

## SOLICITATION, OFFER AND AWARD

1. CONTRACT NO. 696-PF-16-17-C097	2. SOLICITATION NO. 696-PF-15-P025	3. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFO) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	4. DATE ISSUED July 10, 2015
--------------------------------------	---------------------------------------	---	---------------------------------

### SOLICITATION

5. Sealed offers will be received by the Department until <b>3:00 p.m. local time on July 31, 2015</b> , and submitted to:  Texas Department of Criminal Justice Contracts and Procurement Department Client Services and Governmental Contracts Branch Two Financial Plaza, Suite 525 Huntsville, Texas 77340 <b>Attention: 696-HS-15-P025</b>	6. FOR INFORMATION CONTACT:  Tanya Hollas, CTPM, CTCM Contract Administrator  PHONE: (936) 437-7082 FAX: (325) 223-0310 E-MAIL: tanya.hollas@tdcj.texas.gov
--	--

### 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
	1	07/14/2015		
	2	07/23/2015		
9. NAME AND ADDRESS OF OFFEROR:→	Management & Training Corporation 500 N. Marketplace Drive Centerville, UT 84014		10. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or Print) Odie Washington Senior Vice President, Corrections Odie.Washington@mtctrains.com	
11. TELEPHONE NO. (Include area code)  (801) 693-2860	12. SIGNATURE  <i>Odie Washington</i>		13. OFFER DATE  07/31/2015	

TO BE COMPLETED AT TIME OF AWARD

**Document Type: 9**

**Statutory Cite: Texas Government Code, Sections 508.316 and 509.006**

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 (Upon Signature of Both Parties – August 31, 2017) shall not exceed \$1,835,715.00

Management & Training Corporation

By:

*Sergio Molina*  
Sergio Molina  
Sr. VP., Business Development & Administration

Date: November 5, 2015

Texas Department of Criminal Justice

By:

*Brad Livingston*  
Brad Livingston  
Executive Director

Date: 11/18/15

**696-PF-16-17-C097**

The following items are mutually agreed to by Management & Training Corporation and the Department, and are hereby incorporated into this Contract, including revisions realized by Amendments A-001 and A-002.

1. The Solicitation, Offer and Award form has been revised to add the Contract number, add the Contractor name and title in the Contractor signature block, the total funding for the Base Period of this Contract and to update the Service Commencement Date.
2. Section A, Definitions, Contractor, has been revised to include the Contractor's name.
3. Section A, Definitions, Service Commencement Date, has been revised to include updated language.
4. Section B.1.2, Pricing Instructions, has been revised to include updated language.
5. Section B.2 Pricing Schedule, has been revised to include the Contractor's Per Diem Rate.
6. Section F.1, Period of Performance, has been revised to include updated language.
7. Section G.2.1, Authorized Representative, paragraphs B and D have been revised to reflect current language.
8. Section G.2.2, Contract Administrator, has been revised to reflect Amy McGlothlin as the Contract Administrator.
9. Section G.2.3, Contract Monitor, has been revised to reflect current language.
10. Section I.25, Notices, has been revised to reflect Amy McGlothlin as the Contract Administrator.
11. Section J, List of Exhibits, has been revised to reflect the correct number of pages for Exhibit J.2, HUB Subcontracting Plan.
12. Exhibit J.1, Budget Justification Forms and Staffing Plans, has been revised to include Contractor's completed forms.
13. Exhibit J.2, HUB Subcontracting Plan, has been revised to include Contractor's completed forms.
14. Section K, Representations, Certifications, and Other Statements of Offerors, has been revised to include the Contractor's responses to subsections K.1.2, K.2, K.4, K.8, K.9, K.10, and K.11.
15. Section K.6.14, Notification/Limitation on Employment of Former State Officers has been revised to add paragraph B regarding the employment of former state officers or employees.
16. Sections L and M of this Contract are hereby deleted.

## TABLE OF CONTENTS

	Page
<b>SECTION A - CONTRACT DEFINITIONS.....</b>	<b>7</b>
<b>SECTION B – SUPPLIES OR SERVICES AND PRICES/COSTS.....</b>	<b>10</b>
B.1 SERVICES AND PRICES/COSTS .....	10
B.1.1 Services Being Acquired .....	10
B.1.2 Pricing Instructions .....	10
B.1.3 Allowable Costs.....	10
B.1.4 Non-Allowable Costs .....	10
B.2 PRICING SCHEDULE.....	11
<b>SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT.....</b>	<b>12</b>
C.1 BACKGROUND .....	12
C.2. COMPLIANCE WITH APPLICABLE RULES, REGULATIONS, POLICIES, PROCEDURES AND LAWS .....	12
C.3 SPECIFIC DUTIES AND OBLIGATIONS FOR COGNITIVE INTERVENTION PROGRAM...	12
C.4 OFFENDER MONITORING .....	13
C.5 STAFFING .....	13
C.6 TRAINING.....	16
C.7 DISCIPLINARY PROCEDURES .....	17
C.8 TEXAS HEALTH AND SAFETY CODE, SECTIONS 85.112-114 (HIV/AIDS POLICIES AND EDUCATION).....	17
C.9 PROGRAM EVALUATION (QUALITY ASSURANCE) AND SELF-MONITORING .....	18
C.10 COMPLIANCE STANDARDS .....	19
C.11 OPERATIONAL PLAN .....	19
C.12 GRIEVANCE PROCEDURES.....	20
C.13 RECORD KEEPING.....	21
C.14 ACCESS TO PREMISES/PERSONAL IDENTIFICATION.....	21
C.15 INTAKE REQUIREMENTS .....	21
C.16 OFFENDER RECORDS.....	21
C.17 INFORMATION TECHNOLOGY/TELECOMMUNICATIONS .....	23
C.18 RISK MANAGEMENT .....	23
C.19 DEPARTMENT RECORDS.....	23
<b>SECTION D - RESERVED FOR FUTURE USE.....</b>	<b>25</b>
<b>SECTION E - INSPECTION AND ACCEPTANCE .....</b>	<b>26</b>
E.1 INSPECTION OF SERVICES .....	26
E.2 INSPECTION BY STATE EMPLOYEES .....	26
E.3 MONITORING CRITERIA .....	26
E.4 AUTHORITY TO AUDIT.....	27
E.5 AUDITS BY OTHER AGENCIES .....	27
E.6 FRAUD, WASTE OR ABUSE.....	27
<b>SECTION F - DELIVERIES OR PERFORMANCE .....</b>	<b>28</b>
F.1 PERIOD OF PERFORMANCE.....	28
<b>SECTION G - CONTRACT ADMINISTRATION DATA.....</b>	<b>29</b>
G.1 CLAUSES INCORPORATED BY REFERENCE .....	29
G.2 AUTHORITY – AUTHORIZED REPRESENTATIVE, CONTRACT ADMINISTRATOR, CONTRACT MONITOR AND FACILITY DIRECTOR.....	29
G.2.1 Authorized Representative .....	29
G.2.2 Contract Administrator.....	29

G.2.3	Contract Monitor.....	30
G.2.4	Facility Director .....	30
G.3	INVOICES AND PAYMENTS.....	30
G.3.1	Payment by Direct Deposit.....	30
G.3.2	Invoices.....	31
G.3.3	Compensation for Additional Services.....	31
G.3.4	Failure to Agree on Compensation for Additional Services.....	32
G.3.5	Payment Adjustment.....	32
G.3.6	Late Payment.....	32
G.3.7	Deductions for Unacceptable Compliance.....	32
G.3.8	Withholding of Payment.....	32
G.3.9	Payment of Debt Owed to the State of Texas.....	33
G.3.10	Right to Offset.....	33
G.4	ANNUAL FINANCIAL DISCLOSURE REPORTS.....	33
<b>SECTION H</b>	<b>- SPECIAL CONTRACT REQUIREMENTS .....</b>	<b>35</b>
H.1	INSURANCE REQUIREMENTS .....	35
H.1.1	Required Provisions .....	35
H.2	SUBCONTRACTORS.....	36
H.2.1	Insurance.....	37
H.2.2	Historically Underutilized Business (HUB).....	38
H.3	ORGANIZATIONAL AND NAME CHANGE.....	38
H.4	AUTHORITY OF ASSIGNING OFFENDERS.....	38
H.5	FREE EXERCISE OF RELIGION.....	38
H.6	BOOKS AND RECORDS.....	38
H.7	DELAY OF SERVICES .....	39
H.8	UTILIZATION OF PRODUCTS AND MATERIALS PRODUCED IN TEXAS.....	39
H.9	CRIMINAL HISTORY INFORMATION COMPLIANCE .....	39
H.10	OTHER CONFIDENTIAL OR SENSITIVE INFORMATION.....	40
H.11	TRANSITION .....	40
H.12	UTILIZATION OF PROGRAM.....	40
H.13	SECURITY.....	40
<b>SECTION I</b>	<b>- CONTRACT CLAUSES.....</b>	<b>42</b>
I.1	AVAILABILITY OF FUNDS FOR NEXT FISCAL YEAR.....	42
I.2	ADVERTISING OF AWARD.....	42
I.3	DEFAULT AND TERMINATION.....	42
I.3.1	Default by the Contractor.....	42
I.3.2	Further Opportunity to Cure.....	43
I.3.3	Remedy of the Department .....	43
I.3.4	Termination for Unavailability of Funds.....	44
I.3.5	Non-Appropriation Effect and Remedy .....	45
I.3.6	Termination for Convenience .....	45
I.3.7	Termination by Mutual Agreement.....	45
I.3.8	Termination Procedures.....	45
I.3.9	Default by the Department.....	46
I.3.10	Remedy of the Contractor .....	46
I.3.11	Dispute Resolution .....	46
I.4	NO WAIVER OF RIGHTS .....	47
I.5	INDEMNIFICATION OF THE DEPARTMENT .....	47
I.5.1	Acts or Omissions .....	47
I.5.2	Infringements .....	48
I.5.3	Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity.....	48
I.6	NO WAIVER OF DEFENSES .....	49

I.7	INDEPENDENT CONTRACTOR .....	49
I.8	LAWS OF TEXAS .....	50
I.9	ASSIGNMENT .....	50
I.10	MAINTENANCE OF CORPORATE EXISTENCE AND BUSINESS .....	50
I.11	APPROVAL OF CONTRACT .....	50
I.12	NON-DISCRIMINATION .....	50
I.13	CONFIDENTIALITY AND OPEN RECORDS .....	51
I.13.1	Confidentiality .....	51
I.13.2	Open Records .....	51
I.14	CONTRACT CHANGES.....	51
I.15	OPTION TO EXTEND THE TERM OF THE CONTRACT .....	52
I.16	OPTION TO EXTEND SERVICES .....	52
I.17	SEVERABILITY .....	52
I.18	IMMIGRATION.....	52
I.19	NO LIABILITY UPON TERMINATION.....	52
I.20	LIMITATION ON AUTHORITY .....	53
I.21	INTELLECTUAL PROPERTY INDEMNIFICATION.....	53
I.22	ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS, AS REQUIRED BY TEXAS ADMINISTRATIVE CODE, TITLE 1, PART 10, CHAPTER 213.....	53
I.23	RIGHTS TO DATA, DOCUMENTS AND COMPUTER SOFTWARE (STATE OWNERSHIP)	53
I.24	FORCE MAJEURE .....	54
I.25	NOTICES.....	54
I.26	SUBSTITUTIONS .....	54
I.27	U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM.....	54
<b>SECTION J - LIST OF EXHIBITS.....</b>		<b>56</b>
<b>SECTION K – REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS.....</b>		<b>57</b>
K.1	HISTORICALLY UNDERUTILIZED BUSINESS (HUB) REPRESENTATION .....	57
K.1.1	Definition .....	57
K.1.2	Representation.....	57
K.2	CHILD SUPPORT REPRESENTATION.....	57
K.3	FRANCHISE TAX REPRESENTATION .....	58
K.4	TYPE OF BUSINESS ORGANIZATION.....	58
K.5	PREFERENCE CLAIM.....	59
K.5.1	Source and Specification Preferences.....	59
K.5.2	Tie-Bid Preferences.....	59
K.5.3	Additional Preferences .....	59
K.6	REPRESENTATIONS OF OFFEROR.....	59
K.6.1	Organization and Qualification .....	60
K.6.2	Authorization .....	60
K.6.3	No Violation of Agreements, Articles of Incorporation or Bylaws.....	60
K.6.4	No Defaults Under Agreements.....	60
K.6.5	Compliance With Laws .....	60
K.6.6	No Litigation .....	60
K.6.7	Taxes .....	61
K.6.8	No Adverse Change .....	61
K.6.9	Disclosure .....	62
K.6.10	No Collusion.....	62
K.6.11	Ethics .....	62
K.6.12	No Compensation.....	62
K.6.13	Contracting with Executive Head of State Agency .....	63
K.6.14	Notification / Limitation on Employment of Former State Officers .....	63
K.6.15	Suspension, Debarment and Terrorism.....	63

K.6.16 Violation of Federal Law Relating To Reconstruction Efforts As A Result Of Hurricanes  
Rita, Katrina or Any Other Disaster After September 24, 2005 .....64

K.6.17 Deceptive Trade Practices; Unfair Business Practices .....64

K.7 REPRESENTATIONS OF THE DEPARTMENT .....64

    K.7.1 Authorization .....64

    K.7.2 No Violation of Agreements .....64

    K.7.3 Disclosure .....65

K.8 AUTHORIZED NEGOTIATORS .....65

K.9 PAYEE IDENTIFICATION NUMBER.....65

K.10 POINT OF CONTACT .....65

K.11 CERTIFICATION .....66

**SECTION A - CONTRACT DEFINITIONS**

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

**Authorized Representative** means the person designated in writing to act for and on behalf of a party 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.

**Cognitive Intervention** means a process whereby Offenders are taught to identify their habits of thinking that lead to problems and to restructure the core beliefs involved.

**Compliance Standards** means Contract requirements that have specific and clearly defined recoupment strategies to ensure that the Department does not pay for services that are not received.

**Contract Administrator** means the Department employee responsible for non-technical administration of this Contract.

**Contract Monitor** means the Department employee responsible for the technical details within the scope of this Contract.

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

**Contractor** means Management & Training Corporation.

**CSCD** means Community Supervision and Corrections Department, a county agency that oversees offenders that are placed on Community Supervision by the Court.

**Days** means calendar days, unless otherwise specified.

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

**Department Policy/Policies** means all written policies, procedures, standards, guidelines, directives, and manuals of the TBCJ and the Department applicable, to providing the services specified under this Contract.

**DSHS** means the Texas Department of State Health Services.

**Event of Default** means any of the events or circumstances described in Section I.3.1 and I.3.9.

**Facility** means the Roach Intermediate Sanction Facility (ISF) where Services under this Contract are to be performed.

**Filled Date** means the employee's first date on the job following receipt of appropriate certification/license and a satisfactory criminal background clearance and/or Department approved letter.

**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.

**Monthly Contractor Payment** means the mathematical product of the Per Diem Rate times the number of Offenders receiving services during the billing month, according to the Daily Activity Report for each day of the billing month.

**NCIC** means the National Crime Information Center operated under the authority of the Federal Bureau of Investigation.

**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.

**Offender** means a person under the supervision of the Department or a CSCD.

**Operational Plan** means those plans, policies and procedures which are consistent with Department standards and developed by the Contractor to meet the requirements of this Contract.

**Parole** means the discretionary and conditional release of an eligible Offender sentenced to the TDCJ-Correctional Institutions Division so that the Offender may serve the remainder of the Offender's sentence under the supervision of the TDCJ-Parole Division.

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

**PD** means the Texas Department of Criminal Justice's Personnel Directives.

**PD/POP** means the Parole Division/Policy and Operating Procedure.

**Per Diem Rate** means the rate paid per day for each Offender.

**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.

**Position Vacancy** means a position in which there is no qualified, fully trained incumbent. A vacant position occurs when an employee resigns, has been terminated, is reassigned to another position or is off the payroll after exhausting all accrued leave, with the exception of Family Medical Leave (FML) and Workers' Compensation and no other qualified, trained person or employee is placed in that position. Similarly, positions are considered vacant if the individual in that position does not meet the criteria for employment as outlined in PD-17, PD-27, and PD-75. A position becomes vacant when the incumbent is removed from the payroll either temporarily or permanently, regardless of leave status, with the exception of Family Medical Leave (FML) and Workers' Compensation. A position also becomes partially vacant when Contractor places a part-time incumbent in a full time position. Positions

requiring certification, licensure, or registration are considered vacant if the person in that position does not possess the appropriate certification, licensure or registration.

**PREA** means Prison Rape Elimination Act.

**Probation** means the supervised release of a convicted defendant by a court under a continuum of programs and sanctions with conditions imposed by the court for a specific period during which the imposition of a sentence is suspended: a) criminal proceedings are deferred without judgement or guilt, or b) a sentence of imprisonment or confinement, imprisonment and a fine, or confinement and a fine, is probated and the imposition of sentence is suspended in whole or in part.

**Program Budget** means the budget that reflects all resources necessary to perform contracted activities, which is included as Exhibit J.1.

**Qualified Credential Counselor (QCC)** means a Licensed Chemical Dependency Counselor or professional as defined in Texas Department of State Health Services (DSHS) Licensure Rules.

**SACP** means Substance Abuse Counseling Program.

**SATOM** means Substance Abuse Treatment Operations Manual.

**Service Commencement Date** means the date on which the Contractor shall begin providing services at the Facility pursuant to this Contract. For the purpose of this Contract, that date is Upon Signature of Both Parties.

**TBCJ** means the Texas Board of Criminal Justice.

**Therapeutic Community (TC)** means a therapeutic community environment for Offenders that is peer driven; based on hierarchy and structure; and constitutes the method or vehicle by which Services are provided hereunder.

**TCIC** means the Texas Crime Information Center operated under the authority of the Texas Department of Public Safety.

**TDCJ-CJAD** means the Texas Department of Criminal Justice-Community Justice Assistance Division, a division of the Texas Department of Criminal Justice, an agency of the State of Texas.

**TDCJ-PD** means the Texas Department of Criminal Justice-Parole Division, a division of the Texas Department of Criminal Justice, an agency of the State of Texas.

**TDCJ-PFCMOD** means the Texas Department of Criminal Justice-Private Facility Contract Monitoring/Oversight Division, a division of the Texas Department of Criminal Justice, an agency of the State of Texas.

**Upper Level Management** means those top three Facility-assigned individuals who are responsible for the administration of the services provided under this Contract.

**Year** means Fiscal Year, unless otherwise specified.

## 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, equipment, materials, supplies and services (except as may be furnished by the Department as specifically identified within this Contract) and otherwise do all things necessary for, or incidental to, the operation and management of a Cognitive Intervention Program at the following Intermediate Sanction Facility (ISF):

Facility Name	Location	Capacity	Offender Type
Roach ISF	Childress, Texas	420	Male

#### B.1.2 Pricing Instructions

The Department anticipates award of a fixed-price Contract for these services covering the Base Period (Upon Signature of Both Parties through August 31, 2017) and two (2) additional two (2) year option periods.

#### B.1.3 Allowable Costs

The proposed budget shall include only costs that are reasonable, necessary and allowable under State statutes, Agency policies, procedures and Federal Cost Standards (OMB Circulars A-122 for Nonprofit Entities, A-21 for Educational Institutes, A-87 for State and Local Governments, A-102 Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreement with State and Local Governments, and 48 CFR, Part 31, Subpart 31.2, Contracts with Commercial Organizations). The Department shall make the final decision if a cost is allowable or not.

#### B.1.4 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.

**B.2 PRICING SCHEDULE****Contract Line Item Numbers (CLIN) 001-006 Roach ISF Program**

001	Base Period, Year 1 (Upon Signature of Both Parties – 08/31/16)	\$6.42 Per Diem Rate
002	Base Period, Year 2 (09/01/16 – 08/31/17)	\$6.61 Per Diem Rate
003	Option Period 1, Year 1 (09/01/17 – 08/31/18)	\$6.81 Per Diem Rate
004	Option Period 1, Year 2 (09/01/18 – 08/31/19)	\$7.02 Per Diem Rate
005	Option Period 2, Year 1 (09/01/19 – 08/31/20)	\$7.23 Per Diem Rate
006	Option Period 2, Year 2 (09/01/20 – 08/31/21)	\$7.38 Per Diem Rate

## SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

### C.1 BACKGROUND

The Department requires the operation of a Cognitive Intervention Program at the following Intermediate Sanction Facility (ISF) for the training, education and reformation of Offenders released on supervision pursuant to Texas Government Code, Section 508.316 and 509.006.

Facility Name	Location	Capacity	Offender Type
Roach ISF	Childress, Texas	420	Male

All Probation and Parole Offenders assigned to the Cognitive Intervention Program will receive services. Refer to C.3 for program description.

### C.2. COMPLIANCE WITH APPLICABLE RULES, REGULATIONS, POLICIES, PROCEDURES AND LAWS

The Contractor shall provide the Services at the Facility in compliance with applicable federal and state law, including all constitutional, legal and court ordered requirements, whether now in effect or hereafter effected or implemented, and in accordance with the Operational Plan. The Contractor shall comply with Department Policy and unless otherwise required by this Contract, shall be free to establish procedures such that the Services attain the goals established by such Department Policies, provided that any such deviations are approved in writing by the Department prior to their implementation.

