

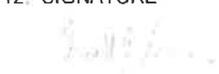
## SOLICITATION, OFFER AND AWARD

1. CONTRACT NO. 696-HR-18-18-C066	2. SOLICITATION NO. 696-HR-17-P009	3. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFO) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	4. DATE ISSUED April 4, 2017
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### SOLICITATION

5. Sealed offers will be received by the Department until <b>3:00 p.m. local time on May 9, 2017</b> , and submitted to:  <b>Attention: 696-HR-17-P009</b> Texas Department of Criminal Justice Contracts and Procurement Department Client Services and Governmental Contracts Branch Two Financial Plaza, Suite 525 Huntsville, Texas 77340	6. <b>FOR INFORMATION CONTACT:</b>  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)

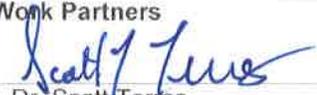
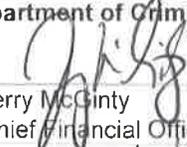
7. DISCOUNT FOR PROMPT PAYMENT:→	10 CALENDAR DAYS	20 CALENDAR DAYS	30 CALENDAR DAYS	CALENDAR DAYS
	%	%	%	%
8. ACKNOWLEDGMENT OF AMENDMENTS: <i>(The Offeror acknowledges receipt of amendments to the SOLICITATION for Offerors and related documents numbered and dated:</i>	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
9. NAME AND ADDRESS OF OFFEROR:→	Alliance Work Partners 2525 Wallingwood Dr. Building 5 Austin, TX 78746		10. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or Print) Dr. Scott Terres Vice President	
11. TELEPHONE NO. (Include area code) 800-522-0550	12. SIGNATURE 		13. OFFER DATE 5/9/17	

### TO BE COMPLETED AT TIME OF AWARD

#### Document Type: 2S

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 \$72,547.75.

Alliance Work Partners  By:  Name: Dr. Scott Terres Title: Vice President Date: 2-11-17	Texas Department of Criminal Justice  By:  Name: Jerry McGinty Title: Chief Financial Officer Date: 7/25/17
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The following items are mutually agreed to by Alliance Work Partners and the Department and are hereby incorporated in this Contract, including revisions made by Amendment A-001.

1. The Solicitation, Offer and Award form has been replaced to add the Contract number, 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, has been deleted and reserved for future use.
4. Section B.2, Pricing Schedule, has been revised to include the Contractor's pricing.
5. Section G.2.3, Human Resources Specialist, has been revised to include updated language.
6. Section G.2.4, Program Manager, has been revised to include updated language.
7. Section G.3.C, Invoice Requirements, has been revised to include updated language.
8. Section H.7, Criminal History Information Compliance, has been revised to include updated language.
9. Exhibit J.1, List of Units and Department Offices, has been revised.
10. 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.5.2, K.8, K.9, K.10 and K.11.
11. Section K.6.7, Taxes, has been revised to included updated language.
12. Section K.6.17, Suspension, Debarment and Terrorism, has been revised to include updated language.
13. Sections L and M of this Contract are hereby deleted.

## TABLE OF CONTENTS

<b>SECTION A – CONTRACT DEFINITIONS .....</b>	<b>7</b>
<b>SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS .....</b>	<b>9</b>
B.1 SERVICES AND PRICES/COSTS .....	9
B.1.1 Services Being Acquired .....	9
B.1.2 Reserved for Future Use .....	9
B.2 PRICING SCHEDULE .....	9
B.3 ALLOWABLE COSTS .....	10
B.4 NON-ALLOWABLE COSTS .....	10
<b>SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT .....</b>	<b>11</b>
C.1 BACKGROUND .....	11
C.2 GENERAL DUTIES AND OBLIGATIONS .....	11
C.3 TYPES OF REFERRALS .....	11
C.4 EAP SERVICE REQUIREMENTS .....	12
C.5 ASSESSMENT AND REFERRAL SPECIALISTS .....	15
C.6 RECORD KEEPING .....	16
C.7 ORGANIZATIONAL PROFILE .....	16
C.8 SERVICE LOCATIONS .....	17
C.9 ACCOUNT MANAGEMENT .....	17
C.10 SECURITY AND PRIVACY .....	17
C.11 RELEASE OF INFORMATION .....	18
C.12 QUALITY ASSURANCE PLAN .....	18
C.13 DEPARTMENT POLICIES AND PROCEDURES .....	18
<b>SECTION D – REPORTS AND DATA .....</b>	<b>20</b>
D.1 REPORTS REQUIRED FROM CONTRACTOR .....	20
<b>SECTION E - INSPECTION AND ACCEPTANCE .....</b>	<b>21</b>
E.1 INSPECTION OF SERVICES .....	21
E.2 INSPECTION BY STATE EMPLOYEES .....	21
E.3 MONITORING CRITERIA .....	21
E.4 AUTHORITY TO AUDIT .....	22
E.5 AUDITS BY OTHER AGENCIES .....	22
E.6 FRAUD, WASTE OR ABUSE .....	22
<b>SECTION F - DELIVERIES OR PERFORMANCE .....</b>	<b>24</b>
F.1 CONTRACT TERM .....	24
F.2 DELIVERY RESPONSE .....	24
F.3 LOCATIONS OF PARTICIPATING UNIT AND DEPARTMENT OFFICES .....	24
<b>SECTION G - CONTRACT ADMINISTRATION DATA .....</b>	<b>25</b>
G.1 CLAUSES INCORPORATED BY REFERENCE .....	25
G.2 AUTHORITY – AUTHORIZED REPRESENTATIVE, CONTRACT SPECIALIST, HUMAN RESOURCES AND ACCOUNT MANAGER .....	25
G.2.1 Authorized Representative .....	25
G.2.2 Contract Specialist .....	26
G.2.3 Human Resources Specialist .....	26
G.2.4 Program Manager .....	26
G.3 INVOICE REQUIREMENTS .....	27

