPS through any other DPS contract with Vendor (if, for example, Vendor is an incumbent). All Work performed under this Contract is made the exclusive property of DPS. All rights, title, and interest in and to said property will vest in DPS upon creation and will be deemed to be a Work for Hire and made in the course of the services rendered under this Contract. To the extent that title to any such Work may not, by operation of law, vest in DPS, or such Work may not be considered a Work Made for Hire, all rights, title and interest are irrevocably assigned to DPS. DPS 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. Contractor

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must give DPS or the State of Texas, as well as any person designated by DPS or the State of Texas, all assistance required to perfect the rights defined in this Contract without any charge or expense beyond those amounts payable to Contractor for services rendered under this Contract.

### 5.16 DPS OWNERSHIP

#### 5.16.1 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 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 DPS by Contractor upon completion, termination, or cancellation of this Contract.
- B. Contractor will not use, willingly allow, or cause to have such data used for any purpose other than the performance of Contractor's obligations under this Contract without the prior written consent of DPS.
- C. The ownership rights described within this section will include the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.
- D. If DPS is not purchasing a license under the terms of this Contract, Contractor must provide, at no additional charge, appropriate licenses for DPS to use and access Contractor's deliverables and Contractor's pre-existing software or other intellectual or proprietary property that Contractor determines is necessary to facilitate the performance of Contractor's obligations under this Contract.

#### 5.16.2 OWNERSHIP OF PROPERTY IN CONTRACTS THAT REQUIRE CONTRACTOR TO DEVELOP A REPORT

- A. As used in this Section, the term "Contractor's Technology" means all intellectual property of Contractor created by Contractor prior to this Contract and used by Contractor, in its discretion, in performing services to DPS under this Contract. Notwithstanding anything else in this Contract to the contrary, the Final Report delivered by Contractor to DPS under this Contract will be the exclusive property of DPS and the State of Texas. DPS is not procuring and will not acquire ownership of any of Contractor's technology under this Contract, and therefore, Contractor will not deliver to DPS a Final Report that includes Contractor's technology that otherwise creates or could create issues of ownership and use for DPS or the State of Texas.
- B. Contractor will include its name and logo on the Final Report, but Contractor will not copyright the Final Report. Contractor understands that the Final Report will be subject to the Texas Public Information Act and other law applicable to a consulting report commissioned by and delivered to the State of Texas.



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### 5.17 OTHER CONTRACTS

During the course of this Contract, DPS may award additional contracts to other contractors for similar services. DPS will provide notification to Contractor regarding any additional contractors and the scope of work that the additional contractors will be performing if necessary for Contractor to perform services under the Contract. Contractor must work cooperatively with the additional contractors in order to ensure that the performance of the services or capital improvements is not unnecessarily delayed. Contractor will not commit or permit any act that would unduly interfere with the performance of work by any other contractors.

### 5.18 INDEPENDENT CONTRACTOR

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. Contractor and its employees, representatives, agents and any subcontractors will not be employees of DPS. Should Contractor subcontract any of the services provided under this Contract, Contractor expressly understands and acknowledges that in entering into such subcontracts, DPS is in no manner liable to any subcontractor of Contractor. In no event will this provision relieve Contractor of the responsibility for ensuring the services rendered under all subcontracts are rendered in compliance with this Contract.

## Article 6, Publicity and Public Information

### 6.1 NEWS RELEASES, ADVERTISEMENTS, AND PUBLICITY

- A. 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 DPS, and then only in accordance with explicit written instructions from DPS.
- B. Contractor will not use the name of the State of Texas or DPS or any state insignia in any advertisement, promotion or otherwise for any purpose regarding this Contract without the express prior written consent of DPS. DPS is not authorized to provide endorsements.
- C. Notwithstanding the foregoing, Contractor may make any disclosure required by law or regulation without the approval of DPS.

### 6.2 PUBLIC INFORMATION ACT

- A. Notwithstanding any provisions of this Contract to the contrary, Contractor understands that DPS is subject to and will comply with the Texas Public Information Act, Tex. Gov't Code Chapter 552, as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. DPS will notify Contractor in writing within a reasonable time from receipt of a request for information related to Contractor's work under this Contract. Contractor must cooperate with DPS in the production of documents responsive to the request. DPS will make a determination whether to submit a Public Information Act exception request to the Attorney General. Contractor must notify DPS within 24 hours of receipt of any third party requests for information that was provided by DPS for use in performing this Contract. This Contract and all data and other

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information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Contractor must maintain the confidentiality of information received from DPS during the performance of this Contract, including information which discloses confidential personal information particularly, social security numbers.

- B. Contractor must make any information created or exchanged with a state governmental entity [as defined by Tex. Gov't Code § 2252.907(d)] under 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 and DPS : portable document format (pdf) compatible with the latest version of Adobe Acrobat®; Microsoft Word®; Microsoft Excel®; or, hard copy (paper).
- C. If Contractor must provide a Draft Report and Final Report, this section C applies. If not, this section is inapplicable to this Contract.
  - 1. In a separate appendix to both the Draft Report and the Final Report, Contractor must include all information which DPS asserts is confidential under the Texas Public Information Act, including without limitation on the foregoing, any information which DPS asserts is confidential under Tex. Gov't Code § 552.139 related to computer network security, restricted information under Section 2059.055, or to the design, operation, or defense of a computer network. Contractor will not release any of DPS's information under this Contract without the prior written approval of DPS and Contractor must promptly refer any requests for this information to DPS for handling.
  - 2. As provided under Tex. Gov't Code § 2254.041, DPS may, in its discretion, distribute the Final Report delivered by Contractor under this Contract and post the public portion of the Final Report on DPS's Internet website or the website of a standing committee of the Texas Legislature. This Section does not affect the application of Tex. Gov't Code Chapter 552, to the Final Report.

### **Article 7, State and Federal Law, Rules, and Regulations**

#### **7.1 DRUG-FREE WORKPLACE**

Contractor must comply with the applicable provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. Sections 8101-8106).

#### **7.2 DISCLOSURE OF INTERESTED PARTIES**

If DPS determines that Tex. Gov't 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. If Vendor is excepted under the limited provisions of Tex. Gov't Code § 2252.908(c), Vendor must affirmatively tell

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DPS and provide written documentation proving its exception.

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 fill out all portions of the form, including the unsworn declaration, sign the printed form, and submit the form to DPS. The address for submission will be provided to the potential awardee(s).

For further information, see Tex. Gov't Code § 2252.908 and 1 Tex. Admin. Code Ch. 46 as well as TEC's website.

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

### 7.3 BUY TEXAS

Contractor must comply with Tex. Gov't Code § 2155.4441, in the performance of this Contract. In performing services under this Contract, Contractor must 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.

### 7.4 COMPLIANCE WITH STATE, FEDERAL, AND LOCAL LAWS, RULES, AND REGULATIONS

- A. Contractor must comply with all applicable state, federal and local laws and ordinances in providing deliverables to DPS under this Contract. Without limiting the generality of the foregoing, 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. Contractor must provide both federal and state unemployment insurance coverage and standard workers' compensation insurance coverage. Contractor must comply with all federal and state tax laws and withholding requirements. DPS will not be liable to Contractor/subcontractor or its employees for any unemployment insurance or workers' compensation coverage or federal or state tax withholding requirements. Contractor may be required to demonstrate compliance with such laws at the written request of DPS.
- B. Except as stated otherwise in this Contract, Contractor must provide all labor and equipment necessary to furnish the deliverables under this Contract. All employees of

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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 DPS, no visitors or relatives of Contractor's employees and subcontractor(s) will be allowed on State property, unless they are bona fide employees or subcontractor(s) of Contractor performing work under this Contract.

- C. Contractor must ensure that at all times its personnel will observe and comply with all laws, regulations, and rules pertaining to state facilities, including, parking and security regulations and non-smoking policies. Additionally, Contractor and Contractor's personnel must comply with all relevant DPS 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 be amended.
- D. DPS will have the right to require Contractor to remove any of Contractor's personnel from involvement in this Contract who have failed to comply with such laws, regulations, or rules.

### 7.5 APPLICABLE LAW AND CONFORMING AMENDMENTS

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. DPS reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any necessary changes to ensure DPS's or Contractor's compliance with all applicable state and federal laws, rules, and regulations.

### 7.6 TAXES; UNEMPLOYMENT; WORKERS COMPENSATION

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

DPS makes no representation to 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 Contractor entering into this Contract with DPS or its performance under this Contract.

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

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

Contractor must 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

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the Revenue Act of 1978, including without limitation the issuance of Form W-2s to Contractor's employees.

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

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. DPS reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for DPS's or Contractor's compliance with all applicable laws, regulations, requirements, and guidelines.

### 7.7 IMMIGRATION AND E-VERIFY

Contractor must comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments as applicable to Contractor. To the extent not prohibited by federal law or regulation and only as required under Texas Executive Order No. RP-80, Respondent certifies that it uses and will continue to use the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of those employed or subcontracted to perform contract duties under this Contract.

### 7.8 FRAUD, WASTE, OR ABUSE

- A. In accordance with Tex. Gov't 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 DPS, 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 DPS's Office of the Inspector General at (512) 424-2015, DPS Chief Auditor's Office at 512-424-4403, or Crime Stoppers at 1-800-832-8477.
- C. Contractor represents and warrants that it has read and understood and must comply with DPS's Anti-Fraud Policy, as such policy reads as stated below and as amended throughout the term of this Contract.
- D. Fraud is a serious violation of law that will not be tolerated at DPS. Fraud offenses can be found in Tex. Penal Code Chapter 32. Generally, (for purposes of this policy) it is theft of, or any means used to misappropriate state property or resources. Employees or Contractors who suspect fraud is occurring in the workplace should immediately notify their supervisors or the Contract Monitor as applicable. If for some reason the employee or Contractor is uncomfortable with notifying their supervisor or Contract Monitor, they may notify Office of Inspector General (OIG) or the State Auditor's Office.

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### 7.9 RIGHT TO AUDIT

- A. Under Tex. Gov't Code § 2262.154, the State Auditor's Office, or successor agency, may conduct an audit or investigation of Contractor or any other entity or person receiving funds from the State directly under this Contract or indirectly through a subcontract under this Contract.

Contractor understands that acceptance of funds by 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, 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 DPS to comply with any rules and procedures of the State Auditor's Office in the implementation and enforcement of Tex. Gov't Code § Section 2262.154.

Contractor must ensure that this section's provisions concerning the authority to audit funds received either directly or indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract that the Contractor awards.

- B. Contractor must reimburse the state for all costs incurred by the state associated with enforcing this provision.
- C. DPS reserves the right to audit Contractor's records and documents regarding compliance with this Contract. Contractor is also subject to audit by any other department or agency, including federal agencies, responsible for determining that DPS and Contractor have complied with the applicable laws, procedures, policies, and best practices.
- D. In the event such an audit reveals any errors by DPS or Contractor, Contractor must refund DPS the full amount of such overpayments within 30 days of Contractor's receipt of notice of such audit findings. DPS reserves the right, in its sole discretion, to deduct such amount owing to DPS from any payments to Contractor.

### 7.10 CONSTITUTIONAL AND STATUTORY LIMITATIONS

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

DPS and Contractor are aware that there may be constitutional and statutory limitations on the authority of DPS to enter into certain terms and conditions of this Contract, including, those terms and conditions relating to disclaimers and limitations of warranties; disclaimers and

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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 DPS except to the extent authorized by the laws and Constitution of the State of Texas.