### C.3 SPECIFIC DUTIES AND OBLIGATIONS FOR COGNITIVE INTERVENTION PROGRAM

- A. The Contractor shall utilize core curriculum(s) for a cognitive based intervention program, upon the written approval of TDCJ-PFCMOD. The core cognitive intervention program shall provide at least thirty (30) hours of programming per week for up to forty-five (45) days. A complimentary didactic track for the continuation of programming should also be provided for those Offenders not immediately released after the completion of the core cognitive intervention program.
- B. All programming shall contain structured schedules, well-defined goals, and guidelines. The Contractor shall establish a graded system of rewards and sanctions for Offenders participating in the program, within current security system and rules of the Department.
- C. The Contractor shall measure program effectiveness of the Cognitive Intervention Program utilizing an Offender evaluation process administered to Offenders prior to programming and upon conclusion of programming requirements.
- D. The Contractor shall hire or contract with qualified individuals to implement the Cognitive Intervention Program. These individuals shall be appropriately trained in the Cognitive Intervention Program and possess at a minimum Training for Trainers Certificate.
- E. The Contractor shall also be responsible for furnishing all required furniture, classrooms, and supplies needed for Offenders to successfully complete the program.

**C.4 OFFENDER MONITORING**

The Contractor shall establish written policies and procedures, including format and frequency, for monitoring Offenders' progress in Offender rehabilitation treatment. These procedures shall include methods for reporting progress to Department staff, including any release of information forms, progress reports, telephone calls, etc.

**C.5 STAFFING**

- A. The Contractor's positions shall be staffed with qualified employees in accordance with this Contract. The Contractor shall provide written job descriptions that include job duties and minimum qualifications for all staff members. Documentation evidencing qualifications shall be maintained in the employee's personnel file, as well as the job description.
- B. The Contractor shall not hire any Upper Level Management without prior written approval by the Department.
- C. Staffing, based on Offender population, shall include specific provisions to maintain required levels of service during periods of vacation, sick leave and other absences.
- D. Positions requiring certification, licensure or registration are considered vacant if the person occupying that position does not possess the appropriate certification, license or registration. Similarly, the position is considered vacant if the individual does not meet the criteria for employment outlined in PD-17, PD-26, PD-27 and PD-75.
- E. The Contractor shall maintain accurate, current, complete and orderly personnel records on location on each employee.
- F. The Contractor shall provide a complete Staffing Plan in the required format provided in Exhibit J.1. The Staffing Plan shall include, at a minimum, the following information:
  - 1. Positions for administration, instructors and clerical/support staff;
  - 2. The number of staff by position;
  - 3. Identification of shift;
  - 4. Relief factors and total FTEs;
  - 5. The Department position equivalency;
  - 6. Identification of any position on the Staffing Plan as "PRN" or "as needed" requires the Contractor to enter into a subcontract for the Services to be provided in accordance with Section H.2 of this Contract; and
  - 7. Salaries and percentage of time spent on program.
- G. The Contractor shall comply with the Staffing Plan, Exhibit J.1. Staffing Plan changes can only be obtained through an approved Contract modification.

- H. The Contractor shall provide an Organizational Chart, indicating the lines of supervision for all staff positions identified in the Staffing Plan at Exhibit J.1.
- I. Each applicant shall sign a release stating the employee's employment history may be released not only to the Department, but also to other contractors under contract with the Department.
1. All prospective Contractor employees (including consultants, independent contractors and their employees and agents who work on a routine basis at the Facility) who currently work or previously worked for the Department must authorize the Department to release to the Contractor information concerning all disciplinary actions taken during their employment with the Department as well as their Department re-hire eligibility status. The Department shall determine employment eligibility for any prospective employee requiring Division Director approval prior to being rehired.
  2. Job applicants must authorize the Contractor to release to the Department or a Department contractor information concerning all disciplinary actions taken during their employment with the Contractor as well as their re-hire eligibility status as determined by the Contractor in the event the employee seeks employment with the Department or another contractor.
  3. Both types of releases shall be documented in a Public Information Act Request, along with results, filed in the employee's personnel folder.
    - a. The Contractor shall maintain all employment records for a period of seven (7) years after expiration or termination of this Contract.
    - b. Upon receipt of a written request from the Department or a Department contractor, the Contractor shall be required to release employment records for a period of seven (7) years after expiration or termination of this Contract.
- J. A vacancy does not occur when an employee is temporarily absent due to vacation, sick leave, or other temporary leave conditions. Such other temporary leave conditions shall include employee participation in management and professional conferences or in-service training, so long as such other temporary leave does not exceed a period greater than two (2) weeks in duration.
- K. If it is determined by the Department monitoring staff that a Service has not been provided while the incumbent is off the payroll due to Family Medical Leave (FML) status, Workers' Compensation status or Military Leave status, the Average Daily Salary for that position will be deducted for the time period for which the Service was not provided.
1. Such a position is vacant, regardless of whether the Service is being provided, when:
    - a. The incumbent remains on FML or Workers' Compensation status in excess of twelve (12) weeks.
    - b. The incumbent, on Military Leave status, exhausts all paid leave and is placed in a leave without pay status or separated from employment.

2. In the event the employee was terminated from the Contractor's payroll, a pre-employment criminal background check that meets employment eligibility criteria in PD-75 is required prior to the incumbent returning to work.
- L. A pre-employment criminal background check shall be completed by the Department for each applicant (including consultants, independent contractors and their employees and agents and volunteer workers who work on a routine basis in the program) within thirty (30) days prior to being assigned by the Contractor to the program.
  - M. The Contractor shall employ or assign only those applicants that meet employment eligibility criteria outlined in PD-75 to perform Department Contract duties. Applicants with a misdemeanor or felony conviction shall meet the eligibility requirements of PD-75 and obtain the Department's approval prior to having direct care contact with Department Offenders. At a minimum, the following documents shall be maintained in each personnel file:
    1. The Department's TCIC/NCIC Pre-Employment Inquiry Results letter;
    2. The criminal background investigation reports;
    3. A satisfactory pre-employment drug test;
    4. The Department's approval letter, if the applicant has a criminal conviction;
    5. A signed job description approved by the Department;
    6. A copy of the employee's license or certification, as required by the job description; and
    7. Any other documents that verify the employee meets the minimum qualifications of the position, (e.g. High School Diploma, College Degree, etc.).
  - N. Employees, to include those in on-the-job training (OJT), shall not be assigned to any Department contract Service or have contact with Offenders until a current criminal background check that meets PD-75 eligibility criteria is received.
  - O. In addition to criminal background investigation reports, the Contractor shall maintain on file on site the results of a pre-employment drug test on each employee in compliance with PD-17 (Drug-Free Workplace) that is acceptable to the Department.
  - P. The Contractor is responsible for the conduct and behavior of all persons employed or assigned to perform Contract duties (including consultants, independent contractors and their employees and agents and volunteer workers) and will ensure the Department Policy regarding management and treatment of Offenders, including PD-29 (Sexual Misconduct with Offenders), are followed. Should a violation occur the Contractor shall take immediate corrective action acceptable to the Department.
  - Q. The Contractor shall immediately, upon learning of the event, notify the Department of employees who resign while under investigation for inappropriate conduct related to Offender management and for violations of policies related to the Facility and program security.

- R. The Contractor shall immediately, upon learning of the event, notify the Department in writing of any employee who has been convicted, arrested, indicted or charged with a criminal offense. Such employee shall not be permitted to return to duty until authorized in writing by the Department. A copy of such written authorization shall be maintained in the employee's personnel file.
- S. The Contractor shall comply with PD-26 (Nepotism) regarding the employment of relatives.
- T. A nominal fee will be charged to the Contractor for criminal background checks. These fees shall be processed in accordance with the format and frequency as determined by the Department.
- U. The Contractor shall be responsible for any additional fee charged by the Department of Public Safety (DPS) to the Department for any resubmission requests due to unreadable fingerprints.
- V. The Contractor shall provide an Affirmative Action Plan outlining Equal Employment Opportunity (EEO) compliance and strategies used to meet goals outlined in the Affirmative Action Plan.
- W. The Contractor shall submit a Monthly Position Vacancy Report as required by the Department.
- X. The report dates shall correspond with the Contractor's work week schedule (e.g., Monday - Sunday, Wednesday - Tuesday).
- Y. Failure to do so shall result in delayed Monthly Contractor Payment.
- Z. The Contractor shall submit a Position Control Number (PCN) List monthly to the Department. This list shall be included with the last Position Vacancy Report for the respective month.
- AA. The Contractor shall be responsible for the preparation of accurate employee time and attendance records, ensuring these records are signed by the employee, approved by the supervisor, maintained on file at the Facility and available to Department staff.
- BB. All Upper Level Management absences in excess of seventy-two (72) hours shall be reported in writing to the Department before the ninety-sixth (96th) hour of the absence.
- CC. The Contractor shall implement an employee random drug testing program that meets the minimum requirements of PD-17. The drug testing program policy and procedures shall be approved by the Department prior to implementation.

## **C.6 TRAINING**

- A. Staff providing Cognitive Intervention Programming shall obtain a certificate of training in a Cognitive Intervention Program approved by the Department within ninety (90) days of hire.
- B. All training hours an employee receives shall be documented in the employee's personnel file and/or personnel training records, to include course topic, number of hours and date completed. Training documentation shall include an authorized signature validating such

training. The Contractor shall maintain accurate, complete current and orderly training records on location on each employee.

- C. Staff shall be required to complete Correctional Awareness Training prior to contact with Offenders. In-service training shall be completed annually thereafter.
- D. The Contractor shall provide all employees with a new employee orientation programs after being hired and prior to regular assignment.
- E. The Contractor shall submit for written approval by the Department a written training curriculum and schedule for all employee trainings. The schedule shall include the following information:
  - 1. Proposed date(s) of training;
  - 2. Duration of training;
  - 3. Topic(s) of training;
  - 4. A brief synopsis of each topic; and
  - 5. Staff positions to be trained.

#### **C.7 DISCIPLINARY PROCEDURES**

- A. The Contractor shall have written disciplinary policies and procedures, which are consistent with the Department's Policies and procedures and will provide a copy of these procedures to Offenders at intake.
- B. The Contractor shall maintain a master file of all disciplinary cases issued and the pursuant actions taken.
- C. Disciplinary records shall be retained on location in accordance with the Department's records retention schedule.
- D. The Contractor shall submit a monthly report listing all treatment disciplinary cases written and pursuant action.
- E. The Contractor shall maintain a master file of treatment violations on a Behavioral Intervention Log that will be provided by the Department.
- F. The Contractor shall provide the Department's assigned Facility supervising officer a written report and recommended sanctions, within ten (10) days of the notification, in the event an Offender commits a violation.

#### **C.8 TEXAS HEALTH AND SAFETY CODE, SECTIONS 85.112-114 (HIV/AIDS POLICIES AND EDUCATION)**

The Contractor shall provide HIV-related Services in accordance with Texas Health and Safety Code, Sections 85.112, 85.113 and 85.114.

- A. The Contractor shall develop workplace guidelines that address HIV policies, confidentiality and employee/Offender education programs. The guidelines shall, at a minimum, incorporate the model workplace guidelines developed by DSHS, or mirror the guidelines adopted by the Department. The Contractor shall maintain the written policies and guidelines at the Facility site.
- B. The Contractor shall develop confidentiality guidelines regarding AIDS and HIV medical information for employees and Offenders. The policies shall be consistent with guidelines published by DSHS and with state and federal laws and regulations.
- C. Educational programs regarding HIV/AIDS shall be provided to all employees and Offenders on a routine basis. These programs shall be based on the model education program created by the DSHS. The education program developed by the Contractor shall be tailored to meet the needs of all employees and Offenders, including the use of Braille or telecommunications devices for the deaf. The HIV education and prevention programs shall also be tailored to address the needs of persons with physical or mental disabilities.
- D. The Contractor shall provide the Department with copies of the above stated policies/programs.
- E. The Contractor shall maintain written documentation in each Offender and employee file of HIV/AIDS education/training completion.

#### **C.9 PROGRAM EVALUATION (QUALITY ASSURANCE) AND SELF-MONITORING**

- A. The Contractor shall continually conduct self-monitoring and quarterly corporate self-monitoring, utilizing comprehensive self-monitoring plans approved by the Department.
  - 1. The Contractor shall designate an employee as the staff member responsible for continuous self-monitoring of the program. The reporting procedures, which also include frequency and subject matter, shall be included in the Operational Plan.
  - 2. Any self-monitoring reports that are produced shall be provided to the designated Department staff in accordance with the self-monitoring plan approved by the Department.
- B. The Contractor shall forward to the Department copies of Monthly Operational Reports no later than the fifteenth (15th) of the month following the end of the preceding month. This internal administrative audit conducted by the Contractor shall exist apart from any audit conducted by the Department or another agency. These Operational Reports are as follows and shall be submitted in the format requested by the Department:
  - 1. Offender List by Program Instructors;
  - 2. List of Staff Hires, Terminations, Resignations and Vacant Positions;
  - 3. Organizational Chart;
  - 4. Staff Leave Time Report;

5. Ex-Offenders Employee Roster;
  6. Program Schedule;
  7. Disciplinary and Sanction Reports;
  8. Copies of Grievance submitted by Offenders;
  9. Serious and/or Unusual Incident Reports; and
  10. New or Revised Policies and Procedures for review and Department approval.
- C. The Contractor shall provide to the Department a Monthly Status (Statistical Report) no later than the fifth (5th) of the month following the end of the preceding month, in the format requested by the Department.

#### **C.10 COMPLIANCE STANDARDS**

As part of the comprehensive quality assurance plan described in Section C.9, the Contractor shall include a system of Compliance Standards designed to monitor and assess the success of the program. The Department has developed the minimum Compliance Standards listed in Exhibit J.3. The Contractor's plan may include additional standards along with criteria that define acceptable or unacceptable performance. The Contractor shall ensure that outcome measures indicate results achieved. In devising Compliance Standards, the Contractor shall:

- A. Develop clearly defined goals, outputs and measurable outcomes which directly relate to the program objectives;
- B. Develop a formalized system to record information relative to the outcome measures;
- C. Develop a method to track and evaluate the achievement of outcomes; and
- D. Submit on a quarterly basis, the first (1<sup>st</sup>) working day of the month following the end of the quarter, the Performance Measure Report to designated Department staff.

#### **C.11 OPERATIONAL PLAN**

- A. The Contractor shall provide for the Department's written approval, an Operational Plan that details the Contractor's policies and procedures on how operational requirements and standards discussed in Section C will be met for the program.
- B. The Contractor shall provide for the Department's written approval, both the program and training curriculums. Any changes or additions to the curriculums must receive written approval by the Department prior to implementation.
- C. Any deviation from Department Policy must be noted and approved in writing by the Department prior to implementation.
- D. The Contractor shall have written policies and procedures to govern the total operation of the program. Policies and procedures cannot conflict with contractual obligations or the

policies and procedures of the Department. Revisions which alter program policies and procedures shall be submitted to the Department for approval immediately upon development and prior to implementation. The Contractor shall comply with all procedures and guidelines as defined by the Department.

- E. The Contractor shall provide two (2) sets of their Operational Plan that covers the following:
  - 1. A policy and procedures manual which shall cover all aspects of program operations; and
  - 2. Staffing Plan to include full time designations and job descriptions that include the education and experience requirements, descriptions of job duties and pursuant to Section C.5 and Exhibit J.1 of this Contract.
- F. Policies, procedures and manuals submitted hereunder shall comply with the requirements of Section C of this Contract with regard to the Department Policies. The Contractor shall notify the Department in writing of proposed changes in, or additions to, the Operational Plan with regard to the Contractor's policies and procedures, and job descriptions pursuant to Section C of this Contract. The Department, prior to any changes or modifications being implemented, must grant written approval.
- G. The Contractor's policies and procedures shall reference the applicable policies, standards, manuals or any other source document and citation deemed appropriate.
- H. The Contractor shall have an Affirmative Action Plan outlining EEO compliance and strategies used to meet goals outlined in the Affirmative Action Plan.
- I. The Contractor shall maintain current Department Policy as a minimum.
- J. The Contractor shall submit a complete and comprehensive curricula for the program, to include any supplemental materials (i.e., videos, pamphlets, handouts, workbooks, instructor's manual, etc.) which comprise the Contractor's proposed program design.

#### **C.12 GRIEVANCE PROCEDURES**

- A. The Contractor shall have written Offender grievance policies and procedures, which are consistent with the Department's grievance policy and will provide a copy of these procedures to all Offenders at intake.
- B. The Contractor shall maintain a master file of all grievances and pursuant actions taken.
- C. Grievance records shall be retained on location in accordance with the Department's records retention schedule.
- D. The Contractor shall submit a monthly report listing all grievances filed and pursuant action(s) taken.

**C.13 RECORD KEEPING**

The Contractor shall establish and maintain written policies and procedures and shall be consistent with the Department. The written policies and procedures shall address the method and process used in recording and disseminating the following:

- A. Intake;
- B. Program participation;
- C. Accounting;
- D. Record keeping control and identification; and
- E. Other statistical records as may be required by law and as may be generally required in similar programs.

**C.14 ACCESS TO PREMISES/PERSONAL IDENTIFICATION**

The Contractor is responsible for expenses of employee identification cards and shall submit a prototype employee identification card for Department approval. The Contractor employee identification card shall incorporate security features that cannot readily be replicated in the program or commercially. Identification procedures for employees and visitors are to be established in accordance with Departmental Policy.

**C.15 INTAKE REQUIREMENTS**

The Contractor shall have written policies and procedures regarding the intake for Offenders, which must minimally include providing the Offender a copy of disciplinary procedures, grievance procedures and evacuation procedures in both the English and Spanish languages. The established policies and procedures shall be approved by the Department.

**C.16 OFFENDER RECORDS**

- A. The Contractor shall be responsible for maintaining accurate, complete, current and orderly case records and reports and statistics necessary for the evaluation of the program.
- B. These records shall not be disclosed to any person other than the authorized Contractor and the Department employees who have a need to access such information.
- C. All Offender records shall be maintained in accordance with the following:
  - 1. All Offender records shall be locked in a file cabinet located in a locked room accessible only to the Contractor and the Department representatives.
  - 2. All Offender records shall be maintained current and include the following information, as applicable, to the program:
    - a. Identification data;

- b. Parole Plans;
  - c. Case History (if available);
  - d. Comprehensive Treatment Plan;
  - e. Continuum of Care Service Plan;
  - f. Aftercare Plan;
  - g. Appropriate mental and physical information (Form HSM-18);
  - h. Screening/intake forms and assessment/diagnostic needs;
  - i. Correspondence regarding the case;
  - j. Signed release of information form to specific agencies, when applicable;
  - k. A copy of the Comprehensive Assessment Plan;
  - l. Individualized Treatment Plan;
  - m. Relapse Prevention Plan;
  - n. Programmatic intake, adjustment and activity reports;
  - o. Offender's daily adjustment and/or progress notes, documented weekly at a minimum;
  - p. Documentation of completion for HIV/AIDS education;
  - q. Discharge Summary; and
  - r. All documentation required by SATOM and/or ISF Addendum.
3. Individualized case files for each Offender shall be retained for a period of seven (7) years after the Offender has been discharged. At the conclusion of the seven (7) year period, the files shall be destroyed in accordance with Department Policy.
  4. Files that have not reached retention periods upon expiration of the Contract shall remain the property of the Department.
  5. The Contractor shall maintain the confidentiality of Offender records and information including, but not limited to, compliance with federal regulations concerning alcohol and drug abuse treatment set forth in the Code of Federal Regulations, Title 42, Volume 2 and Texas Government Code, Section 508.313. No personal information of any Offender may be divulged or made known in any manner to any person except as may be necessary to provide the Services. The Contractor shall immediately notify the Department, in writing, if any legal process requires disclosure of an Offender's records and shall obtain written authorization from the Department before disclosure or release of same.

**C.17 INFORMATION TECHNOLOGY/TELECOMMUNICATIONS**

- A. The Contractor shall provide, at its own expense, equipment that may be required to interface with existing and all future requirements directed by the Department.
- B. All computers not connected to the Department's Mainframe System shall be purchased at the Contractor's expense.
- C. The Contractor shall purchase, install, maintain/repair and replace at the Contractor's expense, all cabling for Department owned computers.
- D. State-Owned computer equipment shall be provided by the Department, for Offender management control and related programs.
- E. All printers shall be purchased at the Contractor's expense and must have scanning capabilities, to include support in the event of failure and/or replacement.
- F. The Contractor shall not connect their Contractor-Owned computer equipment to the Department's network. Only State-Owned computer equipment shall be connected to the Department's network. There shall be no "Dual Homed" computer equipment on the Facility.

**C.18 RISK MANAGEMENT**

- A. The Contractor shall report verbally, followed by e-mail notification, serious and/or unusual incidents to the Department immediately and upon learning of the event.
- B. The Contractor shall complete injury and other types of reports in the format and within the time frames established by the Department.
- C. The Contractor shall submit a monthly report listing all serious and/or unusual incidents as part of the monthly Operation Reports.

