



Texas Department of Criminal Justice

Bryan Collier
Executive Director

June 22, 2017

Attn: Linda Smith
Truce Dispute Resolution Firm, LLC
11322 Raveneaux Dr.
Frisco, Texas 75034-7904

Re: Contract Number: 696-HR-18-18-C064
Independent Dismissal Mediation Services

Dear Ms. Smith:

Attached for your review and signature is the above referenced Contract, which was awarded from Solicitation Number 696-HR-17-P006. In accordance with Section L.11, Legislative Budget Board (LBB) Postings, please submit the required CD or a thumb drive to my attention no later than five (5) business days from receipt of this Notice. Please sign all three (3) pages of the contract, where indicated, and return to:

Jason Andrews
TDCJ Contracts & Procurement
2 Financial Plaza, Suite 525
Huntsville, TX 77340

Upon signature by the TDCJ's Chief Financial Officer, a fully executed copy will be returned to you for your records.

Thank you for your assistance with this. Should you have any questions, I can be reached at (936)-437-7129 or jason.andrews@tdcj.texas.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Andrews", with a long, sweeping horizontal line extending to the right.

Jason Andrews, CTPM, CTCM
Contract Administrator

cc: file

Our mission is to provide public safety, promote positive change in offender behavior, reintegrate offenders into society, and assist victims of crime.

P.O. Box 99
Huntsville, Texas 77342-0099
(936) 437-7015
www.tdcj.texas.gov

SOLICITATION, OFFER AND AWARD

1. CONTRACT NO. 696-HR-18-18-C064	2. SOLICITATION NO. 696-HR-17-P006	3. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFO) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	4. DATE ISSUED March 21, 2017
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SOLICITATION

5. Sealed offers will be received by the Department until 3:00 p.m. local time on April 25, 2017 , and submitted to: Texas Department of Criminal Justice Contracts and Procurement Department Client Services and Governmental Contracts Branch Two Financial Plaza, Suite 525 Huntsville, Texas 77340 Attention: 696-HR-17-P006	6. FOR INFORMATION CONTACT: Jason Andrews, CTPM, CTCM Contract Specialist PHONE: (936) 437-7129 FAX: (325) 223-0310 E-MAIL: jason.andrews@tdcj.texas.gov
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OFFER (Must be fully completed by Offeror)

7. DISCOUNT FOR PROMPT PAYMENT:→	10 CALENDAR DAYS 1.5 %	20 CALENDAR DAYS 1.0 %	30 CALENDAR DAYS 0 %	CALENDAR DAYS 0 %
8. ACKNOWLEDGMENT OF AMENDMENTS: <i>(The Offeror acknowledges receipt of amendments to the SOLICITATION for Offerors and related documents numbered and dated:</i>	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
9. NAME AND ADDRESS OF OFFEROR:→	TRUCE Dispute Resolution Firm, LLC 11322 Raveneaux Drive Frisco, Texas 75033		10. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or Print) Linda Smith President	
11. TELEPHONE NO. (Include area code) 214-636-9720	12. SIGNATURE 		13. OFFER DATE 4/20/2017	

TO BE COMPLETED AT TIME OF AWARD

Document Type: 2S
Statutory Cite: Texas Government Code, Section 2009.004(c)

This award consummates the Contract which consists of the following documents: (a) the State's solicitation, and solicitation amendments, such provisions, representations, certifications, specifications, and negotiated changes as hereby incorporated and attached to this award (b) the Contractor's offer, points of clarification, responses to clarification request and/or best and final offer, and negotiated changes as hereby incorporated and attached to this award and (c) this award. In the event of a conflict between any terms and conditions of this Contract document with Contractor's offer, points of clarification and/or best and final offer, the terms which are more favorable to the Department shall prevail.

The total funding for the Base Period of this Contract (September 1, 2017 – August 31, 2018) shall not exceed \$ 54,416.00.

Contractor By: _____ Name: _____ Title: _____ Date: _____	Texas Department of Criminal Justice By: _____ Title: Jerry McGinty Chief Financial Officer Date: _____
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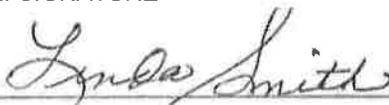
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Contractor	Texas Department of Criminal Justice
By: _____	By: _____
Name: _____	Jerry McGinty
Title: _____	Chief Financial Officer
Date: _____	Date: _____

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The total funding for the Base Period of this Contract (September 1, 2017 – August 31, 2018) shall not exceed \$ 54,416.00.

Contractor	Texas Department of Criminal Justice
By: _____	By: _____
Name: <u>Linda Smith</u>	<u>Jerry McGinty</u>
Title: <u>President</u>	<u>Chief Financial Officer</u>
Date: _____	Date: _____

The following items are mutually agreed to by TRUCE Dispute Resolution Firm, LLC and the Department, and are hereby incorporated into this Contract.

1. The Solicitation, Offer and Award form has been replaced to add the Contract number, update Contract Administrator's information, and add the Contractor and the authorized signor's name and title in the Contractor signature block.
2. Section A, Definitions, has been revised to include the name of the Contractor.
3. Section B.1.2, Pricing Instructions, is hereby deleted and renamed.
4. Section B.2, Pricing Schedule, has been revised to include the Contractor's pricing.
5. Section B.5, Discount for Award of Multiple Regions, is hereby deleted.
6. Section K, Representations, Certifications, and Other Statements of Offerors, has been revised to include the Contractor's responses to subsections K.1.2, K.2, K.4, K.8, K.9, K.10 and K.11.
7. Section K.6.7, Taxes, has been revised to included updated language.
8. Section K.6.17, Suspension, Debarment and Terrorism, has been revised to include updated language.
9. Sections L and M of this Contract are hereby deleted.

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SECTION A – CONTRACT DEFINITIONS

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

AD means the Texas Department of Criminal Justice's Administrative Directives.

ADA means Americans with Disabilities Act.

Authorized Representative means the Person designated in writing to act for and on behalf of a party of this Contract, which designation has been furnished to the other party hereto as described in Section G.2.1.

Biennium means any of the two (2) year periods beginning on September 1 and ending on August 31 of odd numbered years, which periods are used for budgetary purposes by the State of Texas.

Business Day(s) means Monday through Friday, excluding state and national holidays for which TDCJ administrative offices are closed and days when offices are closed at the direction of the Executive Director, such as for adverse weather.

Contract Monitor shall have the meaning set forth in Section G.2.3.

Contract Specialist means the Department employee responsible for non-technical administration of this Contract, as described in Section G.2.2.

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

Contractor means TRUCE Dispute Resolution Firm, LLC.

Day(s) means calendar days unless otherwise specified.

Department means the Texas Department of Criminal Justice (TDCJ), an agency of the State of Texas.

Department Policy/Policies means all written policies, procedures, standards, guidelines, directives and manuals of the Texas Board of Criminal Justice, and the Department, applicable to providing the Services specified under this Contract.

Dispute Resolution means a process under which an impartial Person, the facilitator, promotes communication between employees in an attempt to reach a mutually acceptable agreement. This process allows employees to resolve many of their employment-related disputes in a fair and timely manner.

Dispute Resolution Organization means a private profit or nonprofit corporation, political subdivision, or public corporation, or a combination of these, that offers alternative Dispute Resolution services to the public.

Event of Default means any of the events or circumstances described in Section I.3.

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

Mediation means a process under which an impartial Person, the Mediator, facilitates communication between the parties to promote reconciliation, settlement or understanding among them.

Mediator means the Contractor, or a Person working for the Contractor, that acts as an impartial third Person to facilitate communication between parties in a professional independent dismissal Mediation session. The Mediator may suggest ways of resolving the dispute, but may not impose own judgment on the issues for that of the parties.

Non-Appropriation means the failure by the Legislature of the State, as part of its budgetary process, to appropriate money to be used for the Payments due hereunder.

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

PD means the Texas Department of Criminal Justice Personnel Directives.

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

Program Coordinator means Department employee responsible for the daily aspects of the Mediation process.

Service Commencement Date means the date on which the Contractor shall begin providing Services pursuant to this Contract. For the purpose of this Contract, that date is September 1, 2017.

Service(s) means delivery by the Contractor of requirements in accordance with the terms and conditions of this Contract.

Subcontractor means a Person or organization who contracts under, or for the performance of part, or the entire Contract between the Department and the Contractor. The subcontract may be direct with the Contractor or with another subcontractor.

TBCJ means the Texas Board of Criminal Justice.

TDCJ means the Texas Department of Criminal Justice, an agency of the State of Texas.

SECTION B - SERVICES AND PRICES/COSTS

B.1 SERVICES AND PRICES/COSTS

B.1.1 Services Being Acquired

Pursuant to Texas Government Code, Chapter 2009, the Department utilizes independent dismissal Mediation as an informal means of resolving dismissal recommendations.

The Contractor shall provide the necessary personnel and supplies to perform these services.

B.1.2 Reserved for Future Use

B.2 PRICING SCHEDULE

B.2.1 Mediation Services

Contract Line Item Numbers (CLIN) 001-007 Base Period (09/01/17 – 08/31/18)

<i>CLIN</i>	<i>Region</i>	<i>Estimated Number of Mediations</i>	<i>Estimated Hours</i>	<i>Hourly Rate</i>	<i>Total</i>
001	I	177	354	\$38.00	\$13,452.00
002	II	61	122	\$38.00	\$ 4,636.00
003	III	164	328	\$38.00	\$12,464.00
004	IV	90	180	\$38.00	\$ 3,840.00
005	V	116	232	\$38.00	\$ 8,816.00
006	VI	81	162	\$38.00	\$ 6,156.00
007	VII	27	54	\$38.00	\$ 2,052.00

Contract Line Item Numbers (CLIN) 008-014 Option Period One (09/01/18 – 08/31/19)

<i>CLIN</i>	<i>Region</i>	<i>Estimated Number of Mediations</i>	<i>Estimated Hours</i>	<i>Hourly Rate</i>	<i>Total</i>
008	I	177	354	\$39.00	\$13,806.00
009	II	61	122	\$39.00	\$ 4,758.00
010	III	164	328	\$39.00	\$12,792.00
011	IV	90	180	\$39.00	\$ 7,020.00
012	V	116	232	\$39.00	\$ 9,048.00
013	VI	81	162	\$39.00	\$ 6,318.00
014	VII	27	54	\$39.00	\$ 2,106.00

Contract Line Item Numbers (CLIN) 015-021 Option Period Two (09/01/19 – 08/31/20)

<i>CLIN</i>	<i>Region</i>	<i>Estimated Number of Mediations</i>	<i>Estimated Hours</i>	<i>Hourly Rate</i>	<i>Total</i>
015	I	177	354	\$43.00	\$15,222.00
016	II	61	122	\$43.00	\$ 5,246.00
017	III	164	328	\$43.00	\$14,104.00
018	IV	90	180	\$43.00	\$ 7,740.00
019	V	116	232	\$43.00	\$ 9,976.00
020	VI	81	162	\$43.00	\$ 6,966.00
021	VII	27	54	\$43.00	\$ 2,322.00

B.2.2 Additional Services

At the Department's request, the following additional Services may be utilized:

Forty (40) hour Mediation Training to be conducted for Department Managers. Training would be conducted in Huntsville, Texas.