### **Article 8, Certifications**

#### **8.1 REPRESENTATIONS AND CERTIFICATIONS; FALSE STATEMENTS; CONTINUING DUTY TO AMEND, SUPPLEMENT, AND CORRECT**

By signing this Contract, including all incorporated documents and exhibits, Contractor makes all the representations and certifications included in this Contract. If Contractor signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations or certifications included in this Contract, Contractor will be in default under this Contract and DPS may terminate or void this Contract for cause and pursue other remedies available to DPS under this Contract and applicable law.

Contractor has a continuing duty to amend, supplement, or correct any such representations or certifications in writing to DPS not later than ten days after discovering additional information relating to any of its representations or certifications.

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

Under Tex. Gov't. Code § 2252.152, DPS 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.

#### **8.3 CONTRACTS WITH COMPANIES WHO BOYCOTT ISRAEL PROHIBITED**

Under Tex. Gov't. Code § 2271.002, DPS may not enter into a contract (valued at \$100,000 or more) with a company (as defined by Tex. Gov't Code § 808.001, but excluding sole proprietors and those companies who employ 10 or fewer employees) that boycotts Israel. By responding to this solicitation, Vendor (if defined as an applicable company) certifies that it does not boycott Israel and will not boycott Israel during the term of any contract resulting from this solicitation. If Vendor cannot make that certification or is not required to do so by law, Vendor must indicate that in its Response and state why the certification is not required.

#### **8.4 BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN**

As required by 13 Tex. Admin. Code § 6.94(a)(9), DPS must require a third-party custodian of electronic state records to provide DPS with descriptions of its business continuity and disaster recovery plans regarding how the custodian will protect DPS's vital state records.

## STANDARD TERMS AND CONDITIONS

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### 8.5 DISCLOSURE OF RESTRICTED EMPLOYMENT

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

### 8.6 NOTICE UNDER TEX. GOV'T CODE § 2261.252

Under Tex. Gov't Code § 2261.252, DPS 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, the Procurement Director, or their covered family members have a financial interest in the vendor. Any contract found to violate Tex. Gov't Code § 2261.252 is void.

### 8.7 PROHIBITED USE OF APPROPRIATED OR OTHER FUNDS UNDER CONTROL OF STATE AGENCY; LOBBYING

Contractor represents and warrants that DPS payments to Contractor and Contractor's receipt of appropriated or other funds under this Contract are not prohibited by the Tex. Gov't Code §§ 556.005 and 556.008.

### 8.8 NON-DISCRIMINATION

- A. In the performance of this Contract, 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. 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. Contractor must post notices setting forth the provisions of this non-discrimination provision in conspicuous places, available to employees and applicants for employment.
- C. Contractor must state that it is an equal opportunity employer in all solicitations or advertisements for employees 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. Contractor must include the provisions of the foregoing paragraphs in every subcontract so that such provisions will be binding upon each subcontractor or Contractor.
- E. Contractor must comply with all related certifications in this Contract.



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### 8.9 EMPLOYEE NON-SOLICITATION

Contractor will not, during the term of this Contract and for a period of 12 months after the term of this Contract, solicit for employment any person who is a DPS employee or was a DPS employee during the previous 12 months with whom 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.

### 8.10 ANTITRUST AND ASSIGNMENT OF CLAIMS

Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation, or institution has (1) violated the antitrust laws of the State of Texas under Texas Bus. & Comm. Code Chapter 15 or the federal antitrust laws; or (2) communicated directly or indirectly its response to the solicitation to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

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

### 8.11 FELONY CRIMINAL CONVICTIONS

Contractor represents that Contractor has not and Contractor's employees and subcontractors have not been convicted of a felony criminal offense. Alternatively, if such a conviction has occurred, Contractor has fully advised DPS as to the facts and circumstances surrounding the conviction and DPS has given Contractor written approval for Contractor or Contractor's employees or subcontractors to perform work under or related to this Contract (whether or not the work involves physical or logical access).

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

Contractor must amend, supplement, or correct representations and warranties in this section in writing to DPS not later than five business days after discovering any additional information that would change Contractor's representation or warranty.

### 8.12 DPS BACKGROUND CHECK AND ID CARD REQUIREMENTS

- A. Contractor must not allow any personnel (employee or subcontractor) to work on the project that have not submitted to and successfully completed a DPS fingerprint-based Criminal History Background Investigation. DPS has the right to prevent Contractor's personnel from gaining access to DPS's buildings and computer systems if DPS determines that such personnel did not pass the background check or failed to otherwise maintain a security clearance.

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- B. Contractor certifies that Contractor and any of its employees or subcontractors will wear and make visible any DPS-issued identification cards at all times while working on this Contract.

### 8.13 BOOKS AND RECORDS

- A. Contractor must retain all financial records, supporting documents, statistical records, and any other records or books relating to the performance under this Contract. Contractor must retain these records for a period of seven years after the expiration of this Contract, or until DPS or the State Auditor's Office (SAO) is satisfied that all audit and litigation matters are resolved, whichever period is longer. Contractor must grant access to all books, records, and documents pertinent to this Contract to DPS, the SAO, and any state or federal governmental entity that has authority to review records due to state or federal funds being spent under this Contract.
- B. In the disclosure of its financial affairs, Contractor must allow DPS, SAO, or their authorized representatives access to all of its corporate books relative to this Contract and must cooperate in any audits.
- C. Notwithstanding anything else in this section or any other provision of this Contract to the contrary, Contractor must fully cooperate with state and federal representatives in audits of Contractor's performance and receipt of funds under this Contract or applicable law.

### 8.14 LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS

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

# INFORMATION AND CERTIFICATIONS FORM

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For the purposes of this form, Vendor means Respondent, Bidder, Applicant, or Contractor as those terms apply throughout the relevant solicitation and contracting process Vendor is participating in or to whom a final contract or purchase order has been awarded. Response means any interested response from the Vendor to DPS for purposes of applying to a solicitation, such as a Proposal, Bid, or Application.

## 1. Vendor Information

### A. Demographics

Company's Legal Name	
Company's DBA if applicable	
Mailing Address	
Physical Address	
DUNS No.	
(Texas) Payee Identification Number	
Federal Taxpayer Identification Number	
Secretary of State Charter No.	
Texas Franchise Tax File No.	
Email for Receipt of Purchase Orders	
Remittance Address if Direct Deposit is Declined	

### B. Authorized Representatives and Vendor's Personnel

Complete all fields for each name as requested on this form. All information is necessary.

#### i. Vendor's Authorized Representative

First Name	
Middle Initial/Name	
Last Name	
Title	
Email	
Phone	

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### ii. Contact for Response Clarifications, Inquiries, and Negotiations

First Name	
Middle Initial/Name	
Last Name	
Title	
Email	
Phone	

### iii. Contract/Project Manager

First Name	
Middle Initial/Name	
Last Name	
Title	
Email	
Phone	

### C. Historically Underutilized Business (HUB) Representation

Vendor represents and certifies as part of its response that it ☐ is or ☐ is not, a HUB certified by the Comptroller of Public Accounts' Statewide Procurement Division.

### D. Preferences

Check the preferences for which you qualify.

- ☐ Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
- ☐ Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
- ☐ Agricultural products grown in Texas
- ☐ Agricultural products offered by a Texas bidder
- ☐ Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
- ☐ Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran
- ☐ Texas vegetation native to the region
- ☐ USA-produced supplies, materials, or equipment
- ☐ Products of persons with mental or physical disabilities

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- ☐ Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
- ☐ Energy efficient products
- ☐ Rubberized asphalt paving material
- ☐ Recycled motor oil and lubricants
- ☐ Products produced at facilities located on formerly contaminated property
- ☐ Products and services from economically depressed or blighted areas
- ☐ Vendors that meet or exceed air quality standards
- ☐ Recycled or reused computer equipment of other manufacturers
- ☐ Foods of higher nutritional value
- ☐ Commercial production company or advertising agency located in Texas

### 2. Required Submissions

**A. Child support certification.** Under Tex. Fam. Code § 231.006(c), responses must include names and Social Security Numbers of each person with at least 25% ownership of the business entity submitting the Response. If any person meets the 25% ownership criterion, failure to provide the required information will result in disqualification of the solicitation. Vendors meeting the criteria must complete the following.

Name	Social Security Number

**B. Certification for former executives.** Under Tex. Gov't Code § 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 signing the below acknowledgment, Vendor certifies that it is in compliance with § 669.003. If § 669.003 applies, Vendor must complete the following information in order for its Response to be evaluated.

Name of Former Executive	
Name of State Agency	
Date of Separation from State Agency	
Date of Employment with Vendor	

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### C. Type of Business Organization

Vendor, by checking the applicable box, represents that it operates as:

- ☐ A corporation incorporated under the laws of Texas
- ☐ An individual
- ☐ A partnership
- ☐ A non-profit organization
- ☐ A joint venture; or

If Vendor is a foreign entity, it operates as:

- ☐ An individual;
- ☐ A partnership;
- ☐ A non-profit organization;
- ☐ A joint venture; or
- ☐ A corporation, registered for business in \_\_\_\_\_ .

### D. Lawsuits (check the applicable paragraph that applies)

- i. ☐ Vendor represents and warrants that it is not aware of and has no notice of any court or governmental agency actions, proceedings, or investigations, etc., pending or threatened against Vendor or any related individuals or affiliated entities related to the subject matter of this solicitation or otherwise relevant to DPS's consideration of the response. Vendor represents and warrants that it is not aware of any court or governmental agency actions, proceedings or investigations, etc. against Vendor or any of these individuals or entities within the five years immediately preceding the submission of the Response to this solicitation. In addition, Vendor represents and warrants that it will notify DPS in writing within five business days of any changes to the representations or warranties in Subsection i and understands that failure to so timely update DPS will constitute breach of contract and may result in immediate termination of the awarded contract.
- ii. ☐ Vendor is unable to make the representation and warranty in Subsection i above and instead represents and warrants that it has included as a detailed attachment within its response, which expressly references this Subsection ii, 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 Vendor's performance under the awarded contract; (2) relate to the solicited or similar goods or services or the awarded contract; or (3) be otherwise relevant to DPS's consideration of the response. In addition,

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Vendor represents and warrants that it will notify DPS within five business days of any changes to the representations and warranties in this Subsection ii or attachments in response to Subsection ii and understands that failure to so timely update DPS will constitute breach of contract and may result in immediate termination of the awarded contract.

### **E. Ethics and Conflict of Interest**

Under Tex. Gov't Code § 572.051, any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established. Tex. Gov't Code § 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 DPS 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 DPS or purchasers of other state agencies. Vendor must also comply with the Conflict of Interest provisions and disclosure requirements as listed in the Texas Contract Management Guide.

Vendor must disclose any such conflict of interest below.

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### **3. Vendor Acknowledgments, Certifications, Assurances, Warranties, and Affirmations**

Vendor acknowledges it can meet all requirements as stated and also acknowledges the receipt, review, and acceptance of this Solicitation. Any exceptions to the specifications or statement of work (SOW), terms, requirements, and conditions have been explicitly identified within Vendor's response. Failure to sign and submit this form with the response may disqualify Vendor.

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By signing the solicitation and submitting a response to DPS, Vendor certifies its compliance and understanding with the following statements.

By signature and submission, Vendor represents and warrants that the individual signing 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 contract which may be awarded from the submission of its response.

By signature and submission, Vendor represents and warrants that all statements and information prepared and submitted in response to this solicitation are true, current, complete, and accurate.