**C.19 DEPARTMENT RECORDS**

- A. Upon conclusion or termination of this Contract, or for any other reasons that the Contractor no longer performs the services listed in this Contract, possession and control of the complete set of Offender records, files and logs, will revert to the Department or transfer to the Contractor that performs or will be performing services listed in this Contract.
- B. Offender records shall be labeled in a manner satisfactory to the Department as well as organized and retained in the original folder. The Contractor shall comply with additional instructions pertaining to Department records as detailed in Sections H.6, H.11 and I.23 of this Contract.
- C. The Department reserves the right to supervise the records preservation, boxing, labeling and movement to a secure, separately keyed and locked area on the Facility until the management transition is complete.

- D. In the event the Contractor requires copies of any records after conclusion of the Contract or Contract expiration and Facility management transition, the Department shall furnish copies to the Contractor at the Contractor's expense.
- E. Records shall be maintained in accordance with the Department Records Retention Schedule.

**SECTION D - RESERVED FOR FUTURE USE**

**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 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, including financial books and records, employee records including time and attendance records, and Offender records 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.3.5 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 taken to 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 government regulatory agency.

**E.2 INSPECTION BY STATE EMPLOYEES**

The Contractor shall provide entry at all times by the Texas Board of Criminal Justice (TBCJ) and the Department's authorized employees/agents for inspections and other official purposes. The Governor, members of the Legislature and all other members of the Executive and Judicial Departments of the State, as well as any other persons designated by the Department including the Office of the Inspector General, shall be allowed to monitor the delivery of Services.

**E.3 MONITORING CRITERIA**

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

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

#### **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.6, Books and Records, concerning record retention.

#### **E.5 AUDITS BY OTHER AGENCIES**

Upon receipt of audit or monitoring reports pertaining to the provision of services under this Contract that are conducted by agencies or organizations other than the Department, the Contractor shall provide copies thereof to the Department within thirty (30) days. The Contractor shall provide to the Department copies of responses to audit or monitoring reports within seven (7) days of issuance. Audit or monitoring reports shall include allegations or complaints involving program operations 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.state.tx.us](http://www.sao.state.tx.us). It can also be reported to the Department Office of the Inspector General at 1-866-372-8329, the Department Internal Audit Division at 1-512-406-5935, or Crime Stoppers at 1-800-832-8477.

**SECTION F - DELIVERIES OR PERFORMANCE****F.1 PERIOD OF PERFORMANCE**

The Contract will consist of a Base Period (Upon Signature of Both Parties through August 31, 2017) and two (2) two (2) year renewal Option Periods (September 1, 2017 through August 31, 2019, September 1, 2019 through August 31, 2021). The Contract may be extended for an additional six (6) month period at the Department's option, per Section I.16. The terms, conditions and rates for all extensions shall remain as stated in the Contract.

**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 Administrator will make their full text available.

Texas Government Code, Chapter 2251, PAYMENT FOR GOODS AND SERVICES.

**G.2 AUTHORITY – AUTHORIZED REPRESENTATIVE, CONTRACT ADMINISTRATOR, CONTRACT MONITOR AND FACILITY DIRECTOR****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 TDCJ-PFCMOD Director has been designated as the Authorized Representative to act on behalf of the Executive Director on all matters pertaining to the population management of the Facility 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 at 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) 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. In the event the Contractor makes any change at the direction of any person other than the Executive Director, 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 Administrator**

- A. The Contract Administrator for administration of this Contract is Amy McGlothlin.
- B. The telephone number for the Contract Administrator is (936) 437-7064.
- C. The facsimile number of the Contract Administrator is (325) 223-0310.
- D. The e-mail address of the Contract Administrator is amy.mcglathlin@tdcj.texas.gov.

- E. The Contract Administrator is responsible for general administration of this Contract, negotiation of any changes and final issuance of written changes/modifications to this Contract. All requests by the Contractor to modify the Contract shall be made in writing to the TDCJ-PFCMOD, and a copy submitted to the Contract Administrator.

### **G.2.3 Contract Monitor**

- A. The Contract Monitor is not authorized to make any representations or commitments of any kind on behalf of the Executive Director of the Department or the State.
- B. The Contract Monitor does not have the authority to alter the Contractor's obligations or to change the Contract specifications, price, terms or conditions.
- C. If, as a result of technical discussions, it is desirable to modify Contract obligations or the statement of work, changes will be issued in writing and signed by the Executive Director of the Department.

### **G.2.4 Facility Director**

The Contractor shall provide a Facility Director 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. The Facility Director shall have full authority to act for the Contractor in the performance of the required services. The Facility Director or a designated representative shall meet with the Contract Monitor to discuss problems as they occur.

## **G.3 INVOICES AND PAYMENTS**

### **G.3.1 Payment by Direct Deposit**

It is recommended that the Contractor receive Payments via Electronic Funds Transfer (EFT), also known as Direct Deposit.

Regardless as to whether Direct Deposit is chosen, upon Contract award the Contractor shall submit a completed Vendor Maintenance Direct Deposit and Substitute W-9 Form to the following address:

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

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

The form and instructions can be found at the following link on the TDCJ website: [www.tdcj.texas.gov/divisions/finance/finance\\_acct\\_accts\\_pay.html](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:

---



---



---

### G.3.2 Invoices

- A. The Contractor shall bill the Department for each calendar month, one calendar month in arrears for the amount due for services rendered. One monthly invoice, per service, per location shall be submitted to the Department who shall pay such invoice thirty (30) days after receipt of an accurate invoice and supporting documentation. To be considered valid for payment, billings shall be submitted to TDCJ-PFCMOD within one month past the invoice due date. The Contractor may offer a prompt payment discount, i.e., 1%, fifteen (15) days (refer to page 1, block 7 of Contract) if the Contractor desires expedited payment. Prompt payment discounts must be stated on each invoice.
- B. The Contractor's monthly invoice shall include the following:
1. Name of business, remittance address and invoice date;
  2. Contract number;
  3. Descriptions, price and quantity of services rendered; and
  4. Payment terms, including prompt payment discount, if applicable.
- C. The original invoice shall be submitted to the office designated below:
- Business Operations  
TDCJ – Private Facility Contract Monitoring/Oversight Division  
Two Financial Plaza, Suite 300  
Huntsville, Texas 77340
- D. Invoices and supporting documentation must be submitted by the tenth (10th) of the month. If not received by the date due, an explanation letter from the Program Executive Director to the TDCJ-PFCMOD Director must be provided for payment consideration. The letter should include the reason the documentation was not received timely and the corrective action taken to prevent future incidents.

### G.3.3 Compensation for Additional Services

- A. The Department recognizes that the Contractor has entered into this Contract and has offered to furnish the Services hereunder based upon Department Policies in effect as of the date of this Contract.
- B. If there are changes in such Department Policies which changes are not as a result of changes in laws, government regulations or Court Orders generally applicable to the Department and which necessitate a change in the scope of Services furnished by the Contractor so as to increase the cost of operating and managing the program or

performing other Services contemplated in this Contract; then the Contractor may be provided extra compensation for the additional Services required.

- C. The Contractor shall request in writing, together with such supporting documentation or information as the Department may reasonably request, the additional compensation the Contractor desires to offset the Contractor's increase in costs for furnishing the additional Services because of such change in the Department Policies.
- D. In the event that such changes in the Department Policy are the result of changes in laws or government regulations, the Contractor shall be financially responsible for incurring any additional cost to comply with the terms of such policies and this Contract.

#### **G.3.4 Failure to Agree on Compensation for Additional Services**

If the parties cannot agree on a payment adjustment or compensation for additional Services within sixty (60) days of the date the Contractor's request is received by the Department, the Contractor may utilize the dispute resolution process as outlined in Section I.3.11.

#### **G.3.5 Payment Adjustment**

- A. The Department may elect to withhold from its Monthly Contractor Payment as specified in Section G.3.7, any amount specified in Section C, and Exhibit J.3 or any money determined to be due as specified under Section E.1.C.
- B. If it is determined that the remaining amount of monthly payment is not adequate to cover the money determined to be due the Department, then all remaining monthly payments shall be withheld and an invoice issued to the Contractor for the remaining amount due.
- C. The Contractor shall be responsible to pay the invoiced amount within thirty (30) days of receipt unless the Contractor and the Department mutually agree on an alternative payment method.

#### **G.3.6 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.3.2.A hereof shall accrue interest each day that such amount is not paid at the rate specified by Texas Government Code, §2251.025, provided, however, that this provision shall not excuse failure by the Department to make payment in strict accordance with this Contract.

#### **G.3.7 Deductions for Unacceptable Compliance**

- A. Compliance Standards and deductions are listed in Exhibit J.3 of this Contract.
- B. The Contractor's failure to meet the listed Compliance Standards shall result in a deduction to the Monthly Contractor Payment.

#### **G.3.8 Withholding of Payment**

- A. The Department shall have the right to withhold the monthly payment to the Contractor until the following failures have been corrected:
  - 1. Failure to submit reports required for Compliance Standards as listed in Exhibit J.3;

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 notification.
- B. The Contractor agrees that the Department shall not pay interest to the Contractor for monies so withheld.
- C. The Monthly Contractor Payment withheld shall be released upon the Department's satisfaction that compliance has been achieved for thirty (30) consecutive days.

### **G.3.9 Payment of Debt Owed to the State of Texas**

As required by Texas Government Code, §2252.903, the Contractor agrees that any payments due under a Contract resulting from this solicitation 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, §§403.055, 403.0551, 2252.903 and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

### **G.3.10 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.

## **G.4 ANNUAL FINANCIAL DISCLOSURE REPORTS**

- A. The Contractor shall have an annual audit performed by an independent Certified Public Accountant (CPA) and submit to the Contract Administrator the financial reports prepared according to Generally Accepted Accounting Principles (GAAP) within one hundred twenty (120) calendar days after the end of the Contractor's Fiscal Year.
- B. In the disclosure of its financial affairs, the Contractor agrees to allow the Department or its representative's access to all its corporate books, to cooperate in any audits thereof and to provide the Department's Contract Administrator with 1 and 2 below:
1. Consolidated financial statements such as are required by GAAP of the Contractor and its affiliates for such year, setting forth in each case in comparative form the corresponding figures for the preceding Fiscal Year, all in reasonable detail and certified by independent CPAs of recognized standing to the effect that said financial statements fairly present, except as specifically stated, the consolidated financial position and result of the Contractor and its affiliates as of the end of the year for the year involved, and a statement signed by a senior accounting or financial officer of the Contractor that such officer has no knowledge, except as specifically stated, of the occurrence and continuance of an Event of Default or event which, with the time or the giving of notice, or both, would constitute an Event of Default (as defined in Section I.3.1) or, if such circumstance does exist, specifying the nature and extent thereof and the actions proposed to cure same; or

2. Copies of any "management letters" (as that term is understood pursuant to GAAP and GAAS) received by the Contractor following any such audits.

## SECTION H - SPECIAL CONTRACT REQUIREMENTS

### H.1 INSURANCE REQUIREMENTS

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. 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. 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 TDCJ, Contracts and Procurement Department, Client Services and Governmental Contracts Branch within thirty (30) days of the effective date.

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:

- A. **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.
- B. **Business Automobile Liability Insurance** covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage limit of \$1,000,000 per occurrence.
- C. **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. 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.

The Department shall be named as an additional insured by using endorsement CG2026 or broader.

- D. 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 policies.

- 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 policies.
- 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 the 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 at least thirty (30) days prior 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 Service Commencement Date.
- H. 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.
- 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 (5) percent of the required yearly aggregate limit of coverage.
- J. The Contractor is responsible for the first 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, audits 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.
  - 6. The subcontract shall contain 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 Historically Underutilized Business (HUB)

- A. The Contractor shall make a good faith effort to award necessary subcontracts to HUBs in accordance with Texas Government Code, Sections 2161.181-182, 2161.252(b), and Texas Administrative Code (TAC), Title 34, Part 1, Chapter 20, Subchapter B, Rule 20.13. Pursuant to the Texas Procurement and Support Services (TPASS) HUB Rules, TAC, Title 34, Part 1, Chapter 20, Subchapter B, Rules 20.13 and 20.14, the Contractor shall submit a HUB Subcontracting Plan (HSP) as part of the proposal submission, as well as make a good faith effort to implement the HSP. The Contractor shall seek written approval from the Department prior to making any modifications to its HSP.
- B. A detailed description of the HSP and required forms are included as Exhibit J.2.
- C. The Contractor shall provide notice to all subcontractors of their selection as a subcontractor for this Contract. The notice must specify, at a minimum, this agency's name, the name of the Contract Administrator, this Contract's assigned contract number, the subcontracting opportunity the subcontractor will perform, the approximate dollar value of the subcontract and the expected percentage of this Contract's total value that the subcontract represents. A copy of the notice shall be provided to the Contract Administrator no later than ten (10) working days after this Contract is awarded.
- D. The Contractor shall submit to the Contract Administrator on a monthly basis (by the 5th day of the following month) the Prime Contractor Progress Assessment Report, which is included as Exhibit J.2.

## H.3 ORGANIZATIONAL AND NAME CHANGE

The Contractor shall submit written notification to the Department within thirty (30) days 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.4 AUTHORITY OF ASSIGNING OFFENDERS

The Department has the sole authority to assign or transfer Offenders to and from the program.

## H.5 FREE EXERCISE OF RELIGION

The Contractor is prohibited from substantially burdening an employee's or Offender's free exercise of religion.

## H.6 BOOKS AND RECORDS

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

**H.7 DELAY OF SERVICES**

The Contractor shall meet its obligations to commence Services at the Facility 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.8 UTILIZATION OF PRODUCTS AND MATERIALS PRODUCED IN TEXAS**

The Contractor shall comply with Texas Government Code, Section 2155.4441, relating to Service contract use of products produced in the State of Texas. 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.9 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, Part 20, Subpart B, Section 20.21; Section 524 (a) of the Omnibus Crime Control and Safe Streets Act, 42 U.S.C. 3701, et seq., as amended (the "Act"), Texas Government Code, Chapter 411, Section 411.083; and with the FBI Criminal Justice Information Services (CJIS) Security Policy. More specifically, the Contractor agrees and acknowledges as follows:

- A. The Department hereby specifically authorizes that the Contractor may have access to criminal justice history to the extent such access is necessary or appropriate to enable the Contractor to perform the Services contemplated herein.
- B. The Contractor agrees to limit the use of such criminal justice information for the purposes set to herein.
- C. The Contractor agrees to maintain the confidentiality and security of the criminal justice history information in compliance with federal and state statutes, rules and regulations, and return or destroy such information when it is no longer needed to perform the Services contemplated herein.
- D. In the event that the Contractor's employee(s) fails to comply with the terms hereof, the Contractor shall take corrective action with the employee(s). Such corrective action must be acceptable to the Department. An intentional or knowing violation may also result in civil and criminal violations under federal and state laws. Additionally, the Contractor shall submit for the Department's approval, the Contractor's corrective action plan to

ensure full compliance with the terms hereof. Until such time as the corrective action plan is approved by the Department, the Contractor shall not be authorized to fill any vacant positions unless special authorization is granted in writing by the Department which authorization shall not be unreasonably withheld.

#### **H.10 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.11 TRANSITION**

- A. Upon termination of this Contract, the Contractor agrees to work with the Department under the Department's management supervision for a period of sixty (60) days, prior to the expiration of the Contract, to ensure the orderly transfer and efficient transition from the current Contractor management to either the Department management or management by a third party of the program.
- B. During this transition period, the Contractor shall transfer all Offender records to the Department if requested to do so by the Department. In the event the Contractor requires copies of any records after contract expiration and program management transition, the Department will furnish copies to the Contractor at the Contractor's expense.

#### **H.12 UTILIZATION OF PROGRAM**

The Department agrees that it will use its best efforts to assign appropriately classified Offenders to the program as provided by law; however, the Department does not covenant or represent to the Contractor that it will refer Offenders at 100% capacity. The Department will not be liable to the Contractor for loss of profits or damages incurred by the Contractor in the event that the Department does not refer Offenders at 100% capacity.

#### **H.13 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 paraphernalia, pagers and cellphones to any State 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. Tobacco products are strictly prohibited on TDCJ units, but are allowed in the personal vehicles on on-site employees or in designated smoking areas. All vehicles must be kept locked when not in use and the Contractor's employee must stay with the vehicle when it is unlocked.

**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, 2017.
- 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, 2017, 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 Department Policy, 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 Policy 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 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.3.8; or
- D. Exercising a Termination for Default.
  - 1. In the event of Termination for Default the Department shall offset against Payments owed to the Contractor any reasonable amounts expended by the Department to cure the Event of Default.
  - 2. The Department will have no further obligations to the Contractor after such termination.
  - 3. The Department may also acquire, in the manner the Department considers appropriate, Services similar to those terminated and the Contractor will be liable to the Department for any increase in costs for those Services.
  - 4. The Contractor shall not be liable for any increase in costs if the failure to perform the Contract arises from and without the fault or negligence of the Contractor as follows:
    - a. Acts of God or of the public enemy;
    - b. Acts of the State in either its sovereign or contractual capacity;
    - c. Fires;
    - d. Floods;
    - e. Epidemics;
    - f. Quarantine restrictions;
    - g. Strikes;
    - h. Freight embargoes; and
    - i. Unusually severe weather.

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

#### **I.3.4 Termination for Unavailability of Funds**

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

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

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

### **I.3.5 Non-Appropriation Effect and Remedy**

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

### **I.3.6 Termination for Convenience**

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

### **I.3.7 Termination by Mutual Agreement**

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

### **I.3.8 Termination Procedures**

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

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

### **I.3.9 Default by the Department**

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

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

### **I.3.10 Remedy of the Contractor**

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

### **I.3.11 Dispute Resolution**

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

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

#### **I.4 NO WAIVER OF RIGHTS**

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

#### **I.5 INDEMNIFICATION OF THE DEPARTMENT**

##### **I.5.1 Acts or Omissions**

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

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

### **I.5.2 Infringements**

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

### **I.5.3 Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity**

- A. The Contractor agrees and acknowledges that during the existence of this Contract, the Contractor shall be entirely responsible for the liability and payment of the Contractor's and the Contractor's employees' taxes of whatever kind, arising out of the performances in this Contract. The Contractor agrees to comply with all state and

federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. The Department and/or the State shall not be liable to the Contractor, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or workers' compensation or any benefit available to a State employee or employee of another governmental entity customer.

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

#### **I.6 NO WAIVER OF DEFENSES**

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

#### **I.7 INDEPENDENT CONTRACTOR**

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

**I.8 LAWS OF TEXAS**

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

**I.9 ASSIGNMENT**

- A. The Contractor may not assign any interest in this Contract without the prior written consent of the Department which consent the Department may withhold at its sole discretion.
- B. If the Department so elects in its sole discretion, this Contract will terminate upon the occurrence of any of the following:
  - 1. More than fifty (50) percent 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 (10) percent beneficial ownership of the Contractor fails to continue to own at least ten (10) percent.
- 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**

Changes/modifications to this Contract (except Contract extensions, administrative changes, such as changing the Contract Administrator 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. 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 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 agrees to comply with the Immigration Reform and Control Act of 1986, and Immigration Act of 1990 regarding employment verification and retention of verification forms of any individuals who will perform any labor or Services under this Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) enacted on September 30, 1996.

#### **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) business 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 either hand delivered to the Contractor's office address specified on page 1, block 9 of this Contract or by U.S. Mail, certified, return receipt requested, to:

Amy McGlothlin, Contract Specialist II  
 Texas Department of Criminal Justice  
 Contracts and Procurement Department  
 2 Financial Plaza, Suite 525  
 Huntsville, Texas 77340

Notice will be effective upon receipt by the affected party. Either party may change the designated notice address in this Section by written notification to the other party.