G.4	PAYMENTS .....	28
G.4.1	Reserved for Future Use.....	28
G.4.2	Reserved for Future Use.....	28
G.4.3	Reserved for Future Use.....	28
G.4.4	Late Payment.....	28
G.4.5	Reserved for Future Use.....	28
G.4.6	Withholding of Payment.....	28
G.4.7	Payment of Debt Owed to the State of Texas .....	29
G.4.8	Right to Offset.....	29
<b>SECTION H - SPECIAL CONTRACT REQUIREMENTS.....</b>		<b>30</b>
H.1	INSURANCE REQUIREMENTS.....	30
H.1.1	Required Provisions.....	31
H.2	SUBCONTRACTORS .....	32
H.2.1	Insurance.....	33
H.2.2	Reserved For Future Use.....	33
H.3	RESERVED FOR FUTURE USE .....	33
H.4	RESERVED FOR FUTURE USE .....	33
H.5	RESERVED FOR FUTURE USE .....	33
H.6	UTILIZATION OF PRODUCTS AND MATERIALS PRODUCED IN TEXAS .....	33
H.7	CRIMINAL HISTORY INFORMATION COMPLIANCE .....	33
H.8	OTHER CONFIDENTIAL OR SENSITIVE INFORMATION .....	34
H.9	BOOKS AND RECORDS .....	34
H.10	ORGANIZATIONAL AND NAME CHANGE .....	35
H.11	FREE EXERCISE OF RELIGION.....	35
H.12	DELAY OF SERVICES.....	35
H.13	RESERVED FOR FUTURE USE .....	35
H.14	RESERVED FOR FUTURE USE .....	35
H.15	RESERVED FOR FUTURE USE .....	35
H.16	SECURITY.....	35
<b>SECTION I - CONTRACT CLAUSES .....</b>		<b>36</b>
I.1	AVAILABILITY OF FUNDS FOR NEXT FISCAL YEAR.....	36
I.2	ADVERTISING OF AWARD.....	36
I.3	DEFAULT AND TERMINATION .....	36
I.3.1	Default by the Contractor .....	36
I.3.2	Further Opportunity to Cure .....	37
I.3.3	Remedy of the Department.....	37
I.3.4	Termination for Unavailability of Funds .....	38
I.3.5	Non-Appropriation Effect and Remedy.....	39
I.3.6	Termination for Convenience .....	39
I.3.7	Termination by Mutual Agreement .....	39
I.3.8	Termination Procedures.....	39
I.3.9	Default by the Department .....	40
I.3.10	Remedy of the Contractor .....	40
I.3.11	Dispute Resolution.....	40
I.4	NO WAIVER OF RIGHTS .....	41
I.5	INDEMNIFICATION OF THE DEPARTMENT .....	41
I.5.1	Acts or Omissions .....	41
I.5.2	Infringements .....	42
I.5.3	Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity.....	42
I.6	NO WAIVER OF DEFENSES.....	43
I.7	INDEPENDENT CONTRACTOR.....	43

I.8	LAWS OF TEXAS .....	44
I.9	ASSIGNMENT .....	44
I.10	MAINTENANCE OF CORPORATE EXISTENCE AND BUSINESS .....	44
I.11	APPROVAL OF CONTRACT .....	44
I.12	NON-DISCRIMINATION.....	44
I.13	CONFIDENTIALITY AND OPEN RECORDS .....	45
I.13.1	Confidentiality .....	45
I.13.2	Open Records.....	45
I.14	CONTRACT CHANGES.....	45
I.15	OPTION TO EXTEND THE TERM OF THE CONTRACT.....	46
I.16	OPTION TO EXTEND SERVICES .....	46
I.17	SEVERABILITY.....	46
I.18	IMMIGRATION.....	46
I.19	NO LIABILITY UPON TERMINATION .....	46
I.20	LIMITATION ON AUTHORITY .....	46
I.21	INTELLECTUAL PROPERTY INDEMNIFICATION .....	47
I.22	ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS, AS REQUIRED BY TEXAS ADMINISTRATIVE CODE, TITLE 1, PART 10, CHAPTER 213.....	47
I.23	RIGHTS TO DATA, DOCUMENTS AND COMPUTER SOFTWARE (STATE OWNERSHIP) .....	47
I.24	FORCE MAJEURE.....	48
I.25	NOTICES .....	48
I.26	SUBSTITUTIONS.....	48
I.27	U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM.....	48
<b>SECTION J - LIST OF EXHIBITS .....</b>		<b>50</b>
<b>SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS.....</b>		<b>51</b>
K.1	HISTORICALLY UNDERUTILIZED BUSINESS (HUB) REPRESENTATION .....	51
K.1.1	Definition.....	51
K.1.2	Representation .....	51
K.2	CHILD SUPPORT REPRESENTATION.....	51
K.3	FRANCHISE TAX REPRESENTATION .....	52
K.4	TYPE OF BUSINESS ORGANIZATION .....	52
K.5	PREFERENCE CLAIM.....	52
K.5.1	Source and Specification Preferences .....	53
K.5.2	Tie-Bid Preferences .....	53
K.5.3	Additional Preferences.....	53
K.6	REPRESENTATIONS OF OFFEROR.....	53
K.6.1	Organization and Qualification .....	53
K.6.2	Authorization.....	54
K.6.3	No Violation of Agreements, Articles of Incorporation or Bylaws .....	54
K.6.4	No Defaults Under Agreements .....	54
K.6.5	Compliance With Laws.....	54
K.6.6	No Litigation.....	54
K.6.7	Taxes.....	55
K.6.8	Financial Statements .....	55
K.6.9	No Adverse Change.....	56
K.6.10	Disclosure.....	56
K.6.11	No Collusion .....	56
K.6.12	Ethics.....	56
K.6.12.1	Conflict of Interest.....	56