Prices for these Services should be separate from items listed in B.2.1.

<i>CLIN</i>	<i>Base Period (09/01/17 – 08/31/18)</i>	
022	40 hour Mediation Training	\$1,421.00
<i>CLIN</i>	<i>Option Period One (09/01/18 – 08/31/19)</i>	
023	40 hour Mediation Training	\$1,730.40
<i>CLIN</i>	<i>Option Period Two (09/01/19 – 08/31/20)</i>	
024	40 hour Mediation Training	\$1,782.40

B.3 ALLOWABLE COSTS

The proposed budget shall include only costs that are reasonable, necessary, and allowable under state statutes, Department Policy, and federal cost standards. The Department shall make the final decision on the allowance or acceptability of a cost.

B.4 NON-ALLOWABLE COSTS

The proposed budget shall not include costs that are not allowed by the State or any authorized agency, statute, policy or procedures. Types of non-allowable costs may include but are not limited to, alcoholic beverages, bad debts, fundraising, political lobbying, and tobacco products.

SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT**C.1 BACKGROUND**

Pursuant to Texas Government Code, Section 2009.004(c), the Department is seeking a Contractor(s) to provide Professional Independent Dismissal Mediation Services. To enhance existing Dispute Resolution practices, the Department will offer independent Mediations to employees who are recommended for dismissal due to violation of PD-22, General Rules of Conduct and Disciplinary Action Guidelines for Employees. Experienced Mediators appropriate for each individual case shall conduct these Mediations.

C.2 GENERAL DUTIES AND OBLIGATIONS

The Contractor shall provide the Services in accordance with applicable federal and state law, including all constitutional, legal and court ordered requirements, whether now in effect or hereafter effected or implemented. The Contractor shall comply with Department Policies, procedures, personnel directives and regulations during the Contract Term. The Contractor shall comply with the Department's safety requirements and reporting procedures.

C.3 SPECIFIC DUTIES AND OBLIGATIONS**C.3.1 Contractor Qualifications**

The Contractor shall have a minimum of five (5) years employment-related Mediation experience, including two (2) years with either federal or state government experience.

All Mediators provided by the Contractor shall be certified with a minimum of forty (40) hours of Mediation training with six (6) months field experience preferred. The Contractor shall provide proof of certification to Employee Relations Department.

C.3.2 Contractor Duties

- A. The Contractor shall provide Mediation Services to the Department employee(s) as scheduled by the Department. Scheduling is not completed by the Contractor.
- B. The Contractor shall provide monthly a list of current Mediators as well as contact information for each Mediator. This list should be submitted to the Program Coordinator no later than the tenth (10th) of each month.
- C. The Department will make every effort to give a minimum of five (5) Business Days' notice. In the event there is less than five (5) Business Days' notice, the Contractor may decline and the Mediation will be rescheduled.
- D. The Contractor must confirm, in writing via e-mail, the Mediation schedule for the next week by Friday morning, no later than 10:00 a.m. the week prior. The Contractor should provide contact information for each Mediator for use in the event of a location change or emergency.
- E. The Department shall provide to the Contractor, in written format, a copy of "The Rules for Mediation", "Agreement to Mediate" and other reproducible materials that may be used to

promote understanding and the benefits of the Mediation process. The Department will provide this information to the employee at the time that the employee is invited to participate in Independent Dismissal Mediation.

- F. The Contractor shall provide the written results of each Mediation session to the Department Representative immediately upon conclusion of the Mediation session. The Department Representative will fax the results to the Program Coordinator immediately upon conclusion of the Mediation session.
- G. The Contractor must be available to the Department Representative via direct voice communications. Voice mail, answering machines and answering services are acceptable; however, the Contractor shall be required to respond within one (1) Business Day of the time that the Department leaves a message.
- H. In the event that the Contractor or Mediator is required to testify in court as a result of a Mediation performed under this Contract, the Contractor will be compensated at the hourly rate stated in Section B.2.1, Mediation Services. Travel expenses will be reimbursed as outlined in Section C.3.3.

C.3.3 Travel

The Contractor shall travel to and perform Services at all TDCJ Regions listed in Exhibit J.1 as required by the Department. The Contractor will be responsible for initial payment of the travel expenses. Travel time is not a billable expense. The Contractor must obtain original receipts for such travel expenses in order to be reimbursed monthly for these expenses. Travel expenses are reimbursable only if the purpose of the travel clearly involved official state business and is consistent with the legal responsibilities of the Department. Travel expenses may not exceed applicable state reimbursement rates and will be allowed for the following expenses:

- A. The Contractor may be reimbursed for the actual cost of lodging based on the State of Texas Contract Rates. For cities/counties not listed, the maximum allowed rate for lodging is \$85.00 per night.
- B. For mileage to and from Mediation session, the Contractor may be reimbursed for mileage incurred to conduct official state business. Reimbursement may not exceed the actual number of miles traveled and the maximum mileage reimbursement rate.
- C. The Contractor will be required to have at least one Mediator within one hundred fifty (150) miles of each geographical location, i.e. Austin, Beeville, Gatesville, Huntsville, Palestine, Plainview and Rosharon. As first option, the Mediator located closest to the mediation site should be utilized. If the Contractor fails to have a Mediator within one hundred fifty (150) miles of a geographical area, the Department will pay up to one hundred fifty (150) miles for each way. If the Mediator in the geographical area is unavailable for the scheduled Mediation, the Contractor will notify the Program Coordinator. The Program Coordinator will make a decision on whether to reschedule or have the next closest Mediator attend.
- D. The Contractor may be reimbursed for the actual cost of airfare and rental car to and from airport. The Contractor shall obtain the lowest airfare on the given date of travel and rental cars are to be economy or subcompact vehicles. The Contractor must obtain written approval from the Program Coordinator prior to making any reservations. The Contractor

will not receive reimbursement for first class airfares or rental of luxury vehicles.

- E. The Contractor may be reimbursed for actual cost of toll road charges and parking charges.
- F. The Contractor will not be reimbursed for the following expenses:
 - 1. Expenses not related to official state business;
 - 2. Any expenses related to a personal vehicle apart from mileage, parking and tolls;
 - 3. Tips or gratuities; and
 - 4. Excess baggage charges for personal belongings.

The reimbursement rates specified in this Section are subject to change and are governed by Texas Government Code, Chapter 660; the General Appropriations Act; and the TDCJ Travel Guide. The Program Coordinator will notify the Contractor of any state rate changes.

C.4 ADDITIONAL SERVICES

At the Department's request, the following additional Services may be utilized:

- A. Forty (40) hour Mediation Training to be conducted for the Department Managers in Huntsville, Texas. Training to provide participants with the knowledge and skills necessary to be able to mediate a variety of workplace disputes. The course should be designed to satisfy the forty (40) classroom hours of training required to mediate court-referred disputes as indicated in the Texas Alternative Dispute Resolution Act, Civil Practice and Remedies Code, Section 154.052, and meet the Texas Mediator Trainers Roundtable requirements.
- B. Course shall cover the following topics: general principles of Mediation process, Mediation techniques, ethical considerations in Mediation, intervention techniques and possible communication barriers.

C.5 ADA COMPLIANCE

All Mediation sessions will be conducted at Department facilities that meet accessibility requirements of the Americans with Disabilities Act.

C.6 CANCELLATION OF MEDIATION SESSION

C.6.1 Contractor Cancellation

If the Contractor/Mediator cannot attend the scheduled Mediation, the Contractor's Contract Manager shall notify the Department's Program Coordinator of cancellation twenty-four (24) hours in advance of a scheduled Mediation.

C.6.2 Department Cancellation

If the Department Representative cannot attend the scheduled Mediation, the Department's Program Coordinator shall notify the Contractor's Contract Manager of cancellation twenty-four (24) hours in advance of a scheduled Mediation.

C.6.3 Payment Disputes Due to Cancellation

In instances where twenty-four (24) hour notice of cancellation is not provided, payment disputes will be mutually agreed upon by the Contractor and the Department.

C.7 DEPARTMENT POLICIES AND PROCEDURES

The Contractor's employees/Subcontractors working on the Department premises shall adhere to TDCJ's Personnel Directives listed below and available on the Department website at <http://www.tdcj.state.tx.us/vacancy/hr-policy/index.htm>:

- PD-22, General Rules of Conduct and Disciplinary Action Guidelines for Employees;
- PD-28, Dress and Grooming Standards; and
- PD-35, Independent Dismissal Mediation and Dispute Resolution.

SECTION D - REPORTS AND DATA

D.1 REPORTS REQUIRED FROM CONTRACTOR

FREQUENCY	DUE DATE	REPORT ITEM	AUTHORITY
Weekly	10:00 a.m. Friday	Mediation Schedule for the following week.	C.3.2.D
Monthly	Tenth (10 th) Day after the end of preceding month	List of current Mediators with contact information	C.3.2.B
Monthly	Tenth (10 th) Day after the end of preceding month	Monthly Invoices with Supporting Documents	G.3.C
Quarterly	Tenth (10 th) Day after the end of preceding month	Quarterly Report Listing Litigation	K.6.6.D.4
Upon Occurrence	Immediately upon conclusion of Mediation	Written Results of Mediation Session	C.3.2.F
Upon Occurrence	Within five (5) Days of notification	Any actions, suits or proceedings filed against the Contractor	K.6.6.D

D.2 ADDITIONAL REPORTS FROM THE CONTRACTOR

Additional Reports may be required from the Contractor during the course of the Contract.