#### **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**

	<b>Pages</b>
J.1 Budget Justification Forms and Staffing Plans	7
J.2 HUB Subcontracting Plan	7
J.3 Compliance Standards	1
J.4 Reserved for Future Use	
J.5 Reserved for Future Use	
J.6 Reserved for Future Use	
J.7 Reserved for Future Use	
J.8 Reserved for Future Use	
J.9 TDCJ-PFCMOD Position Vacancy Instructions and Report	3
J.10 Position Control Number (PCN) Listing	1

**BUDGET JUSTIFICATION FORMS AND STAFFING PLANS  
REHABILITATION TREATMENT SERVICES  
ISF COGNITIVE TREATMENT BUDGET DETAIL**

Facility Name: Roach ISF Program

<b>ANNUAL TREATMENT COSTS - ISF COGNITIVE INTERVENTION TREATMENT</b>							
<b>COST CATEGORY / ITEM</b>	<b>FTEs</b>	<b>Base Period 1</b>	<b>Base Period 2</b>	<b>Option 1 Year 1</b>	<b>Option 1 Year 2</b>	<b>Option 2 Year 1</b>	<b>Option 2 Year 2</b>
<b>Staffing Salary Direct Costs:</b>							
<b>ISF Non-Labor Costs :</b>							
Office/Printing/Computer Supplies		\$20,848	\$26,228	\$27,040	\$27,877	\$28,826	\$29,629
Membership/License Fees		\$2,007	\$2,580	\$2,662	\$2,747	\$2,844	\$2,924
Depreciation/Equipment		\$7,870	\$10,870	\$11,253	\$11,648	\$12,106	\$12,478
Travel *		\$1,425	\$2,075	\$2,152	\$2,233	\$2,327	\$2,402
Insurance		\$7,249	\$8,935	\$9,203	\$9,479	\$9,791	\$10,057
Staff Recruiting		\$1,253	\$1,545	\$1,591	\$1,639	\$1,693	\$1,738
Supplies/Materials		\$6,434	\$7,931	\$8,169	\$8,414	\$8,690	\$8,926
<b>Sub-Total</b>		<b>\$47,086</b>	<b>\$60,164</b>	<b>\$62,070</b>	<b>\$64,037</b>	<b>\$66,277</b>	<b>\$68,154</b>
<b>Other Direct Costs (Details Required):</b>							
Office/Printing/Computer Supplies		\$2,500	\$2,550	\$2,601	\$2,653	\$2,706	\$2,760
Membership/License Fees		\$500	\$510	\$520	\$531	\$541	\$552
Depreciation/Equipment		\$5,500	\$5,610	\$5,722	\$5,837	\$5,953	\$6,072
Travel *		\$1,500	\$1,530	\$1,561	\$1,592	\$1,624	\$1,656
<b>Sub-Total</b>		<b>\$10,000</b>	<b>\$10,200</b>	<b>\$10,404</b>	<b>\$10,613</b>	<b>\$10,824</b>	<b>\$11,040</b>
<b>Indirect Costs:</b>							
Overhead		\$55,399	\$68,286	\$70,335	\$72,445	\$74,816	\$76,137
Contractor's Profit Margin		\$74,789	\$92,186	\$94,952	\$97,800	\$101,002	\$102,785
<b>Sub-Total</b>		<b>\$234,473</b>	<b>\$289,016</b>	<b>\$297,687</b>	<b>\$306,617</b>	<b>\$316,588</b>	<b>\$321,492</b>
<b>Grand Total</b>		<b>\$822,676</b>	<b>\$1,014,048</b>	<b>\$1,044,469</b>	<b>\$1,075,804</b>	<b>\$1,111,022</b>	<b>\$1,130,637</b>

<b>Number of Beds</b>	<b>420</b>	<b>420</b>	<b>420</b>	<b>420</b>	<b>420</b>	<b>420</b>
<b>ISF Per Diem</b>	<b>\$ 6.42</b>	<b>\$ 6.61</b>	<b>\$ 6.81</b>	<b>\$ 7.02</b>	<b>\$ 7.23</b>	<b>\$ 7.38</b>

\* Travel rates for lodging, meals and mileage are limited to State rates



Rev. 10/14

# HUB Subcontracting Plan (HSP)

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

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

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

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

**-- Agency Special Instructions/Additional Requirements --**

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

**SECTION 1: RESPONDENT AND REQUISITION INFORM**

- a. Respondent (Company) Name: Management & Training Corp State of Texas VID #: 1870365322-2  
 Point of Contact: Betty Tobias Phone #: 801-693-2776  
 E-mail Address: betty.toblas@mtctrains.com Fax #: 801-693-2900
- b. Is your company a State of Texas certified HUB?  - Yes  - No
- c. Requisition #: 696-PF-15-P025 Bid Open Date: 7/11/2015  
(mm/dd/yyyy)

Enter your company's name here: Management & Training Corp

Requisition #: 696-PF-15-P025

**SECTION 2: SUBCONTRACTING INTENTIONS RESPONDENT**

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including goods and services, will be subcontracted. Note: In accordance with 34 TAC §20.11., an "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

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

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

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

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
1	Office Supplies	.54 %	%	%
2	Printing Supplies	1.83 %	%	%
3	Computer Supplies	.47 %	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		2.84 %	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>).

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

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

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified HUBs with which you have a continuous contract\* in place with for five (5) years or less meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements".

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

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

Enter your company's name here: Management & Training Corp

Requisition #: 696-PF-15-P025

**SECTION 3 SELF PERFORMING JUSTIFICATION** (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4)

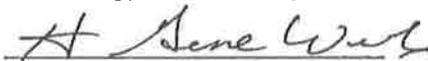
Check the appropriate box (Yes or No) that indicates whether your response/proposal contains an explanation demonstrating how your company will fulfill the entire contract with its own resources.

- Yes (If Yes, in the space provided below list the specific page(s)/section(s) of your proposal which explains how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)
- No (If No, in the space provided below explain how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)

**SECTION 4 AFFIRMATION**

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

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

	<b>H. Gene Weeks</b>	Director, Corporate Procurement	<b>October 12, 2015</b>
Signature	Printed Name	Title	Date (mm/dd/yyyy)

**Reminder:**

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









STANDARD	ACCEPTABLE	UNACCEPTABLE	PAYMENT ADJUSTMENT CALCULATION
1. Contractor shall staff all positions with qualified employees, including special certification and licenses where applicable.	Less than or equal to 60 calendar days	Greater than 60 calendar days	Reduce by \$100.00 for each calendar day a position remains vacant in excess of 60 calendar days.
2. Contractor shall follow all requirements regarding initial employment and re-employment of employees, i.e. obtaining and maintaining a copy of satisfactory background checks and obtaining and maintaining all Department approvals for employees with criminal convictions / pending charges. These requirements are mandatory prior to being assigned to a position and having contact with offenders.	100%	Less than 100%	Reduce \$50.00 per day.
3. Contractor shall obtain from Department and maintain a copy in employee files, prior written approval to hire all Upper-Level Management staff as directed.	100%	Less than 100%	Reduce by \$150.00 for each day the position was filled with a non-approved individual.
4. Contractor shall maintain valid current insurance policies as directed.	Valid current insurance policies	Lapsed policy or policy not meeting Contract requirements	Reduce \$1,000.00 per calendar day for which mandated insurance coverage was not in effect. Contractor has 20 days to cure before this becomes an Event of Default.
5. Contractor shall submit a written response to the Department detailing the corrective action taken to address any items of non-compliance within twenty (20) days of receiving written notice of the item from the Department.	Less than or equal to 20 Calendar Days from the first response	Greater than 20 Calendar Days from the first response	Reduce by \$150.00 for each day past the acceptable response time.
6. Offenders shall have clinical progress notes documented weekly.	100%	Less than 100%	Reduce by Contractor Per Diem Rate for each day treatment file not reflecting offender's weekly progress note.
7. Contractor shall document all programming hours (or inability to provide said programming).	100%	Less than 100%	Reduce by \$150.00 for each session not held in accordance with the Department's approved ISF Cognitive Intervention Treatment schedule unless prior Department approval has been received regarding cancellation of sessions.
8. Staff providing Cognitive Intervention Programming shall obtain a certificate of training in a Cognitive Intervention Program approved by the Department.	Less than or equal to 90 calendar days	Greater than 90 calendar days	Reduce by \$100.00 for each calendar day in excess of 90 calendar days.

TDCJ has the right to withhold the monthly payment or temporarily suspend some or all of the payment adjustments identified in the above table.

Decisions to suspend Payment adjustments will be made by the TDCJ-PFCMOD Director and will be conveyed to the Contractor by letter. Decisions and notifications to reinstate Payment adjustments will be handled in a similar manner.

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE**  
**PRIVATE FACILITY CONTRACT MONITORING / OVERSIGHT DIVISION**  
**INSTRUCTIONS FOR MONTHLY POSITION VACANCY REPORT**

Position ID Number	<p>The <b>permanent</b> identification number established by the facility for each position on the current staffing plan defined in the contract.</p> <p>This number should correspond with the Position Control Number (PCN) listing.</p>
Position Title	The position title on the current staffing pattern that corresponds to the departing and replacing employee.
a. Departing Employee	Name of the employee assigned to the position ID number that is being removed from the position ID number. This may be as a result of a termination or promotion.
b. Replacing Employee	Name of the employee being permanently assigned to the position ID number. This may be as a result of a promotion or being newly hired. The assigned employee must meet the satisfactory completion of all requirements designated for the position.
1. Date Vacated	<p>The departing employee's last day on the job in a paid status or the last day of any paid leave entitlements, such as vacation leave. This includes employees placed in military leave status upon exhausting all paid leave entitlements.</p> <p>Positions filled by employees that are in a workers' compensation or family medical leave (FML) status will be considered vacant once the twelve (12) week time period is exhausted per the Contract. <u>However, these positions should be listed on the Position Vacancy Report immediately upon notification that workers' compensation or FML status begins, notating the specific leave status.</u></p>
2. Date Filled	Positions are to be reported filled on the day following the completion of all requirements for the specific position based on contract requirements.
3. Date Pre-Service / Orientation Completed	<p>The date the replacing employee finishes pre-service training or orientation based on the requirements of the position.</p> <p><u>A copy of the pre-service training certificate must be attached to the Position Vacancy Report for newly hired employees.</u></p>
4. Date of Background Check Received	<p>The date on the pre-employment criminal history inquiry or notification letter from the Department concerning the results of a criminal background check.</p> <p><u>A copy of either the pre-employment criminal history inquiry or the notification letter must be attached to the Position Vacancy Report.</u></p>

- 
5. Date Pre-Employment Drug Test Received      The date of notification that a satisfactory pre-employment drug test was received.
- 
6. Date of Hire      The date the employee is hired with the contractor.
- 
7. Required Certification Completed      Positions requiring certification must be designated as to whether the appropriate certification has been completed by indicating YES or NO.  
A copy of the certification must be attached to the Position Vacancy Report.
- 
8. Date of TDCJ Approval for Upper Level Management      Upper level management positions require Department approval.  
A copy of the TDCJ approval letter must be attached to the Position Vacancy Report.
- 
9. Date OJT Completed      The date on the job training is completed. This may occur after the position is filled.
- 
10. Number of Days Position Vacant      The calculation starts the day after the position has been vacated and ends on the day prior to the date filled.

Position Vacancy Report

Facility Name: \_\_\_\_\_

Month Of: \_\_\_\_\_

Category of Staff (Security, Support Ops & Programs, etc):											
Position ID Number	Position Title	a. Departing Employee	1. Date Vacated								
		b. Replacing Employee	2. Date Filled	* 3. Date Pre Service / Orient Completed	* 4. Date of Background Check Rec'd	5. Date of Pre Emp Drug Test Rec'd	6. Date of Hire	* 7. Required Certification Completed	* 8. Date of TDCJ Approval for Upper Lvl Mngmt	9. Date OJT Complete	10. Number of Days Position Vacant
		a.									
		b.									
		a.									
		b.									
		a.									
		b.									
		a.									
		b.									
		a.									
		b.									

*I hereby confirm that the above information is accurate and correct. This report may be used in calculating fiscal sanctions regarding position vacancies.*

Preparer: \_\_\_\_\_

Total Positions in Staffing Pattern: \_\_\_\_\_  
 Total Vacant: \_\_\_\_\_  
 Total Filled: \_\_\_\_\_

Printed Name  
 \_\_\_\_\_  
 Facility Warden or Administrator

Signature & Date  
 \_\_\_\_\_  
 Facility Warden or Administrator

\*Copies of Pre-Service Training Certificates, Background Checks and Required Certifications must be attached for all positions filled during the month.

Positions filled by promotion of current staff should be indicated by writing promotion through #3-6.

Copies of approval letters must be attached for all newly filled Upper Level Management positions.

**Position Control Number (PCN) List**

Facility Name: \_\_\_\_\_  
 Month & Year: \_\_\_\_\_

PCN#	POSITION TITLE	FTE	EMPLOYEE NAME	HIRE DATE
<b>INDIRECT ADMINISTRATION - ISF COGNITIVE INTERVENTION TREATMENT PROGRAM</b>				
<b>TOTAL INDIRECT ADMINISTRATION</b>		<b>0.0</b>		
<b>DIRECT STAFF - ISF COGNITIVE INTERVENTION TREATMENT PROGRAM</b>				
<b>TOTAL DIRECT PROGRAM STAFF</b>		<b>0.0</b>		
<b>GRAND TOTAL</b>		<b>0.0</b>		

## 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 (51) percent or more of all classes of the shares of stock or other equitable securities are owned by one or more economically disadvantaged persons who have a proportionate interest and actively participate in the corporation's control, operation and management;
  2. A sole proprietorship created for the purpose of making a profit that is completely owned, operated and controlled by an economically disadvantaged person;
  3. A partnership formed for the purpose of making a profit in which fifty-one (51) percent or more of the assets and interest in the partnership are owned by one or more economically disadvantaged persons who have a proportionate interest and actively participate in the partnership's control, operation, and management;
  4. A joint venture in which each entity in the venture is a 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 Procurement and Support Services (TPASS).

### 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 (25) percent 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 Section 231.006, a proposal must include names and social security numbers of each person with at least a twenty-five (25) percent ownership of the business entity submitting a proposal.

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

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

**K.3 FRANCHISE TAX REPRESENTATION**

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

**K.4 TYPE OF BUSINESS ORGANIZATION**

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

- A. It operates as  a corporation incorporated under the laws of the State of Delaware,  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 C, Rule 20.38, 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 Administrative Code, Title 34, Part 1, Chapter 20, Subchapter C, Rule 20.32 (68).

**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 Offeror's ability to perform its obligations under this Contract; and
  - 4. The Contractor shall provide in writing, to the Contract Administrator, 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.

#### **K.6.8 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.6.9 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.6.10 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, made to any competitor or any other person engaged in such line of business.

**K.6.11 Ethics****K.6.11.1 Conflict of Interest**

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

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

**K.6.11.2 No Gratuities**

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

**K.6.12 No Compensation**

Pursuant to Texas Government Code, Section 2155.004, the Offeror has not received compensation for participation in the preparation of the specifications for this proposal.

Under Texas Government Code, Section 2155.004, the Offeror certifies that the individual or business entity named in this proposal or Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

#### **K.6.13 Contracting with Executive Head of State Agency**

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

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

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

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

Date of Employment with Offeror: \_\_\_\_\_

#### **K.6.14 Notification / Limitation on Employment of Former State Officers**

- A. 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 TDCJ who during the period of state service or employment participated on behalf of the TDCJ 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 TDCJ ceased.
- B. 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.6.15 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 on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's System for Award Management (SAM, <https://www.sam.gov>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list. Contents of EO 13224 may be viewed by accessing the following website: <http://www.whitehouse.gov/news/orders/>.

**K.6.16 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, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five (5) year period preceding the date of the 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.6.17 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).

Scott Marquardt, President – (801) 693-2800

Jane Marquardt, Vice Chair – (801) 693-2680

Sergio Molina, Sr. VP, Business Development & Administration – (801) 693-2804

Odie Washington, Sr. VP, Corrections – (801) 693-2860

**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: \_\_\_\_\_ or

Federal Taxpayer Identification Number: 87-0365322

**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: Scott Marquardt Title: President

Phone Number: (801) 693-2800 Fax Number: (801) 693-2900

Street Address: 500 N. Marketplace Drive

City: Centerville State: UT Zip Code: 84014

E-mail Address: Marquardt@mtctrains.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.

Management & Training Corporation

Name of Offeror

696-PF-15-P025

Solicitation No.



Signature of Authorized Individual

07/31/2015

Date

Scott Marquardt

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 list

## APPENDIX

	Page
Solicitation, Offer and Award .....	1
Table of Contents .....	3
Section A – Contract Definitions .....	7
Section B – Supplies or Services and Prices/Costs .....	10
Section C – Description/Specifications/Work Statement.....	12
Section D – Reserved for Future Use .....	25
Section E – Inspection and Acceptance .....	26
Section F – Deliveries or Performance .....	28
Section G – Contract Administration Data .....	29
Section H – Special Contract Requirements .....	35
Section I – Contract Clauses .....	42
Section J – List of Exhibits .....	56
J.1 Budget Justification Forms and Staffing Plans	
Staffing Costs and Staffing Plans – Deleted Contains Proprietary Information	
Section K – Representations, Certifications and Other Statements of Offerors .....	57

## SOLICITATION, OFFER AND AWARD

1. CONTRACT NO.	2. SOLICITATION NO. 696-PF-15-P025	3. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFO) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	4. DATE ISSUED July 10, 2015
-----------------	---------------------------------------	---	---------------------------------

### SOLICITATION

5. Sealed offers will be received by the Department until <b>3:00 p.m. local time on July 31, 2015</b> , and submitted to:  Texas Department of Criminal Justice Contracts and Procurement Department Client Services and Governmental Contracts Branch Two Financial Plaza, Suite 525 Huntsville, Texas 77340 <b>Attention: 696-HS-15-P025</b>	6. <b>FOR INFORMATION CONTACT:</b>  Tanya Hollas, CTPM, CTCM Contract Administrator  PHONE: (936) 437-7082 FAX: (325) 223-0310 E-MAIL: tanya.hollas@tdcj.texas.gov
--	---

### 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:→			10. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or Print)	
11. TELEPHONE NO. (Include area code)	12. SIGNATURE		13. OFFER DATE	

### TO BE COMPLETED AT TIME OF AWARD

<b>Document Type: 9</b> <b>Statutory Cite: Texas Government Code, Sections 508.316 and 509.006</b>	
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 (November 1, 2015 – August 31, 2017) shall not exceed \$ _____	
<b>Contractor</b>  By: _____ Name: _____ Title: _____ Date: _____	<b>Texas Department of Criminal Justice</b>  By: _____ Brad Livingston Title: Executive Director Date: _____

## TABLE OF CONTENTS

	Page
<b>TABLE OF CONTENTS .....</b>	<b>2</b>
<b>SECTION A - CONTRACT DEFINITIONS.....</b>	<b>6</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 Pricing Instructions .....	9
B.1.3 Allowable Costs .....	9
B.1.4 Non-Allowable Costs .....	9
B.2 PRICING SCHEDULE.....	10
<b>SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT.....</b>	<b>11</b>
C.1 BACKGROUND.....	11
C.2 COMPLIANCE WITH APPLICABLE RULES, REGULATIONS, POLICIES, PROCEDURES AND LAWS 11	11
C.3 SPECIFIC DUTIES AND OBLIGATIONS FOR COGNITIVE INTERVENTION PROGRAM .....	11
C.4 OFFENDER MONITORING .....	12
C.5 STAFFING.....	12
C.6 TRAINING .....	15
C.7 DISCIPLINARY PROCEDURES .....	16
C.8 TEXAS HEALTH AND SAFETY CODE, SECTIONS 85.112-114 (HIV/AIDS POLICIES AND EDUCATION) .....	17
C.9 PROGRAM EVALUATION (QUALITY ASSURANCE) AND SELF-MONITORING .....	17
C.10 COMPLIANCE STANDARDS .....	18
C.11 OPERATIONAL PLAN .....	18
C.12 GRIEVANCE PROCEDURES.....	20
C.13 RECORD KEEPING.....	20
C.14 ACCESS TO PREMISES/PERSONAL IDENTIFICATION .....	20
C.15 INTAKE REQUIREMENTS .....	20
C.16 OFFENDER RECORDS.....	21
C.17 INFORMATION TECHNOLOGY/TELECOMMUNICATIONS .....	22
C.18 RISK MANAGEMENT .....	22
C.19 DEPARTMENT RECORDS.....	23
<b>SECTION D - RESERVED FOR FUTURE USE.....</b>	<b>24</b>
<b>SECTION E - INSPECTION AND ACCEPTANCE .....</b>	<b>25</b>
E.1 INSPECTION OF SERVICES .....	25
E.2 INSPECTION BY STATE EMPLOYEES.....	25
E.3 MONITORING CRITERIA .....	25
E.4 AUTHORITY TO AUDIT.....	26
E.5 AUDITS BY OTHER AGENCIES .....	26
E.6 FRAUD, WASTE OR ABUSE.....	26
<b>SECTION F - DELIVERIES OR PERFORMANCE .....</b>	<b>27</b>
F.1 PERIOD OF PERFORMANCE .....	27
<b>SECTION G - CONTRACT ADMINISTRATION DATA.....</b>	<b>28</b>
G.1 CLAUSES INCORPORATED BY REFERENCE .....	28
G.2 AUTHORITY – AUTHORIZED REPRESENTATIVE, CONTRACT ADMINISTRATOR, CONTRACT MONITOR AND FACILITY DIRECTOR.....	28
G.2.1 Authorized Representative .....	28
G.2.2 Contract Administrator .....	28
G.2.3 Contract Monitor .....	29
G.2.4 Facility Director .....	29
G.3 INVOICES AND PAYMENTS.....	29