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

- A. If a Texas address is shown as the address of Vendor, Vendor qualifies as a Texas Resident Bidder as defined in Tex. Gov't Code § 2155.444(c).
- B. Vendor's response and subsequent documents are subject to the Texas Public Information Act.
- C. Acknowledges its obligation to specifically identify information it contends to be confidential or proprietary, and where Vendor designates substantial portions of or the entire response as confidential or proprietary, the response is subject to being determined to be non-responsive to the Solicitation.
- D. Grants a royalty-free, non-revocable limited perpetual license to reproduce any copyrighted portions of the response and subsequent documents to comply with Legislative Budget Board reporting requirements, Texas Public Information Act disclosures, or any other reporting requirements mandated by law or statute.
- E. Certifies that it is exempt or not delinquent in the payment of any franchise taxes owed the State of Texas under Tex. Tax Code Chapter 171.
- F. Certifies it will include without limitation all disclosures, affirmations, guarantees, certifications, statements, and warranties of Vendor in submitting its response to this Solicitation and will become certifications of the Contractor if Vendor is selected for contract award.
- G. Acknowledges that all of its representations and warranties contained in any part of its response and the awarded contract are material and have been relied upon by DPS in selecting Vendor for contract award. Vendor warrants and represents that all of its statements and representations made to DPS prior to contract award, and those made during the negotiation of the contract are material, true and correct. Vendor certifies that it will promptly notify DPS



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in the event that any representations and warranties provided in the awarded contract are no longer true and correct.

- H. Certifies it 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 Vendor 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 Vendor's ability to perform its obligations.
- I. Affirms it has not given, offered to give, and does not intend to give at any time, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response. Violation of this requirement may result in the termination of the contract at the discretion of DPS.
- J. Vendor affirms that no person will, on the grounds 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 any awarded contract. Vendor 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."
- K. Certifies that Vendor 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 Vendor is in compliance with the State of Texas statutes and rules relating to procurement and that Vendor is not listed on the federal government's terrorism watch list as described in Executive Order 13224 or debarred on the *Texas Debarred Vendor List*. Entities ineligible for federal procurement are listed at <http://www.sam.gov>.
- L. Affirms compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1251 et seq.).
- M. Complies with the provisions of the Lobbying Disclosure Act, 2 U.S.C. § 1601 et seq. By submitting a response, Vendor certifies that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence any officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant,

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or any other award covered by 31 U.S.C. § 1352. It also certifies that Vendor will disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award by completing and submitting Standard Form LLL.

- N. Vendor understands and agrees that, where activities supported by the Contract produce original books, manuals, films, or other original material (the works), Vendor may copyright the works subject to the reservation by DPS of a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for state and political subdivision purposes:
- i. The copyright in the works developed under the contract; and
  - ii. Any rights of copyright to which Vendor purchases ownership with funding from the contract.

Vendor may publish, at its expense, the results of contract performance with prior DPS review and approval of that publication. Any publication (written, video, or audio recording) will include acknowledgment of the support received from DPS. One copy of any such publication must be provided to DPS. DPS reserves the right to require additional copies before or after the initial review. All copies must be provided free of charge to DPS.

- O. Certifies that it has not given and does not intend to give at any time, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this transaction.
- P. Under Tex. Gov't Code § 2155.004, Vendor certifies that the individual or business entity named in its response is not ineligible to receive the Contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate. Tex. Gov't Code § 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.
- Q. Tex. Gov't Code §§ 2155.006 and 2261.053 prohibit DPS from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief, recovery, or reconstruction efforts as a result of Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Texas Government Code § 418.004 occurring after September 24, 2005. Under Tex. Gov't Code § 2155.006, Vendor certifies that the individual or business entity named in its response is not ineligible to receive the contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.
- R. Represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com. Code Chapter 17 or allegations of any unfair business practice in any administrative hearing or court suit and that Vendor has not been

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found to be liable for such practices in such proceedings. Vendor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable for such practices in such proceedings.

- S. Represents and warrants that Vendor and Vendor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Vendor has fully advised DPS as to the facts and circumstances surrounding the conviction.
- T. Certifies its compliance with Tex. Health & Safety Code Ch. 361, Subchapter Y and Texas Commission on Environmental Quality rules in 30 Tex. Admin. Code Ch. 328, if Vendor is submitting a response for the purchase or lease of computer equipment.
- U. Certifies its compliance with Tex. Health & Safety Code Ch. 361 related to the Television Equipment Recycling Program, if Vendor is submitting a response for the purchase or lease of covered television equipment.
- V. Certifies, in accordance with Tex. Gov't Code § 2254.033, relating to consulting services, that it does not employ an individual who has been employed by DPS or another agency at any time during the two years preceding the submission of the response, or in the alternative, Vendor has disclosed in its response the following: (1) the nature of the previous employment with DPS or the other agency; (2) the date the employment was terminated; and (3) the annual rate of compensation for the employment at the time of its termination.
- W. Represents, if solicitation and Contract is for a professional or consulting service under Tex. Gov't Code Ch. 2254, that none of its employees, including those authorized to provide services under the Contract, were former employees of DPS during the 12 months immediately preceding Contract execution.
- X. Represents that it has disclosed to DPS all existing or potential conflicts of interest relative to performance of the Contract or that performance will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
- Y. Certifies it will include without limitation all disclosures, affirmations, guarantees, certifications, statements, and warranties of Vendor in submitting its response to this Solicitation and will become certifications of the Contractor if Vendor is selected for contract award.
- Z. Acknowledges that all of its representations and warranties contained in any part of its Response and the awarded contract are material and have been relied upon by DPS in selecting Vendor for contract award. Vendor warrants and represents that all of its statements and representations made to DPS prior to contract award, and those made during the negotiation of the contract are material, true, and correct. Vendor certifies that it will promptly notify the

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Department in the event that any representations and warranties provided in the awarded contract are no longer true and correct.

- AA. Certifies that it or its subcontractor has not provided and will not provide any gifts, payments, or other inducements to any officer, employee, or agent of DPS.
- BB. Certifies that it will comply with Tex. Gov't Code § 2054.5192, which requires cybersecurity training. Any Contractor who has access to a state computer system or database must complete a cybersecurity training program certified by DIR and selected by DPS during the initial term of the contract and during any optional renewal period. Contractor must verify completion of the program to DPS. Contractor must complete its first annual training no later than June 14, 2020.
- CC. Certifies, under Tex. Gov't Code §2155.0061, that the individual or business entity named in this solicitation or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- DD. Acknowledges that Tex. Gov't Code Chapter 552, Subchapter J may apply to this solicitation or contract and agrees that DPS may terminate the contract if Contractor or Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

# Application for Texas Identification Number

• See instructions on back

For Comptroller's use only

1. Is this a new account? <input type="checkbox"/> YES    Mail Code 000 <input type="checkbox"/> NO    Enter Mail Code _____    Agency number _____ Complete Sections 1 - 5    Complete Sections 1, 2 & 5	
<b>Section 1</b>	2. <b>Texas Identification Number (TIN)</b> - Indicate the type of number you are providing to be used for your TIN <input type="checkbox"/> Employer Identification Number (EIN) (9 digits) <input type="checkbox"/> Social Security number (SSN) (9 digits)    Enter the number indicated _____ <input type="checkbox"/> Individual Taxpayer Identification Number (ITIN) (9 digits) <input type="checkbox"/> Comptroller's assigned number (FOR STATE AGENCY USE ONLY) (11 digits) <input type="checkbox"/> Current Texas Identification Number (FOR STATE AGENCY USE ONLY) (11 digits)
3. Are you currently reporting any Texas tax to the Comptroller's office such as sales tax or franchise tax? <input type="checkbox"/> YES <input type="checkbox"/> NO    If "YES," enter Texas Taxpayer Number _____	
<b>Section 2</b>	<b>Payee Information (Please type or print)</b> 4. Name of payee (Individual or business to be paid) _____ 5. Mailing address where you want to receive payments _____ 6. (Optional) _____ 7. (Optional) _____ 8. (Optional) _____ 9. City _____ State _____ ZIP code _____ 10. Payee telephone number (Area code and number) _____ SIC code _____ Security type code ( 0, 1, 2 ) _____ Zone code _____
<b>Section 3</b>	11. <b>Ownership Codes</b> - Check only one code by the appropriate ownership type that applies to you or your business. <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input type="checkbox"/> <b>I</b> - Individual Recipient (not owning a business)   <input type="checkbox"/> <b>S</b> - Sole Ownership (Individual owning a business): If checked, enter the owner's name and Social Security number (SSN)                      Owner's name _____                      SSN / ITIN (9 digits) _____                 </div> <div style="width: 48%;"> <input type="checkbox"/> <b>L</b> - Texas Limited Partnership:                      If checked, enter the Texas File Number _____  <input type="checkbox"/> <b>T</b> - Texas Corporation:                      If checked, enter the Texas File Number _____  <input type="checkbox"/> <b>A</b> - Professional Association:                      If checked, enter the Texas File Number _____  <input type="checkbox"/> <b>C</b> - Professional Corporation:                      If checked, enter the Texas File Number _____  <input type="checkbox"/> <b>O</b> - Out-of-State Corporation  <input type="checkbox"/> <b>G</b> - Governmental Entity  <input type="checkbox"/> <b>U</b> - State agency / University  <input type="checkbox"/> <b>F</b> - Financial Institution  <input type="checkbox"/> <b>R</b> - Foreign (out of U.S.A.)                 </div> </div> <input type="checkbox"/> <b>P</b> - Partnership: If checked, enter two partner's names and Social Security numbers (SSN). If a partner is a corporation, use the corporation's Employer Identification Number (EIN). Name _____ SSN / ITIN / EIN (9 digits) _____ Name _____ SSN / ITIN / EIN (9 digits) _____  <input type="checkbox"/> <b>N</b> - Other: If checked, explain. _____
<b>Section 4</b>	12. Payment Assignment? <input type="checkbox"/> YES <input type="checkbox"/> NO <i>Note: A copy of the assignment agreement between payees must be attached.</i> Assignee name _____ Assignee TIN _____    Assignment date _____
<b>Section 5</b>	13. Comments _____ 14.  _____ <div style="display: flex; justify-content: space-between;"> <span>Authorized signature (Applicant or authorized agent)</span> <span>Date</span> </div> <div style="display: flex; justify-content: space-between;"> <span>Agency name</span> <span>Prepared by</span> <span>Phone (Area code and number)</span> </div> 15. _____



# Application for Texas Identification Number

**GLENN HEGAR**

**TEXAS COMPTROLLER OF PUBLIC ACCOUNTS**

Fiscal Management  
Austin, TX 78774-0100

## Who Must Submit This Application -

This application must be submitted by every person (sole owner, individual recipient, partnership, corporation or other organization) who intends to bill agencies of the state government for goods, services provided, refunds, public assistance, etc. The Texas Identification Number (TIN) will be required on all maintenance submitted by state agencies. The use of this number on all billings will reduce the time required to process billings to the State of Texas.

**Note: To expedite processing of this application, please return the completed application to the state agency with which you are conducting business. It is not necessary for the payee to sign or complete this form. The state agency representative may complete the form for the payee.**

## For Assistance -

For assistance in completing this application, please call the Texas Comptroller's office at 1-800-531-5441, ext. 6-8138, or 512-936-8138.

### Notice to State Agencies -

When this form is used to set up additional mail codes, Sections 1, 2 and 5 must be completed. State agencies may refer to the Texas Identification Number System (TINS) Guide at <https://fm.x.cpa.state.tx.us/fmx/pubs/tins/tinsguide> for additional information.