SECTION E - INSPECTION AND ACCEPTANCE

E.1 INSPECTION OF SERVICES

- A. The Department and other government regulatory agencies has the right to inspect and test all Services called for by this Contract, to the extent practicable at all times and places during the Contract Term. The Department shall perform inspections in a manner that will not unduly interfere with the Contractor's performance of Services. The Contractor shall furnish, and shall require Subcontractors to furnish, at no increase in the Contract price, all reasonable assistance for the safe and convenient performance of these duties.
- B. From time to time the Department shall, subject to limitations provided by law with respect to rights of privacy, have the right to reasonably prompt access and to examine all records of the Contractor related specifically to the Services being provided, including financial records, maintenance records, employee records including time, attendance and payroll records, and any and all records and documents generated by the Contractor and its Subcontractors in connection with performance of this Contract.
- C. If, subject to the outcome of an audit or inspection, it is determined that the Contractor is in non-compliance with any provisions of this Contract and/or that money is owed to the Department by the Contractor, then the Department may exercise its rights of recovery of money owed as authorized in Section G.4.6 of this Contract.
1. If any of the Services are non-compliant with the Contract requirements, as identified by the Department, the Contractor shall be notified describing specific areas of non-compliance. The Contractor shall have a twenty (20) Day period to file a written response detailing corrective action(s) taken to address all such items of non-compliance. The response must include supporting documentation which verifies execution of corrective action(s) taken. Unless otherwise specified, or previously agreed to by the Department, the submission of a corrective action plan shall not be accepted as corrective action. For all items of non-compliance satisfactorily resolved by agreement between the Contractor and the Department, no further action regarding such items shall be taken.
 2. If any of the services are non-compliant with the Contract requirements, as identified by the government regulatory agency, the Contractor must resolve all items identified as non-compliant by the deadline established by the agency.

E.2 INSPECTION BY STATE EMPLOYEES

The Contractor shall allow at all times employees/agents of the Governor, members of the Legislative and all other members of the Executive and Judicial Branches of the State of Texas, as well as any other Person designated by the Department and Texas Board of Criminal Justice (TBCJ) to monitor the delivery of Services.

E.3 MONITORING CRITERIA

- A. The Department shall devise its own procedures for monitoring the quality of the Contractor's performance under this Contract, and Department Policies.

- B. The Contractor shall cooperate fully with the Department and the Contract Monitor in obtaining the requisite information needed to complete such audits and to assess the quality of the Contractor's performance.
- C. Monitoring may include, but is not limited to, monthly and interim audits conducted by the Contract Monitor, unannounced visits at any time, and annual and special audits conducted by Authorized Representatives of the Department.
- D. Such monitoring by the Department shall not relieve the Contractor of any of its obligations under this Contract.
- E. The Contract Monitor and other Department staff shall provide written findings regarding non-compliant conditions, processes, procedures and observations that could, if not addressed by the Contractor, become an item of non-compliance as described in Section E.1.

E.4 AUTHORITY TO AUDIT

- A. The Contractor understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. The Contractor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested.
- B. The Contractor shall ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards.
- C. The Contractor shall reimburse the State of Texas for all costs associated with enforcing this provision.
- D. See Section H.4, Books and Records, concerning record retention.

E.5 AUDITS BY OTHER AGENCIES

- A. Upon receipt of audits or inspections pertaining to Services under this Contract that are conducted by agencies or entities other than the Department, the Contractor shall provide copies thereof to the Department within thirty (30) Days.
- B. The Contractor shall provide to the Department copies of responses to audits and/or inspections within seven (7) Days of issuance. Audits or inspections may include allegations or complaints involving Services or the Contractor and its employees (including consultants, independent contractors and their employees and agents and volunteer workers).

E.6 FRAUD, WASTE OR ABUSE

- A. In accordance with Texas Government Code, Chapter 321, the State Auditor's Office (SAO) 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 this agency, it can be reported to the SAO by calling 1-800-892-8348 or at the SAO's website at www.sao.texas.gov. It can also be reported to the TDCJ Office of the Inspector General

at 1-866-372-8329, the TDCJ Internal Audit Division at 936-437-7100, or Crime Stoppers at 1-800-832-8477.

SECTION F - DELIVERIES OR PERFORMANCE**F.1 CONTRACT TERM**

The Contract will consist of a Base Period of one (1) year (September 1, 2017 through August 31, 2018) and two (2) one (1) year renewal Option Periods (September 1, 2018 through August 31, 2019 and September 1, 2019 through August 31, 2020).

SECTION G - CONTRACT ADMINISTRATION DATA**G.1 CLAUSES INCORPORATED BY REFERENCE**

This Contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contract Specialist will make their full text available.

Texas Government Code, Chapter 2251, Payment for Goods and Services.

G.2 AUTHORITY – AUTHORIZED REPRESENTATIVE, CONTRACT SPECIALIST, CONTRACT MONITOR AND PROGRAM COORDINATOR**G.2.1 Authorized Representative**

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

G.2.2 Contract Specialist

- A. The Contract Specialist for administration of this Contract is Jason Andrews.

- B. The telephone number for the Contract Specialist is (936) 437-7129.
- C. The facsimile number of the Contract Specialist is (325) 223-0310.
- D. The e-mail address of the Contract Specialist is jason.andrews@tdcj.texas.gov.
- E. The Contract Specialist is responsible for general administration of this Contract, negotiation of any changes and final issuance of written changes/modifications to this Contract.

G.2.3 Contract Monitor

- A. The Contract Monitor for this Contract is Eve Shelly.
- B. The telephone number for the Contract Monitor is (936) 437-3173.
- C. The facsimile number of the Contract Monitor is (936) 437-3105.
- D. The e-mail address is eve.shelly@tdcj.texas.gov.
- E. The Contract Monitor is not authorized to make any representations or commitments of any kind on behalf of the Executive Director of the Department or the State of Texas.
- F. The Contract Monitor does not have the authority to alter the Contractor's obligations or to change the Contract specifications, price, terms or conditions.
- G. The Contract Monitor assignment for this Contract may be changed at any time by the Department without prior notice to the Contractor.
- H. If, as a result of technical discussions, it is desirable to modify the Contract obligations, or the statement of work, changes will be issued in writing and signed by the Executive Director of the Department or his/her designee.

G.2.4 Program Coordinator

- A. The Program Coordinator for this Contract is Cherie J. Grossman.
- B. The telephone number for the Program Coordinator is (936) 437-3151.
- C. The facsimile number for the Program Coordinator is (936) 437-4010.
- D. The e-mail address for the Program Coordinator is cherie.grossman@tdcj.texas.gov.
- E. The Program Coordinator is responsible for the daily aspects of the Mediation process. All reports required from the Contractor are to be submitted to the Program Coordinator.

G.2.5 Contract Manager

- A. The Contract Manager for this Contract is Linda Smith.
- B. The telephone number for the Contract Manager is (214) 636-9720.

- C. The facsimile number for the Contract Manager is (214) 872-6242.
- D. The e-mail address for the Contract Manager is truce.media@aol.com.
- E. The Contractor shall provide a Contract Manager for this Contract who shall be responsible for the overall management and coordination of this Contract and shall act as the central point of contact with the Department.
- F. The Contract Manager shall have full authority to act for the Contractor in the performance of the required Services.
- G. The Contract Manager or a designated representative shall meet with the Contract Monitor to discuss problems as they occur.

G.3 INVOICE REQUIREMENTS

- A. Payment is to be made monthly by the Department to the Contractor after all Services are rendered and invoices with required reports have been submitted accurately and completely.
- B. The Contractor may offer prompt payment discount, for example, one percent (1%), fifteen (15) Days (refer to page 1, block 7 of the of the Solicitation, Offer and Award form) if the Contractor desires expedited Payment. Prompt payment discounts and payment terms must be stated on each invoice.
- C. Original monthly invoices and associated travel receipts shall be submitted to the office designated below no later than the tenth (10th) Day after the end of the preceding month. Any invoices received after 5:00 p.m., will be date stamped as received on the next Business Day.

Cherie J. Grossman
Texas Department of Criminal Justice
Human Resources Division
Two Financial Plaza, Suite 600
Huntsville, Texas 77340
E-mail: cherie.grossman@tdcj.texas.gov

- D. Corrections due to a disputable item that will result in a lower total amount will be corrected by the Program Coordinator. A copy of the corrected invoice will be mailed to the Contractor by the Program Coordinator.
- E. Corrections that will result in a higher total amount will be required to be resubmitted by the Contractor.

G.4 PAYMENTS

- A. It is recommended that the Contractor receive Payments via Electronic Funds Transfer (EFT), also known as Direct Deposit.
- B. Regardless as to whether Direct Deposit is chosen, upon the Contract award, the Contractor shall submit a completed Vendor Maintenance Direct Deposit and Substitute W-9 Form to the following address:

Texas Department of Criminal Justice
Accounts Payable
P.O. Box 4018
Huntsville, Texas 77342-4018

If the Contractor has previously submitted a completed Vendor Maintenance Direct Deposit and Substitute W-9 Form to the Department for another separate contract, another form is not required to be submitted.

The form and instructions can be found at the following link on the TDCJ website: www.tdcj.texas.gov/divisions/finance/finance_acct_accts_pay.html.

In the event the Contractor elects to decline Direct Deposit on the Vendor Maintenance Direct Deposit and Substitute W-9 Form, the Payment will be mailed to the following remittance address:

G.4.1 Reserved for Future Use

G.4.2 Reserved for Future Use

G.4.3 Reserved for Future Use

G.4.4 Late Payment

Any amount owed to the Contractor more than one (1) Day beyond the date such amount is due as described in Section G.4 hereof shall accrue interest each Day that such amount is not paid at the rate specified by Texas Government Code, Section 2251.025, provided, however, that this provision shall not excuse failure by the Department to make Payment in strict accordance with this Contract.

G.4.5 Reserved for Future Use

G.4.6 Withholding of Payment

- A. The Department shall have the right to withhold the Payment until the failures described below have been corrected.
 - 1. Failure to submit reports as required in Section D;
 - 2. Failure to respond to audit reports as set forth in Section E.1.C; and
 - 3. Failure to correct identified areas of non-compliance to the satisfaction of the Department within twenty (20) Days upon receipt of written notification.
- B. The Contractor agrees that the Department shall not pay interest to the Contractor for monies so withheld.

- C. The Payment withheld shall be released upon the Department's satisfaction that compliance has been achieved for thirty (30) Days.
- D. With the exception of disputed issues, such withholding of final Payment by the Department shall not exceed one hundred twenty (120) Days from date of the Contract termination.