K.6.12.2 Disclosure of Interested Parties ..... 57

K.6.12.3 No Gratuities ..... 57

K.6.13 No Compensation ..... 57

K.6.14 Contracting with Executive Head of State Agency..... 57

K.6.15 Limitation on Employment of Former State Officers ..... 58

K.6.16 Notification ..... 58

K.6.17 Suspension, Debarment and Terrorism..... 58

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..... 58

K.6.19 Deceptive Trade Practices; Unfair Business Practices ..... 58

K.7 REPRESENTATIONS OF THE DEPARTMENT ..... 59

    K.7.1 Authorization ..... 59

    K.7.2 No Violation of Agreements ..... 59

    K.7.3 Disclosure ..... 59

K.8 AUTHORIZED NEGOTIATORS ..... 59

K.9 PAYEE IDENTIFICATION NUMBER ..... 60

K.10 POINT OF CONTACT ..... 60

K.11 CERTIFICATION..... 60

**SECTION A – CONTRACT DEFINITIONS**

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

**Assessment** means the process by which the Employee Assistance Program (EAP) counselor determines the Participant's needs for the EAP Services as well as social, emotional, and psychological strengths and weaknesses, and support systems. Assessment is an ongoing process throughout the relationship between the Participant and the EAP counselor.

**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.

**Commuting Distance** refers to a provider being within the same county as the employee's place of business. However, if the employee's home is in another county than their place of business, the employee may obtain a referral for a provider in that county if they prefer.

**Contract Specialist** shall have the meaning set forth in Section G.2.2.

**Contract Term** means the duration of this Contract as specified in Section B.1.1 and F.1.

**Contractor** means Alliance Work Partners.

**Day(s)** means calendar days, unless otherwise specified.

**Department** means the Texas Department of Criminal Justice (TDCJ).

**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.

**Employee Assistance Program (EAP)** means a confidential mechanism for resolving problems of substance abuse, mental health, family issues, and other difficulties that adversely affect personal functioning, health, and work performance. As an employer-sponsored program, it is usually provided as a benefit to employees and their families with the intention of minimizing the impact of personal problems on work performance.

**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.

**Human Resources Specialist** means the Department employee responsible for conducting a comprehensive audit of this Contract. As described in Section G.2.3.

**Immediate Family Members** means those individuals related by kinship, adoption, marriage or foster children who are certified by the Department of Human Services who are living in the same

household, or if not in the same household are totally dependent upon the employee for personal care or services on a continuing basis.

**Imminent Danger** means life-threatening circumstance which occurs in situations which are life threatening to one's self and/or others and require immediate action to defuse the situation and prevent and/or reduce the potential for violence.

**Material Failure** means the failure of a party to fulfill one or more obligations essential to achieving the purpose of this Contract.

**Monthly Invoice** means the Contractor's invoice submitted no later than the tenth (10<sup>th</sup>) Day after the ending of the preceding month, based on the Contractor's yearly rate and employee population, yielding the Payment to be made by the Department.

**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.

**Participant** means employee or employee's Immediate Family Member.

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

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

**Program Supervisor** shall have the meaning set forth in section G.2.4.

**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 the Contract.

**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 - SUPPLIES OR SERVICES AND PRICES/COSTS**

**B.1 SERVICES AND PRICES/COSTS**

**B.1.1 Services Being Acquired**

The Contractor shall, in accordance with the terms of this Contract, provide all necessary personnel, services and equipment, and otherwise do all things necessary for, or incidental to, providing an Employee Assistance Program (EAP), listed hereunder, for all Texas Department of Criminal Justice (hereinafter referred to as the Department) employees.

The Contract Term will consist of a one (1) year Base Period with two (2) two (2) year Option Periods to extend services for a potential contract period of five (5) years.

**B.1.2 Reserved for Future Use**

**B.2 PRICING SCHEDULE**

**Estimated Employees 39,215**

**Contract Line Item Number (CLIN) 001-005 Base Period (09/01/2017 - 8/31/2018)**

	Yearly Rate per Employee	Total Base Period Cost
001 Basic EAP Services - Required Services	\$ <u>1.56</u>	\$ <u>61,175.40</u>
002 Face-to-Face Assessment and Referral	\$ <u>Included</u>	\$ <u>Included</u>
003 Supervisory Training and Workshops	\$ <u>0.05</u>	\$ <u>1,960.75</u>
004 Follow-Up and Department Support	\$ <u>0.24</u>	\$ <u>9,411.60</u>

**Contract Line Item Number (CLIN) 006-010 Option Period One (09/01/2018 - 8/31/2020)**

	Yearly Rate per Employee	Total Option Period One Cost
005 Basic EAP Services - Required Services	\$ <u>1.56</u>	\$ <u>61,175.40</u>
006 Face-to-Face Assessment and Referral	\$ <u>Included</u>	\$ <u>Included</u>
007 Supervisory Training and Workshops	\$ <u>0.05</u>	\$ <u>1,960.75</u>
008 Follow-Up and Department Support	\$ <u>0.24</u>	\$ <u>9,411.60</u>

**Contract Line Item Number (CLIN) 011-015 Option Period Two (09/01/2020 - 8/31/2022)**

	Yearly Rate per Employee	Total Option Period Two Cost
009 Basic EAP Services - Required Services	\$ <u>1.59</u>	\$ <u>62,351.85</u>
010 Face-to-Face Assessment and Referral	\$ <u>Included</u>	\$ <u>Included</u>
011 Supervisory Training and Workshops	\$ <u>0.05</u>	\$ <u>1,960.75</u>
012 Follow-Up and Department Support	\$ <u>0.24</u>	\$ <u>9,411.60</u>

**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**

An Employee Assistance Program (EAP) is a program implemented by the Department in support of Department employees and their family members to help resolve personal problems that may have a negative effect on the employee's job performance. The EAP is a twenty-four (24) hour, seven (7) days a week information and referral services program related to confidential professional counseling for personal and/or work related problems. The EAP shall be administered by an outside Contractor under the direction of the Department. The EAP Services are free to all Department employees and their family members.

The Department recognizes that many personal problems can be successfully prevented through wellness programs that promote physical fitness, stress reduction, proper nutrition, and general wellness. The EAP information and referral services may be related to the promotion of general wellness programs, identification of and treating for alcoholism, drug dependency, or psychological disorders, resources for financial or legal problems, and other personal problems that affect an employee's job performance. The EAP will refer the employee or employee's family member to proper treatment or assistance for their problems.