G.3.1	Payment by Direct Deposit .....	29
G.3.2	Invoices .....	30
G.3.3	Compensation for Additional Services .....	30
G.3.4	Failure to Agree on Compensation for Additional Services .....	31
G.3.5	Payment Adjustment .....	31
G.3.6	Late Payment .....	31
G.3.7	Deductions for Unacceptable Compliance .....	31
G.3.8	Withholding of Payment .....	31
G.3.9	Payment of Debt Owed to the State of Texas .....	32
G.3.10	Right to Offset .....	32
G.4	ANNUAL FINANCIAL DISCLOSURE REPORTS .....	32
<b>SECTION H - SPECIAL CONTRACT REQUIREMENTS .....</b>		<b>34</b>
H.1	INSURANCE REQUIREMENTS .....	34
H.1.1	Required Provisions .....	34
H.2	SUBCONTRACTORS .....	35
H.2.1	Insurance .....	36
H.2.2	Historically Underutilized Business (HUB) .....	37
H.3	ORGANIZATIONAL AND NAME CHANGE .....	37
H.4	AUTHORITY OF ASSIGNING OFFENDERS .....	37
H.5	FREE EXERCISE OF RELIGION .....	37
H.6	BOOKS AND RECORDS .....	37
H.7	DELAY OF SERVICES .....	38
H.8	UTILIZATION OF PRODUCTS AND MATERIALS PRODUCED IN TEXAS .....	38
H.9	CRIMINAL HISTORY INFORMATION COMPLIANCE .....	38
H.10	OTHER CONFIDENTIAL OR SENSITIVE INFORMATION .....	39
H.11	TRANSITION .....	39
H.12	UTILIZATION OF PROGRAM .....	39
H.13	SECURITY .....	39
<b>SECTION I - CONTRACT CLAUSES .....</b>		<b>41</b>
I.1	AVAILABILITY OF FUNDS FOR NEXT FISCAL YEAR .....	41
I.2	ADVERTISING OF AWARD .....	41
I.3	DEFAULT AND TERMINATION .....	41
I.3.1	Default by the Contractor .....	41
I.3.2	Further Opportunity to Cure .....	42
I.3.3	Remedy of the Department .....	42
I.3.4	Termination for Unavailability of Funds .....	43
I.3.5	Non-Appropriation Effect and Remedy .....	44
I.3.6	Termination for Convenience .....	44
I.3.7	Termination by Mutual Agreement .....	44
I.3.8	Termination Procedures .....	44
I.3.9	Default by the Department .....	45
I.3.10	Remedy of the Contractor .....	45
I.3.11	Dispute Resolution .....	45
I.4	NO WAIVER OF RIGHTS .....	46
I.5	INDEMNIFICATION OF THE DEPARTMENT .....	46
I.5.1	Acts or Omissions .....	46
I.5.2	Infringements .....	47
I.5.3	Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity .....	48
I.6	NO WAIVER OF DEFENSES .....	48
I.7	INDEPENDENT CONTRACTOR .....	48
I.8	LAWS OF TEXAS .....	49
I.9	ASSIGNMENT .....	49
I.10	MAINTENANCE OF CORPORATE EXISTENCE AND BUSINESS .....	49
I.11	APPROVAL OF CONTRACT .....	49
I.12	NON-DISCRIMINATION .....	50
I.13	CONFIDENTIALITY AND OPEN RECORDS .....	50
I.13.1	Confidentiality .....	50

I.13.2	Open Records.....	50
I.14	CONTRACT CHANGES.....	51
I.15	OPTION TO EXTEND THE TERM OF THE CONTRACT.....	51
I.16	OPTION TO EXTEND SERVICES.....	51
I.17	SEVERABILITY.....	51
I.18	IMMIGRATION.....	51
I.19	NO LIABILITY UPON TERMINATION.....	52
I.20	LIMITATION ON AUTHORITY.....	52
I.21	INTELLECTUAL PROPERTY INDEMNIFICATION.....	52
I.22	ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS, AS REQUIRED BY TEXAS ADMINISTRATIVE CODE, TITLE 1, PART 10, CHAPTER 213.....	52
I.23	RIGHTS TO DATA, DOCUMENTS AND COMPUTER SOFTWARE (STATE OWNERSHIP).....	53
I.24	FORCE MAJEURE.....	53
I.25	NOTICES.....	53
I.26	SUBSTITUTIONS.....	53
I.27	U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM.....	54
<b>SECTION J - LIST OF EXHIBITS.....</b>		<b>55</b>
<b>SECTION K – REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS.....</b>		<b>56</b>
K.1	HISTORICALLY UNDERUTILIZED BUSINESS (HUB) REPRESENTATION.....	56
K.1.1	Definition.....	56
K.1.2	Representation.....	56
K.2	CHILD SUPPORT REPRESENTATION.....	57
K.3	FRANCHISE TAX REPRESENTATION.....	57
K.4	TYPE OF BUSINESS ORGANIZATION.....	57
K.5	PREFERENCE CLAIM.....	58
K.5.1	Source and Specification Preferences.....	58
K.5.2	Tie-Bid Preferences.....	58
K.5.3	Additional Preferences.....	58
K.6	REPRESENTATIONS OF OFFEROR.....	58
K.6.1	Organization and Qualification.....	59
K.6.2	Authorization.....	59
K.6.3	No Violation of Agreements, Articles of Incorporation or Bylaws.....	59
K.6.4	No Defaults Under Agreements.....	59
K.6.5	Compliance With Laws.....	59
K.6.6	No Litigation.....	59
K.6.7	Taxes.....	60
K.6.8	No Adverse Change.....	60
K.6.9	Disclosure.....	61
K.6.10	No Collusion.....	61
K.6.11	Ethics.....	61
K.6.12	No Compensation.....	61
K.6.13	Contracting with Executive Head of State Agency.....	62
K.6.14	Notification.....	62
K.6.15	Suspension, Debarment and Terrorism.....	62
K.6.16	Violation of Federal Law Relating To Reconstruction Efforts As A Result Of Hurricanes Rita, Katrina or Any Other Disaster After September 24, 2005.....	62
K.6.17	Deceptive Trade Practices; Unfair Business Practices.....	63
K.7	REPRESENTATIONS OF THE DEPARTMENT.....	63
K.7.1	Authorization.....	63
K.7.2	No Violation of Agreements.....	63
K.7.3	Disclosure.....	63
K.8	AUTHORIZED NEGOTIATORS.....	64
K.9	PAYEE IDENTIFICATION NUMBER.....	64
K.10	POINT OF CONTACT.....	64
K.11	CERTIFICATION.....	65

**SECTION L – INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS .....66**

- L.1 AMENDMENTS TO SOLICITATIONS ..... 66
- L.2 LATE SUBMISSIONS, MODIFICATIONS AND WITHDRAWALS OF PROPOSALS ..... 66
- L.3 SIGNATURES ON PROPOSAL SUBMITTED..... 66
- L.4 PROPOSAL ACCEPTANCE PERIOD ..... 67
- L.5 CONTRACT AWARD ..... 67
- L.6 RIGHTS OF THE DEPARTMENT..... 67
- L.7 PROPOSAL PREPARATION INSTRUCTION ..... 68
  - L.7.1 Volume One – Introductory Portion of Proposal ..... 69
  - L.7.2 Volume Two – Technical Portion of Proposal..... 70
  - L.7.3 Volume Three – Business/Cost Proposal..... 71
  - L.7.4 Volume Four – HUB Subcontracting Plan ..... 72
- L.8 DISCUSSION AND CORRESPONDENCE ..... 72
- L.9 LEGISLATIVE BUDGET BOARD (LBB) POSTINGS ..... 72
- L.10 PRE-PROPOSAL CONFERENCE..... 73
- L.11 SUMMARY OF KEY DATES FOR PROPOSAL SUBMISSION ..... 73

**SECTION M - EVALUATION FACTORS FOR AWARD.....74**

- M.1 SELECTION PROCESS ..... 74
  - M.1.1 Cost (50%)..... 74
  - M.1.2 Programs and Services (40%)..... 74
  - M.1.3 Experience (2.5%) ..... 74
  - M.1.4 Past Performance (2.5%) ..... 74
  - M.1.5 Financial Strength (5%) ..... 74

**SECTION A - CONTRACT DEFINITIONS**

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

**Authorized Representative** means the person designated in writing to act for and on behalf of a party 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.

**Cognitive Intervention** means a process whereby Offenders are taught to identify their habits of thinking that lead to problems and to restructure the core beliefs involved.

**Compliance Standards** means Contract requirements that have specific and clearly defined recoupment strategies to ensure that the Department does not pay for services that are not received.

**Contract Administrator** means the Department employee responsible for non-technical administration of this Contract.

**Contract Monitor** means the Department employee responsible for the technical details within the scope of this Contract.

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

**Contractor** means \_\_\_\_\_.

**CSCD** means Community Supervision and Corrections Department, a county agency that oversees offenders that are placed on Community Supervision by the Court.

**Days** means calendar days, unless otherwise specified.

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

**Department Policy/Policies** means all written policies, procedures, standards, guidelines, directives, and manuals of the TBCJ and the Department applicable, to providing the services specified under this Contract.

**DSHS** means the Texas Department of State Health Services.

**Event of Default** means any of the events or circumstances described in Section I.3.1 and I.3.9.

**Facility** means the Roach Intermediate Sanction Facility (ISF) where Services under this Contract are to be performed.

**Filled Date** means the employee's first date on the job following receipt of appropriate certification/license and a satisfactory criminal background clearance and/or Department approved letter.

**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.

**Monthly Contractor Payment** means the mathematical product of the Per Diem Rate times the number of Offenders receiving services during the billing month, according to the Daily Activity Report for each day of the billing month.

**NCIC** means the National Crime Information Center operated under the authority of the Federal Bureau of Investigation.

**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.

**Offender** means a person under the supervision of the Department or a CSCD.

**Operational Plan** means those plans, policies and procedures which are consistent with Department standards and developed by the Contractor to meet the requirements of this Contract.

**Parole** means the discretionary and conditional release of an eligible Offender sentenced to the TDCJ-Correctional Institutions Division so that the Offender may serve the remainder of the Offender's sentence under the supervision of the TDCJ-Parole Division.

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

**PD** means the Texas Department of Criminal Justice's Personnel Directives.

**PD/POP** means the Parole Division/Policy and Operating Procedure.

**Per Diem Rate** means the rate paid per day for each Offender.

**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.

**Position Vacancy** means a position in which there is no qualified, fully trained incumbent. A vacant position occurs when an employee resigns, has been terminated, is reassigned to another position or is off the payroll after exhausting all accrued leave, with the exception of Family Medical Leave (FML) and Workers' Compensation and no other qualified, trained person or employee is placed in that position. Similarly, positions are considered vacant if the individual in that position does not meet the criteria for employment as outlined in PD-17, PD-27, and PD-75. A position becomes vacant when the incumbent is removed from the payroll either temporarily or permanently, regardless of leave status, with the exception of Family Medical Leave (FML) and Workers' Compensation. A position also becomes partially vacant when Contractor places a part-time incumbent in a full time position. Positions

requiring certification, licensure, or registration are considered vacant if the person in that position does not possess the appropriate certification, licensure or registration.

**PREA** means Prison Rape Elimination Act.

**Probation** means the supervised release of a convicted defendant by a court under a continuum of programs and sanctions with conditions imposed by the court for a specific period during which the imposition of a sentence is suspended: a) criminal proceedings are deferred without judgement or guilt, or b) a sentence of imprisonment or confinement, imprisonment and a fine, or confinement and a fine, is probated and the imposition of sentence is suspended in whole or in part.

**Program Budget** means the budget that reflects all resources necessary to perform contracted activities, which is included as Exhibit J.1.

**Qualified Credential Counselor (QCC)** means a Licensed Chemical Dependency Counselor or professional as defined in Texas Department of State Health Services (DSHS) Licensure Rules.

**SACP** means Substance Abuse Counseling Program.

**SATOM** means Substance Abuse Treatment Operations Manual.

**Service Commencement Date** means the date on which the Contractor shall begin providing services at the Facility pursuant to this Contract. For the purpose of this Contract, that date is November 1, 2015.

**TBCJ** means the Texas Board of Criminal Justice.

**Therapeutic Community (TC)** means a therapeutic community environment for Offenders that is peer driven; based on hierarchy and structure; and constitutes the method or vehicle by which Services are provided hereunder.

**TCIC** means the Texas Crime Information Center operated under the authority of the Texas Department of Public Safety.

**TDCJ-CJAD** means the Texas Department of Criminal Justice-Community Justice Assistance Division, a division of the Texas Department of Criminal Justice, an agency of the State of Texas.

**TDCJ-PD** means the Texas Department of Criminal Justice-Parole Division, a division of the Texas Department of Criminal Justice, an agency of the State of Texas.

**TDCJ-PFCMOD** means the Texas Department of Criminal Justice-Private Facility Contract Monitoring/Oversight Division, a division of the Texas Department of Criminal Justice, an agency of the State of Texas.

**Upper Level Management** means those top three Facility-assigned individuals who are responsible for the administration of the services provided under this Contract.

**Year** means Fiscal Year, unless otherwise specified.

## 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, equipment, materials, supplies and services (except as may be furnished by the Department as specifically identified within this Contract) and otherwise do all things necessary for, or incidental to, the operation and management of a Cognitive Intervention Program at the following Intermediate Sanction Facility (ISF):

Facility Name	Location	Capacity	Offender Type
Roach ISF	Childress, Texas	420	Male

#### B.1.2 Pricing Instructions

The Department anticipates award of a fixed-price Contract for these services covering the base period of one (1) year and ten (10) months (November 1, 2015 through August 31, 2017) and two (2) additional two (2) year option periods.

#### B.1.3 Allowable Costs

The proposed budget shall include only costs that are reasonable, necessary and allowable under State statutes, Agency policies, procedures and Federal Cost Standards (OMB Circulars A-122 for Nonprofit Entities, A-21 for Educational Institutes, A-87 for State and Local Governments, A-102 Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreement with State and Local Governments, and 48 CFR, Part 31, Subpart 31.2, Contracts with Commercial Organizations). The Department shall make the final decision if a cost is allowable or not.

#### B.1.4 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.

**B.2 PRICING SCHEDULE**

**Contract Line Item Numbers (CLIN) 001-006 Roach ISF Program**

001	Base Period, Year 1 (11/01/15 – 08/31/16)	\$_____ Per Diem Rate
002	Base Period, Year 2 (09/01/16 – 08/31/17)	\$_____ Per Diem Rate
003	Option Period 1, Year 1 (09/01/17 – 08/31/18)	\$_____ Per Diem Rate
004	Option Period 1, Year 2 (09/01/18 – 08/31/19)	\$_____ Per Diem Rate
005	Option Period 2, Year 1 (09/01/19 – 08/31/20)	\$_____ Per Diem Rate
006	Option Period 2, Year 2 (09/01/20 – 08/31/21)	\$_____ Per Diem Rate

## SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

### C.1 BACKGROUND

The Department requires the operation of a Cognitive Intervention Program at the following Intermediate Sanction Facility (ISF) for the training, education and reformation of Offenders released on supervision pursuant to Texas Government Code, Section 508.316 and 509.006.

Facility Name	Location	Capacity	Offender Type
Roach ISF	Childress, Texas	420	Male

All Probation and Parole Offenders assigned to the Cognitive Intervention Program will receive services. Refer to C.3 for program description.

### C.2 COMPLIANCE WITH APPLICABLE RULES, REGULATIONS, POLICIES, PROCEDURES AND LAWS

The Contractor shall provide the Services at the Facility in compliance with applicable federal and state law, including all constitutional, legal and court ordered requirements, whether now in effect or hereafter effected or implemented, and in accordance with the Operational Plan. The Contractor shall comply with Department Policy and unless otherwise required by this Contract, shall be free to establish procedures such that the Services attain the goals established by such Department Policies, provided that any such deviations are approved in writing by the Department prior to their implementation.

### C.3 SPECIFIC DUTIES AND OBLIGATIONS FOR COGNITIVE INTERVENTION PROGRAM

- A. The Contractor shall provide a Cognitive Intervention Program to all Offenders not identified for the ninety (90) day Substance Abuse Cognitive Track or the forty-five (45) day Substance Abuse Relapse Track. The Contractor shall utilize core curriculum(s) for a cognitive based intervention program, upon the written approval of TDCJ-PFCMOD. The core Cognitive Intervention Program shall provide at least thirty (30) hours of programming per week for up to forty-five (45) days. A complimentary didactic track for the continuation of programming should also be provided for those Offenders not immediately released after the completion of the core Cognitive Intervention Program.
- B. All programming shall contain structured schedules, well-defined goals, and guidelines. The Contractor shall establish a graded system of rewards and sanctions for Offenders participating in the program, within current security system and rules of the Department.
- C. The Contractor shall measure program effectiveness of the Cognitive Intervention Program utilizing an Offender evaluation process administered to Offenders prior to programming and upon conclusion of programming requirements.
- D. The Contractor shall hire or contract with qualified individuals to implement the Cognitive Intervention Program. These individuals shall be appropriately trained in the Cognitive Intervention Program and possess at a minimum Training for Trainers Certificate.

- E. The Contractor shall also be responsible for furnishing all required furniture, classrooms, and supplies needed for Offenders to successfully complete the program.

#### **C.4 OFFENDER MONITORING**

The Contractor shall establish written policies and procedures, including format and frequency, for monitoring Offenders' progress in Offender rehabilitation treatment. These procedures shall include methods for reporting progress to Department staff, including any release of information forms, progress reports, telephone calls, etc.

#### **C.5 STAFFING**

- A. The Contractor's positions shall be staffed with qualified employees in accordance with this Contract. The Contractor shall provide written job descriptions that include job duties and minimum qualifications for all staff members. Documentation evidencing qualifications shall be maintained in the employee's personnel file, as well as the job description.
- B. The Contractor shall not hire any Upper Level Management without prior written approval by the Department.
- C. Staffing, based on Offender population, shall include specific provisions to maintain required levels of service during periods of vacation, sick leave and other absences.
- D. Positions requiring certification, licensure or registration are considered vacant if the person occupying that position does not possess the appropriate certification, license or registration. Similarly, the position is considered vacant if the individual does not meet the criteria for employment outlined in PD-17, PD-26, PD-27 and PD-75.
- E. The Contractor shall maintain accurate, current, complete and orderly personnel records on location on each employee.
- F. The Contractor shall provide a complete Staffing Plan in the required format provided on Exhibit J.1. The Staffing Plan shall include, at a minimum, the following information:
  - 1. Positions for administration, instructors and clerical/support staff;
  - 2. The number of staff by position;
  - 3. Identification of shift;
  - 4. Relief factors and total FTEs;
  - 5. The Department position equivalency;
  - 6. Identification of any position on the Staffing Plan as "PRN" or "as needed" requires the Contractor to enter into a subcontract for the Services to be provided in accordance with Section H.2 of this Contract; and
  - 7. Salaries and percentage of time spent on program.

- G. The Contractor shall comply with the Staffing Plan, Exhibit J.1. Staffing Plan changes can only be obtained through an approved Contract modification.
- H. The Contractor shall provide an Organizational Chart, indicating the lines of supervision for all staff positions identified in the Staffing Plan at Exhibit J.1.
- I. Each applicant shall sign a release stating the employee's employment history may be released not only to the Department, but also to other contractors under contract with the Department.
  - 1. All prospective Contractor employees (including consultants, independent contractors and their employees and agents who work on a routine basis at the Facility) who currently work or previously worked for the Department must authorize the Department to release to the Contractor information concerning all disciplinary actions taken during their employment with the Department as well as their Department re-hire eligibility status. The Department shall determine employment eligibility for any prospective employee requiring Division Director approval prior to being rehired.
  - 2. Job applicants must authorize the Contractor to release to the Department or a Department contractor information concerning all disciplinary actions taken during their employment with the Contractor as well as their re-hire eligibility status as determined by the Contractor in the event the employee seeks employment with the Department or another contractor.
  - 3. Both types of releases shall be documented in a Public Information Act Request, along with results, filed in the employee's personnel folder.
    - a. The Contractor shall maintain all employment records for a period of seven (7) years after expiration or termination of this Contract.
    - b. Upon receipt of a written request from the Department or a Department contractor, the Contractor shall be required to release employment records for a period of seven (7) years after expiration or termination of this Contract.
- J. A vacancy does not occur when an employee is temporarily absent due to vacation, sick leave, or other temporary leave condition. Such other temporary leave conditions shall include employee participation in management and professional conferences or in-service training, so long as such other temporary leave does not exceed a period greater than two (2) weeks in duration.
- K. If it is determined by the Department monitoring staff that a Service has not been provided while the incumbent is off the payroll due to Family Medical Leave (FML) status, Workers' Compensation status or Military Leave status, the Average Daily Salary for that position will be deducted for the time period for which the Service was not provided.
  - 1. Such a position is vacant, regardless of whether the Service is being provided, when:
    - a. The incumbent remains on FML or Workers' Compensation status in excess of twelve (12) weeks.