G.4.7 Payment of Debt Owed to the State of Texas

As required by Texas Government Code, Section 2252.903, the Contractor agrees that any Payments due under this Contract shall be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan Payments and delinquent child support, until the debt is paid in full. The Contractor shall comply with the rules adopted by the Department under Texas Government Code, Sections 403.055, 403.0551, 2252.903 and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

G.4.8 Right to Offset

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

SECTION H - SPECIAL CONTRACT REQUIREMENTS

H.1 INSURANCE REQUIREMENTS

- A. Prior to the approval of this Contract by the Department, the Contractor shall procure, pay for and maintain the following insurance written by companies approved by the State of Texas and acceptable to the Department. It is recommended that coverage be with a company or companies having both a Financial Strength Rating of "A" or better and Financial Size Category Class of "VII" or better from A.M. Best Company, Inc.
- B. The insurance shall be evidenced by delivery to the Department of certificates of insurance executed by the insurer or its authorized agent stating coverage, limits, expiration dates and compliance with all applicable required provisions.
- C. Upon request, the Department shall be entitled to receive without expense, copies of the policies and all endorsements. Copies and changes to the initial insurance policies, including extensions, renewals, cancellations and revisions shall be submitted to the Contract Specialist within thirty (30) Days of the effective date.
- D. Subject to the Contractor's right to maintain reasonable deductibles, the Contractor shall obtain and maintain in full force and effect for the duration of this Contract and any extension hereof, at the Contractor's sole expense, insurance coverage in the following type(s) and amounts:

<u>Types of Coverage</u>	<u>Minimum Limits of Liability</u>
Workers' Compensation	Statutory
Comprehensive General Liability	\$1,000,000 aggregate \$ 500,000 per occurrence
Vehicle Liability	\$ 500,000 Combined Single Limit
Fidelity (Employee Dishonesty) Bond	10% of total contract amount

H.1.1 Required Provisions

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

- A. Name the Department and its officers, employees and elected representatives as additional insured to all applicable coverages.
- B. Waive subrogation against the Department, its officers, employees and elected representatives, for bodily injury (including death), property damage or any other loss, to all applicable coverages.
- C. Provide that the Contractor's insurance is the primary insurance in regards to the Department, its officers, employees and elected representatives.

- D. Provide that all provisions of this Contract concerning liability, duty and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.
- E. Ensure that all certificates of insurance identify the service or product being provided and the name of responsible party.
- F. The Contractor through an insurance agent licensed by the State of Texas shall obtain all insurance coverage and an insurance company licensed to issue such coverage in this state shall provide such coverage. No "self-insurance" coverage shall be acceptable. All policies shall include a provision requiring written notice of cancellation to the Department.
- G. All insurance coverage obtained by the Contractor shall continue in full force and effect during the Contract Term. No Contract shall be entered into between the Contractor and the Department unless insurance coverage binders are received by the date scheduled for the execution of the Contract. Proof of insurance policies must be delivered prior to the Services Commencement Date.
- H. All insurance coverage is to be provided by insurance carriers permitted to conduct business in Texas.
- I. The Contractor may choose the amount of deductible for any other insurance coverage required (above) to be obtained by the Contractor, but in no event shall such deductible for each occurrence exceed five percent (5%) of the required yearly aggregate limit of coverage.
- J. The Contractor is responsible for the first (1st) dollar defense coverage. All general liability and professional liability policies shall provide defense in addition to the policy limits.
- K. The limits required herein are minimum acceptable. However, these limits are not to be construed as being the maximum any prospective contractor may wish to purchase for their own benefit.
- L. As respect to the total limits of liability required, any combination of primary and/or umbrella coverage may satisfy those totals. However, if an umbrella is used, coverage must be at least as broad as the primary coverage.

H.2 SUBCONTRACTORS

- A. The Contractor may subcontract for the performance of any of its responsibilities to provide Services pursuant to this Contract.
- B. No subcontract may be entered into unless the Department provides prior written approval, which approval may not be unreasonably withheld.
- C. If a Subcontractor is deemed to be needed for an event of an emergency nature, verbal approval may be obtained through an authorized Department representative. The Contractor shall submit a written request with supporting documentation for approval, by the Department, as soon as possible.
- D. The Contractor shall furnish to the Department copies of all subcontracts, without regard to the amount of annual payments.

- E. Any arrangement by the Contractor with an affiliate or member company to provide Services for this Contract shall be subject to the Subcontractor provisions of this Section.
- F. No contractual relationship shall exist between the Department and any Subcontractor and the Department shall accept no responsibility whatsoever for the conduct, actions or omissions of any Subcontractor selected by the Contractor.
- G. The Contractor shall be responsible for the management of the Subcontractors in the performance of their work.
- H. A Subcontractor may not work directly with the Department in any manner and shall not be included in Contract negotiations, renewals, audit(s) or any other discussions except at the request of the Department.
- I. Unless waived in writing by the Department, the subcontract shall contain the following:
 - 1. An acknowledgement that the subcontract is subject to the Contract between the Department and the Contractor (the "Master Contract").
 - 2. The Subcontractor shall agree to comply with the terms of the Master Contract to the extent applicable with respect to goods and Services being provided under the subcontract. It is the intention of the parties of the subcontract that the Subcontractor shall "stand in the shoes" of the Contractor with respect to fulfilling the duties and obligations of the Contractor to the Department under the Master Contract.
 - 3. The Department's approval of a subcontract does not relieve the Contractor of its duty to perform under the Master Contract.
 - 4. The Department shall be deemed a "third party beneficiary" to the subcontract.
 - 5. The subcontract shall contain the required Authority to Audit clause referenced in Section E.4, and the required Non-Discrimination clause referenced in Section I.12.

H.2.1 Insurance

The Contractor shall require all Subcontractors to obtain, maintain, and keep in force insurance coverage in accordance with accepted industry standards and the Contract during the time they are engaged hereunder.

H.2.2 Reserved for Future Use

H.3 RESERVED FOR FUTURE USE

H.4 RESERVED FOR FUTURE USE

H.5 RESERVED FOR FUTURE USE

H.6 UTILIZATION OF PRODUCTS AND MATERIALS PRODUCED IN TEXAS

- A. The Contractor shall comply with Texas Government Code, Section 2155.4441, relating to service contract use of products produced in the State of Texas.

- B. In performing Services under this Contract, the Contractor shall purchase products and materials produced in the State of Texas when they are available at a price and time comparable to products and materials produced outside of Texas.

H.7 CRIMINAL HISTORY INFORMATION COMPLIANCE

The parties hereto acknowledge and agree that in order for the Contractor to perform the Services contemplated herein, the Department may have to provide the Contractor with, or the Contractor may have access to, certain information regarding Offenders and former Offenders known as "criminal history information". Criminal history information means information collected about a Person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information and other formal criminal charges and their dispositions. The term does not include information as to convictions, fingerprint information, and driving records. In the event the Department provides the Contractor with criminal history information, the Contractor agrees to comply with the confidentiality requirements of 28 CFR 20, Part 20, Subpart B, Section 20.21; Section 524 (a) of the Omnibus Crime Control and Safe Streets Act, 42 U.S.C. 3701, et seq., as amended (the "Act"), Texas Government Code, Chapter 411, Section 411.083, and with the FBI Criminal Justice Information Services (CJIS) Security Policy. More specifically, the Contractor agrees and acknowledges as follows:

- A. The Department hereby specifically authorizes that the Contractor may have access to criminal justice history to the extent such access is necessary or appropriate to enable the Contractor to perform the Services contemplated herein.
- B. The Contractor agrees to limit the use of such criminal justice information for the purposes set to herein.
- C. The Contractor agrees to maintain the confidentiality and security of the criminal justice history information in compliance with federal and state statutes, rules and regulations, and return or destroy such information when it is no longer needed to perform the Services contemplated herein.
- D. In the event that the Contractor's employee(s) fails to comply with the terms hereof, the Contractor shall take corrective action with the employee(s). Such corrective action must be acceptable to the Department. An intentional or knowing violation may also result in civil and criminal violations under federal and state laws. Additionally, the Contractor shall submit for the Department's approval, the Contractor's corrective action plan to ensure full compliance with the terms hereof. Until such time as the corrective action plan is approved by the Department, the Contractor shall not be authorized to fill any vacant positions unless special authorization is granted in writing by the Department which authorization shall not be unreasonably withheld.

H.8 OTHER CONFIDENTIAL OR SENSITIVE INFORMATION

- A. The parties hereto acknowledge and agree that in order for the Contractor to perform the Services contemplated herein, the Department may have to provide the Contractor with, or the Contractor may have access to, certain information, other than criminal history information, that is confidential pursuant to federal or state laws, rules, or regulations, or that is personal information considered to be "sensitive". The Contractor agrees that such confidential or sensitive information shall only be used for the purpose of performing Services contemplated herein. Such information shall not be disclosed, copied or

transmitted for any purpose other than for the performance of Services contemplated herein.

- B. In the event that the Contractor's employee(s) fails to comply with the terms hereof, the Contractor shall take corrective action with the employee(s). Such corrective action must be acceptable to the Department. An intentional or knowing violation may also result in civil and criminal violations under federal and state laws. Additionally, the Contractor shall submit for the Department's approval, the Contractor's corrective action plan to ensure full compliance with the terms hereof. Until such time as the corrective action plan is approved by the Department, the Contractor shall not be authorized to fill any vacant positions unless special authorization is granted in writing by the Department which authorization shall not be unreasonably withheld.

H.9 BOOKS AND RECORDS

All records and documents pertinent to the Services contracted hereunder shall be kept for a minimum of seven (7) years after termination hereof. If any litigation, claim, or audit involving these records begins before the retention period expires, the Contractor must continue to retain said records and documents until all litigation, claims or audit findings are resolved, meaning that there is a final court order from which no further appeal may be made, or a written agreement is entered into between the Contractor and the Department.

H.10 ORGANIZATIONAL AND NAME CHANGE

The Contractor shall submit written notification to the Department of any changes in the Contractor's name, address, telephone number, facsimile number and/or e-mail address with an effective date of such change. The Contractor shall submit to the Department a copy of any registration "to do business as," "DBA," or "also known as," "AKA," and any legal corporate name change filed with the Secretary of State.

H.11 FREE EXERCISE OF RELIGION

The Contractor is prohibited from substantially burdening an employee's or Offender's Free Exercise of Religion.

H.12 RESERVED FOR FUTURE USE

H.13 RESERVED FOR FUTURE USE

H.14 RESERVED FOR FUTURE USE

H.15 RESERVED FOR FUTURE USE

H.16 SECURITY

The Contractor's employees and representatives, vehicles and equipment must be under security surveillance at all times and are subject to inspection at any time while on State property. The Contractor agrees to abide by all Department Policies and unit rules and regulations on State property. These rules, in part, prohibit the introduction of alcohol, narcotics, weapons, gambling and paraphernalia to any Department property. This includes having these items in the personal vehicles of on-site employees. The Contractor's employees may not carry more than twenty-five dollars (\$25.00) in cash into any Department facility. Pagers, cellphones and tobacco products are strictly prohibited on TDCJ units, but are

allowed in the personal vehicles. All vehicles must be kept locked when not in use and the Contractor's employee must stay with the vehicle when it is unlocked.