**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 hereinafter 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 TYPES OF REFERRALS**

Referrals shall be provided for the following types of problems: situational, emotional, marital, adolescent, legal, financial and other personal problems.

- A. Self-Referral - Employees and/or Immediate Family Members voluntarily call the EAP directly to schedule an appointment or talk to a counselor about a particular concern. The EAP is designed to provide convenient, confidential counseling to address problems in early stages.
- B. Recommended Referrals - A supervisor, co-worker or peer may consider recommending the EAP to individuals who are struggling with a personal or work-related concern. In addition, supervisors may help to facilitate a recommended referral through one of the following options:
  - 1. Provide an EAP brochure and encourage the employee to contact the EAP.
  - 2. Offer to assist the employee in placing the initial call or requesting the employee's permission to schedule an appointment for them.

3. Arranging the employee's work schedule to accommodate EAP appointments.

C. Supervisor Referrals - Supervisors may refer Employees to the EAP when:

1. An incident or problem continues to affect an employee's behavior or performance.
2. An initial EAP recommendation has been ineffective or inappropriate due to the nature of the problem.

D. Command Referral

1. A Command Referral shall be made to the EAP when an employee admits to his/her supervisor that he/she has a drug and/or alcohol problem, or when the employee poses an Imminent Danger to self. Command referrals include mandatory referrals in accordance with Personnel Directive (PD)-17, Drug-Free Workplace and/or PD-37, Employee Commercial Drivers' Physical Examination and Alcohol/Drug Testing Programs (See Section C.13).
2. In the Command Referral process, the Department will notify the EAP that the employee must call due to a drug/alcohol issue or due to suicidal ideation. Upon notification, the EAP shall have administrative responsibility for "duty to warn," initiating an immediate referral for treatment, treatment planning with the employee's health care system, case management, follow up and coordinating return to duty with the Department, as well as, follow up drug testing and continuity of care as needed.

#### **C.4 EAP SERVICE REQUIREMENTS**

The Contractor shall provide an EAP which shall include the following Services:

##### Basic EAP Services

- Telephone Assessment and Referral
- Orientation and Training
- 24-Hour Crisis Intervention
- Basic Follow-Up
- Promotional Materials
- Monthly Statistical Reports
- Satisfaction Survey

##### Additional EAP Services

- Face-to-Face Assessment and Referral
- Counseling
- Supervisory Training and Workshops
- Follow-Up and Agency Support

## A. Basic EAP Services:

## 1. Telephone Assessment and Referral

- a. The Contractor shall provide a twenty-four (24) hour centralized toll-free line available statewide for all Department employees.
- b. The Contractor shall provide a line with a Telecommunications Device for the Deaf (TDD) for Department employees.
- c. The Contractor shall provide assessment and referral specialists to consult with employees by telephone, evaluate needs and provide resource referrals. Assessment and referral specialists shall meet the qualifications outlined in Section C.5.
- d. The Contractor shall provide referrals to providers within the employee's Commuting Distance for counseling services.
- e. If face-to-face sessions are recommended by the Contractor's assessment specialist for mental health or medical assessments, the Contractor shall refer the Participant to his/her health care specialist of choice. The number of sessions provided shall be determined by the Participant's insurance provider.

## 2. Orientation and Training

- a. Employee Orientation - The Contractor shall provide new employee orientation consisting of an overview of the EAP Services through written materials, support materials, handouts and videotape(s)/DVD(s), capable of being reproduced. The Department shall review these materials prior to acceptance.
- b. Basic Supervisory Training - The Contractor shall provide written lesson plans, written support materials, handouts and videotape(s)/DVD(s), capable of being reproduced, for basic supervisory training consisting of the following:
  - i. How to recognize signs of substance abuse or emotional problems;
  - ii. Techniques for encouraging employees to seek help;
  - iii. Ongoing orientation of EAP Services available; and
  - iv. How to make a referral.
- c. The Contractor shall provide training on Department of Transportation (DOT) regulations on alcohol misuse and controlled substance use in accordance with PD-37, Employee Commercial Drivers' Physical Examination and Alcohol/Drug Testing Programs (Section C.13). This training shall be provided to Department supervisors annually within approximately three to four (3 to 4) clustered locations. Locations shall be determined by the Department.
- d. Upon request by the Department, workshops shall be offered to particular groups, such as personnel directors or as a general workshop for employees.

The number of workshops shall be a minimum of three (3) per year. Dates and locations of workshops to be determined.

3. Twenty-four (24) Hour Crisis Intervention

- a. The Contractor shall provide emergency mental health and substance abuse crisis intervention on a twenty-four (24) hour per day, seven (7) days per week, three hundred sixty-five (365) days a year basis.
- b. This Service shall include coordination of personal screening for inpatient services in life threatening circumstances.
- c. The Contractor shall provide qualified professionals (see Section C.5) to provide assessment and emergency treatment.

4. Basic Follow-Up

The Contractor shall provide basic follow-up as needed for critical incident debriefing on site. The Department shall determine when this service is necessary.

5. Promotional Materials

- a. The Contractor shall provide written material to include a minimum of informational brochures, mailers, posters (English and Spanish text) for approximately two hundred fifty-three (253) locations, and camera-ready copies for the Department newsletters. The Department shall have the right to review all written material prior to dissemination.
- b. The Contractor shall provide wallet cards for all employees that reflect the Contractor's name, counseling locations, telephone numbers plus any other pertinent information to assure access to services for employees. The Department shall have the right to review all written material prior to dissemination.

6. Monthly Statistical Reports

The Contractor shall provide the Department with monthly statistical reports in a format to be determined after the Contract award. The reports shall include cumulative year-to-date totals.

7. Satisfaction Survey

The Contractor shall provide an anonymous Participant satisfaction survey to be mailed by the Participant to the Department EAP Human Resources Specialist or a third-party, independent evaluator who will forward the responses directly to the Department's EAP Human Resources Specialist. The postage shall be paid by the Contractor. The Department's EAP Human Resources Specialist will provide the Contractor with feedback on the results of the surveys.