## General Instructions -

- Do not use dashes when entering Social Security, Employer Identification, Individual Taxpayer Identification or Comptroller's assigned numbers.
- Disclosure of your Social Security number is required. This disclosure requirement has been adopted under the Federal Privacy Act of 1974 (5 U.S.C.A. sec. 552a(note)(West 1977), the Tax Reform Act of 1976 (42 U.S.C.A. sec. 405(c)(2)(C) (West 1992), TEX. GOV'T. CODE ANN. sec. 403.055 (Vernon 2005) and TEX. GOV'T. CODE ANN. sec. 403.056 (Vernon 2005). Your Social Security number will be used to help the Texas Comptroller of Public Accounts administer the state's tax laws and for other purposes. See Op Tex. Att'y Gen. No. H-1255 (1978).

## Specific Instructions -

### Section 1 - Texas Identification Number

- EIN: For all ownership codes other than Individual Recipient listed in Section 3, enter a 9-digit Employer Identification Number (EIN) issued by the Internal Revenue Service.
- SSN: For Individual Recipient or Sole Owner without an EIN, enter your 9-digit Social Security number (SSN) issued by the Social Security Administration.
- ITIN: For Individual Recipient or Sole Owner without an EIN, enter your 9-digit Individual Taxpayer Identification Number (ITIN) issued by the IRS.
- Comptroller Assigned Number – 11 digits: FOR STATE AGENCY USE ONLY. A Comptroller Assigned Number is an ID number that is given to a state agency that needs to pay either a foreign entity or a foreign individual who does not have an EIN, SSN or ITIN.
- Current Texas Identification Number – 11 digits: FOR STATE AGENCY USE ONLY.

Are you currently reporting any Texas tax to the Comptroller's office such as sales tax or franchise tax? If "YES," enter Texas Taxpayer Number.

### Section 2 - Payee Information

- Items 4 through 8 - Enter the complete name and mailing address where you want payments to be received. Names of individuals must be entered first name first. Each line cannot exceed 50 characters including spaces. If the name is more than 50 characters, continue the name in Item 5 and begin the address in Item 6.
- Item 9 - Enter the city, state and ZIP code.
- Item 10 - Enter payee telephone number.
- SIC code, Security type code and Zone code: FOR STATE AGENCY USE ONLY.

### Section 3 - Ownership Codes

- Item 11 - Check the box next to the appropriate ownership code and enter additional information as requested. Please check only one box in this section. The Secretary of State's office may be contacted at 512-463-5555 for information regarding Texas file numbers.

### Section 4 - Payment Assignment

- Item 12 - Use when one payee is assigning payment to another payee. When setting up an assignment payment, fill out this section completely and include a copy of the assignment agreement between the assignee and the assignor.

### Section 5 - Comments and Identification

- Item 13 - Enter any additional information that may be helpful in processing this application. Items 14 and 15 are for identification purposes. Always complete the identification section, including comments and authorized signature.

Under Ch. 559, Government Code, you are entitled to review, request and correct information we have on file about you, with limited exceptions in accordance with Ch. 552, Government Code. To request information for review or to request error correction, contact us at the address or phone numbers listed on this form.

## Direct Deposit Authorization

This form may be used by vendors, individual recipients or state employees to receive payments from the state of Texas by direct deposit or to change/cancel existing direct deposit information.

### Transaction Type

SECTION 1	<input type="checkbox"/> New setup (Sections 2, 3, 5 and 6)	<input type="checkbox"/> Change account type (Sections 2, 3, 4, 5 and 6)
	<input type="checkbox"/> Change financial institution (Sections 2, 3, 4, 5 and 6)	<input type="checkbox"/> Cancellation (Sections 2 and 6 - Sections 7 and 8 for state agency use)
	<input type="checkbox"/> Change account number (Sections 2, 3, 4, 5 and 6)	

### Payee Identification

SECTION 2	Payee type	<input type="checkbox"/> Texas Identification Number (TIN) <input type="checkbox"/> Individual Taxpayer Identification Number (ITIN) <input type="checkbox"/> State employee <input type="checkbox"/> Employer Identification Number (EIN) <input type="checkbox"/> Vendor or other recipient <input type="checkbox"/> Social Security Number (SSN) *	Mail code (If not known, leave blank.)
	Payee name	Phone number	ext.
	Mailing address	City	State    ZIP code

### New Account Information (Setups and Changes) (Completion by financial institution is recommended.)

SECTION 3	Financial institution name	City	State
	Routing transit number (9 digits)	Customer account number (maximum 17 characters)	Type of account <input type="checkbox"/> Checking <input type="checkbox"/> Savings
	Financial representative name (optional)	Title (optional)	
	Financial representative signature (optional)	Phone number (optional)	Date (optional)


### Existing Account Information (Changes Only)

SEC 4	Routing transit number (9 digits)	Customer account number (maximum 17 characters)	Type of account <input type="checkbox"/> Checking <input type="checkbox"/> Savings
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### International Payments Verification (required)

SEC 5	Will these payments be forwarded to a financial institution outside the United States?..... <input type="checkbox"/> YES <input type="checkbox"/> NO If "YES," also complete the ACH (Direct Deposit) Payment Destination Confirmation (Form 74-227).
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### Authorization for Setup, Changes or Cancellation (required)

SECTION 6	I authorize the Texas Comptroller of Public Accounts to deposit my payments from the state of Texas to my financial institution electronically. I understand that the Texas Comptroller of Public Accounts will reverse any payments made to my account in error. I further understand that the Texas Comptroller of Public Accounts will comply at all times with the National Automated Clearing House Association's rules. (For further information on these rules, please contact your financial institution.)		
	 Authorized signature	Printed name	Date

### Cancellation by Agency (for state agency use)

SEC 7	Reason	Date
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### Authorized Signature (for state agency use)

SECTION 8	 Signature	Date
	Phone number	Agency number
	Agency name	
	Comments	

### Please return your completed form to:

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS  
 Fiscal Management - Direct Deposit Program  
 P.O. Box 13528  
 Austin, TX 78711-3528

FAX: 512-475-5424

Phone: 512-936-8138



## Instructions for Direct Deposit Authorization

*You have certain rights under Chapters 552 and 559, Government Code, to review, request and correct information we have on file about you. To request information for review or to request error correction, use the contact information on this form.*

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### Section 1: Transaction Type

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Select the appropriate transaction type(s).

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### Section 2: Payee Identification

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Select payee type, provide the Texas Identification Number (TIN), Employer Identification Number (EIN) Social Security Number (SSN)\* or Individual Taxpayer Identification Number (ITIN) and enter payee contact information.

**\*Federal Privacy Act Statement**

*Disclosure of your Social Security number is required and authorized under law, for the purpose of tax administration and identification of any individual affected by applicable law, 42 U.S.C. sec. 405(c)(2)(C)(i); Texas Govt. Code Sections 403.011, 403.056, and 403.078. Release of information on this form in response to a public information request will be governed by the Public Information Act, Chapter 552, Government Code, and applicable federal law.*

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### Section 3: New Account Information (Needed for setups and changes)

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Completion by financial institution is recommended.

**Important:** Your direct deposit account information may be different from the account information printed on your checks. It is recommended that you contact your financial institution to confirm your direct deposit account information.

**Prenote Test:**

A prenote test will be sent to your financial institution for the account information provided. The prenote test is for a period of six banking days, and it is sent to your financial institution to verify your account information. If no further action is required by your financial institution, your direct deposit instructions will become effective when the six banking day prenote time frame has expired.

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### Section 4: Existing Account Information (Needed for changes to existing account information)

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When requesting a change to your existing direct deposit account information, you must complete Section 4 with the existing account information for verification purposes. This measure will help the paying state agency verify accuracy of the requested change.

Any change to banking information begins a prenote test period. See explanation in Section 3, above.

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### Section 5: International Payments Verification

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Check "YES" or "NO" to indicate if direct deposit payments to the account information designated in Section 3 of this form will be forwarded to a financial institution outside the United States. If "YES," also complete the ACH (Direct Deposit) Payment Destination Confirmation (Form 74-227).

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### Section 6: Authorization for Setup, Changes or Cancellation

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Must be completed in its entirety, and no alterations to the authorization language will be accepted.

### For State Agency Use

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#### Section 7: Cancellation by Agency

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Provide reason for cancellation request.

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#### Section 8: Authorized Signature

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For state agency use only.



Form

**W-9****Request for Taxpayer**

Give Form to the

(Rev. December 2014)

**Identification Number and Certification****requester. Do not  
send to the IRS.**Department of the Treasury  
Internal Revenue ServicePrint or type  
See Specific Instructions on page 2.**1** Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.**2** Business name/disregarded entity name, if different from above☐☐☐☐☐**3** Check appropriate box for federal tax classification; check only **one** of the following seven boxes:  
Individuals; see☐ Individual/sole proprietor or☐ C Corporation☐ S Corporation☐ Partnership☐ Trust/estate

instructions on page 3):

☐ single-member LLC☐

Exempt payee code (if any)

Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership)

**Note.** For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner.

code (if any)

Exemption from FATCA reporting

Other (see instructions) ☐

(Applies to accounts maintained outside the U.S.)

**5** Address (number, street, and apt. or suite no.) Requester's name and address (optional)

City, state, and ZIP code

**7** List account number(s) here (optional)**Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid **Social security number backup** withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other – – entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

or

Employer identification number

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**Part II Certification**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

**Sign  
Here**Signature of  
U.S. person <sup>(2)</sup>Date <sup>(2)</sup>

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at [www.irs.gov/fw9](http://www.irs.gov/fw9).

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

**Note.** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7). **Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States:

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.*

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

## Backup Withholding

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code* on page 3 and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships* above.

## What is FATCA reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code* on page 3 and the Instructions for the Requester of Form W-9 for more information.

Cat. No. 10231X

Form **W-9** (Rev. 12-2014)

## Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account, list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have

changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

**Note. ITIN applicant:** Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C Corporation, or S Corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

### Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

### Line 3

Check the appropriate box in line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box in line 3.

**Limited Liability Company (LLC).** If the name on line 1 is an LLC treated as a partnership for U.S. federal tax purposes, check the "Limited Liability Company" box and enter "P" in the space provided. If the LLC has filed Form 8832 or 2553 to be taxed as a corporation, check the "Limited Liability Company" box and in the space provided enter "C" for C corporation or "S" for S corporation. If it is a single-member LLC that is a disregarded entity, do not check the "Limited Liability Company" box; instead check the first box in line 3 "Individual/sole proprietor or single-member LLC."

### Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space in line 4 any code(s) that may apply to you.

**Exempt payee code.**

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)

2—The United States or any of its agencies or instrumentalities

3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

4—A foreign government or any of its political subdivisions, agencies, or instrumentalities

5—A corporation

6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession

7—A futures commission merchant registered with the Commodity Futures Trading Commission

8—A real estate investment trust

9—An entity registered at all times during the tax year under the Investment Company Act of 1940

10—A common trust fund operated by a bank under section 584(a)

11—A financial institution

12—A middleman known in the investment community as a nominee or custodian

13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 5 <sup>2</sup>
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency. **Exemption from FATCA reporting code.** The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan **Note.** You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed. **Line 5**

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns.

## Line 6

Enter your city, state, and ZIP code.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on this page), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [IRS.gov](http://IRS.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, or 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code* earlier.

**Signature requirements.** Complete the certification as indicated in items 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1983 and broker accounts considered inactive during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

## What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee <sup>1</sup>  The actual owner <sup>1</sup>
5. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>1</sup>
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor <sup>*</sup>
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity <sup>*</sup>
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

<sup>3</sup> You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 2.

<sup>\*</sup>**Note.** Grantor also must provide a Form W-9 to trustee of trust.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

## Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund. To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

**Protect yourself from suspicious emails or phishing schemes.** Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: [spam@uce.gov](mailto:spam@uce.gov) or contact them at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 1-877-IDTHEFT (1-877-438-4338).