The Contractor's employees and representatives shall utilize designated exits and entries into the Unit and shall be required to follow security procedures relating to sign-in and sign-out according to the Unit's regulations. The Contractor's employees and representatives shall be required to wear identification, as the Warden deems necessary, while on the Unit.

The Contractor's employees and representatives shall not have a criminal record. The Department shall require fingerprinting of the Contractor's employees to be coordinated by the Program Coordinator to take place within one hundred fifty (150) miles of a geographical location, (i.e. Austin, Beeville, Gatesville, Huntsville, Palestine, Plainview, and Rosharon). The fingerprinting will take place at a site closest to the Mediator's physical location, at the Contractor's cost.

SECTION I - CONTRACT CLAUSES**I.1 AVAILABILITY OF FUNDS FOR NEXT FISCAL YEAR**

- A. Funds are not presently available for performance under this Contract beyond August 31, 2018.
- B. The Department's obligation for performance of this Contract beyond that date is contingent upon legislative approval and the availability of appropriated funds from which Payment for Contract purposes can be made.
- C. No legal liability on the part of the Department for any Payment may arise for performance under this Contract beyond August 31, 2018, until funds are made available to the Department for performance and until the Contractor receives notice of availability.
- D. Refer to Section I.3.4.C, Termination for Unavailability of Funds, for the Department's right to terminate this Contract in the event it is appropriated insufficient funds.

I.2 ADVERTISING OF AWARD

The Contractor agrees not to refer to awards in commercial advertising in such a manner as to state or imply that the product or Service provided is endorsed or preferred by the Department or is considered by the Department to be superior to other products or services.

I.3 DEFAULT AND TERMINATION**I.3.1 Default by the Contractor**

Each of the following shall constitute an Event of Default on the part of the Contractor:

- A. A material failure to keep, observe, perform, meet, or comply with any covenant, agreement, term, or provision of this Contract to be kept, observed, met, performed, or complied with by the Contractor hereunder, when such failure continues for a period of twenty (20) Days after the Contractor's receipt of written notice thereof;
- B. A material failure to meet or comply with federal or state requirement or law, when such failure continues for a period of twenty (20) Days after the Contractor's receipt of written notice thereof;
- C. The Contractor's material failure to comply with any Department Policies for which the Contractor has been expressly required to comply and for which the Contractor has not received a prior written waiver from the Department, when such failure continues for a period of twenty (20) Days after the Contractor's receipt of written notice thereof;
- D. Insolvency of the Contractor as evidenced by any of the following occurrences:
 - 1. Its inability to pay its debts;
 - 2. Any general assignment for the benefit of creditors;

3. Any decree or order appointing a receiver or trustee for it or substantially all of its property to be entered and, if entered without its consent, not to be stayed or discharged within sixty (60) Days;
 4. Any proceedings under any law relating to bankruptcy, insolvency, or the reorganization or relief of debtors to be instituted by or against it and, if contested by it, not to be dismissed or stayed within sixty (60) Days; or
 5. Any judgment, writ of attachment or execution, or any similar process to be issued or levied against a substantial part of its property which is not released, stayed, bonded, or vacated within sixty (60) Days after issue or levy.
- E. The discovery by the Department that any statement, representation or warranty in this Contract is false, misleading, or erroneous in any material respect; or
- F. A failure by the Contractor to comply with contractual terms and conditions, resulting in a breach of security or health and safety standards. This Event of Default may result in the immediate termination of this Contract.

I.3.2 Further Opportunity to Cure

- A. If an Event of Default of the type specified in Section I.3.1 occurs and the Contractor reasonably believes that such Event of Default cannot be cured within the twenty (20) Days allowed in Section I.3.1 but that such Event of Default can be cured through a diligent, on-going, and conscientious effort on the part of the Contractor, within a reasonable period not to exceed three (3) months, then the Contractor may, within the twenty (20) Day cure period, submit a detailed plan for curing the Event of Default to the Department.
- B. Upon receipt of any such plan for curing an Event of Default, the Department shall promptly review such plan and at its discretion, which must be reasonable in the circumstances, may allow, or not allow, the Contractor to pursue such plan of cure.
- C. The decision of the Department will be communicated in writing to the Contractor.
- D. The Department agrees that it will not exercise its remedies thereunder with respect to such Event of Default for so long as the Contractor diligently, conscientiously, and timely undertakes to cure the Event of Default in accordance with the approved plan.
- E. If the Department does not allow the Contractor an extension of the cure period, the twenty (20) Day time period shall be tolled during the period of time the request is pending before the Department.

I.3.3 Remedy of the Department

When an Event of Default by the Contractor has been determined to exist, the Department's Authorized Representative will notify, in writing, the Contractor of such Event of Default, and subject to the provisions of Section I.3.2, the Department will have the right to pursue any remedy it may have by law or in equity including, but not limited to:

- A. Reducing its claim to a judgment;

- B. Taking action to cure the Event of Default, in which case the Department may offset against any Payments owed to the Contractor all reasonable costs incurred by the Department in connection with its efforts to cure such Event of Default;
- C. Withholding of funds as authorized in Section G.4.6; or
- D. Exercising a Termination for Default.
 - 1. In the event of Termination for Default the Department shall offset against Payments owed to the Contractor any reasonable amounts expended by the Department to cure the Event of Default.
 - 2. The Department will have no further obligations to the Contractor after such termination.
 - 3. The Department may also acquire, in the manner the Department considers appropriate, services similar to those terminated and the Contractor will be liable to the Department for any increase in costs for those services.
 - 4. The Contractor shall not be liable for any increase in costs if the failure to perform the Contract arises from and without the fault or negligence of the Contractor as follows:
 - a. Acts of God or of the public enemy;
 - b. Acts of the State in either its sovereign or contractual capacity;
 - c. Fires;
 - d. Floods;
 - e. Epidemics;
 - f. Quarantine restrictions;
 - g. Strikes;
 - h. Freight embargoes; and
 - i. Unusually severe weather.

In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

I.3.4 Termination for Unavailability of Funds

- A. The Payment of money by the Department or the State under any provisions hereof is contingent upon the availability of funds appropriated by the Legislature to an agency or department of the State to cover the provisions hereof.
- B. Neither the State, the Department nor its elected officials, officers, employees, agents, attorneys or other individuals acting on behalf of the State, make any representations or

warranty as to whether any appropriation will, from time to time during the Contract Term, be made by the Legislature of the State.

- C. In the event State funds for this Contract become unavailable due to Non-Appropriation, the Department will have the right to terminate the Contract without penalty.
- D. The Contractor acknowledges that the Department does not receive a "line item appropriation".
 - 1. If the funds appropriated are not sufficient to pay for the Department's operating expenses, contractual obligations and other financial obligations, the Department, in its sole discretion, will determine what operating expenses, contractual obligations and other financial obligations it will pay.
 - 2. In the event the Department determines it was not appropriated sufficient money, the Department may terminate this Contract without paying the Contractor any additional money or penalty, provided that the Department will pay the Contractor for obligation that occurred up to the time of termination.

I.3.5 Non-Appropriation Effect and Remedy

An event of Non-Appropriation shall not cause the Department to be in default hereunder, but upon any such event of Non-Appropriation, this Contract shall automatically terminate as of the last day of the Biennium for which appropriations have been made.

I.3.6 Termination for Convenience

The Department may, in its sole discretion, terminate this Contract with or without cause, by providing the Contractor with sixty (60) Days prior written notice of such termination.

I.3.7 Termination by Mutual Agreement

The parties may terminate this Contract by mutual agreement, the terms of which shall be set forth in writing.

I.3.8 Termination Procedures

- A. Upon Termination for Default, Termination for Convenience, Termination by Mutual Agreement or Termination for Unavailability of Funds as heretofore mentioned, the following procedures will be adhered to:
 - 1. The Department will immediately notify the Contractor in writing specifying the effective termination date.
 - 2. After receipt of the Notice of Termination, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:
 - a. Place no further subcontracts or orders in support of this Contract;
 - b. Terminate all subcontracts; and

- c. Cancel all orders as applicable.
- B. Upon termination, the Contractor shall be entitled to receive from the Department Payment for all Services satisfactorily furnished under this Contract up to and including the date of termination. Claims submitted after one hundred eighty (180) Days from the date of termination will not be considered.

I.3.9 Default by the Department

Each of the following shall constitute an Event of Default on the part of the Department:

- A. Failure by the Department to observe and perform any material covenant, condition, or agreement on its part to be observed or performed; or
- B. Its failure or refusal to substantially fulfill any of its material obligations hereunder, unless caused by the default of the Contractor; and
- C. Unless cured by the Department within twenty (20) Days after receiving written notice thereof.

I.3.10 Remedy of the Contractor

Upon an Event of Default by the Department, the Contractor's sole remedy shall be to follow the Dispute Resolution Process in Section I.3.11 below.

I.3.11 Dispute Resolution

- A. Any dispute arising under this Contract, which is not disposed of by mutual agreement between the Department and the Contractor shall be resolved as follows:
 - 1. The dispute resolution process provided for in Texas Government Code, Chapter 2260, shall be used, as further described herein, by the Department and the Contractor to attempt to resolve any claim for breach of Contract made by the Contractor.
 - 2. A Contractor's claims for breach of this Contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Texas Government Code, Chapter 2260, Subchapter B.
 - 3. To initiate the process, the Contractor shall submit written notice, as required by Texas Government Code, Chapter 2260, Subchapter B, to the Contracts and Procurement Director or designee, at Two Financial Plaza, Suite 525, Huntsville, Texas 77340.
 - 4. Said notice shall specifically state the provisions of Texas Government Code, Chapter 2260, Subchapter B, are being invoked, and shall also be given to all other representatives of the Department and the Contractor otherwise entitled to notice under the parties' Contract.
 - 5. Compliance by the Contractor with Subchapter B, is a condition precedent to the filing of a contested case proceeding under Texas Government Code, Chapter 2260, Subchapter C.