B. Additional EAP Services:

1. Face-to-Face Assessment and Referral

The Contractor shall provide face-to-face consultation with an employee to evaluate needs, provide resource referrals and determine if EAP counseling sessions are necessary.

## 2. Counseling

- a. The EAP shall provide one (1) counseling session (including assessment, evaluation, counseling, referral, if indicated, and follow-up), within commuting distance, at no cost to the Participant, per incident/problem, per Participant, per contract year. If additional services are required after one (1) counseling session, the Participant shall be referred to an outside referral source.
- b. Counseling sessions shall be made available to employees within three (3) Days after a request is made and shall be at least fifty (50) minutes in length for individual sessions and at least ninety (90) minutes in length for marital or family problems. The Department reserves the right to grant exceptions to this requirement on a case-by-case basis.
- c. Frequency of counseling appointments shall be based on the needs of the employees.
- d. If counseling sessions are provided by the Contractor, a counselor shall follow up via telephone after the completion of the counseling to determine the status of the present problem and offer additional assistance, including referral, when needed.

## 3. Supervisory Training and Workshops

The Contractor shall conduct workshops regionally that include stress management, alcohol and drug abuse awareness, parenting skills and surviving traumas. Dates and locations of workshops to be determined.

## 4. Follow-Up and Agency Support

- a. The Contractor shall offer assistance with constructive correctional interviews and/or other work-related problems through telephone or face-to-face meetings with Department supervisors, if requested. Such assistance also shall be provided to Department administrative staff and the Contractor's coordinator, if requested. Telephone assistance shall be provided within one (1) working day of the request.
- b. The Contractor shall designate a contact Person to which the Department EAP coordinator and employees may address questions or complaints. Information on such contact Person's identity and location is to be made readily available to all concerned parties.

### **C.5 ASSESSMENT AND REFERRAL SPECIALISTS**

- A. The Contractor shall provide Assessment and referral specialists to perform an Assessment of a Participant's presenting problem or reason for referral and assess each life area of the Participant.

- B. The Contractor's staff delivering Assessment and referral services shall have the following credentials for delivering services:
1. Master's degree from an accredited college or university in a behavioral science and be licensed or certified by the appropriate professional groups and/or state regulating agencies.
  2. Exception to the Master's degree requirement may be made for licensed or certified staff in fields requiring specialized knowledge, training and expertise obtained through professional training programs that do not award academic degrees such as Licensed Professional Counselors, Licensed Certified Social Workers, Certified Employee Assistance Professionals, Board Certified Substance Abuse Counselors, or Substance Abuse Professionals. Staff who are certified as Alcoholism and Drug Abuse Counselors, Licensed Professional Counselors, or who are certified as a Bachelor of Social Work and have five (5) or more years of experience in mental health or substance abuse meet these criteria. Staff who are only Certified Alcoholism and Drug Abuse Counselors shall only provide counseling services to employees suffering a problem related to substance abuse.
  3. The Contractor shall maintain on staff at least one (1) licensed psychiatrist to review the Assessments made by the qualified professionals.
- C. The Contractor shall provide, in reply to this requirement, a description of staffing patterns which includes the number of full-time staff, the duties of such staff, and total resources available to Participants as well as the following:
1. Assessment/Referral Specialist to Participant ratio;
  2. Staff scheduling;
  3. Employee supervision;
  4. Number of Persons per shift (if applicable); and
  5. How twenty-four (24) hour crisis intervention will be accomplished.

#### **C.6 RECORD KEEPING**

- A. The Contractor shall establish and maintain confidential records and reporting systems that are consistent with both State and Federal laws.
- B. The Contractor shall insure that unattended Participant files are locked at all times.

#### **C.7 ORGANIZATIONAL PROFILE**

The Offeror shall provide a profile of its organization to include a history of its organization, statement of corporate philosophy and/or mission statement and organizational chart listing staff members of organization and all satellite offices.

**C.8 SERVICE LOCATIONS**

This Contract shall be designated a Statewide Contract and all Services must be provided to all employees of the Department. Currently, this includes approximately 39,215 employees. Exhibit J.1, List of Units and Department Offices, is a list for information purposes only of all TDCJ office/unit locations.

**C.9 ACCOUNT MANAGEMENT**

The Contractor shall designate an employee to manage and service the Department account resulting from this Contract (see Section G.2.4). The Program Manager shall serve as the central point-of-contact for Department staff and be responsible for overseeing Service delivery, resolving issues, providing customer support to include on-site visits to Department offices, and facilitating the implementation of any EAP changes approved, required and/or requested by the Department.

**C.10 SECURITY AND PRIVACY**

- A. The Contractor's counselors shall encourage the Participant to sign a release of confidential information for their supervisor when a supervisory referral is made to the EAP and when it is in the Participant's best interest to include the supervisor. If a release is signed, the EAP counselor shall contact the supervisor periodically to inform the supervisor of the Participant's cooperation and general progress, but shall not provide specific information regarding the employee's problem.
- B. The Contractor shall provide to the Department immediate notice with written follow up, as determined by the Contractor's Assessment and Referral Specialist, in which a Participant poses a threat to self or others in accordance with Texas Health and Safety Code 611.004.
- C. The Contractor shall require that staff providing Services specified meet sufficient standards of integrity to ensure that:
  - 1. The confidentiality of employee records is not compromised; and
  - 2. Unauthorized access to the records is not allowed and no information is disclosed to any third party without written authorization of the Department.
- D. The Contractor shall ensure that all individuals (including subcontractors) having access to or custody of records understand the confidentiality requirements of this Contract. These individuals shall be required to sign a statement acknowledging their understanding of these requirements. All Contractor's employees shall be bonded or covered by the Contractor's professional liability/employee dishonesty insurance.
- E. The Contractor shall maintain for inspection and examination by the Department all employee reports and financial records associated with the Contract for a period of seven (7) years subsequent to Contract expiration. In the event of any litigation, claim, or audit involving these records that begins before the records retention period expires, the Contractor shall 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 Department and the Contractor. At the end of the data storage requirement term,

the Contractor shall provide evidence or sworn statements that the Department employee records have been removed from their system.