Visit [IRS.gov](http://IRS.gov) to learn more about identity theft and how to reduce your risk.

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## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

Exhibit No. G.6  
Texas Department of Public Safety

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**Cyber Security Contract Requirements**

Solicitation RFO No.  
405-20-R0050120

Information required as part of a response to a specific Solicitation or required for inclusion as part of a specific Contract (if no Solicitation) or required prior to beginning of work or assignment of employees to the Contract is highlighted in green.

## Cyber Security Contract Requirements Exhibit

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# SYSTEM SECURITY AND ACCESS

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### 1. Definitions

These definitions only apply to the Cyber Security Contract Requirements Exhibit.

- a. **CISO** means the Department's Chief Information Security Officer.
- b. **CJIS Security Addendum** means a document that describes the FBI security related requirements the Department applies to all contractors and subcontractors that work on the Department's contracts. An executed copy of the CJIS Security Addendum is a required part of these contracts. A copy of this form may be found at <http://txdps.state.tx.us/SecurityReview/documents.htm>.
- c. **Contract** means the written agreement with the Contractor that incorporates the Exhibit that includes these Cyber Security Contract Requirements.
- d. **Contractor** means the person or entity with which the Department has entered into this Contract.
- e. **Contractor Hosted or Hosted** means a combination of traditional IT functions to be provided by the Contractor such as infrastructure, applications software (including COTS software solution), security, monitoring, storage, and provider of hardware and hardware maintenance.
- f. **Cyber Security Division (CSD)** means the Department's Cyber Security Division which is responsible for agency information technology security.
- g. **Department** means the Texas Department of Public Safety.
- h. **Department Hosted** means a combination of traditional IT functions to be provided by the Department such as infrastructure, applications software (including COTS software solution), security, monitoring, storage, provider of hardware and hardware maintenance, and e-mail, over the internet or other Wide Area Networks (WAN).
- i. **Department Policies** means all written policies, procedures, standards, guidelines, directives, and manuals of the Public Safety Commission and the Department, applicable to providing the Solution/Services specified under this Contract.
- j. **Hardware** means the physical elements of a computing system including the physical components thereof.
- k. **Information Technology Division (ITD)** means the Department's Information Technology Division which is responsible for agency technology innovation, maintenance, and support as applicable.
- l. **May** means advisory or permissible.
- m. **Must** means mandatory.



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- n. **PII** means any information about an individual maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual's identity; this includes any other personal information which is linked or linkable to an individual.
- o. **PR** means Pricing Request.
- p. **Respondent** means the individual, business entity, or organization that submits an Offer in response to the Solicitation, if any, related to this Contract, with the intent to contract with the Department.
- q. **RFQ** means Request for Qualifications.
- r. **RFO** means Request for Offers.
- s. **RFP** means Request for Proposals
- t. **Services** means the furnishing of labor, time, or effort by the Contractor, which may or may not involve the delivery of a specific end product other than reports.
- u. **Shall** means mandatory.
- v. **Software** means any application programs for exclusive use with the System.
- w. **Solicitation** means Request for Proposals (RFP), Request for Offers (RFO), Pricing Request (PR) or Requests for Qualifications (RFQ).
- x. **Solution** means a collection of information management techniques involving computer automation (software/hardware/database/network) to support and improve the quality and efficiency of business operations.
- y. **System** means a collection of information management techniques involving computer automation (software/hardware/database/network) to support and improve the quality and efficiency of business operations.
- z. **System Backups** means procedures utilized to backup data to protect against data loss in the event of a System outage. Backups will include cold (offline) and hot (online) backups.
- aa. **System Component** means any individual unit of Hardware or Software which together with other system components make up the System as a whole.
- bb. **System Failure** means a breakdown of any system hardware, operating system, or application software which prevents the accomplishment of the system's intended function.
- cc. **Wireless Local Area Network (WLAN)** means a wireless computer network that links two or more devices using a wireless distribution method within a limited area.

# Cyber Security Contract Requirements Exhibit

## 2. Cyber Security Standards

The Contractor represents and warrants that it shall comply with all technology, security, assurance, accessibility, warranty, maintenance, confidentiality, testing and other standards, policies and procedures of the Department and the State of Texas that are applicable to the Contractor in its performance of this Contract as such standards, policies, and procedures are amended by the Department or the State throughout the term of this Contract, including any renewal or *optional* periods. The CISO is designated by the Department to assist the Contractor in reviewing these standards, policies and procedures and identifying those that are applicable to the Contractor in its performance of this Contract. The Department reserves the right to disqualify or reject Contractor's Solicitation Response or Solution for non-compliance or for failure to meet the Department's desired specification.

## 3. Cloud Security

For all Contractor-hosted Service(s) or application(s) that are included as part of the Contractor's solution, the Contractor shall:

- a. Comply with the current Cloud Security Alliance's (CSA) Cloud Control Matrix (CCM), RFO/Exhibit G.7; and
- b. Provide a completed CSA CCM for the Solution within its Solicitation Response.

Information pertaining to CSA <https://cloudsecurityalliance.org/> and CCM information may be found at <https://cloudsecurityalliance.org/research/ccm/>.

## 4. User Security

The Contractor shall:

- a. Account Management: Establish and administer user accounts in accordance with role-based scheme and will track and monitor role assignment.
- b. Account Management: Automatically audit account creations, modifications, disabling and termination actions with notification to the Department's personnel.
- c. Prevent multiple concurrent active sessions for one user identification.
- d. Enforce a limit of no more than three (3) consecutive invalid access attempts by a user.
- e. Automatically lock the account/node for a three (3) minute time period unless released by the Department's Administrator.
- f. Prevent further access to the system by initiating a session lock after a maximum of thirty (30) minutes of inactivity, and the session lock will remain in effect until

## Cyber Security Contract Requirements Exhibit

the user reestablishes access using appropriate identification and authentication procedures.

- g. Ensure all users will be uniquely identified.
- h. Force users to follow the secure password attributes, below, to authenticate a user's unique ID. The secure password attributes will:
  - 1) Be a minimum length of 12 characters;
  - 2) Not be a dictionary word or proper name;
  - 3) Not be the same as the User ID;
  - 4) Expire within a maximum of ninety (90) calendar days;
  - 5) Not be identical to the previous ten (10) passwords;
  - 6) Not be transmitted in the clear text outside the secure location;
  - 7) Not be displayed in clear text when entered;
  - 8) Never be displayed in clear text on the screen; and
  - 9) Include 2 numbers, 2 special, 2 upper and 2 lower characters

### 5. System Assurance

The Contractor shall comply with the following System assurance specifications:

- a. Provide periodic security updates to correct any security defect, vulnerability, or exploit in System.
- b. Systems will operate with all System supporting software updates, security updates, and patches.
- c. Systems that are no longer supported by the manufacturer will be replaced or upgraded within three (3) months from the official manufacturer end of support date.
- d. Systems will operate without the use of elevated access privileges.

### 6. System Security

The Contractor shall:

- a. Provide audit logs that enable tracking of activities taking place on the System.
- b. Audit logs will track successful and unsuccessful System log-on attempts.
- c. Audit logs will track successful and unsuccessful attempts to access, create, write, delete or change permission on a user account, file, directory or other System resource.

## Cyber Security Contract Requirements Exhibit

- d. Audit logs will track successful and unsuccessful attempts to change account passwords.
- e. Audit logs will track successful and unsuccessful actions by privileged accounts.
- f. Audit logs will track successful and unsuccessful attempts for users to access, modify, or destroy the audit log.
- g. Provide the following content to be included with every audited event:
  - 1) Date and time of the event;
  - 2) The component of the System (e.g. software component, hardware component) where the event occurred;
  - 3) IP address;
  - 4) Type of event;
  - 5) User/subject identity; and
  - 6) Outcome (success or failure) of the event.
- h. Provide real-time alerts to appropriate Department officials in the event of an audit processing failure. Alert recipients and delivery methods will be configurable and manageable by the Department's system Administrators.
- i. Undergo vulnerability scan/penetration testing conducted by the Department or the Texas Department of Information Resources. The Contractor shall remediate legitimate vulnerabilities and the System/Solution will not be accepted until all vulnerability issues are resolved at no additional cost to the Department.
- j. Notifications will display an approved use notification message or banner before granting access to the System. The notification will state:
  - 1) Users are accessing a Department system;
  - 2) System usage will be monitored, recorded and subject to audit;
  - 3) Unauthorized use of the system is prohibited and subject to criminal and civil penalties; and
  - 4) A description of the authorized use of the system.
- k. The Contractor shall implement and use management and maintenance applications and tools, appropriate fraud prevention and detection, and data confidentiality/protection/encryption technologies for endpoints, servers and mobile devices. This will include mechanisms to identify vulnerabilities and apply security patches.
- l. The Contractor shall establish and maintain a continuous security program as part of the Services. The security program will enable the Department (or its selected third party) to:

## Cyber Security Contract Requirements Exhibit

- 1) Define the scope and boundaries, policies, and organizational structure of an information security management system;
- 2) Conduct periodic risk assessments to identify the specific threats to and vulnerabilities of the Department due to the Services, subject to the terms, conditions and procedures;
- 3) Implement appropriate mitigating controls and training programs, and manage resources; and
- 4) Monitor and test the security program to ensure its effectiveness. The Contractor will review and adjust the security program in light of any assessed risks.

### 7. Physical Access Controls

The Contractor shall:

- a. Restrict physical access to the System containing the Department's data to authorized personnel with appropriate clearances and access authorizations.
- b. Enforce physical access authorizations for all physical access points to the facility where the System resides;
- c. Verify individual access authorizations before granting access to the facility containing the System;
- d. Control entry to the facility containing the System using physical access devices and guards; and
- e. Change combinations and keys when keys are lost, combinations are compromised, or individuals are transferred or terminated.
- f. The Department and the Contractor shall collaborate on security monitoring and incident response, define points of contact on both sides, establish monitoring and response procedures, set escalation thresholds, and conduct training. The Contractor shall, at the request of the Department or, in the absence of any request from the Department, at least quarterly, provide the Department with a report of the incidents that it has identified and taken measures to resolve.

### 8. Data Security

- a. If the Contractor or any subcontractors require access to the Department's network; the Department's data; or the network processing, transporting, or storing of the Department's data (may at the Department's discretion), the Contractor will be required to sign the CJIS Security Addendum, and all of the Contractor's employees requiring access to the Department's network will sign

## Cyber Security Contract Requirements Exhibit

the FBI Certification to the CJIS Security Addendum and complete a fingerprint based background check.

- b. The System will protect against an employee falsely denying having performed a particular action (non-repudiation).
- c. The Contractor, its subcontractors, and their staff shall obtain and provide proof of PII certifications for its employees accessing the Department's data at the request of the Department.
- d. The Contractor shall comply with relevant federal and state statutes and rules, and the Department's policies, and standards, including but not limited to CJIS requirements.
- e. Data will not be exported to an external location without the permission of the Department.
- f. In the event of any impermissible disclosure, loss or destruction of Confidential Information, the receiving Party shall immediately notify the disclosing Party and take all reasonable steps to mitigate any potential harm or further disclosure, loss or destruction of such Confidential Information.

### 9. Encryption

The System will protect the confidentiality of the Department's information. All data transmitted outside or stored outside the secure network will be encrypted. When cryptography (encryption) is employed within information systems, the System will perform all cryptographic operations using Federal Information Processing Standard (FIPS) PUB140-2 validated cryptographic modules with approved modes of operation. The System will produce, control, and distribute symmetric cryptographic keys using NIST-approved key management technology and processes. The key management process is subject to audit by the Department.