- b. The incumbent, on Military Leave status, exhausts all paid leave and is placed in a leave without pay status or separated from employment.
2. In the event the employee was terminated from the Contractor's payroll, a pre-employment criminal background check that meets employment eligibility criteria in PD-75 is required prior to the incumbent returning to work.
- L. A pre-employment criminal background check shall be completed by the Department for each applicant (including consultants, independent contractors and their employees and agents and volunteer workers who work on a routine basis in the program) within thirty (30) days prior to being assigned by the Contractor to the program.
- M. The Contractor shall employ or assign only those applicants that meet employment eligibility criteria outlined in PD-75 to perform Department Contract duties. Applicants with a misdemeanor or felony conviction shall meet the eligibility requirements of PD-75 and obtain the Department's approval prior to having direct care contact with Department Offenders. At a minimum, the following documents shall be maintained in each personnel file:
  1. The Department's TCIC/NCIC Pre-Employment Inquiry Results letter.
  2. The criminal background investigation reports.
  3. A satisfactory pre-employment drug test.
  4. The Department's approval letter, if the applicant has a criminal conviction.
  5. A signed job description approved by the Department.
  6. A copy of the employee's license or certification, as required by the job description.
  7. Any other documents that verify the employee meets the minimum qualifications of the position, (e.g. High School Diploma, College Degree, etc.).
- N. Employees, to include those in on-the-job training (OJT), shall not be assigned to any Department contract Service or have contact with Offenders until a current criminal background check that meets PD-75 eligibility criteria is received.
- O. In addition to criminal background investigation reports, the Contractor shall maintain on file on site the results of a pre-employment drug test on each employee in compliance with PD-17 (Drug-Free Workplace) that is acceptable to the Department.
- P. The Contractor is responsible for the conduct and behavior of all persons employed or assigned to perform Contract duties (including consultants, independent contractors and their employees and agents and volunteer workers) and will ensure the Department Policy regarding management and treatment of Offenders, including PD-29 (Sexual Misconduct with Offenders), are followed. Should a violation occur the Contractor shall take immediate corrective action acceptable to the Department.
- Q. The Contractor shall immediately, upon learning of the event, notify the Department of employees who resign while under investigation for inappropriate conduct related to

Offender management and for violations of policies related to the Facility and program security.

- R. The Contractor shall immediately, upon learning of the event, notify the Department in writing of any employee who has been convicted, arrested, indicted or charged with a criminal offense. Such employee shall not be permitted to return to duty until authorized in writing by the Department. A copy of such written authorization shall be maintained in the employee's personnel file.
- S. The Contractor shall comply with PD-26 (Nepotism) regarding the employment of relatives.
- T. A nominal fee will be charged to the Contractor for criminal background checks. These fees shall be processed in accordance with the format and frequency as determined by the Department.
- U. The Contractor shall be responsible for any additional fee charged by the Department of Public Safety (DPS) to the Department for any resubmission requests due to unreadable fingerprints.
- V. The Contractor shall provide an Affirmative Action Plan outlining Equal Employment Opportunity (EEO) compliance and strategies used to meet goals outlined in the Affirmative Action Plan.
- W. The Contractor shall submit a Monthly Position Vacancy Report as required by the Department.
- X. The report dates shall correspond with the Contractor's work week schedule (e.g., Monday - Sunday, Wednesday - Tuesday).
- Y. Failure to do so shall result in delayed Monthly Contractor Payment.
- Z. The Contractor shall submit a Position Control Number (PCN) List monthly to the Department. This list shall be included with the last Position Vacancy Report for the respective month.
- AA. The Contractor shall be responsible for the preparation of accurate employee time and attendance records, ensuring these records are signed by the employee, approved by the supervisor, maintained on file at the Facility and available to Department staff.
- BB. All Upper Level Management absences in excess of seventy-two (72) hours shall be reported in writing to the Department before the ninety-sixth (96th) hour of the absence.
- CC. The Contractor shall implement an employee random drug testing program that meets the minimum requirements of PD-17. The drug testing program policy and procedures shall be approved by the Department prior to implementation.

## C.6 TRAINING

- A. Staff providing Cognitive Intervention Programming shall obtain a certificate of training in a Cognitive Intervention Program approved by the Department within ninety (90) days of hire.

- B. All training hours an employee receives shall be documented in the employee's personnel file and/or personnel training records, to include course topic, number of hours and date completed. Training documentation shall include an authorized signature validating such training. The Contractor shall maintain accurate, complete current and orderly training records on location on each employee.
- C. Staff shall be required to complete Correctional Awareness Training prior to contact with Offenders. In-service training shall be completed annually thereafter.
- D. The Contractor shall provide all employees with a new employee orientation programs after being hired and prior to regular assignment.
- E. The Contractor shall submit for written approval by the Department a written training curriculum and schedule for all employee trainings. The schedule shall include the following information:
  - 1. Proposed date(s) of training.
  - 2. Duration of training.
  - 3. Topic(s) of training.
  - 4. A brief synopsis of each topic.
  - 5. Staff positions to be trained.

#### **C.7 DISCIPLINARY PROCEDURES**

- A. The Contractor shall have written disciplinary policies and procedures, which are consistent with the Department's Policies and procedures and will provide a copy of these procedures to Offenders at intake.
- B. The Contractor shall maintain a master file of all disciplinary cases issued and the pursuant actions taken.
- C. Disciplinary records shall be retained on location in accordance with the Department's records retention schedule.
- D. The Contractor shall submit a monthly report listing all treatment disciplinary cases written and pursuant action.
- E. The Contractor shall maintain a master file of treatment violations on a Behavioral Intervention Log that will be provided by the Department.
- F. The Contractor shall provide the Department's assigned Facility supervising officer a written report and recommended sanctions, within ten (10) days of the notification, in the event an Offender commits a violation.

**C.8 TEXAS HEALTH AND SAFETY CODE, SECTIONS 85.112-114 (HIV/AIDS POLICIES AND EDUCATION)**

The Contractor shall provide HIV-related Services in accordance with Texas Health and Safety Code, Sections 85.112, 85.113 and 85.114.

- A. The Contractor shall develop workplace guidelines that address HIV policies, confidentiality and employee/Offender education programs. The guidelines shall, at a minimum, incorporate the model workplace guidelines developed by DSHS, or mirror the guidelines adopted by the Department. The Contractor shall maintain the written policies and guidelines at the Facility site.
- B. The Contractor shall develop confidentiality guidelines regarding AIDS and HIV medical information for employees and Offenders. The policies shall be consistent with guidelines published by DSHS and with state and federal laws and regulations.
- C. Educational programs regarding HIV/AIDS shall be provided to all employees and Offenders on a routine basis. These programs shall be based on the model education program created by the DSHS. The education program developed by the Contractor shall be tailored to meet the needs of all employees and Offenders, including the use of Braille or telecommunications devices for the deaf. The HIV education and prevention programs shall also be tailored to address the needs of persons with physical or mental disabilities.
- D. The Contractor shall provide the Department with copies of the above stated policies/programs.
- E. The Contractor shall maintain written documentation in each Offender and employee file of HIV/AIDS education/training completion.

**C.9 PROGRAM EVALUATION (QUALITY ASSURANCE) AND SELF-MONITORING**

- A. The Contractor shall continually conduct self-monitoring and quarterly corporate self-monitoring, utilizing comprehensive self-monitoring plans approved by the Department.
  - 1. The Contractor shall designate an employee as the staff member responsible for continuous self-monitoring of the program. The reporting procedures, which also include frequency and subject matter, shall be included in the Operational Plan.
  - 2. Any self-monitoring reports that are produced shall be provided to the designated Department staff in accordance with the self-monitoring plan approved by the Department.
- B. The Contractor shall forward to the Department copies of Monthly Operational Reports no later than the fifteenth (15th) of the month following the end of the preceding month. This internal administrative audit conducted by the Contractor shall exist apart from any audit conducted by the Department or another agency. These Operational Reports are as follows and shall be submitted in the format requested by the Department:
  - 1. Offender List by Program Instructors;

2. List of Staff Hires, Terminations, Resignations and Vacant Positions;
  3. Organizational Chart;
  4. Staff Leave Time Report;
  5. Ex-Offenders Employee Roster;
  6. Program Schedule;
  7. Disciplinary and Sanction Reports;
  8. Copies of Grievance submitted by Offenders;
  9. Serious and/or Unusual Incident Reports; and
  10. New or Revised Policies and Procedures for review and Department approval.
- C. The Contractor shall provide to the Department a Monthly Status (Statistical Report) no later than the fifth (5th) of the month following the end of the preceding month, in the format requested by the Department.

#### **C.10 COMPLIANCE STANDARDS**

As part of the comprehensive quality assurance plan described in Section C.9, the Contractor shall include a system of Compliance Standards designed to monitor and assess the success of the program. The Department has developed the minimum Compliance Standards listed in Exhibit J.3. The Contractor's plan may include additional standards along with criteria that define acceptable or unacceptable performance. The Contractor shall ensure that outcome measures indicate results achieved. In devising Compliance Standards, the Contractor shall:

- A. Develop clearly defined goals, outputs and measurable outcomes which directly relate to the program objectives;
- B. Develop a formalized system to record information relative to the outcome measures;
- C. Develop a method to track and evaluate the achievement of outcomes; and
- D. Submit on a quarterly basis, the first (1<sup>st</sup>) working day of the month following the end of the quarter, the Performance Measure Report to designated Department staff.

#### **C.11 OPERATIONAL PLAN**

- A. The Contractor shall provide for the Department's written approval, an Operational Plan that details the Contractor's policies and procedures on how operational requirements and standards discussed in Section C will be met for the program.
- B. The Contractor shall provide for the Department's written approval, both the program and training curriculums. Any changes or additions to the curriculums must receive written approval by the Department prior to implementation.

- C. Any deviation from Department Policy must be noted and approved in writing by the Department prior to implementation.
- D. The Contractor shall have written policies and procedures to govern the total operation of the program. Policies and procedures cannot conflict with contractual obligations or the policies and procedures of the Department. Revisions which alter program policies and procedures shall be submitted to the Department for approval immediately upon development and prior to implementation. The Contractor shall comply with all procedures and guidelines as defined by the Department.
- E. The Contractor shall provide two (2) sets of their Operational Plan that covers the following:
  - 1. A policy and procedures manual which shall cover all aspects of program operations; and
  - 2. Staffing Plan to include full time designations and job descriptions that include the education and experience requirements, descriptions of job duties and pursuant to Section C.5 and Exhibit J.1 of this Contract.
- F. Policies, procedures and manuals submitted hereunder shall comply with the requirements of Section C of this Contract with regard to the Department Policies. The Contractor shall notify the Department in writing of proposed changes in, or additions to, the Operational Plan with regard to the Contractor's policies and procedures, and job descriptions pursuant to Section C of this Contract. The Department, prior to any changes or modifications being implemented, must grant written approval.
- G. The Contractor's policies and procedures shall reference the applicable policies, standards, manuals or any other source document and citation deemed appropriate.
- H. The Contractor shall have an Affirmative Action Plan outlining EEO compliance and strategies used to meet goals outlined in the Affirmative Action Plan.
- I. The Contractor shall maintain current Department Policy as a minimum.
- J. The Contractor shall submit a complete and comprehensive curricula for the program, to include any supplemental materials (i.e., videos, pamphlets, handouts, workbooks, instructor's manual, etc.) which comprise the Contractor's proposed program design.

**C.12 GRIEVANCE PROCEDURES**

- A. The Contractor shall have written Offender grievance policies and procedures, which are consistent with the Department's grievance policy and will provide a copy of these procedures to all Offenders at intake.
- B. The Contractor shall maintain a master file of all grievances and pursuant actions taken.
- C. Grievance records shall be retained on location in accordance with the Department's records retention schedule.
- D. The Contractor shall submit a monthly report listing all grievances filed and pursuant action(s) taken.

**C.13 RECORD KEEPING**

The Contractor shall establish and maintain written policies and procedures and shall be consistent with the Department. The written policies and procedures shall address the method and process used in recording and disseminating the following:

- A. Intake;
- B. Program participation;
- C. Accounting;
- D. Record keeping control and identification; and
- E. Other statistical records as may be required by law and as may be generally required in similar programs.

**C.14 ACCESS TO PREMISES/PERSONAL IDENTIFICATION**

The Contractor is responsible for expenses of employee identification cards and shall submit a prototype employee identification card for Department approval. The Contractor employee identification card shall incorporate security features that cannot readily be replicated in the program or commercially. Identification procedures for employees and visitors are to be established in accordance with Departmental Policy.

**C.15 INTAKE REQUIREMENTS**

The Contractor shall have written policies and procedures regarding the intake for Offenders, which must minimally include providing the Offender a copy of disciplinary procedures, grievance procedures and evacuation procedures in both the English and Spanish languages. The established policies and procedures shall be approved by the Department.

**C.16 OFFENDER RECORDS**

- A. The Contractor shall be responsible for maintaining accurate, complete, current and orderly case records and reports and statistics necessary for the evaluation of the program.
- B. These records shall not be disclosed to any person other than the authorized Contractor and the Department employees who have a need to access such information.
- C. All Offender records shall be maintained in accordance with the following:
  - 1. All Offender records shall be locked in a file cabinet located in a locked room accessible only to the Contractor and the Department representatives.
  - 2. All Offender records shall be maintained current and include the following information, as applicable, to the program:
    - a. Identification data;
    - b. Parole Plans;
    - c. Case History (if available);
    - d. Comprehensive Treatment Plan;
    - e. Continuum of Care Service Plan;
    - f. Aftercare Plan;
    - g. Appropriate mental and physical information (Form HSM-18);
    - h. Screening/intake forms and assessment/diagnostic needs;
    - i. Correspondence regarding the case;
    - j. Signed release of information form to specific agencies, when applicable;
    - k. A copy of the Comprehensive Assessment Plan;
    - l. Individualized Treatment Plan;
    - m. Relapse Prevention Plan;
    - n. Programmatic intake, adjustment and activity reports;
    - o. Offender's daily adjustment and/or progress notes, documented weekly at a minimum;
    - p. Documentation of completion for HIV/AIDS education;
    - q. Discharge Summary; and

- r. All documentation required by SATOM and/or ISF Addendum.
- 3. Individualized case files for each Offender shall be retained for a period of seven (7) years after the Offender has been discharged. At the conclusion of the seven (7) year period, the files shall be destroyed in accordance with Department Policy.
- 4. Files that have not reached retention periods upon expiration of the Contract shall remain the property of the Department.
- 5. The Contractor shall maintain the confidentiality of Offender records and information including, but not limited to, compliance with federal regulations concerning alcohol and drug abuse treatment set forth in the Code of Federal Regulations, Title 42, Volume 2 and Texas Government Code, Section 508.313. No personal information of any Offender may be divulged or made known in any manner to any person except as may be necessary to provide the Services. The Contractor shall immediately notify the Department, in writing, if any legal process requires disclosure of an Offender's records and shall obtain written authorization from the Department before disclosure or release of same.

#### **C.17 INFORMATION TECHNOLOGY/TELECOMMUNICATIONS**

- A. The Contractor shall provide, at its own expense, equipment that may be required to interface with existing and all future requirements directed by the Department.
- B. All computers not connected to the Department's Mainframe System shall be purchased at the Contractor's expense.
- C. The Contractor shall purchase, install, maintain/repair and replace at the Contractor's expense, all cabling for Department owned computers.
- D. State-Owned computer equipment shall be provided by the Department, for Offender management control and related programs.
- E. All printers shall be purchased at the Contractor's expense and must have scanning capabilities, to include support in the event of failure and/or replacement.
- F. The Contractor shall not connect their Contractor-Owned computer equipment to the Department's network. Only State-Owned computer equipment shall be connected to the Department's network. There shall be no "Dual Homed" computer equipment on the Facility.

#### **C.18 RISK MANAGEMENT**

- A. The Contractor shall report verbally, followed by e-mail notification, serious and/or unusual incidents to the Department immediately and upon learning of the event.
- B. The Contractor shall complete injury and other types of reports in the format and within the time frames established by the Department.
- C. The Contractor shall submit a monthly report listing all serious and/or unusual incidents as part of the monthly Operation Reports.

**C.19 DEPARTMENT RECORDS**

- A. Upon conclusion or termination of this Contract, or for any other reasons that the Contractor no longer performs the services listed in this Contract, possession and control of the complete set of Offender records, files and logs, will revert to the Department or transfer to the Contractor that performs or will be performing services listed in this Contract.
- B. Offender records shall be labeled in a manner satisfactory to the Department as well as organized and retained in the original folder. The Contractor shall comply with additional instructions pertaining to Department records as detailed in Sections H.11 and I.23 of this Contract.
- C. The Department reserves the right to supervise the records preservation, boxing, labeling and movement to a secure, separately keyed and locked area on the Facility until the management transition is complete.
- D. In the event the Contractor requires copies of any records after conclusion of the Contract or Contract expiration and Facility management transition, the Department shall furnish copies to the Contractor at the Contractor's expense.
- E. Records shall be maintained in accordance with the Department Records Retention Schedule.

**SECTION D - RESERVED FOR FUTURE USE**

## 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 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, including financial books and records, employee records including time and attendance records, and Offender records 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.4.3 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 taken to 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 government regulatory agency.

### E.2 INSPECTION BY STATE EMPLOYEES

The Contractor shall provide entry at all times by the Texas Board of Criminal Justice (TBCJ) and the Department's authorized employees/agents for inspections and other official purposes. The Governor, members of the Legislature and all other members of the Executive and Judicial Departments of the State, as well as any other persons designated by the Department including the Office of the Inspector General, shall be allowed to monitor the delivery of Services.

### E.3 MONITORING CRITERIA

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

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

#### **E.4 AUTHORITY TO AUDIT**

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

#### **E.5 AUDITS BY OTHER AGENCIES**

Upon receipt of audit or monitoring reports pertaining to the provision of services under this Contract that are conducted by agencies or organizations other than the Department, the Contractor shall provide copies thereof to the Department within thirty (30) days. The Contractor shall provide to the Department copies of responses to audit or monitoring reports within seven (7) days of issuance. Audit or monitoring reports shall include allegations or complaints involving program operations 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.state.tx.us](http://www.sao.state.tx.us). It can also be reported to the Department Office of the Inspector General at 1-866-372-8329, the Department Internal Audit Division at 1-512-406-5935, or Crime Stoppers at 1-800-832-8477.

**SECTION F - DELIVERIES OR PERFORMANCE****F.1 PERIOD OF PERFORMANCE**

The Contract will consist of a Base Period of one (1) year and ten (10) months (November 1, 2015 through August 31, 2017) and two (2) two (2) year renewal Option Periods (September 1, 2017 through August 31, 2019, September 1, 2019 through August 31, 2021). The Contract may be extended for an additional six (6) month period at the Department's option, per Section I.16. The terms, conditions and rates for all extensions shall remain as stated in the Contract.

**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 Administrator will make their full text available.

Texas Government Code, Chapter 2251, PAYMENT FOR GOODS AND SERVICES.

**G.2 AUTHORITY – AUTHORIZED REPRESENTATIVE, CONTRACT ADMINISTRATOR, CONTRACT MONITOR AND FACILITY DIRECTOR****G.2.1 Authorized Representative**

- A. In the case of the Contractor, its President or any Vice President shall designate the Authorized Representative in writing. The designation of the Contractor's initial Authorized Representative shall be delivered to the Department no later than the effective date of this Contract. The Contractor's Authorized Representative may designate other persons to assist such Authorized Representative in the performance of certain obligations required by this Contract.
- B. In the case of the Department, the Executive Director is hereby designated as its Authorized Representative. The Executive Director has designated the Chief Financial Officer to act in his/her behalf on matters requiring signature approval of the Authorized Representative. The Director of the TDCJ-PFCMOD has been designated to act on behalf of the Chief Financial Officer on all matters pertaining to the daily operations of the program and compliance with 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 Administrator**

- A. The Contract Administrator for administration of this Contract is Tanya Hollas.
- B. The telephone number for the Contract Administrator is (936) 437-7082.

- C. The facsimile number of the Contract Administrator is (325) 223-0310.
- D. The e-mail address of the Contract Administrator is tanya.hollas@tdcj.texas.gov.
- E. The Contract Administrator is responsible for general administration of this Contract, negotiation of any changes and final issuance of written changes/modifications to this Contract. All requests by the Contractor to modify the Contract shall be made in writing to the TDCJ-PFCMOD, and a copy submitted to the Contract Administrator.

### **G.2.3 Contract Monitor**

- A. The Contract Monitor is not authorized to make any representations or commitments of any kind on behalf of the Executive Director of the Department or the State.
- B. The Contract Monitor does not have the authority to alter the Contractor's obligations or to change the Contract specifications, price, terms or conditions.
- C. If, as a result of technical discussions, it is desirable to modify Contract obligations or the statement of work, changes will be issued in writing and signed by the Executive Director of the Department or his/her designee.

### **G.2.4 Facility Director**

The Contractor shall provide a Facility Director 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. The Facility Director shall have full authority to act for the Contractor in the performance of the required services. The Facility Director or a designated representative shall meet with the Contract Monitor to discuss problems as they occur.

## **G.3 INVOICES AND PAYMENTS**

### **G.3.1 Payment by Direct Deposit**

It is recommended that the Contractor receive Payments via Electronic Funds Transfer (EFT), also known as Direct Deposit.

Regardless as to whether Direct Deposit is chosen, upon Contract award the Contractor shall submit a completed Vendor Maintenance Direct Deposit and Substitute W-9 Form to the following address:

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

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

The form and instructions can be found at the following link on the TDCJ website: [www.tdcj.texas.gov/divisions/finance/finance\\_acct\\_accts\\_pay.html](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:

---

---

---

### G.3.2 Invoices

- A. The Contractor shall bill the Department for each calendar month, one calendar month in arrears for the amount due for services rendered. One monthly invoice, per service, per location shall be submitted to the Department who shall pay such invoice thirty (30) days after receipt of an accurate invoice and supporting documentation. To be considered valid for payment, billings shall be submitted to TDCJ-PFCMOD within one month past the invoice due date. The Contractor may offer a prompt payment discount, i.e., 1%, fifteen (15) days (refer to page 1, block 9 of Contract) if the Contractor desires expedited payment. Prompt payment discounts must be stated on each invoice.
- B. The Contractor's monthly invoice shall include the following:
1. Name of business, remittance address and invoice date;
  2. Contract number;
  3. Descriptions, price and quantity of services rendered; and
  4. Payment terms, including prompt payment discount, if applicable.
- C. The original invoice shall be submitted to the office designated below:
- Business Operations  
TDCJ – Private Facility Contract Monitoring/Oversight Division  
Two Financial Plaza, Suite 300  
Huntsville, Texas 77340
- D. Invoices and supporting documentation must be submitted by the tenth (10th) of the month. If not received by the date due, an explanation letter from the Program Executive Director to the TDCJ-PFCMOD Director must be provided for payment consideration. The letter should include the reason the documentation was not received timely and the corrective action taken to prevent future incidents.