- F. The Contractor shall notify the Department immediately upon receipt of any legal process requiring disclosure of records of employees.
- G. The Contractor shall, upon request of the Department or in response to a subpoena, appear or submit an affidavit and testify in any legal proceedings convened by a court of competent jurisdiction or the Department.

#### **C.11 RELEASE OF INFORMATION**

- A. In performance of this Contract, the Contractor agrees to assume responsibility for protection of the confidentiality of government records and that all work shall be performed under the supervision of the Contractor or the Contractor's responsible employees.
- B. Each officer or employee of the Contractor to whom information may be available or disclosed shall be notified in writing by the Contractor that information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein.

#### **C.12 QUALITY ASSURANCE PLAN**

The Contractor shall continuously conduct self-monitoring utilizing a comprehensive quality assurance plan. Prior to Contract award the Contractor shall provide a copy of the assurance plan to the Department for review and approval. The quality assurance plan shall include details relating to:

- A. Self-monitoring techniques;
- B. Reporting procedures, including frequency and subject matter;
- C. Staffing, hiring and training; and
- D. Quality improvement plans.

All data and reports compiled under the quality assurance plan shall be maintained by the Contractor and made available for review by the Department personnel during an audit or upon request.

#### **C.13 DEPARTMENT POLICIES AND PROCEDURES**

The Contractor and its employees/subcontractors shall adhere to the Department's Policies and Procedures listed below and available on the Department website at <http://www.tdcj.texas.gov>:

- PD-04, Consulting/Contract Employee Information Confidentiality;
- PD-17, Drug Free Workplace;
- PD-20, Employee Assistance Program;
- PD-22, Listing of Employee General Rules of Conduct and Disciplinary Violations;
- PD-27, Employee Status Pending Resolution of Criminal Charges or Protective Orders;

- PD-37, Employee Commercial Drivers' Physical Examination and Alcohol/Drug Testing Programs; and
- PD-75, Applicants with Pending Criminal Charges or Prior Criminal Convictions.

The policies and procedures shall serve to guide employee behavior in relationships to other employees and the public.

**SECTION D – REPORTS AND DATA**

**D.1 REPORTS REQUIRED FROM CONTRACTOR**

- A. Monthly Statistical Reports shall be submitted to the Human Resources Specialist in a format to be developed by the Department after the award of this Contract (C.4.A.6).
- B. The Department reserves the right to request additional reports that may be considered "ad hoc" reports, as deemed necessary during the course of the Contract.

## SECTION E - INSPECTION AND ACCEPTANCE

### E.1 INSPECTION OF SERVICES

- A. The Department and other government regulatory agencies have 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.4.4 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 a 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, in coordination with the Human Resources Specialist (Section G.2.3) 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 Human Resources Specialist 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 Human Resources Specialist, 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 Human Resources Specialist 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.9, 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](http://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) two (2) year renewal Option Periods (September 1, 2018 through August 31, 2020 and September 1, 2020 through August 31, 2022). The Contract may be extended for an additional six (6) month period (September 1, 2022 through February 28, 2023) at the Department's option, per Section I.16. The terms, conditions and rates for all extensions shall remain as stated in the Contract.

**F.2 DELIVERY RESPONSE**

- A. The Contractor shall be available to meet with the Department within five (5) working days following the Contract award to discuss plans for implementation of the EAP. EAP implementation shall include, but may not be limited to, a review of materials, and an orientation and/or training of Services which meet the need of the Department.
- B. The initial EAP Service shall commence on September 1, 2017. The Contractor must provide sufficient materials as determined by the Department to initiate the EAP Services.
- C. Demonstrated failure of the Contractor to notify the Department sufficiently in advance of the Contractor's inability to initiate Services under this Contract within the designated delivery time, and without acceptable reasons as determined by the Department, shall give the Department the option of assessing damages or terminating the Contract and acquiring services from another source.
- D. Following notification that Service is desired in a new county, the Contractor shall be available to meet with the Department within five (5) working days to discuss implementation plans. Initial EAP Services in a new county shall occur no later than thirty (30) Days following notification.

**F.3 LOCATIONS OF PARTICIPATING UNIT AND DEPARTMENT OFFICES**

- A. The locations of the Unit and Department offices participating in the EAP shall include but may not be limited to each city listed on Exhibit J.1.
- B. The Contract resulting from this Solicitation will be designated a Statewide Contract. The Department offices located throughout the State of Texas may receive these Services directly from this Contract. In the event Services are needed in a new county the Department will unilaterally modify the Contract to include the location and Services.

**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, HUMAN RESOURCES AND ACCOUNT MANAGER****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 on his/her behalf on matters requiring signature approval of the Authorized Representative. The Director of Human Resources has been designated as the Authorized Representative to act on behalf of the Chief Financial Officer on all matters pertaining to the daily operations and 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 Human Resources Specialist**

- A. The Human Resources Specialist for this Contract is Brenda LeNorman.
- B. The telephone number for the Human Resources Specialist is (936) 437-3171.
- C. The facsimile number of the Human Resources Specialist is (936) 437-3111.
- D. The e-mail address of the Human Resources Specialist is brenda.lenorman@tdcj.texas.gov.
- E. The Director of Human Resources represents the Executive Director in the administration of technical details within the scope of this Contract.
- F. The Human Resources Specialist 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.
- G. The Human Resources Specialist does not have the authority to alter the Contractor's obligations or to change the Contract specifications, price, terms or conditions.
- H. The Human Resources Specialist assignment for this Contract may be changed at any time by the Department without prior notice to the Contractor.
- I. If, as a result of technical discussions, it is desirable to modify the Contract obligations, changes will be issued in writing and signed by the Executive Director of the Department or his/her designee.