- a. Wireless: The following requirements specify the minimum set of security measures required on WLAN-enabled portable electronic devices (PEDs) that transmit, receive, process, or store PII or confidential information:
  - 1) Personal Firewall: WLAN-enabled PED will use personal firewalls or run a Mobile Device Management system that facilitates the ability to provide firewall services.
  - 2) Anti-Virus Software: Anti-virus software will be used on wireless ECMs-capable PEDs or run a Mobile Device Management System that facilitates the ability to provide anti-virus services.
  - 3) Encryption of PII or confidential data-in-transit via WLAN-enabled PEDs, systems and technologies will be implemented in a manner that protects the

## Cyber Security Contract Requirements Exhibit

data end-to-end. All systems components within a WLAN that wirelessly transmit PII or confidential information will have cryptographic functionality that is validated under the National Institute of Standards and Technology (NIST) Cryptographic Module Validation Program as meeting requirements per Federal Information Processing Standards (FIPS) Publication 140-2. Encryption will be a minimum of 128 bit.

- 4) **Data-at-Rest:** Data at rest encryption will be implemented in a manner that protects PII and confidential information stored on WLAN enabled PEDs by requiring that the PED must be powered on and credentials successfully authenticated in order for the data to be deciphered. Data-at-rest encryption will include the encryption of individual files, portions of the file system (e.g., directories or partitions), or the entire drive (e.g. hard disks, on-board memory cards, memory expansion cards). In recognition of the increased risk of unauthorized access to PII or confidential information in the event that a PED is lost or stolen and the inherently mobile nature of these devices, encryption will be provided for data-at-rest on all WLAN enabled PEDs that is validated as meeting FIPS 140-2.
  - 5) **WLAN Infrastructure:** WLAN infrastructure systems may be composed of either stand-alone (autonomous) access points or thin Access Points that are centrally controlled by a WLAN controller.
  - 6) **Validated Physical Security:** APs used in the WLANS will not be installed in unprotected environments due to an increased risk of tampering and/or theft.
- b. **Mobile Device Management Requirement.** Mobile Device Management (MDM) facilitates the implementation of sound security controls for mobile devices and allows for centralized oversight of configuration control, application usage, and device protection and recovery. MDM will include the following core features:
- 1) The ability to push security policies to managed devices;
  - 2) The ability to query the device for its configuration information;
  - 3) The ability to modify device configuration as required;
  - 4) Security functionality that ensures the authenticity and integrity of the transaction in the three categories above;
  - 5) Asset management (track/enable/disable) mobile devices being managed via the MDM server;
  - 6) The ability to manage proxy access to network resources via the connection of the mobile device to the MDM server;
  - 7) The ability to query devices being managed on the status of security policy compliance and to implement a specified mediation function based on compliance status;
  - 8) The ability to download and store mobile device audit records;
  - 9) The ability to receive alerts and other notifications from manage mobile devices;

## **Cyber Security Contract Requirements Exhibit**

- 10) The ability to receive alerts and other notifications from managed mobile devices;
- 11) The ability to generate audit record reports from mobile device audit records; and
- 12) Application management (application white list) for applications installed on managed mobile devices.

### **10. Secure Erasure of Hard Disk Capability**

All equipment provided to the Department by the Contractor that is equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) will have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment's useful life or the end of the related services agreement for such equipment, in accordance with 1 TAC §202.

### **11. Data Center Location Requirements**

The data center will be located in the continental United States of America.

### **12. Access to Internal Department Network and Systems**

As a condition of gaining remote access to any internal Department network and Systems, the Contractor shall comply with Department policies and procedures. The Department's remote access request procedures require the Contractor to submit a Remote Access Request form for the Department's review and approval.

- a. Remote access technologies provided by the Contractor will be approved by the Department's CISO.
- b. Individuals who are provided with access to the Department's network may be required to attend or review the Department's Security Awareness Training on an annual basis.
- c. The Contractor shall secure its own connected systems in a manner consistent with Department requirements.
- d. The Department reserves the right to audit the security measures in effect on the Contractor's connected systems without prior warning.
- e. The Department also reserves the right to immediately terminate network and system connections not meeting such requirements.



## Cyber Security Contract Requirements Exhibit

### 13. FBI CJIS Security Addendum

The Respondent or proposed Contractor, as appropriate, shall execute an originally signed CJIS Security Addendum which can be downloaded from <http://www.txdps.state.tx.us/securityreview>. Additionally, a CJIS Security Addendum Certification will be signed by each employee performing duties related to this project prior to final Contract award. Each original Certification will include an original signature of the employee and the Contractor's representative. Non-compliance by the Respondent or proposed Contractor will be cause for termination of contract negotiations and the Department may elect to enter into negotiations with the next highest evaluated Respondent or proposed Contractor.

The Contractor shall, prior to beginning work on this Contract, enter into the CJIS online system all Contractor employees and subcontractors who will work on this Contract (further instructions will be provided to the Contractor prior to execution of this Contract), and have those employees/subcontractors complete the CJIS online training/testing. The Contractor shall meet or exceed all requirements contained in the CJIS Security Policy.

### 14. Criminal History Background Checks

- a. The Contractor's project personnel shall submit to a fingerprint-based Criminal History Background Investigation, if required by the Department, at the Contractor's expense. To facilitate this Criminal History Background Investigation, each person shall complete the Department's Vendor Background Information form (HR-22), which will be provided by the Department.
- b. If required under this Contract, the Contractor will not allow personnel who have not submitted to and successfully completed the Department's fingerprint-based Criminal History Background Investigation and who do not otherwise maintain a Department security clearance to work on this Contract. The Department has the right to prevent the Contractor's personnel from gaining access to the Department's building(s) and computer systems if the Department determines that such personnel do not pass the background check or fail to otherwise maintain the Department security clearance.
- c. When required, the Contractor's Project Manager will provide the following to the Department's Project Manager within seven (7) calendar days of executing this Contract:
  - a) the completed Vendor Background Information form (HR-22) for all proposed personnel; and
  - b) Acceptable fingerprints for all proposed personnel.

## **Cyber Security Contract Requirements Exhibit**

- d. Throughout the term of this Contract, the Department may require the Contractor personnel to submit an annual Department fingerprint-based Criminal History Background Investigation to the Department.
- e. Throughout the term of this Contract, the Contractor will promptly notify the Department of any activity or action by the Contractor's personnel that may affect that individual's ability to continue to work under this Contract

### **15. Department Information Protection Policies, Standards & Guidelines**

- a. The Contractor, its employees, and any subcontractors shall comply with all applicable Department Information Protection Policies, Standards & Guidelines and any other Department requirements that relate to the protection or disclosure of Department Information. Department Information includes all data and information:
  - 1. Submitted to the Contractor by or on behalf of the Department;
  - 2. Obtained, developed, or produced by the Contractor in connection with this Contract;
  - 3. Communicated verbally whether intentionally or unintentionally; or
  - 4. To which the Contractor has access in connection with the Services provided under this Contract.
- b. Such Department Information may include taxpayer, vendor, and other state agency data held by the Department.
- c. All waiver requests will be processed in accordance with the Department's Information Protection Policies, Standards & Guidelines Waiver Policy or within Chapter 26 of the TXDPS General Manual.
- d. The Department reserves the right to audit the Contractor's compliance with the Department's Information Protection Policies, Standards & Guidelines or within Chapter 26 of the TXDPS General Manual.
- e. The Department reserves the right to take appropriate action to protect the Department's network and information including the immediate termination of System access.
- f. The Contractor will ensure that any confidential Department Information in the custody of the Contractor is properly sanitized or destroyed when the information is no longer required to be retained by the Department or the Contractor in accordance with this Contract.

## Cyber Security Contract Requirements Exhibit

- g. Electronic media used for storing any confidential Department Information will be sanitized by clearing, purging or destroying in accordance with NIST Special Publication 800-88 Guidelines for Media Sanitization. The Contractor will maintain a record documenting the removal and completion of all sanitization procedures with the following information:
  - 1. Date and time of sanitization/destruction,
  - 2. Description of the item(s) and serial number(s) if applicable,
  - 3. Inventory number(s), and
  - 4. Procedures and tools used for sanitization/destruction.
- h. No later than sixty (60) calendar days from contract expiration or termination or as otherwise specified in this Contract, the Contractor shall complete the sanitization and destruction of the data and provide to the Department all sanitization documentation.

### 16. General Confidentiality Requirements

- a. All information provided by the Department or sub-recipients to the Contractor or created by the Contractor in performing the obligations under this Contract is confidential and will not be used by the Contractor or disclosed to any person or entity, unless such use or disclosure is required for the Contractor to perform work under this Contract. The obligations of this section do not apply to information that the Contractor can demonstrate:
  - 1) Is publicly available;
  - 2) The Contractor received from a third party without restriction on disclosure and without breach of contract or other wrongful act;
  - 3) The Contractor independently developed without regard to the Department confidential information; or
  - 4) Is required to be disclosed by law or final order of a court of competent jurisdiction or regulatory authority, provided that the Contractor will furnish prompt written notice of such required disclosure and will reasonably cooperate with the Department at the Department's cost and expense, in any effort made by the Department to seek a protection order or other appropriate protection of its confidential information.
- b. The Contractor shall notify the Department in writing of any unauthorized release of confidential information within two (2) business days of when the Contractor knows or should have known of such unauthorized release.
- c. The Contractor shall notify sub-recipient in writing of any unauthorized release of confidential information within two (2) business days of when the Contractor knows or should have known of any unauthorized release of confidential information obtained from sub-recipient(s).

## Cyber Security Contract Requirements Exhibit

- d. The Contractor shall maintain all confidential information, regardless whether obtained from the Department or from sub-recipient(s) in confidence during the term of this Contract and after the expiration or earlier termination of this Contract.
- e. If the Contractor has any questions or doubts as to whether particular material or information is confidential information, the Contractor shall obtain the prior written approval of the Department prior to using, disclosing, or releasing such information.
- f. The Contractor acknowledges that the Department's and sub-recipient(s)' confidential information is unique and valuable, and that the Department and sub-recipient(s) may have no adequate remedy at law if the Contractor does not comply with its confidentiality obligations under this Contract. Therefore, the Department will have the right, in addition to any other rights it may have, to seek in any Travis County court of competent jurisdiction temporary, preliminary, and permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any confidentiality obligations of the Contractor if the Contractor fails to perform any of its confidentiality obligations under this Contract.
- g. The Contractor shall immediately return to the Department all confidential information when this Contract terminates, at such earlier time as when the confidential information is no longer required for the performance of this Contract or when the Department requests that such confidential information be returned.
- h. Information, documentation and other material in connection with this Contract, including the Contractor's proposal, may be subject to public disclosure pursuant to the Texas Government Code, Chapter 552.
- i. The FBI and the Department have computer security requirements. The Contractor's and subcontractor's employees working on this assignment will sign and submit appropriate agreements and abide by these security requirements, within five (5) calendar days of the Department's request.

### 17. Sensitive Personal Information

To the extent this subsection does not conflict with Subsection 15 herein entitled "General Confidentiality Requirements," the Contractor shall comply with both subsections. To the extent this subsection conflicts with the Subsection 15 herein entitled "General Confidentiality Requirements," this Subsection 17 entitled "Sensitive Personal Information" controls.