### G.3.3 Compensation for Additional Services

- A. The Department recognizes that the Contractor has entered into this Contract and has offered to furnish the Services hereunder based upon Department Policies in effect as of the date of this Contract.
- B. If there are changes in such Department Policies which changes are not as a result of changes in laws, government regulations or Court Orders generally applicable to the Department and which necessitate a change in the scope of Services furnished by the Contractor so as to increase the cost of operating and managing the program or

performing other Services contemplated in this Contract, then the Contractor may be provided extra compensation for the additional Services required.

- C. The Contractor shall request in writing, together with such supporting documentation or information as the Department may reasonably request, the additional compensation the Contractor desires to offset the Contractor's increase in costs for furnishing the additional Services because of such change in the Department Policies.
- D. In the event that such changes in the Department Policy are the result of changes in laws or government regulations, the Contractor shall be financially responsible for incurring any additional cost to comply with the terms of such policies and this Contract.

#### **G.3.4 Failure to Agree on Compensation for Additional Services**

If the parties cannot agree on a payment adjustment or compensation for additional Services within sixty (60) days of the date the Contractor's request is received by the Department, the Contractor may utilize the dispute resolution process as outlined in Section I.3.11.

#### **G.3.5 Payment Adjustment**

- A. The Department may elect to withhold from its Monthly Contractor Payment as specified in Section G.3.7, any amount specified in Section C, and Exhibit J.3 or any money determined to be due as specified under Section E.1.C.
- B. If it is determined that the remaining amount of monthly payment is not adequate to cover the money determined to be due the Department, then all remaining monthly payments shall be withheld and an invoice issued to the Contractor for the remaining amount due.
- C. The Contractor shall be responsible to pay the invoiced amount within thirty (30) days of receipt unless the Contractor and the Department mutually agree on an alternative payment method.

#### **G.3.6 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.3.2.A hereof shall accrue interest each day that such amount is not paid at the rate specified by Texas Government Code, §2251.025, provided, however, that this provision shall not excuse failure by the Department to make payment in strict accordance with this Contract.

#### **G.3.7 Deductions for Unacceptable Compliance**

- A. Compliance Standards and deductions are listed in Exhibit J.3 of this Contract.
- B. The Contractor's failure to meet the listed Compliance Standards shall result in a deduction to the Monthly Contractor Payment.

#### **G.3.8 Withholding of Payment**

- A. The Department shall have the right to withhold the monthly payment to the Contractor until the following failures have been corrected:
  - 1. Failure to submit reports required for Compliance Standards as listed in Exhibit J.3;

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 notification.
- B. The Contractor agrees that the Department shall not pay interest to the Contractor for monies so withheld.
- C. The Monthly Contractor Payment withheld shall be released upon the Department's satisfaction that compliance has been achieved for thirty (30) consecutive days.

#### **G.3.9 Payment of Debt Owed to the State of Texas**

As required by Texas Government Code, §2252.903, the Contractor agrees that any payments due under a Contract resulting from this solicitation 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, §§403.055, 403.0551, 2252.903 and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

#### **G.3.10 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.

#### **G.4 ANNUAL FINANCIAL DISCLOSURE REPORTS**

- A. The Contractor shall have an annual audit performed by an independent Certified Public Accountant (CPA) and submit to the Contract Administrator the financial reports prepared according to Generally Accepted Accounting Principles (GAAP) within one hundred twenty (120) calendar days after the end of the Contractor's Fiscal Year.
- B. In the disclosure of its financial affairs, the Contractor agrees to allow the Department or its representative's access to all its corporate books, to cooperate in any audits thereof and to provide the Department's Contract Administrator with 1 and 2 below:
1. Consolidated financial statements such as are required by GAAP of the Contractor and its affiliates for such year, setting forth in each case in comparative form the corresponding figures for the preceding Fiscal Year, all in reasonable detail and certified by independent CPAs of recognized standing to the effect that said financial statements fairly present, except as specifically stated, the consolidated financial position and result of the Contractor and its affiliates as of the end of the year for the year involved, and a statement signed by a senior accounting or financial officer of the Contractor that such officer has no knowledge, except as specifically stated, of the occurrence and continuance of an Event of Default or event which, with the time or the giving of notice, or both, would constitute an Event of Default (as defined in

Section I.3.1) or, if such circumstance does exist, specifying the nature and extent thereof and the actions proposed to cure same; or

2. Copies of any "management letters" (as that term is understood pursuant to GAAP and GAAS) received by the Contractor following any such audits.

## SECTION H - SPECIAL CONTRACT REQUIREMENTS

### H.1 INSURANCE REQUIREMENTS

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. 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. 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 TDCJ, Contracts and Procurement Department, Client Services and Governmental Contracts Branch within thirty (30) days of the effective date.

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:

- A. **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.
- B. **Business Automobile Liability Insurance** covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage limit of \$1,000,000 per occurrence.
- C. **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. 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.

The Department shall be named as an additional insured by using endorsement CG2026 or broader.

- D. 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 policies.

- 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 policies.
- 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 the 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 at least thirty (30) days prior 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 Service Commencement Date.
- H. 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.
- 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 (5) percent of the required yearly aggregate limit of coverage.
- J. The Contractor is responsible for the first 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, audits 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.
  - 6. The subcontract shall contain 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 Historically Underutilized Business (HUB)**

- A. The Contractor shall make a good faith effort to award necessary subcontracts to HUBs in accordance with Texas Government Code, Sections 2161.181-182, 2161.252(b), and Texas Administrative Code (TAC), Title 34, Part 1, Chapter 20, Subchapter B, Rule 20.13. Pursuant to the Texas Procurement and Support Services (TPASS) HUB Rules, TAC, Title 34, Part 1, Chapter 20, Subchapter B, Rules 20.13 and 20.14, the Contractor shall submit a HUB Subcontracting Plan (HSP) as part of the proposal submission, as well as make a good faith effort to implement the HSP. The Contractor shall seek written approval from the Department prior to making any modifications to its HSP.
- B. A detailed description of the HSP and required forms are included as Exhibit J.2.
- C. The Contractor shall provide notice to all subcontractors of their selection as a subcontractor for this Contract. The notice must specify, at a minimum, this agency's name, the name of the Contract Administrator, this Contract's assigned contract number, the subcontracting opportunity the subcontractor will perform, the approximate dollar value of the subcontract and the expected percentage of this Contract's total value that the subcontract represents. A copy of the notice shall be provided to the Contract Administrator no later than ten (10) working days after this Contract is awarded.
- D. The Contractor shall submit to the Contract Administrator on a monthly basis (by the 5th day of the following month) the Prime Contractor Progress Assessment Report, which is included as Exhibit J.2.

### **H.3 ORGANIZATIONAL AND NAME CHANGE**

The Contractor shall submit written notification to the Department within thirty (30) days 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.4 AUTHORITY OF ASSIGNING OFFENDERS**

The Department has the sole authority to assign or transfer Offenders to and from the program.

### **H.5 FREE EXERCISE OF RELIGION**

The Contractor is prohibited from substantially burdening an employee's or Offender's free exercise of religion.

### **H.6 BOOKS AND RECORDS**

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

**H.7 DELAY OF SERVICES**

The Contractor shall meet its obligations to commence Services at the Facility 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.8 UTILIZATION OF PRODUCTS AND MATERIALS PRODUCED IN TEXAS**

The Contractor shall comply with Texas Government Code, Section 2155.4441, relating to Service contract use of products produced in the State of Texas. 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.9 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, Part 20, Subpart B, Section 20.21; Section 524 (a) of the Omnibus Crime Control and Safe Streets Act, 42 U.S.C. 3701, et seq., as amended (the "Act"), Texas Government Code, Chapter 411, Section 411.083; and with the FBI Criminal Justice Information Services (CJIS) Security Policy. More specifically, the Contractor agrees and acknowledges as follows:

- A. The Department hereby specifically authorizes that the Contractor may have access to criminal justice history to the extent such access is necessary or appropriate to enable the Contractor to perform the Services contemplated herein.
- B. The Contractor agrees to limit the use of such criminal justice information for the purposes set to herein.
- C. The Contractor agrees to maintain the confidentiality and security of the criminal justice history information in compliance with federal and state statutes, rules and regulations, and return or destroy such information when it is no longer needed to perform the Services contemplated herein.
- D. In the event that the Contractor's employee(s) fails to comply with the terms hereof, the Contractor shall take corrective action with the employee(s). Such corrective action must be acceptable to the Department. An intentional or knowing violation may also result in civil and criminal violations under federal and state laws. Additionally, the Contractor shall submit for the Department's approval, the Contractor's corrective action plan to

ensure full compliance with the terms hereof. Until such time as the corrective action plan is approved by the Department, the Contractor shall not be authorized to fill any vacant positions unless special authorization is granted in writing by the Department which authorization shall not be unreasonably withheld.

#### **H.10 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.11 TRANSITION**

- A. Upon termination of this Contract, the Contractor agrees to work with the Department under the Department's management supervision for a period of sixty (60) days, prior to the expiration of the Contract, to ensure the orderly transfer and efficient transition from the current Contractor management to either the Department management or management by a third party of the program.
- B. During this transition period, the Contractor shall transfer all Offender records to the Department if requested to do so by the Department. In the event the Contractor requires copies of any records after contract expiration and program management transition, the Department will furnish copies to the Contractor at the Contractor's expense.

#### **H.12 UTILIZATION OF PROGRAM**

The Department agrees that it will use its best efforts to assign appropriately classified Offenders to the program as provided by law; however, the Department does not covenant or represent to the Contractor that it will refer Offenders at 100% capacity. The Department will not be liable to the Contractor for loss of profits or damages incurred by the Contractor in the event that the Department does not refer Offenders at 100% capacity.

#### **H.13 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 paraphernalia, pagers and cellphones to any State 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. Tobacco products are strictly prohibited on TDCJ units, but are allowed in the personal vehicles on on-site employees or in designated smoking areas. All vehicles must be kept locked when not in use and the Contractor's employee must stay with the vehicle when it is unlocked.

**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, 2017.
- 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, 2017, 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 Department Policy, 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 Policy 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 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.3.8; or
- D. Exercising a Termination for Default.
  - 1. In the event of Termination for Default the Department shall offset against Payments owed to the Contractor any reasonable amounts expended by the Department to cure the Event of Default.
  - 2. The Department will have no further obligations to the Contractor after such termination.
  - 3. The Department may also acquire, in the manner the Department considers appropriate, Services similar to those terminated and the Contractor will be liable to the Department for any increase in costs for those Services.
  - 4. The Contractor shall not be liable for any increase in costs if the failure to perform the Contract arises from and without the fault or negligence of the Contractor as follows:
    - a. Acts of God or of the public enemy;
    - b. Acts of the State in either its sovereign or contractual capacity;
    - c. Fires;
    - d. Floods;
    - e. Epidemics;
    - f. Quarantine restrictions;
    - g. Strikes;
    - h. Freight embargoes; and
    - i. Unusually severe weather.

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

#### **I.3.4 Termination for Unavailability of Funds**

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

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

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

#### **I.3.5 Non-Appropriation Effect and Remedy**

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

#### **I.3.6 Termination for Convenience**

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

#### **I.3.7 Termination by Mutual Agreement**

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

#### **I.3.8 Termination Procedures**

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

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

### **I.3.9 Default by the Department**

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

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

### **I.3.10 Remedy of the Contractor**

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

### **I.3.11 Dispute Resolution**

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

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

#### **I.4 NO WAIVER OF RIGHTS**

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

#### **I.5 INDEMNIFICATION OF THE DEPARTMENT**

##### **I.5.1 Acts or Omissions**

The Contractor shall indemnify and hold harmless the State of Texas, the Department and the TBCJ, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from any and all liability, actions, claims, demands, or suits, and all related costs, attorney fees, and expenses arising out of, or resulting from any acts or omissions of the Contractor or its agents, employees, Subcontractors, order fulfillers,

or suppliers of Subcontractors in the execution or performance of the Contract and any purchase orders issued under the Contract. The defense shall be coordinated by the Contractor with the Office of the Attorney General when Texas State Agencies are named defendants in any lawsuit and the Contractor may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General. The Contractor and the Department agree to furnish timely written notice to each other of any such claim.

### **I.5.2 Infringements**

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

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

- A. The Contractor agrees and acknowledges that during the existence of this Contract, the Contractor shall be entirely responsible for the liability and payment of the Contractor's and the Contractor's employees' taxes of whatever kind, arising out of the performances in this Contract. The Contractor agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. The Department and/or the State shall not be liable to the Contractor, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or workers' compensation or any benefit available to a State employee or employee of another governmental entity customer.
- B. The Contractor agrees to indemnify and hold harmless the Department, the TBCJ, the State of Texas and/or their employees, agents, representatives, contractors, and/or assignees from any and all liability, actions, claims, demands, or suits, and all related costs, attorneys' fees, and expenses, relating to tax liability, unemployment insurance and/or workers' compensation in its performance under this Contract. The Contractor shall be liable to pay all cost of defense including attorneys' fees. The defense shall be coordinated by the Contractor with the Office of the Attorney General when Texas State Agencies are named defendants in any lawsuit and the Contractor may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General. The Contractor and the Department agree to furnish timely written notice to each other of any such claim.

**I.6 NO WAIVER OF DEFENSES**

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

**I.7 INDEPENDENT CONTRACTOR**

- A. The Contractor is associated with the Department only for the purposes and to the extent set forth herein, and with respect to the performance of Services hereunder, the Contractor is and shall be an independent contractor and shall have the sole right to supervise, manage, operate, control, and direct the performance of the details incident to its duties hereunder.
- B. Nothing contained herein shall be deemed or construed to create a partnership or joint venture, to create the relationships of an employer-employee or principal-agent, or to otherwise create any liability for the Department whatsoever with respect to the indebtedness, liabilities, and obligations of the Contractor or any other party.

- C. The Contractor shall be solely responsible for (and the Department shall have no obligation with respect to) Payment of all Federal Income, FICA, and other taxes owed or claimed to be owed by the Contractor, arising out of the Contractor's association with the Department pursuant hereto, and the Contractor shall indemnify and hold the Department harmless from and against any and all liability from all losses, damages, claims, costs, penalties, liabilities, and expenses howsoever arising or incurred because of, incident to, or otherwise with respect to any such taxes.

#### **I.8 LAWS OF TEXAS**

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

#### **I.9 ASSIGNMENT**

- A. The Contractor may not assign any interest in this Contract without the prior written consent of the Department which consent the Department may withhold at its sole discretion.
- B. If the Department so elects in its sole discretion, this Contract will terminate upon the occurrence of any of the following:
  - 1. More than fifty (50) percent 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 (10) percent beneficial ownership of the Contractor fails to continue to own at least ten (10) percent.
- 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**

Changes/modifications to this Contract (except Contract extensions, administrative changes, such as changing the Contract Administrator 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. 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 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 agrees to comply with the Immigration Reform and Control Act of 1986, and Immigration Act of 1990 regarding employment verification and retention of verification forms of any individuals who will perform any labor or Services under this Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) enacted on September 30, 1996.

**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) business 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 either hand delivered to the Contractor's office address specified on page 1, block 9 of this Contract or by U.S. Mail, certified, return receipt requested, to:

Tanya Hollas, Contract Specialist II  
Texas Department of Criminal Justice  
Contracts and Procurement Department  
2 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.

**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

	Pages
J.1 Budget Justification Forms and Staffing Plans	7
J.2 HUB Subcontracting Plan	10
J.3 Compliance Standards	1
J.4 Reserved for Future Use	
J.5 Reserved for Future Use	
J.6 Reserved for Future Use	
J.7 Reserved for Future Use	
J.8 Reserved for Future Use	
J.9 TDCJ-PFCMOD Position Vacancy Instructions and Report	3
J.10 Position Control Number (PCN) Listing	1













**BUDGET JUSTIFICATION FORMS AND STAFFING PLANS  
REHABILITATION TREATMENT SERVICES  
ISF COGNITIVE TREATMENT BUDGET DETAIL**

Facility Name:

<b>ANNUAL TREATMENT COSTS - ISF COGNITIVE INTERVENTION TREATMENT</b>							
<b>COST CATEGORY / ITEM</b>	<b>FTEs</b>	<b>Base Period 1</b>	<b>Base Period 2</b>	<b>Option 1 Year 1</b>	<b>Option 1 Year 2</b>	<b>Option 2 Year 1</b>	<b>Option 2 Year 2</b>
<b>Staffing Salary Direct Costs:</b>							
<b>Sub-Total</b>	<b>0.0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>ISF Non-Labor Costs :</b>							
Equipment							
Travel *							
<b>Sub-Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Other Direct Costs (Details Required):</b>							
<b>Sub-Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Indirect Costs:</b>							
Indirect Salaries							
Overhead							
Contractor's Profit Margin							
<b>Sub-Total</b>	<b>0.0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Grand Total</b>	<b>0.0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>Number of Beds</b>						
<b>ISF Per Diem</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>

\* Travel rates for lodging, meals and mileage are limited to State rates

# HUB Subcontracting Plan (HSP)

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

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

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

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

- - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

The TDCJ HUB goals are defined as:

- **17.5 percent for heavy construction other than building contracts. This goal is higher than the statewide goal and therefore must be the utilized goal for this category,**
- **36.9 percent for all building construction, including general contractors and operative builders contracts. This goal is higher than the statewide goal and therefore must be the utilized goal for this category,**
- **32.7 percent for all special trade construction contracts,**
- **23.6 percent for professional services contracts,**
- **24.6 percent for all other services contracts, and**
- **21 percent for commodities contracts.**

The TDCJ has determined that the HUB Category for this contract falls under the  
**All Other Services Contracts Category.**

The HUB Goal for this category is therefore identified as **26.0 %**.

For assistance in completing the HSP contact:

Sharon Schultz @ 936-437-7026

sharon.schultz@tdcj.texas.gov

**SECTION-1: RESPONDENT AND REQUISITION INFORM**

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

(mm/dd/yyyy)

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

**SECTION-2: SUBCONTRACTING INTENTIONS RESPONDENT**

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including goods and services, will be subcontracted. Note: In accordance with 34 TAC §20.11., an "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

- a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:
- Yes, I will be subcontracting portions of the contract. (If Yes, complete Item b, of this SECTION and continue to Item c of this SECTION.)
  - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources. (If No, continue to SECTION 3 and SECTION 4.)
- b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs .
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>).

- c. Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities you listed in SECTION 2, Item b.
- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
  - No (If No, continue to Item d, of this SECTION.)
- d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified HUBs with which you have a continuous contract\* in place with for five (5) years or less meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements".
- Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
  - No (If No, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

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

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

**SECTION-3: SELF PERFORMING JUSTIFICATION** (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4)

Check the appropriate box (Yes or No) that indicates whether your response/proposal contains an explanation demonstrating how your company will fulfill the entire contract with its own resources.

- Yes** (If *Yes*, in the space provided below list the specific page(s)/section(s) of your proposal which explains how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)
- No** (If *No*, in the space provided below explain how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)

**SECTION-4: AFFIRMATION**

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

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

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

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

**Reminder:**

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



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

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

**IMPORTANT:** If you responded "Yes" to SECTION 2, Items c or d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <http://window.state.tx.us/procurement/prog/hub/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

**SECTION B-1: SUBCONTRACTING OPPORTUNITY**

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

Item #: \_\_\_\_\_ Description: \_\_\_\_\_

**SECTION B-2: MENTOR PROTÉGÉ PROGRAM**

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

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

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

**SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY**

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

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

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

Company Name	VID Number	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No
			<input type="checkbox"/> - Yes <input type="checkbox"/> - No

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

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		<input type="checkbox"/> - Yes <input type="checkbox"/> - No

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

Enter your company's name here: _____	Requisition #: _____
---------------------------------------	----------------------

**SECTION B-4: SUBCONTRACTOR SELECTION**

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

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

Item #: \_\_\_\_\_ Description: \_\_\_\_\_

b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas certified HUB and their VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB.