6. The contested case process provided in Texas Government Code, Chapter 2260, Subchapter C, is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the Department if the parties are unable to resolve their disputes under subparagraph (A) of this paragraph.
 7. Compliance with the contested case process provided in Texas Government Code, Chapter 2260, Subchapter C, is a condition precedent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code.
 8. Neither the execution of this Contract by the Department nor any other conduct of any representative of the Department related to the Contract shall be considered a waiver of sovereign immunity to suit.
- B. In addition to complying with Texas Government Code, Chapter 2260, the Department and the Contractor shall comply with the rule published in the Texas Administrative Code, Title 37, Part 6, Chapter 155, Subchapter C, Rule 155.31.
- C. At all times during the course of the Dispute Resolution process, the Contractor shall continue with providing Services as directed, in a diligent manner and without delay, shall conform to the Department's directive, decision or order, and shall be governed by all applicable provisions of this Contract.
- D. Records of the Services performed shall be kept in sufficient detail to enable payment in accordance with applicable provisions of this Contract, if this should become necessary.
- E. This provision shall not be construed to prohibit the Contractor from seeking any other legal or equitable remedy to which it is entitled.

I.4 NO WAIVER OF RIGHTS

- A. No failure on the part of any party to exercise, and no delay in exercising, and no course of dealing with respect to any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or in the exercise of any other right.
- B. The remedies provided in this Contract are cumulative and non-exclusive of any remedies provided by law or in equity, except as expressly set forth herein.

I.5 INDEMNIFICATION OF THE DEPARTMENT

I.5.1 Acts or Omissions

The Contractor shall indemnify and hold harmless the State of Texas, the Department and the TBCJ, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from any and all liability, actions, claims, demands, or suits, and all related costs, attorney fees, and expenses arising out of, or resulting from any acts or omissions of the Contractor or its agents, employees, Subcontractors, order fulfillers, or suppliers of Subcontractors in the execution or performance of the Contract and any purchase orders issued under the Contract. The defense shall be coordinated by the Contractor with the Office of the Attorney General when Texas State Agencies are named defendants in any lawsuit and the Contractor may not agree to any settlement without first obtaining the concurrence from the Office

of the Attorney General. The Contractor and the Department agree to furnish timely written notice to each other of any such claim.

I.5.2 Infringements

- A. The Contractor shall indemnify and hold harmless the State of Texas, the Department and the TBCJ, and or their employees, agents, representatives, contractors, assignees, and/or designees from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the performances or actions of the Contractor pursuant to this Contract. The Contractor and the Department agree to furnish timely written notice to each other of any such claim. The Contractor shall be liable to pay all costs of defense including attorneys' fees. The defense shall be coordinated by the Contractor with the Office of the Attorney General when Texas State Agencies are named defendants in any lawsuit and the Contractor may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General.
- B. The Contractor shall have no liability under this Section if the alleged infringement is caused in whole or in part by:
1. Use of the product or Service for a purpose or in a manner for which the product or Service was not designed;
 2. Any modification made to the product without the Contractor's written approval;
 3. Any modification made to the product by the Contractor pursuant to the Department's specific instructions;
 4. Any intellectual property right owned by or licensed to the Department; or
 5. Any use of the product or Service by the Department that is not in conformity with the terms of any applicable license agreement.
- C. If the Contractor becomes aware of an actual or potential claim, or the Department provides the Contractor with notice of an actual or potential claim, the Contractor may (or in the case of an injunction against the Department, shall), at the Contractor's sole option and expense;
1. Procure for the Department the right to continue to use the affected portion of the product or Service; or
 2. Modify or replace the affected portion of the product or Service with functionally equivalent or superior product or Service so that the Department's use is non-infringing.

I.5.3 Taxes/Workers' Compensation/Unemployment Insurance - Including Indemnity

- A. The Contractor agrees and acknowledges that during the existence of this Contract, the Contractor shall be entirely responsible for the liability and payment of the Contractor's and the Contractor's employees' taxes of whatever kind, arising out of the performances in this Contract. The Contractor agrees to comply with all state and federal laws applicable to any such Persons, including laws regarding wages, taxes, insurance, and Workers' Compensation. The Department and/or the State shall not be liable to the Contractor, its employees, agents, or others for the payment of taxes or the provision of unemployment

insurance and/or Workers' Compensation or any benefit available to a State employee or employee of another governmental entity customer.

- B. The Contractor agrees to indemnify and hold harmless the Department, the TBCJ, the State of Texas and/or their employees, agents, representatives, contractors, and/or assignees from any and all liability, actions, claims, demands, or suits, and all related costs, attorneys' fees, and expenses, relating to tax liability, unemployment insurance and/or Workers' Compensation in its performance under this Contract. The Contractor shall be liable to pay all cost of defense including attorneys' fees. The defense shall be coordinated by the Contractor with the Office of the Attorney General when Texas State Agencies are named defendants in any lawsuit and the Contractor may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General. The Contractor and the Department agree to furnish timely written notice to each other of any such claim.

I.6 NO WAIVER OF DEFENSES

- A. Neither the Department nor the Contractor shall waive, release or otherwise forfeit any possible defense the Department or the Contractor may have regarding claims arising from or made in connection with the performance of the Services by the Contractor without the consent of the other party.
- B. The Department and the Contractor shall reserve all such available defenses and cooperate with each other to make such defenses available for each other's benefit to the maximum extent allowed by law, including any defenses the Department may have regarding litigation, losses and costs resulting from claims or litigation pending at the time the Contract becomes effective, or arising thereafter from occurrences prior to the effective date hereof.

I.7 INDEPENDENT CONTRACTOR

- A. The Contractor is associated with the Department only for the purposes and to the extent set forth herein, and with respect to the performance of Services hereunder, the Contractor is and shall be an independent contractor and shall have the sole right to supervise, manage, operate, control, and direct the performance of the details incident to its duties hereunder.
- B. Nothing contained herein shall be deemed or construed to create a partnership or joint venture, to create the relationships of an employer-employee or principal-agent, or to otherwise create any liability for the Department whatsoever with respect to the indebtedness, liabilities, and obligations of the Contractor or any other party.
- C. The Contractor shall be solely responsible for (and the Department shall have no obligation with respect to) payment of all Federal Income, FICA, and other taxes owed or claimed to be owed by the Contractor, arising out of the Contractor's association with the Department pursuant hereto, and the Contractor shall indemnify and hold the Department harmless from and against any and all liability from all losses, damages, claims, costs, penalties, liabilities, and expenses howsoever arising or incurred because of, incident to, or otherwise with respect to any such taxes.

I.8 LAWS OF TEXAS

This Contract shall 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 of Travis County, Texas.

I.9 ASSIGNMENT

- A. The Contractor may not assign any interest in this Contract without the prior written consent of the Department which consent the Department may withhold at its sole discretion.
- B. If the Department so elects in its sole discretion, this Contract will terminate upon the occurrence of any of the following:
 - 1. More than fifty percent (50%) of the assets of the Contractor are sold;
 - 2. The Contractor is merged into, acquired by, or consolidated with another corporation or business entity; or is otherwise the subject of reorganization; or
 - 3. Any shareholder or owner of the Contractor who owns at least ten percent (10%) beneficial ownership of the Contractor fails to continue to own at least ten percent (10%).
- C. In the event that any sale, transfer, or assignment, as referenced in paragraphs A and B above, is consented to by the Department, the transferee or its legal representative shall agree in writing with the Department to assume, perform and be bound by the covenants, obligations and agreements contained herein.

I.10 MAINTENANCE OF CORPORATE EXISTENCE AND BUSINESS

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

I.11 APPROVAL OF CONTRACT

- A. This Contract is subject to written approval of the Executive Director of the Department or the Director's designated representative and shall not be binding until so approved.
- B. For Contracts valued over one million dollars in the initial Contract Term, the Executive Director's approval shall be given only on the approval of the TBCJ.

I.12 NON-DISCRIMINATION

In the performance of this Contract, the Contractor warrants that it shall not discriminate against any employee, Subcontractor, participant or provider on account of race, color, disability or perceived disability, religion, sex, national origin, genetic information, or age, and in accordance with the following:

- A. The Contractor shall not discriminate against employees, Subcontractors, participants or providers who have or are perceived to have a disability because Acquired Immune Deficiency Syndrome (AIDS) or Human Immunodeficiency Virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. The Contractor shall post notices setting forth the provisions of this Non-Discrimination Clause in conspicuous places, available to employees and applicants for employment.
- B. In all solicitations or advertisements for employees and/or the purchase of Services, the Contractor shall state that it is an equal opportunity employer; provided, however, that notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting this requirement.
- C. The Contractor shall include the provisions of the foregoing paragraphs in every subcontract so that such provisions shall be binding upon each Subcontractor or vendor.

I.13 CONFIDENTIALITY AND OPEN RECORDS**I.13.1 Confidentiality**

Any confidential information provided to or developed by the Contractor in the performance of the Contract shall be kept confidential unless otherwise provided by law and shall not be made available to any individual or organization by the Contractor or the Department without prior approval of the other party.

I.13.2 Open Records

In accordance with Texas Government Code, Section 2252.907, the Contractor acknowledges that this Contract and information created or maintained in connection with this Contract is public information and subject to disclosure as provided by Texas Government Code, Chapter 552 (Texas Public Information Act). The Texas Public Information Act may require the Contractor to make information related to this Contract available to the public pursuant to a request for public information. The Contractor agrees, upon request, to make information related to this Contract that is not otherwise excepted from release by the Texas Public Information Act available to the public in hard copy, unless the requestor of the information consents to receive the information in another mutually agreeable format. The Contractor acknowledges that the agency shall not provide legal counsel related to the Contractor's compliance with the Texas Public Information Act.

I.14 CONTRACT CHANGES

- A. Changes/modifications to this Contract (except Contract extensions, administrative changes such as changing the Contract Specialist designation, correcting typographical errors or other unilateral changes discussed elsewhere in the Contract) shall be mutually agreed to by the parties and executed in writing with the authorized signatures.

- B. The Department, at its sole discretion, may revise funding during the course of this Contract by issuing a unilateral modification to the Contractor.

I.15 OPTION TO EXTEND THE TERM OF THE CONTRACT

- A. The Department may, at its sole discretion, extend the Contract Term, by written notice to the Contractor within ten (10) Days of the Contract expiration, provided that the Department shall give the Contractor a preliminary written notice of its intent to extend at least sixty (60) Days before the Contract expires.
- B. The preliminary notice does not commit the Department to an extension.
- C. If the Department exercises this option, the extended Contract shall be considered to include this option provision.

I.16 OPTION TO EXTEND SERVICES

- A. The Department may require continued performance of any Services within the limits and at the rates specified in this Contract.
- B. The Department reserves the right to extend this Contract for a ninety (90) Day period at the end of each Contract and/or extension period for the purpose of re-advertising the Service, awarding a new contract, and transitioning into a new contract.
- C. This option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed six (6) months.
- D. The Department may exercise the option by written notice to the Contractor within the period specified in Section I.15.