**G.2.4 Program Manager**

- A. The Contractor's designated Program Managers for this Contract are Cole Noble and Nicki Leach.
- B. The telephone numbers for the Program Managers are 800-343-3822 and 800-522-0550.
- C. The facsimile numbers of the Program Managers are 512-328-3129 and 512-338-0939.
- D. The e-mail address of the Program Manager is cnoble@alliancewp.com.

- E. The Contractor shall provide a Program 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 Program Manager shall have full authority to act for the Contractor in the performance of the required Services.
- G. The Program Manager or a designated representative shall meet with the Human Resources Specialist to discuss problems as they occur.

### G.3 INVOICE REQUIREMENTS

- A. The Contractor shall invoice the Department for each calendar month, one (1) calendar month in arrears for the amount due for Services. The Department, subject to its usual auditing and accounting procedures, shall pay such invoice thirty (30) Days after receipt of an accurate Contractor's invoice and supporting documentation.
- 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 shall be submitted to the office designated below no later than the tenth (10<sup>th</sup>) Day after the end of the preceding month:

Brenda LeNorman  
Texas Department of Criminal Justice  
Human Resources Division  
Two Financial Plaza, Suite 600  
Huntsville, Texas 77340

- D. The Contractor's monthly invoice shall include the following information:
  - 1. Name of business remittance address and invoice date;
  - 2. The Contract number;
  - 3. Descriptions, price and quantity of Services rendered, including the Contract Line Item Number; and
  - 4. Payment terms.
- E. Services submitted by the Contractor that cannot be verified will be disallowed for reimbursement. Illegible or incomplete documentation, which cannot be verified, will be disallowed for reimbursement.
- F. The invoiced price for actual Services shall be based on the total number of employees for the month. This information will be provided by the Department's Human Resources Specialist named in Section G.2.3.

**G.4 PAYMENTS**

- A. It is recommended that the Contractor, upon Contract award, receive Payments via Electronic Funds Transfer (EFT), also known as Direct Deposit.
- B. Regardless as to whether Direct Deposit is chosen, the Contractor shall submit a completed Exhibit J.2 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](http://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:

\_\_\_\_\_  
 N/A  
 \_\_\_\_\_  
 \_\_\_\_\_

**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:
1. Workers' Compensation with statutory limits; Employers Liability with minimum limits for bodily injury: a) by accident, \$100,000 per each accident b) by disease, \$100,000 per employee with a per policy aggregate of \$500,000.
  2. Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage limit of \$500,000 per occurrence.
  3. Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of \$500,000 per occurrence and \$1,000,000 general aggregate.
    - a. If this insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than sixty (60) months following completion of the Contract and acceptance by the Department.
    - b. Coverage, including any renewals, shall contain the same retroactive date as the original policy applicable to this Contract. Civil Rights Liability must be provided with the same liability limits. It may be included within the General Liability policy or written on a separate policy.
    - c. Liability coverage shall include coverage for damage to property and injury to Persons caused by boiler and other equipment malfunction. The policy shall contain an endorsement to include coverage for the property of third parties.

- d. The Department shall be named as an additional insured by using endorsement CG2026 or broader.
4. If the Contractor is a licensed or certified Person who renders professional services, then Professional Liability (including Errors and Omissions) including coverage for the rendering of, or failure to render, professional services with minimum limits of \$1,000,000 per occurrence, \$3,000,000 annual aggregate.

### 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 date on which the Services of the Contractor shall commence.
- 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 (1<sup>st</sup>) 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 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 20.21; 42 U.S.C. 3711, et seq., as amended; Texas Government Code, 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 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 in to 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 DELAY OF SERVICES**

The Contractor shall meet its obligations to commence Services at the Unit within the time frames defined by the Contract. In the event the Contractor fails to meet those time frames as defined by the Contract, absent extensions from the Department, the Department will have the right to obtain the Services from another source and charge the cost thereof to the Contractor for each Day that Services are not performed due to delays caused by the Contractor's nonperformance. The Department will provide written notification to the Contractor by certified mail, return receipt requested, of the charges which will include the date of imposition and the amount that has accrued daily as of the date of the notification.

**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.

**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, 2019.
- 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, 2019, 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 any Court Order or 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 the 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 the 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 of 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	List of Units and Department Offices (C.8 and F.3)	9

Locations Serviced by HR Regional Offices		
Location	City	Geographical HR Region
<b>Departments</b>		
CID-Region I Director's Office	Huntsville	K1
Regional HR Office	Huntsville	K1
Accounting & Business Services	Huntsville	K1
Administrative Review & Risk Management	Huntsville	K1
Agribusiness	Huntsville	K1
Budget	Huntsville	K1
Classification & Records	Huntsville	K1
Commissary & Trust Fund	Huntsville	K1
Communications	Huntsville	K1
Contracts & Procurement	Huntsville	K1
Correctional Institutions Division	Huntsville	K1
Correctional Training	Huntsville	K1
Deputy Director of Prison & Jail Management	Huntsville	K1
Deputy Executive Director	Huntsville	K1
Executive Director	Huntsville	K1
Executive Services	Huntsville	K1
Facilities Division	Huntsville	K1
Health Services Division	Huntsville	K1
Human Resources Division	Huntsville	K1
Information Technology	Huntsville	K1
Internal Audit	Huntsville	K1
Laundry, Food & Supply	Huntsville	K1
Manufacturing, Agribusiness & Logistics	Huntsville	K1
Office of Ombudsman	Huntsville	K1
Office of Inspector General	Huntsville	K1
Plans & Operations	Huntsville	K1
Reentry & Integration	Huntsville	K1
Rehabilitation Programs Division	Huntsville	K1
State Counsel for Offenders	Huntsville	K1
Support Operations	Huntsville	K1
Transportation	Huntsville	K1
Windham School District	Huntsville	K1
<b>Units</b>		
Byrd Unit	Huntsville	K1
Duncan Unit	Diboll	K1
Eastham Unit	Lovelady	K1
Ellis Unit	Huntsville	K1
Estelle Unit	Huntsville	K1
Ferguson Unit	Midway	K1
Goodman Unit	Jasper	K1
Goree Unit	Huntsville	K1
Holliday Unit	Huntsville	K1
Huntsville Unit	Huntsville	K1
Lewis Unit	Woodville	K1
Polunsky Unit	Livingston	K1
Wynne Unit	Huntsville	K1