- a. "Sensitive personal information" is defined as follows:

## Cyber Security Contract Requirements Exhibit

- 1) An individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted:
  - a) Social security number;
  - b) Driver's license number or government-issued identification number; or
  - c) Account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or
- 2) Information that identifies an individual and relates to:
  - a) The physical or mental health or condition of the individual;
  - b) The provision of health care to the individual; or
  - c) Payment for the provision of health care to the individual.
- b. Sensitive personal information does not include publicly available information that is lawfully made available to the public from the federal government or a state or local government.
- c. "Breach of system security" is defined as follows: Unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information the Contractor maintains under this Contract, including data that is encrypted if the Contractor's employee or agent accessing the data has the key required to decrypt the data. Good faith acquisition of sensitive personal information by an employee or agent of the Contractor for the purposes of performing under this Contract is not a breach of system security unless the employee or agent of the Contractor uses or discloses the sensitive personal information in an unauthorized manner.
- d. The Contractor shall implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect from unlawful use or disclosure any sensitive personal information collected or maintained by the Contractor under this Contract.
- e. The Contractor shall notify the Department, any affected sub-recipient and the affected people of any breach of system security immediately after discovering the breach or receiving notification of the breach, if sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person. However, the Contractor shall delay providing notice to the affected people and sub-recipients at the Department's request, if the Department determines that the notification will impede a criminal investigation. Notification to the affected people will be made as soon as the Department determines that it will not compromise any criminal investigation.

## Cyber Security Contract Requirements Exhibit

- f. The Contractor shall give notice as follows, at the Contractor's expense:
- 1) Written notice;
  - 2) Electronic notice, if the notice is provided in accordance with 15 U.S.C. Section 7001;
  - 3) Notice as follows:
    - a) If the Contractor demonstrates that the cost of providing notice would exceed \$250,000, the number of affected people exceeds 500,000, or the Contractor does not have sufficient contact information for the affected people, the Contractor may give notice as follows:
      - i. Electronic mail, if the Contractor has an electronic mail address for the affected people;
      - ii. Conspicuous posting of the notice on the Contractor's website;
      - iii. Notice published in or broadcast on major statewide media; or
    - b) If the Contractor maintains its own notification procedures (as part of an information security policy for the treatment of sensitive personal information) that comply with the timing requirements for notice under this subsection entitled "Sensitive Personal Information," the Contractor may provide notice in accordance with that policy.
- g. If this subsection requires the Contractor to notify at one time more than 10,000 people of a breach of system security, the Contractor will also notify, without unreasonable delay, each consumer reporting agency (as defined by 15 U.S.C. Section 1681a) that maintains files on consumers on a nationwide basis, of the timing, distribution, and content of the notices.
- h. In the event of a breach of system security, if sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person, the Department, an agency of the State of Texas, may assess and enforce, as applicable and without limitation, cyber insurance coverage requirements, indemnification, duty to defend, liquidated damages, actual damages, sanctions, rights, claims, remedies and other amounts against the Contractor in accordance with the contract that includes these Cyber Security Contract Requirements, and in accordance with other applicable law. The Contractor understands that there may be constitutional and statutory limitations on the Department to enter into certain terms and conditions of the contract that includes these Cyber Security Contract Requirements and that any such terms and conditions will not be binding on the Department except to the extent authorized by the laws and constitution of the State of Texas.

## Cyber Security Contract Requirements Exhibit

- i. Liquidated Damages may be assessed under this Section 17 in the amount of the per capita data breach cost for public sector (government) records as listed in the current Ponemon Institute Research Report Cost of Data Breach Study: United States, with a not to exceed Liquidated Damages Cap of XX.X% of the total contract value.

The Ponemon Institute Research Report Cost of Data Breach Study: United States may be found at: <http://www-03.ibm.com/security/data-breach/>.

- j. The Contractor will not be responsible and liquidated damages may not be assessed due to a breach of system security caused entirely by someone other than the Contractor, the Contractor's subcontractor, or the Contractor's agent. (This clause is not to be interpreted that the Contractor is absolved of liability with any other sections pertaining to cyber security or data protection).
- k. Any liquidated damages assessed under this Contract may, at the Department's option, be deducted from any payments due the Contractor. The Department has the right to offset any liquidated damages payable to the Department, as specified above, against any payments due to the Contractor. If insufficient payments are available to offset such liquidated damages, then the Contractor will pay to the Department any remaining liquidated damages within fifteen (15) calendar days following receipt of written notice of the amount due.

### 18. Disclosure of Security Breach

Without limitation on any other provision of this Contract regarding information security or security breaches, the Contractor shall provide notice to the Department's Project Manager and the CISO as soon as possible following the Department's discovery or reasonable belief that there has been unauthorized exposure, access, disclosure, compromise, or loss of sensitive or confidential Department information ("Security Incident").

- a. Within twenty-four (24) hours of the discovery or reasonable belief of a Security Incident, the Contractor shall provide a written report to the CISO detailing the circumstances of the incident, which includes at a minimum:
  - 1) A description of the nature of the Security Incident;
  - 2) The type of Department information involved;
  - 3) Who may have obtained the Department information;
  - 4) What steps the Contractor has taken or will take to investigate the Security Incident;
  - 5) What steps the Contractor has taken or will take to mitigate any negative effect of the Security Incident; and
  - 6) A point of contact for additional information.

## Cyber Security Contract Requirements Exhibit

- b. Each day thereafter until the investigation is complete, the Contractor shall provide the CISO with a written report regarding the status of the investigation and the following additional information as it becomes available:
  - 1) Who is known or suspected to have gained unauthorized access to the Department's information;
  - 2) Whether there is any knowledge if the Department information has been abused or compromised;
  - 3) What additional steps the Contractor has taken or will take to investigate the Security Incident;
  - 4) What steps the Contractor has taken or will take to mitigate any negative effect of the Security Incident; and
  - 5) What corrective action the Contractor has taken or will take to prevent future similar unauthorized use or disclosure.
- c. The Contractor shall confer with the CISO regarding the proper course of the investigation and risk mitigation. The Department reserves the right to conduct an independent investigation of any Security Incident, and should the Department choose to do so, the Contractor shall cooperate fully by making resources, personnel, and systems access available to the Department and the Department's authorized representative(s).
- d. Subject to review and approval of the CISO, the Contractor shall, at its own cost, provide notice that satisfies the requirements of applicable law to individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Security Incident. If the Department, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice will be reimbursed to the Department by the Contractor. If the Contractor does not reimburse such costs within thirty (30) calendar days of the Department's written request, the Department will have the right to collect such costs.

### 19. Cyber Insurance Requirement

The Contractor shall maintain sufficient cyber insurance to cover any and all losses, security breaches, privacy breaches, unauthorized distributions, or releases or uses of any data transferred to or accessed by the Contractor under or as a result of this Contract.

- a. This insurance will provide sufficient coverage(s) for the Contractor, the Department, and affected third parties for the review, repair, notification, remediation and other response to such events, including but not limited to, breaches or similar incidents under Chapter 521, Texas Business and Commerce Code.



## Cyber Security Contract Requirements Exhibit

- b. The Department may, in its sole discretion, confer with the Texas Department of Insurance to review such coverage(s) prior to approving them as acceptable under this Contract.
- c. The Contractor shall obtain modified coverage(s) as reasonably requested by the Department within ten (10) calendar days of the Contractor's receipt of such request from the Department.

## 20. Representations and Warranties Related To Software

If any software is provided under this Contract, the Contractor represents and warrants each of the following:

- a. The Contractor has sufficient right, title, and interest in the Software to grant the license required.
- b. Contract terms and conditions included in any "clickwrap," "browsewrap," "shrinkwrap," or other license agreement that accompanies any Software, including but not limited to Software Updates, Software Patch/Fix, or Software Upgrades, provided under this Contract are void and have no effect unless the Department specifically agrees to each licensure term in this Contract.
- c. The Software provided under this Contract does not infringe upon or constitute a misuse or misappropriation of any patent, trademark, copyright, trade secret or other proprietary right;
- d. Software and any Software Updates, Software Maintenance, Software Patch/Fix, and Software Upgrades provided under this Contract will not contain viruses, malware, spyware, key logger, back door or other covert communications, or any computer code intentionally designed to disrupt, disable, harm, or otherwise impede in any manner, including aesthetical disruptions or distortions, the operation of the computer program, or any other associated software, firmware, hardware, or computer system, (including local area or wide-area networks), in a manner not intended by its creator(s); and
- e. Software provided under this Contract does not and will not contain any computer code that would disable the Software or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanism (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit the Contractor to access the Software to cause such disablement or impairment (sometimes referred to as "trap door" devices").

## **Cyber Security Contract Requirements Exhibit**

### **21. 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 Department and all such data will be delivered to the Department by the Contractor upon completion, termination, or cancellation of this Contract.
- b. The Contractor will not use, willingly allow, or cause to have such data used for any purpose other than the performance of the Contractor's obligations under this Contract without the prior written consent of the Department.
- c. The ownership rights described herein will include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.
- d. The Contractor shall provide, at no additional charge, appropriate licenses for the Department to use and access, as necessary for the Department to use and access the turnkey Solution during the term of the lease, 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.

Consensus Assessments Initiative Questionnaire			
Control Group	CGID	CID	Consensus Assessment Questions
Independent Audits	CO-02	CO-02.2	How often do you conduct network penetration tests of your cloud service infrastructure.
		CO-02.3	How often do you conduct regular application penetration tests of your cloud infrastructure?
		CO-02.4	How often do you conduct internal audits?
		CO-02.5	Do you conduct external audits regularly as prescribed by industry best practices and guidance?
		CO-02.6	Are the results of the network penetration tests available to tenants at their request?
		CO-02.7	Are the results of internal and external audits available to tenants at their request?
Third Party Audits	CO-03	CO-03.1	Will you permit DPS to conduct vulnerability scans on hosted applications and your network?
		CO-03.2	Do you have external third-party conduct vulnerability scans and periodic penetration tests on your applications and networks?
Audit Tools Access	IS-29	IS-29.1	How do you restrict, log, and monitor access to your information security management systems? (Ex. Hypervisors, firewalls, vulnerability scanners, network sniffers, APIs, etc.)
Information System Regulatory Mapping	CO-05	CO-05.1	How do you ensure customer data is logically segmented that data may be produced for a single tenant only, without inadvertently accessing another tenant's data?
		CO-05.2	Do you have capability to logically segment and recover data for a specific customer in the case of a failure or data loss?
Intellectual Property	CO-06	CO-06.1	Describe the controls you have in place to protect tenants intellectual property?
Data Governance			

Consensus Assessments Initiative Questionnaire			
Control Group	CGID	CID	Consensus Assessment Questions
Ownership / Stewardship	DG-01	DG-01.1	Do you follow a structured data-labeling standard (ex. ISO 15489, Oasis XML Catalog Specification, CSA data type guidance)?
Classification	DG-02	DG-02.4	Can you provide the physical location/geography of storage of a tenant’s data upon request?
		DG-02.5	Do you allow tenants to define acceptable geographical locations for data routing or resource instantiation?
Handling / Labeling / Security Policy	DG-03	DG-03.1	Are Policies and procedures established for labeling, handling and security of data and objects which contain data?
Retention Policy	DG-04	DG-04.1	Describe technical control you have in place to enforce tenant data retention policies?
Secure Disposal	DG-05	DG-05.1	Describe your process for secure disposal or destruction of physical media and secure deletion or sanitization of all computer resources of DPS data once DPS has
Nonproduction Data	DG-06	DG-06.1	How do you ensure production data is be replicated or used in non-production environments?
Information Leakage	DG-07	DG-07.1	Describe the controls in place to prevent data leakage or intentional/accidental compromise between tenants.
		DG-07.2	What a Data Loss Prevention (DLP) or extrusion prevention solution is in place for all systems which interface with your cloud service offering?
Facility Security			
Controlled Access Points	FS-03	FS-03.1	Are physical security perimeters (fences, walls, barriers, guards, gates, electronic surveillance, physical authentication mechanisms, reception desks and security patrols) implemented?
Unauthorized Persons Entry	FS-05	FS-05.1	How are ingress and egress points such as service areas and other points where unauthorized personnel may enter the premises, monitored, controlled or isolated from data storage and process?
Asset Management	FS-07	FS-07.1	What are your procedures governing asset management and repurposing of equipment used to support DPS hosted services or data?
Human Resources Security			