I.17 SEVERABILITY

In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

I.18 IMMIGRATION

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

I.19 NO LIABILITY UPON TERMINATION

If this Contract is terminated for any reason, the Department and the State of Texas shall not be liable to the Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, the Contractor may be entitled to the remedies established in Section I.3.11.

I.20 LIMITATION ON AUTHORITY

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

I.21 INTELLECTUAL PROPERTY INDEMNIFICATION

- A. The Contractor will indemnify, defend, and hold harmless the State of Texas and the Department against any action or claim brought against the State of Texas and/or the Department that is based on a claim that software infringes any patent rights, copyright rights or incorporated misappropriated trade secrets. The Contractor will pay any damages attributable to such claim that are awarded against the State of Texas and/or the Department in a judgment or settlement.
- B. If the Department's use of the software becomes subject to a claim, or is likely to become subject to a claim, in the sole opinion of the Department, the Contractor shall, at its sole expense (1) procure for the Department the right to continue using such software under the terms of this Contract; or (2) replace or modify the software so that it is non-infringing.

I.22 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS, AS REQUIRED BY TEXAS ADMINISTRATIVE CODE, TITLE 1, PART 10, CHAPTER 213

- A. Effective September 1, 2006 State Agencies and Institutions of Higher Education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in Texas Administrative Code, Title 1, Part 10, Chapter 213, when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
- B. The Contractor shall provide the Department with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under the Rehabilitation Act, Section 508), or indicate that the product/services accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Contractors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide the Department with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

I.23 RIGHTS TO DATA, DOCUMENTS AND COMPUTER SOFTWARE (STATE OWNERSHIP)

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials prepared by the Contractor in the performance of its obligations under this Contract shall be the exclusive property of the State of Texas and all such materials shall be delivered to the Department by the Contractor upon completion, termination, or cancellation of this Contract. The Contractor may, at its own expense, keep copies of all its writings for its personal files. The Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of the

Contractor's obligations under this Contract without the prior written consent of the Department; provided, however, that the Contractor shall be allowed to use non-confidential materials for writing samples in pursuit of the work. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

I.24 FORCE MAJEURE

- A. Neither the Contractor nor the Department shall be liable to the other for any delay in, or failure of performance, of any requirement included in this Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform.
- B. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.
- C. Each party must inform the other in writing, with proof of receipt, within three (3) working days of the existence of such force majeure, or otherwise waive this right as a defense.

I.25 NOTICES

Any written notices required under this Contract will be delivered by carrier service to the Contractor's office address specified on Page 1 of this Contract or by U.S. mail.

Notices to the Department shall be sent to:

Jason Andrews, Contract Specialist II
Texas Department of Criminal Justice
Contracts and Procurement Department
Two Financial Plaza, Suite 525
Huntsville, Texas 77340

Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this Section by written notification to the other party. This change shall be incorporated with a unilateral modification.

I.26 SUBSTITUTIONS

Substitutions are not permitted without written approval of the Department.

I.27 U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM

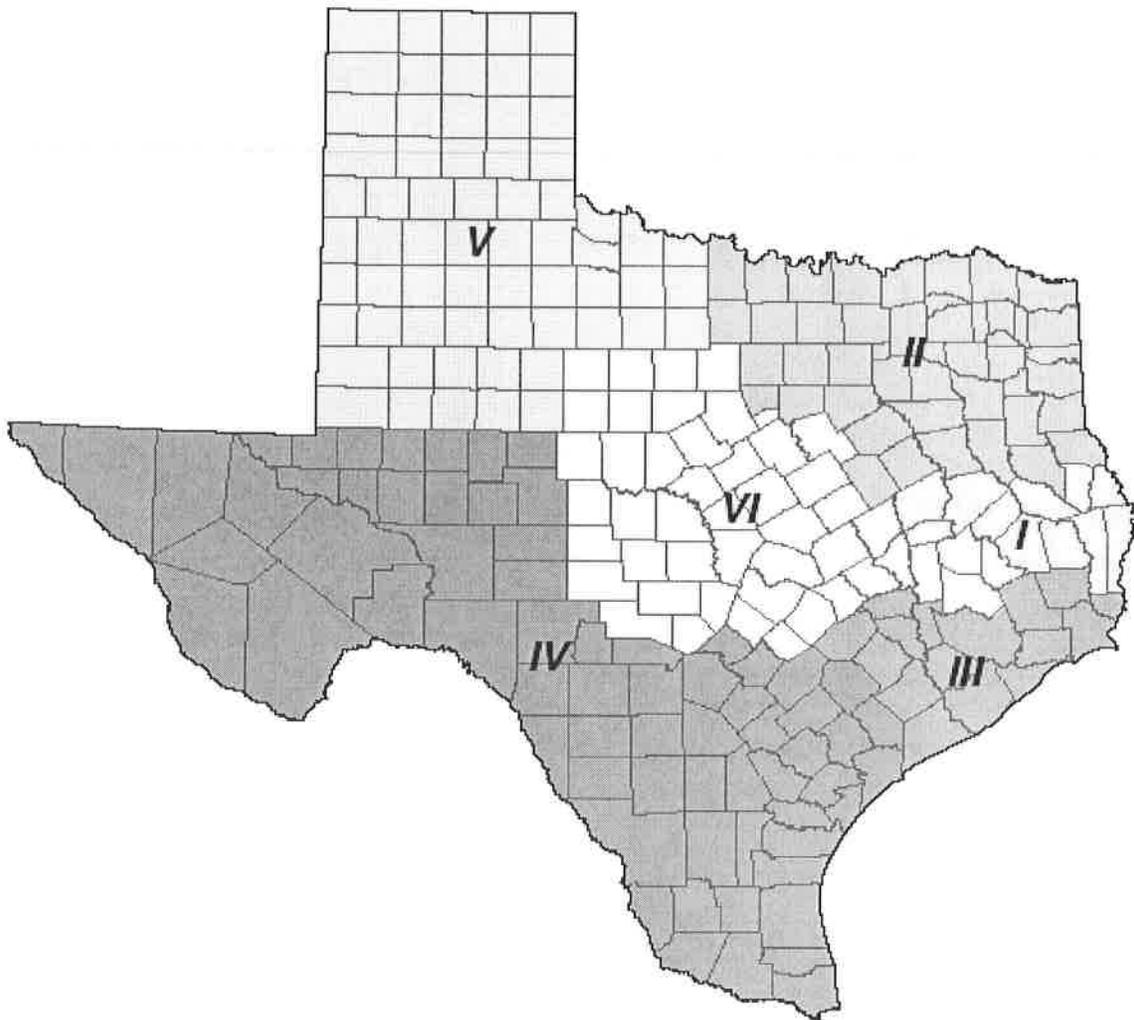
- A. By entering into this Contract, the Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:
 - 1. All Persons employed to perform duties within Texas, during the Contract Term; and

2. All Persons (including Subcontractors) assigned by the Contractor to perform work pursuant to the Contract, within the United States of America.
- B. The Contractor shall provide, upon request of the Department, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Contractor, and the Contractor's Subcontractors, as proof that this provision is being followed.
 - C. If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the State and at no fault to the State, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the State must undertake to replace the terminated Contract.

SECTION J - LIST OF EXHIBITS

EXHIBIT NO.	TITLE	NUMBER OF PAGES
J.1	TDCJ Regional Map	1

TDCJ REGIONS



Region VII: Parole

SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS

K.1 HISTORICALLY UNDERUTILIZED BUSINESS (HUB) REPRESENTATION

K.1.1 Definition

- A. "Historically Underutilized Business" means an entity with its principal place of business in this State that is:
1. A corporation formed for the purpose of making a profit in which fifty-one percent (51%) or more of all classes of the shares of stock or other equitable securities are owned by one or more economically disadvantaged persons who have a proportionate interest and actively participate in the corporation's control, operation and management;
 2. A sole proprietorship created for the purpose of making a profit that is completely owned, operated and controlled by an economically disadvantaged person;
 3. A partnership formed for the purpose of making a profit in which fifty-one percent (51%) or more of the assets and interest in the partnership are owned by one or more economically disadvantaged persons who have a proportionate interest and actively participate in the partnership's control, operation, and management;
 4. A joint venture in which each entity in the venture is a HUB, as determined under another paragraph of this subdivision; or
 5. A supplier Contract between a HUB as determined under another paragraph of this subdivision and a prime Offeror under which the HUB is directly involved in the manufacture or distribution of the goods or otherwise warehouses and ships the goods.
- B. "Economically disadvantaged person" means a person who is economically disadvantaged because of the person's identification as a member of a certain group including Black Americans, Hispanic Americans, Women, Asian Pacific Americans, Native Americans and Service-Disabled Veterans, who has suffered the effects of discriminatory practices or other similar insidious circumstances over which the Person has no control.

K.1.2 Representation

The Offeror represents and certifies as part of its proposal that it is, or is not, a HUB certified by the Texas Statewide Support Services Division.

K.2 CHILD SUPPORT REPRESENTATION

- A. Under the Texas Family Code, Section 231.006, a child support obligor who is more than thirty (30) Days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder or owner with an ownership interest of at least twenty-five percent (25%) is not ineligible to receive payments from State funds under a Contract to provide property, materials or services.
- B. Governmental entities and any business entity, including a non-profit corporation, that does not have a majority shareholder who is a natural person capable of being a child support obligor, are not subject to Texas Family Code, Section 231.006.

Check ONE:

Offeror DOES NOT have a sole proprietor, majority stockholder or substantial owner who is a natural person capable of being a child support obligor therefore IS NOT subject to Texas Family Code, Section 231.006.

Offeror DOES have a sole proprietor, majority stockholder or substantial owner who is a natural person capable of being a child support obligor therefore IS subject to Texas Family Code, Section 231.006.

If subject to Texas Family Code, Section 231.006, a proposal must include names and social security numbers of each Person with at least a twenty-five percent (25%) ownership of the business entity submitting proposal.

N/A	_____	_____	_____
Print Name	SSN	Print Name	SSN

N/A	_____	_____	_____
Print Name	SSN	Print Name	SSN

The Offeror certifies that the individual or business entity named in this proposal is not ineligible to receive the specified Payments and acknowledges that any resultant Contract may be terminated and Payment may be withheld if this certification is inaccurate.

K.3 FRANCHISE TAX REPRESENTATION

The Offeror represents and certifies, as part of its proposal that it is not currently delinquent in the payment of any franchise tax owed the State of Texas.

K.4 TYPE OF BUSINESS ORGANIZATION

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

- A. It operates as a corporation incorporated under the laws of the State of Texas, an individual, a partnership, a nonprofit organization or a joint venture; or

B. If the Offeror is a foreign entity, it operates as an individual, a partnership, a nonprofit organization, a joint venture, or a corporation, registered for business in _____ N/A _____ (country).