Locations Serviced by HR Regional Offices		
Location	City	Geographical HR Region
<b>Departments</b>		
Executive Director's Office	Austin	K7
Regional HR Office	Austin	K7
Austin II	Austin	K7
Austin Review & Release	Austin	K7
Agribusiness	Austin	K7
Budget	Huntsville	K1
Board of Pardons & Paroles/Exec. Clemency	Austin	K7
CJAD	Austin	K7
Information Technology	Austin	K7
Internal Audit	Austin	K7
Office of General Counsel	Austin	K7
Victim Services	Austin	K7
<b>District Parole Offices</b>		
Athens PO	Athens	Region 1 / K7
Beaumont PO	Beaumont	Region 1 / K7
Bryan/College Station PO	College Station	Region 1 / K7
Conroe PO	Conroe	Region 1 / K7
Greenville PO	Greenville	Region 1 / K7
Huntsville PO	Huntsville	Region 1 / K7
Longview PO	Longview	Region 1 / K7
Internal Audit	Huntsville	K1
Marshall PO	Marshall	Region 1 / K7
Manufacturing, Agribusiness & Logistics	Mt. Pleasant	Region 1 / K7
Nacogdoches PO	Nacogdoches	Region 1 / K7
Orange PO	Orange	Region 1 / K7
Paris PO	Paris	Region 1 / K7
Reentry & Integration	Huntsville	K1
Rehabilitation Programs Division	Temple	Region 1 / K7
Texarkana PO	Texarkana	Region 1 / K7
Tyler PO	Tyler	Region 1 / K7
Waco PO	Waco	Region 1 / K7
<b>Dallas Region</b>		
Dallas I PO	Dallas	Region II / K7
Dallas II PO	Dallas	Region II / K7
Dallas III PO	Dallas	Region II / K7
Dallas IV PO	Dallas	Region II / K7
Dallas IV Satellite PO	Dallas	Region II / K7
Dallas V PO	Dallas	Region II / K7
Denton PO	Denton	Region II / K7
Ft. Worth I PO	Ft. Worth	Region II / K7
Ft. Worth II PO	Ft. Worth	Region II / K7
Ft. Worth III PO	Ft. Worth	Region II / K7
Mineral Wells PO	Mineral Wells	Region II / K7
Sherman PO	Sherman	Region II / K7
Waxahachie PO	Waxahachie	Region II / K7

<b>Locations Serviced by HR Regional Offices</b>		
<b>Location</b>	<b>City</b>	<b>Geographical HR Region</b>
<b>District Parole Office Continued</b>		
Angleton PO	Angleton	Region III / K7
Galveston PO	Galveston	Region III / K7
Houston I PO	Houston	Region III / K7
Houston II PO	Houston	Region III / K7
Agribusiness	Houston	Region III / K7
Budget	Huntsville	K1
Houston IV PO	Houston	Region III / K7
Houston V PO	Houston	Region III / K7
Houston VI PO	Houston	Region III / K7
Houston VII PO	Houston	Region III / K7
Houston PRTU PO	Houston	Region III / K7
Liberty PO	Liberty	Region III / K7
Rosenberg PO	Rosenberg	Region III / K7
Austin I PO	Austin	Region IV / K7
Austin II PO	Austin	Region IV / K7
Corpus Christi PO	Corpus Christi	Region IV / K7
Del Rio PO	Del Rio	Region IV / K7
Georgetown PO	Georgetown	Region IV / K7
Harlingen PO	Harlingen	Region IV / K7
Internal Audit	Huntsville	K1
Laredo PO	Laredo	Region IV / K7
Manufacturing, Agribusiness & Logistics	McAllen	Region IV / K7
San Antonio I PO	San Antonio	Region IV / K7
San Antonio II PO	San Antonio	Region IV / K7
San Antonio III PO	San Antonio	Region IV / K7
Reentry & Integration	Huntsville	K1
Rehabilitation Programs Division	San Antonio	Region IV / K7
Seguin PO	Seguin	Region IV / K7
Victoria PO	Victoria	Region IV / K7
Abilene PO	Abilene	Region V / K7
Amarillo PO	Amarillo	Region V / K7
Big Spring PO	Big Spring	Region V / K7
Brownwood PO	Brownwood	Region V / K7
El Paso PO	El Paso	Region V / K7
Lubbock PO	Lubbock	Region V / K7
Midland PO	Midland	Region V / K7
Monahans PO	Monahans	Region V / K7
Odessa PO	Odessa	Region V / K7
Plainview PO	Plainview	Region V / K7
San Angelo PO	San Angelo	Region V / K7
Wichita Falls PO	Wichita Falls	Region V / K7



## 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 [X] 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 a proposal.

<u>N/A</u>			
Print Name	SSN	Print Name	SSN
Print Name	SSN	Print Name	SSN

The Offeror certifies that the individual or business entity named in this offer 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 \_\_\_\_\_ (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.
  - 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.6.9 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



**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).

\_\_\_\_\_ Dr. Scott Terres, Vice President, 800-522-0550

\_\_\_\_\_ Debra S. Ellison, CEO 800-522-0550

**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: 17418479915 or

Federal Taxpayer Identification Number: 74-1847991

**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: Dr. Scott Terres Title: Vice President

Phone Number: (800) 522-0550 Fax Number: (512) 338-0939

Street Address: 2525 Wallingwood Dr., Building 5

City: Austin State: TX Zip Code: 78746

E-mail Address: Sterres@alliancewp.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.

Workers Assistance Program, Inc.  
dba Alliance Work Partners

Name of Offeror



Signature of Authorized Individual

Scott Terres, LPC-S, Ph.D.

696-HR-17-P009

Solicitation No.

4-14-17

Date

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.