Consensus Assessments Initiative Questionnaire			
Control Group	CGID	CID	Consensus Assessment Questions
Background Screening	HR-01	HR-01.1	Are state of residency and national fingerprint-based record checks conducted on employees or contractors who have access to DPS's data, applications or the networks supporting DPS's data and or applications?
Employment Agreements	HR-02	HR-02.1	Do you specifically train your employees regarding their role vs. the tenant's role in providing information security controls?
		HR-02.2	Do you document employee acknowledgment of training they have completed?
Employment Termination	HR-03	HR-03.1	Are Roles and responsibilities for following performing employment termination or change in employment procedures assigned, documented and communicated?
Information Security			
Management Program	IS-01	IS-01.1	Do you provide tenants with documentation describing your Information Security Management Program (ISMP)?
Management Support / Involvement	IS-02	IS-02.1	Are policies in place to ensure executive and line management take formal action to support information security through clear documented direction, commitment, explicit assignment and verification of assignment execution?
Policy	IS-03	IS-03.1	Do your information security and privacy policies align with particular industry standards (ISO-27001, ISO-22307, CoBIT, etc.)?
		IS-03.2	Do you have agreements which ensure your providers adhere to your information security and privacy policies?
	IS-04	IS-04.2	Do you have a capability to continuously monitor and report the compliance of your infrastructure against your information security baselines?
Policy Reviews	IS-05	IS-05.1	Do you notify your tenants when you make material changes to your information security and/or privacy policies?
Policy Enforcement	IS-06	IS-06.1	Is a formal disciplinary or sanction policy established for employees who have violated security policies and procedures?
		IS-06.2	Are employees made aware of what action might be taken in the event of a violation and stated as such in the policies and procedures?

Consensus Assessments Initiative Questionnaire			
Control Group	CGID	CID	Consensus Assessment Questions
User Access Policy	IS-07	IS-07.1	What controls do you controls in place to ensure timely removal of systems access which is no longer required for business purposes?
User Access Restriction / User Access Revocation	IS-08	IS-08.1	Describe process for granting and approving access to DPS data or hosted services.
	IS-09	IS-09.1	Describe process for timely deprovisioning, revocation or modification of user access to the DPS data or hosted services upon any change in status of employees, contractors, customers, business partners or third parties?
	IS-10	IS-10.1	Do you require at least annual certification of entitlements for all system users and administrators (exclusive of users maintained by your tenants)?
Training / Awareness		IS-10.2	If users are found to have inappropriate entitlements, are all remediation and certification actions recorded?
	IS-11	IS-11.1	Do you provide annually a formal security awareness training program for cloud-related access and data management issues for all persons with access to DPS or hosted services?
	IS-12	IS-12.2	Do you benchmark your security controls against industry standards?
Segregation of Duties	IS-15	IS-15.1	How do you maintain segregation of duties within your cloud service offering?
Encryption	IS-18	IS-18.1	Do you have a capability to allow creation of unique encryption keys per tenant?
		IS-18.2	Do you support tenant generated encryption keys or permit tenants to encrypt data to an identity without access to a public key certificate. (e.g. Identity based encryption)?
	IS-19	IS-19.1	What encryption method and level of encryption is applied to DPS's data at rest and does it meet FIPS 140-2?
Encryption Key Management		IS-19.3	For DPS data in transport, what encryption level is applied and is the cryptographic module FIPS 140-2 certified.
		IS-19.4	Describe your key management procedures?
Vulnerability / Patch Management	IS-20	IS-21.1	Describe your patch management process?

Consensus Assessments Initiative Questionnaire			
Control Group	CGID	CID	Consensus Assessment Questions
Antivirus / Malicious Software	IS-21	IS-21.1	Do you have anti-malware programs installed on all systems which support DPS hosted services and data?
		IS-21.2	How do you ensure that security threat detection systems which use signatures, lists, or behavioral patterns are updated across all infrastructure components which support DPS's hosted services.
Incident Management	IS-22	IS-22.1	Do you have a documented security incident response plan
			Do you have processes for handling and reporting of security incidents that include preparation, detection, analysis, containment eradication, and recovery?
			What steps are taken to ensure all employees are made aware of the incident reporting procedures?
Incident Reporting	IS-23	IS-23.1	Does your security information and event management (SIEM) system merge data sources (app logs, firewall logs, IDS logs, physical access logs, etc.) for granular analysis and alerting?
Network Monitoring	IS-27	IS-27.1	List the tools used to monitor network events, detect attacks, and provide identification of unauthorized use.
Source Code Access Restriction	IS-33	IS-33.1	Describe the controls in place to prevent unauthorized access to your application, program or object source code, and assure it is restricted to authorized personnel only?
Utility Programs Access	IS-34	IS-34.1	How are utilities that can significantly manage virtualized partitions (ex. shutdown, clone, etc.) appropriately restricted and monitored?
Release Management			
Production Changes	RM-02	RM-02.1	Do you have documented change management procedures?
Quality Testing	RM-03	RM-03.1	Do you provide your tenants with documentation which describes your quality assurance process?
Outsourced Development	RM-04	RM-04.1	Do you have controls in place to ensure that standards of quality are being met for all software development?
		RM-04.2	Do you have controls in place to detect source code security defects for any outsourced software development activities?
Unauthorized Software Installations	RM-05	RM-05.1	What controls do you have in place to restrict and monitor the installation of unauthorized software onto your systems?



Consensus Assessments Initiative Questionnaire			
Control Group	CGID	CID	Consensus Assessment Questions
<b>Resiliency</b>			
Business Continuity Testing	RS-01	RS-01.1	Are Policy, process and procedures defining business continuity and disaster recovery in place to minimize the impact of a realized risk event?
	RS-04	RS-04.1	Are business continuity plans subject to test at planned intervals or upon significant organizational or environmental changes to ensure continuing effectiveness?
Equipment Power Failures	RS-07	RS-07.1	How are Security mechanisms and redundancies implemented to protect equipment from utility service outages (e.g., power failures, network disruptions, etc.)?
<b>Security Architecture</b>			
Customer Access Requirements	SA-01	SA-01.1	Are all identified security, contractual and regulatory requirements for customer access contractually addressed and remediated prior to granting customers access to data, assets and information systems?
User ID Credentials	SA-02	SA-02.1	Do you support use of, or integration with, existing customer-based Single Sign On (SSO) solutions to your service?
Password			Describe password requirements
Application Security	SA-04	SA-04.2	Do you utilize an automated source-code analysis tool to detect code security defects prior to production?
Data Integrity	SA-05	SA-05.1	Are data input and output integrity routines (i.e., reconciliation and edit checks) implemented for application interfaces and databases to prevent manual or systematic processing errors or corruption of data?
Remote User Multifactor Authentication	SA-07	SA-07.1	Describe multi-factor authentication method required for all remote user access.
Segmentation	SA-09	SA-09.4	Are system and network environments logically separated to ensure protection and isolation of sensitive data?
Wireless Security	SA-10	SA-10.1	Are policies and procedures established and mechanisms implemented to protect network environment perimeter and configured to restrict unauthorized traffic?



Consensus Assessments Initiative Questionnaire			
Control Group	CGID	CID	Consensus Assessment Questions
		SA-10.2	Are policies and procedures established and mechanisms implemented to ensure proper security settings enabled with strong encryption for authentication and transmission, replacing vendor default settings? (e.g., encryption keys, passwords, SNMP community strings, etc.)
		SA-10.3	Are policies and procedures established and mechanisms implemented to protect network environments and detect the presence of unauthorized (rogue) network devices for a timely disconnect from the network?
Clock Synchronization	SA-12	SA-12.1	Do you utilize a synchronized time-service protocol (ex. NTP) to ensure all systems have a common time reference?
Audit Logging / Intrusion Detection	SA-14	SA-14.1	What file integrity controls and network intrusion detection (IDS) tools are deployed to help facilitate timely detection, investigation by root cause analysis and response to incidents?
		SA-14.2	Is Physical and logical user access to audit logs restricted to authorized personnel?



# HUB Subcontracting Plan (HSP)

## QUICK CHECKLIST

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

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

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



# HUB Subcontracting Plan (HSP)

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

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

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

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

## - - Agency Special Instructions/Additional Requirements - -

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

## SECTION 1: RESPONDENT AND REQUISITION INFORMATION

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

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

## SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

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

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

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

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

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

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

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

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

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

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

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

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

Requisition #: \_\_\_\_\_

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

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

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

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

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

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

#### **SECTION 4: AFFIRMATION**

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date  
(mm/dd/yyyy)

#### **Reminder:**

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

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Page 1 of 1  
(Attachment A)

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

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

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

## SECTION B-1: SUBCONTRACTING OPPORTUNITY

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

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

## SECTION B-2: MENTOR PROTÉGÉ PROGRAM

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

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

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

## SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

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

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

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

Company Name	Texas VID (Do not enter Social Security Numbers.)	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			- Yes - No
			- Yes - No
			- Yes - No

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

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		- Yes - No
		- Yes - No



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

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

## SECTION B-4: SUBCONTRACTOR SELECTION

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

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

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

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

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

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

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



# HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in Section B has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

## SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: \_\_\_\_\_

State of Texas VID #: \_\_\_\_\_

Point-of-Contact: \_\_\_\_\_

Phone #: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Fax #: \_\_\_\_\_

## SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: \_\_\_\_\_

Point-of-Contact: \_\_\_\_\_

Phone #: \_\_\_\_\_

Requisition #: \_\_\_\_\_

Bid Open Date: \_\_\_\_\_

(mm/dd/yyyy)

## SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

### 1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than \_\_\_\_\_ on \_\_\_\_\_ .  
Central Time Date (mm/dd/yyyy)

*In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).*

*(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)*

### 2. Subcontracting Opportunity Scope of Work:

### 3. Required Qualifications:

- Not Applicable

### 4. Bonding/Insurance Requirements:

- Not Applicable

### 5. Location to review plans/specifications:

- Not Applicable



# HUB Subcontracting Plan (HSP)

## QUICK CHECKLIST

While this HSP Quick Checklist is being completed, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
- ☐ Section 2 b. - List all subcontracting opportunities you listed in Section 2 b.
- ☐ Section 2 c. - Yes
- ☐ Section 4 - Affirmation
- ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

**BOX 1 –subcontracting only to HUBs  
(Attachment A)**

to award to Texas certified HUB vendors.

- If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract\* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
- ☐ Section 2 b. - List all subcontracting opportunities you listed in Section 2 b.
- ☐ Section 2 c. - No
- ☐ Section 2 d. - Yes
- ☐ Section 4 - Affirmation
- ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

**BOX 2 –subcontracting with HUBs and  
non-HUBs and meeting goal (Attachment A)**

to award to Texas certified HUB vendors

- If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract\* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
- ☐ Section 2 b. - List all subcontracting opportunities you listed in Section 2 b.
- ☐ Section 2 c. - No
- ☐ Section 2 d. - No
- ☐ Section 4 - Affirmation
- ☐ GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.

**BOX 3 –subcontracting with HUBs and  
non-HUBs and not meeting the goals  
(Attachment B)**

to award to Texas certified HUB vendors

- If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - No
- ☐ Section 3 - Self-performing
- ☐ Section 4 - Affirmation

**BOX 4 self-performing**

with my own resources.

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