K.5 PREFERENCE CLAIM

In accordance with Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter D, Division 2, Rule 20.306, the Offeror shall check below if claiming a preference. If the appropriate line is not marked, a preference will not be granted unless other documents included in the proposal show a right to the preference.

K.5.1 Source and Specification Preferences

- _____ Products of Persons with mental or physical disabilities.
- _____ Products made of recycled, remanufactured, or environmental sensitive materials including recycled steel.
- _____ Energy efficient products.
- _____ Rubberized asphalt paving material.
- _____ Recycled motor oil and lubricants.

K.5.2 Tie-Bid Preferences

- _____ Goods produced or offered by a Texas Bidder that is owned by a Texas Resident Service Disabled Veteran.*
- _____ Goods produced in Texas or offered by a Texas Bidder that is not owned by a Texas Resident Service Disabled Veteran.*
- _____ Agricultural products produced or grown in Texas.
- _____ Agricultural products or services offered by Texas Bidders.*
- _____ Services offered by a Texas Bidder that is owned by a Texas Resident 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, equipment or agricultural products.

K.5.3 Additional Preferences

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

*By signing this proposal, the Offeror certifies that if a Texas address is shown as the address of the Contractor, the Contractor qualifies as a Texas Resident Bidder as defined in Texas Government Code, Section 2155.444(c).

K.6 REPRESENTATIONS OF OFFEROR

The Offeror represents and warrants to and for the benefit of the Department, with the intent that the Department will rely thereon for the purposes of entering into this Contract, as follows:

K.6.1 Organization and Qualification

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

K.6.2 Authorization

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

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

The consummation of the transactions contemplated by this Contract and the fulfillment of the terms hereof will not conflict with, or result in a breach of any of the terms and provisions of, or constitute a default under any indenture, mortgage, deed of trust, lease, loan agreement, license, security agreement, contract, governmental license or permit or other agreement or instrument to which the Offeror is a party or by which its properties are bound, or any order, rule or regulation of any court or any regulatory body, administrative agency or other governmental body applicable to the Offeror or any of its properties, except any such conflict, breach, or default which would not materially and adversely affect the Offeror's ability to perform its obligations under this Contract, and will not conflict with, or result in a breach of any of the terms and provisions of, or constitute a default under, the Articles of Incorporation (or other corresponding charter document) or Bylaws of the Offeror.

K.6.4 No Defaults Under Agreements

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

K.6.5 Compliance With Laws

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

K.6.6 No Litigation

- A. The Offeror certifies that there is not now pending, or to its knowledge threatened, any action, suit or proceeding to which the Offeror, or any of its employees, are a party, before or by any court or governmental agency or body, which may result in any material adverse change in the Offeror's ability to perform its obligations under this

Contract, or any such action, suit or proceeding related to environmental or civil rights matters.

- B. The Offeror further certifies that no labor disturbance by the employees of the Offeror exists or is imminent which may be expected to materially and adversely affect the Offeror's ability to perform its obligations under this Contract.
- C. Prior to the Department making an award of this Contract, the Department may require Offerors being considered for the award to recertify the representations set forth above. The Department, in its sole discretion, may disqualify any Offeror that in the opinion of the Department is a party, or who has any employees that are a party, to any action, suit or proceeding that may result in any material adverse change in the Offeror's ability to perform its obligations under this Contract.
- D. During the term of this Contract, to include extensions hereof, the Offeror shall notify the Department in writing within five (5) Days of the Offeror having received knowledge of any actions, suits or proceedings filed against the Offeror, or any of its employees, or to which the Offeror, or any of its employees, are a party, before or by any court or governmental agency or body, which:
 - 1. May result in any material adverse change in the Offeror's ability to perform its obligations under this Contract;
 - 2. Filed in any federal court, state court, or federal or state administrative hearing within the State of Texas regardless as to any anticipated material adverse change in the Offeror's ability to perform its obligations under this Contract;
 - 3. Is brought by or on behalf of a State of Texas Offender regardless as to any anticipated material adverse change in the Offeror's ability to perform its obligations under this Contract; and
 - 4. The Contractor shall provide in writing, to the Contract Specialist, a quarterly report listing litigation identified in the above requirements.

K.6.7 Taxes

- A. The Offeror has filed all necessary federal, state and foreign income and franchise tax returns and has paid all taxes as shown to be due thereon.
- B. The Offeror has no knowledge of any tax deficiency which has been or might be asserted against it and which would materially and adversely affect the Offeror's ability to perform its obligations under this Contract.
- C. The Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, state, or local income, sales or excise taxes of Contractor or its employees.

K.6.8 Financial Statements

- A. The Offeror has delivered to the Department a copy of its most recent audited financial report. This report must include, as a minimum the following financial information:

1. Audited balance sheet;
 2. Statement of income; and
 3. Any changes in financial position of the company.
- B. This statement fairly presents the financial position of the Offeror at the date shown and the results of its operations for the period covered, and has been prepared in conformity with GAAP applied on a consistent basis, except as discussed in the notes to the financial statement.

K.6.9 No Adverse Change

Since the date of the Offeror's most recent balance sheet provided to the Department, there has not been any material adverse change in its business or condition nor has there been any change in the assets or liabilities or financial condition of the Offeror from that reflected in such balance sheet which is material to the Offeror's ability to perform its obligations under this Contract.

K.6.10 Disclosure

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

K.6.11 No Collusion

- A. The Offeror represents and certifies its employees, agents and representatives have not and shall not discuss or disclose the terms of their proposal and its submission or response thereto with any third party other than Persons or entities, which the Offeror engaged to assist it with respect to such response or submission.
- B. Neither the Offeror nor the firm, corporation, partnership or institution represented by the Offeror or anyone acting for such firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly **the offer** made to any competitor or any other Person engaged in such line of business.

K.6.12 Ethics

K.6.12.1 Conflict of Interest

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

Specifically, a Department employee may not have an interest in, or in any manner be connected with a contract or proposal for a purchase of goods or services by an agency of the State; or in any manner, including by rebate or gift, accept or receive from a Person to

whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Entities who are interested in seeking business opportunities with the state must be mindful of these restrictions when interacting with public purchasers of the Department or purchasers of other State agencies.

K.6.12.2 Disclosure of Interested Parties

In accordance with Texas Government Code 2252.908, a governmental entity or state agency may not enter into a contract valued at \$1 million dollars or greater with a business entity unless the business entity, in accordance with Texas Administrative Code, Title 1, Part 2, Chapter 46, Rules 46.1, 46.3 and 46.5, submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.

The disclosure of interested parties must be submitted on a form, and in a manner, prescribed by the Texas Ethics Commission. The Disclosure of Interested Parties Form (Form 1295) and instructions may be found at: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

K.6.12.3 No Gratuities

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

K.6.13 No Compensation

Pursuant to Texas Government Code, Section 2155.004, the Offeror has not received compensation for participation in the preparation of the specifications for this proposal. Under Texas Government Code, Section 2155.004, the Offeror certifies that the individual or business entity named in this proposal 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.

K.6.14 Contracting with Executive Head of State Agency

- A. The Offeror represents and certifies that they are in compliance with Texas Government Code, Section 669.003, relating to contracting with the executive head of a State Agency.
- B. If Section 669.003 applies, the Offeror shall complete the following information in order for the proposal to be evaluated:

Name of Former Executive: _____

Name of State Agency: _____

Date of Separation from State Agency: _____

Date of Employment with Offeror: _____

K.6.15 Limitation on Employment of Former State Officers

The Offeror represents that they are in compliance with Texas Government Code, Section 572.069 relating to employment of a former state officer or employee. A former state officer or employee of the Department who during the period of state service or employment participated on behalf of the Department on a procurement or contract negotiation involving a business entity may not accept employment from that business entity before the second anniversary of the date the officer's or employee's service or employment with the Department ceased.

K.6.16 Notification

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

K.6.17 Suspension, Debarment and Terrorism

The Department is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's System for Award Management (SAM, <https://www.sam.gov>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

K.6.18 Violation of Federal Law Relating To Reconstruction Efforts As A Result Of Hurricanes Rita, Katrina or Any Other Disaster After September 24, 2005

Pursuant to Texas Government Code, Section 2261.053, a State Agency may not accept a proposal or award a Contract, that includes proposed financial participation by a Person who, during the five (5) year period preceding the date of the proposal or award, has been convicted of violating a federal law or accessed a penalty in a federal, civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery or reconstruction efforts as a result of Hurricane Rita, Katrina or any other disaster occurring after September 24, 2005. Under Texas Government Code, Section 2261.053, the Contractor certifies that the individual or business entity named in this proposal 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.

K.6.19 Deceptive Trade Practices; Unfair Business Practices

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

K.7 REPRESENTATIONS OF THE DEPARTMENT

The Department represents and warrants to and for the benefit of the Offeror with the intent that the Offeror will rely thereon for the purposes of entering into this Contract as follows:

K.7.1 Authorization

The Department has the requisite power to enter into this Contract and perform its obligations hereunder and by proper action has duly authorized the execution, delivery and performance hereof.

K.7.2 No Violation of Agreements

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

K.7.3 Disclosure

There is no material fact which materially and adversely affects or in the future will (so far as the Department can now reasonably foresee) materially and adversely affect its ability to perform its obligations under this Contract or which might require changes in or additions to the Services required under this Contract that would increase the cost to the Offeror of providing such Services, which has not been accurately set forth in this Contract or otherwise accurately disclosed in writing to the Offeror by the Department prior to the date hereof.

K.8 AUTHORIZED NEGOTIATORS

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

Linda Smith, President	(214) 636-9720

K.9 PAYEE IDENTIFICATION NUMBER

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

Payee Identification Number: 17528307758 or

Federal Taxpayer Identification Number: _____.

K.10 POINT OF CONTACT

The Offeror shall provide the name, title, phone number, fax number, address and e-mail address of a point-of-contact for questions concerning the submitted proposal.

Name: Linda Smith Title: President

Phone Number: (214) 636-9720 Fax Number: (214) 872-6242

Street Address: 11322 Raveneaux Drive

City: Frisco State: Texas Zip Code: 75033

E-mail Address: trucemedia@aol.com

K.11 CERTIFICATION

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

The Offeror makes the foregoing Representations and Certifications as part of its proposal.

Linda Smith
Name of Offeror

696-HR-17-P006
Solicitation No.

Linda Smith
Signature of Authorized Individual

April 20, 2017
Date

LINDA SMITH

Typed Name of Authorized Individual

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