Company Name	Texas certified HUB	VID # <small>(Required if Texas certified HUB)</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

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

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



# HUB Subcontracting Opportunity Notification Form

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

34 Texas Administrative Code, §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).

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

**SECTION: A PRIME CONTRACTOR'S INFORMATION**

Company Name: \_\_\_\_\_ State of Texas VID #: \_\_\_\_\_  
 Point-of-Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_ Fax #: \_\_\_\_\_

**SECTION: B CONTRACTING STATE AGENCY AND REQUISITION INFORMATION**

Company Name: \_\_\_\_\_  
 Point-of-Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_  
 Requisition #: \_\_\_\_\_ Bid Open Date#: \_\_\_\_\_  
(mm/dd/yyyy)

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

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

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2, we must receive your bid response no later than \_\_\_\_\_ on \_\_\_\_\_  
(Central Time) Date (mm/dd/yyyy)

*In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.11(19)(C).*

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

**2. Subcontracting Opportunity Scope of Work:**

**3. Required Qualifications:**  - Not Applicable

**4. Bonding/Insurance Requirements:**  - Not Applicable

**5. Location to review plans/specifications:**  - Not Applicable



Rev. 10/14

## HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report

*This form must be completed and submitted to the contracting agency each month to document compliance with your HSP.*

Contract/Requisition Number: \_\_\_\_\_ Date of Award: \_\_\_\_\_ Object Code: \_\_\_\_\_  
(mm/dd/yyyy) (Agency Use Only)

Contracting Agency/University Name: **Texas Department of Criminal Justice**

Contractor (Company) Name: \_\_\_\_\_

Contractor (Company) Name: \_\_\_\_\_ State of Texas VID #: \_\_\_\_\_

Point of Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_

Reporting (Month) Period: \_\_\_\_\_ Total Amount Paid this Reporting Period to Contractor: \$ \_\_\_\_\_

### Report HUB and Non-HUB subcontractor information

\*Note: Texas certified HUB status can be verified on line at: <https://myopa.cpa.state.tx.us/tpasscmb/search/index.jsp>

Subcontractor's Name	*Texas certified HUB? <small>(Yes or No)</small>	Subcontractor's VID or HUB Certificate Number <small>(Required if Texas certified HUB)</small>	Total Contract \$ Amount from HSP with Subcontractor	Total \$ Amount Paid This Reporting Period to Subcontractor	Total Contract \$ Amount Paid to Date to Subcontractor	Object Code <small>(Agency Use Only)</small>
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
<b>TOTALS:</b>			\$	\$	\$	

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

## TRADE ORGANIZATIONS/DEVELOPMENT CENTERS

ORGANIZATION	MAILING ADDRESS	PHONE	FAX	EMAIL
American Indian Chamber of Commerce of Texas	11245 Indian Trail, Dallas, TX 76679	972-241-6450	972-241-6454	<a href="mailto:tcce@txbiz.org">tcce@txbiz.org</a>
Asian Contractor Association	4201 Ed Bluestein Blvd., Austin, TX 78721	512-926-5400	512-926-5410	<a href="mailto:asiancontractor@gmail.com">asiancontractor@gmail.com</a>
Black Contractors Association – Dallas/Fort Worth	1409 S. Lamar Street, Suite 251, Dallas, TX 75215	214-928-7097	214-485-0467	<a href="mailto:rwashington@blackcontractors.org">rwashington@blackcontractors.org</a>
Dallas Black Chamber of Commerce	2838 Martin Luther King Jr. Boulevard, Dallas, TX 75215	214-421-5200	214-421-5510	<a href="mailto:chum@dbcc.org">chum@dbcc.org</a>
DFW Minority Supplier Development Council	8828 N Stemmons Frwy, 5 <sup>th</sup> Floor, Suite 550, Dallas, TX 75247	214-630-0747	214-637-2241	<a href="mailto:construction@dfwmsdc.com">construction@dfwmsdc.com</a>
Dallas Hispanic Chamber of Commerce	4622 Maple Avenue, Suite. 207, Dallas, TX 75219	214-521-6007	214-520-1687	<a href="mailto:gquezada@dhcc.com">gquezada@dhcc.com</a>
Del Mar College PTAC, Corpus Christi Black C of C	101 Baldwin Blvd., CED-146, Corpus Christi, TX 78404	361-698-1025	361-698-1024	<a href="mailto:ptac@delmar.edu">ptac@delmar.edu</a>
El Paso Hispanic Chamber of Commerce	2401 E. Missouri, El Paso 79903	915-566-4066	915-566-9714	<a href="mailto:treed@elpasombdcenter.com">treed@elpasombdcenter.com</a>
Fort Worth Metropolitan Black Chamber of Commerce	1150 South Freeway, Suite 211, Fort Worth, TX 76104	817-871-6538	817-332-6438	<a href="mailto:bbolden@fwmbcc.org">bbolden@fwmbcc.org</a>
Golden Triangle Minority Business Council	PO Box 21664, Beaumont, TX 77720	409-962-8530	409-722-5402	<a href="mailto:hatcher_beverly@gtmbc.com">hatcher_beverly@gtmbc.com</a>
Greater Asian Chamber of Commerce	8001 Centre Park Dr. STE 160, Austin, TX 78754	512-407-8240	use email	<a href="mailto:Exec.Admin@AustinAsianChamber.org">Exec.Admin@AustinAsianChamber.org</a>
Greater Austin Black Chamber	912 E. 11 <sup>th</sup> Street, Suite A, Austin, TX 78702	512-459-1181	512-459-1183	<a href="mailto:nmc@austinbcc.org">nmc@austinbcc.org</a>
Greater Houston Business Procurement Forum	1707 1/2 South Post Oak Blvd., PMB 273, Houston, TX 77056	832-216-2185	713-436-8333	<a href="mailto:milonthibodeaux@gmail.com">milonthibodeaux@gmail.com</a>
Hispanic Contractors Association - Houston	7 Parker Road, Houston, TX 77076	832-883-5078	Use email	<a href="mailto:randymagdalen@yahoo.com">randymagdalen@yahoo.com</a>
Hispanic Contractors Association –San Antonio	8300 Pat Booker, RM 233 Live Oak, San Antonio, TX 78233	210-444-1100	210-444-1101	<a href="mailto:dave@hcalesa.org">dave@hcalesa.org</a>
Hispanic Contractors Association – Regional	2210 W. Illinois Avenue, Dallas, TX 75224-1636	972-786-0909	972-786-0910	<a href="mailto:yolanda@regionalhca.org">yolanda@regionalhca.org</a>
Houston Hispanic Chamber of Commerce	1801 Main Street, Suite 890, Houston, TX 77002	713-644-7070	713-644-7377	<a href="mailto:mzarate@houstonhispanicchamber.com">mzarate@houstonhispanicchamber.com</a>
Houston Minority Supplier Development Council	Three Riverway, Suite 555, Houston, TX 77056	713-271-7805	713-271-9770	<a href="mailto:angela.freeman@hmsdc.org">angela.freeman@hmsdc.org</a>
National Association of Minority Contractors Inc.– Houston	3825 Dacoma St., Houston, TX. 77092	713-843-3791	713-843-3743	<a href="mailto:info@namctexas.org">info@namctexas.org</a>
San Antonio Hispanic Chamber of Commerce	200 East Grayson, Suite 203, San Antonio, TX 78215	210-225-0462	210-225-2485	<a href="mailto:briannad@sahcc.org">briannad@sahcc.org</a>
Southwest Minority Supplier Development Council	912 Bastrop Highway, Ste. 101, Austin, TX 78741	512-386-8766	512-386-8988	<a href="mailto:smsdc@smsdc.org">smsdc@smsdc.org</a>
	4100 NW Loop 410 Ste 230, San Antonio, TX 78229	512-659-2160	Use email	<a href="mailto:xenia@smsdc.org">xenia@smsdc.org</a>
Texas Association of African American Chambers of Commerce (TAAACC)	P.O. Box 13064, Austin, TX 78711-3064	512-535-5610	Use email	<a href="mailto:taaaccl79@yahoo.com">taaaccl79@yahoo.com</a>
Texas Association of Historically Underutilized Businesses	P.O. Box 684726, Austin, TX 78768-4726	512-468-0113	915-5857751	<a href="mailto:rmata@tgsaustin.com">rmata@tgsaustin.com</a>
Texas Association of Mexican American Chambers of Commerce (TAMACC)	P.O. Box 41780, Austin, TX 78704	512-444-5727	512-444-4929	<a href="mailto:panton@tamacc.org">panton@tamacc.org</a>
Tri-County Black Chamber of Commerce	P.O. Box 88376, Houston, TX 77288	832-875-3977	281-336-0870	<a href="mailto:procurement@tcbcc.org">procurement@tcbcc.org</a>
U.S. Hispanic Contractors Association de Austin	920 E Dean Keeton, Austin, TX 78705	512-922-0507		<a href="mailto:info@ushca-austin.com">info@ushca-austin.com</a>
U.S. Pan Asian American Chamber of Commerce SW	202 E. Border Street, Suite 144, Arlington, TX 76010	682-367-1393	817-469-9485	<a href="mailto:gmcdermott@uspaacc-sw.org">gmcdermott@uspaacc-sw.org</a>
Women's Business Council - Southwest	2201 North Collins, Suite 158, Arlington, TX 76011	817-299-0566	817-299-0949	<a href="mailto:asteale@wbcsouthwest.org">asteale@wbcsouthwest.org</a>
Women's Business Enterprise Alliance (WBEA)	9800 NW Frwy, Suite 120, Houston, TX 77092	713-681-9232	713-681-9242	<a href="mailto:bids@wbea-texas.org">bids@wbea-texas.org</a>
Women Contractors Association (WCA)	134 Vintage Park Blvd. Houston, TX 77070	713-807-9977	713-807-9917	<a href="mailto:director@womencontractors.org">director@womencontractors.org</a>

Texas Department of Criminal Justice  
Updated – January 2015



# HUB Subcontracting Plan (HSP)

## QUICK CHECKLIST

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

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

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

	STANDARD	ACCEPTABLE	UNACCEPTABLE	PAYMENT ADJUSTMENT CALCULATION
1.	Contractor shall staff all positions with qualified employees, including special certification and licenses where applicable.	Less than or equal to 60 calendar days	Greater than 60 calendar days	Reduce by \$100.00 for each calendar day a position remains vacant in excess of 60 calendar days.
2.	Contractor shall follow all requirements regarding initial employment and re-employment of employees, i.e. obtaining and maintaining a copy of satisfactory background checks and obtaining and maintaining all Department approvals for employees with criminal convictions / pending charges. These requirements are mandatory prior to being assigned to a position and having contact with offenders	100%	Less than 100%	Reduce \$50.00 per day.
3.	Contractor shall obtain from Department and maintain a copy in employee files, prior written approval to hire all Upper-Level Management staff as directed.	100%	Less than 100%	Reduce by \$150.00 for each day the position was filled with a non-approved individual.
4.	Contractor shall maintain valid current insurance policies as directed.	Valid current insurance policies.	Lapsed policy or policy not meeting Contract requirements.	Reduce \$1,000.00 per calendar day for which mandated insurance coverage was not in effect. Contractor has 20 days to cure before this becomes an Event of Default.
5.	Contractor shall submit a written response to the Department detailing the corrective action taken to address any items of non-compliance within twenty (20) days of receiving written notice of the item from the Department	Less than or equal to 20 Calendar Days from the first response	Greater than 20 Calendar Days from the first response	Reduce by \$150.00 for each day past the acceptable response time.
6.	Offenders shall have clinical progress notes documented weekly.	100%	Less than 100%	Reduce by Contractor Per Diem Rate for each day treatment file not reflecting offender's weekly progress note.
7.	Contractor shall document all programming hours (or inability to provide said programming).	100%	Less than 100%	Reduce by \$150.00 for each session not held in accordance with the Department's approved ISF Cognitive Intervention Treatment schedule unless prior Department approval has been received regarding cancellation of sessions.
8.	Staff providing Cognitive Intervention Programming shall obtain a certificate of training in a Cognitive Intervention Program approved by the Department.	Less than or equal to 90 calendar days	Greater than 90 calendar days	Reduce by \$100.00 for each calendar day in excess of 90 calendar days.

TDCJ has the right to withhold the monthly payment or temporarily suspend some or all of the payment adjustments identified in the above table.

Decisions to suspend Payment adjustments will be made by the TDCJ-PFCMOD Director and will be conveyed to the Contractor by letter. Decisions and notifications to reinstate Payment adjustments will be handled in a similar manner.

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE**  
**PRIVATE FACILITY CONTRACT MONITORING / OVERSIGHT DIVISION**  
**INSTRUCTIONS FOR MONTHLY POSITION VACANCY REPORT**

Position ID Number	<p>The <b>permanent</b> identification number established by the facility for each position on the current staffing plan defined in the contract.</p> <p>This number should correspond with the Position Control Number (PCN) listing.</p>
Position Title	<p>The position title on the current staffing pattern that corresponds to the departing and replacing employee.</p>
a. Departing Employee	<p>Name of the employee assigned to the position ID number that is being removed from the position ID number. This may be as a result of a termination or promotion.</p>
b. Replacing Employee	<p>Name of the employee being permanently assigned to the position ID number. This may be as a result of a promotion or being newly hired. The assigned employee must meet the satisfactory completion of all requirements designated for the position.</p>
1. Date Vacated	<p>The departing employee's last day on the job in a paid status or the last day of any paid leave entitlements, such as vacation leave. This includes employees placed in military leave status upon exhausting all paid leave entitlements.</p> <p>Positions filled by employees that are in a workers' compensation or family medical leave (FML) status will be considered vacant once the twelve (12) week time period is exhausted per the Contract. <u>However, these positions should be listed on the Position Vacancy Report immediately upon notification that workers' compensation or FML status begins, notating the specific leave status.</u></p>
2. Date Filled	<p>Positions are to be reported filled on the day following the completion of all requirements for the specific position based on contract requirements.</p>
3. Date Pre-Service / Orientation Completed	<p>The date the replacing employee finishes pre-service training or orientation based on the requirements of the position.</p> <p><u>A copy of the pre-service training certificate must be attached to the Position Vacancy Report for newly hired employees.</u></p>
4. Date of Background Check Received	<p>The date on the pre-employment criminal history inquiry or notification letter from the Department concerning the results of a criminal background check.</p> <p><u>A copy of the of either the pre-employment criminal history inquiry or the notification letter must be attached to the Position Vacancy Report.</u></p>

- 
5. Date Pre-Employment Drug Test Received      The date of notification that a satisfactory pre-employment drug test was received.
- 
6. Date of Hire      The date the employee is hired with the contractor.
- 
7. Required Certification Completed      Positions requiring certification must be designated as to whether the appropriate certification has been completed by indicating YES or NO.  
A copy of the certification must be attached to the Position Vacancy Report.
- 
8. Date of TDCJ Approval for Upper Level Management      Upper level management positions require Department approval.  
A copy of the TDCJ approval letter must be attached to the Position Vacancy Report.
- 
9. Date OJT Completed      The date on the job training is completed. This may occur after the position is filled.
- 
10. Number of Days Position Vacant      The calculation starts the day after the position has been vacated and ends on the day prior to the date filled.

# Position Vacancy Report

Facility Name: \_\_\_\_\_

Month Of: \_\_\_\_\_

Category of Staff (Security, Support Ops & Programs, etc):													
Position ID Number	Position Title	a. Departing Employee	1. Date Vacated	REPORTS AND ATTACHMENTS ARE DUE BY THE 5TH WORKING DAY OF THE FOLLOWING MONTH.									
		b. Replacing Employee	2. Date Filled	* 3. Date Pre Service / Orient Completed	* 4. Date of Background Check Rec'd	5. Date of Pre Emp Drug Test Rec'd	6. Date of Hire	* 7. Required Certification Completed	* 8. Date of TDCJ Approval for Upper Lvl Mngmt	9. Date OJT Complete	10. Number of Days Position Vacant		
		a.											
		b.											
		a.											
		b.											
		a.											
		b.											
		a.											
		b.											
		a.											
		b.											

*I hereby confirm that the above information is accurate and correct. This report may be used in calculating fiscal sanctions regarding position vacancies.*

Preparer: \_\_\_\_\_

Total Positions in Staffing Pattern: \_\_\_\_\_  
 Total Vacant: \_\_\_\_\_  
 Total Filled: \_\_\_\_\_

Printed Name \_\_\_\_\_  
*Facility Warden or Administrator*

Signature & Date \_\_\_\_\_  
*Facility Warden or Administrator*

\*Copies of Pre-Service Training Certificates, Background Checks and Required Certifications must be attached for all positions filled during the month.

Positions filled by promotion of current staff should be indicated by writing promotion through #3-6.

Copies of approval letters must be attached for all newly filled Upper Level Management positions.

Position Control Number (PCN) List

Facility Name: \_\_\_\_\_  
 Month & Year: \_\_\_\_\_

PCN#	POSITION TITLE	FTE	EMPLOYEE NAME	HIRE DATE
<b>INDIRECT ADMINISTRATION - ISF COGNITIVE INTERVENTION TREATMENT PROGRAM</b>				
<b>TOTAL INDIRECT ADMINISTRATION</b>		<b>0.0</b>		
<b>DIRECT STAFF - ISF COGNITIVE INTERVENTION TREATMENT PROGRAM</b>				
<b>TOTAL DIRECT PROGRAM STAFF</b>		<b>0.0</b>		
<b>GRAND TOTAL</b>		<b>0.0</b>		

**SECTION K – REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS**

**(NOTE TO OFFEROR: RESPONSES MUST BE SUBMITTED ON THESE ORIGINAL FORMS, AS THEY BECOME, AND ARE INCORPORATED BY REFERENCE, PART OF THE CONTRACT FOR THE AWARDED CONTRACTOR)**

**K.1 HISTORICALLY UNDERUTILIZED BUSINESS (HUB) REPRESENTATION****K.1.1 Definition**

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

**K.1.2 Representation**

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

**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 (25) percent 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 Section 231.006, a proposal must include names and social security numbers of each person with at least a twenty-five (25) percent ownership of the business entity submitting a proposal.

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

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

**K.3 FRANCHISE TAX REPRESENTATION**

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

**K.4 TYPE OF BUSINESS ORGANIZATION**

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

- A. It operates as [ ] a corporation incorporated under the laws of the State of \_\_\_\_\_, [ ] 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 C, Rule 20.38, 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 Administrative Code, Title 34, Part 1, Chapter 20, Subchapter C, Rule 20.32 (68).

## 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 Offeror's ability to perform its obligations under this Contract; and
  - 4. The Contractor shall provide in writing, to the Contract Administrator, 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.

#### **K.6.8 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.6.9 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.6.10 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, made to any competitor or any other person engaged in such line of business.

**K.6.11 Ethics****K.6.11.1 Conflict of Interest**

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

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

**K.6.11.2 No Gratuities**

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

**K.6.12 No Compensation**

Pursuant to Texas Government Code, Section 2155.004, the Offeror has not received compensation for participation in the preparation of the specifications for this proposal.

Under Texas Government Code, Section 2155.004, the Offeror certifies that the individual or business entity named in this proposal or Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

#### **K.6.13 Contracting with Executive Head of State Agency**

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

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

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

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

Date of Employment with Offeror: \_\_\_\_\_

#### **K.6.14 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.6.15 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 on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's System for Award Management (SAM, <https://www.sam.gov>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list. Contents of EO 13224 may be viewed by accessing the following website: <http://www.whitehouse.gov/news/orders/>.

#### **K.6.16 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, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five (5) year period preceding the date of the 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.6.17 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).

---

---

---

---

**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: \_\_\_\_\_ or

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

**K.10 POINT OF CONTACT**

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

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

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

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

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

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

**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.

\_\_\_\_\_  
Name of Offeror

696-PF-15-P026  
Solicitation No. \_\_\_\_\_

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

\_\_\_\_\_  
Date

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

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

**SECTION L – INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS****L.1 AMENDMENTS TO SOLICITATIONS**

- A. If this solicitation is amended all terms and conditions which are not modified remain unchanged.
- B. The Department will post amendment(s) to this solicitation for downloading in .pdf format via the Texas Electronic State Business Daily (ESBD) at the following address: <http://esbd.cpa.state.tx.us/>.
- C. Offerors shall acknowledge receipt of all amendment(s) to this solicitation by signing and returning the amendment(s), identifying the amendment number and date in the space provided for this purpose on page 1, block 8, or by letter.
- D. The Department shall receive the acknowledgment by the time specified for receipt of the proposals.
- E. Failure to acknowledge amendment(s) may subject proposal to rejection.

**L.2 LATE SUBMISSIONS, MODIFICATIONS AND WITHDRAWALS OF PROPOSALS**

- A. Proposals must be time stamped at the office designated in the solicitation on or before the hour and date specified.
- B. Any proposal received at the designated location after the exact time specified will not be considered.
- C. Proposals cannot be altered, amended or modified by telegram, fax or otherwise after closing date and time.
- D. Alterations made before closing date and time should be initialed by the Offeror or its authorized agent.
- E. No proposal can be withdrawn after closing date and time without approval by the Department based on an acceptable written reason.

**L.3 SIGNATURES ON PROPOSAL SUBMITTED**

- A. Proposals from a partnership shall be signed in the firm name by at least one general partner or in the firm name by an Attorney-in-fact.
- B. If signed by an Attorney-in-fact, there shall be attached to the proposal a Power of Attorney evidencing authority to sign the proposal, dated and executed by all partners in the firm.
- C. Proposals from a corporation shall have the correct corporate name thereon and the signature of an authorized officer of the corporation.
- D. Title of office held by the person signing for the corporation shall appear below the signature of the officer.

- E. Proposals from an individual doing business under a firm or fictitious name shall be signed in the name of the individual doing business under the proper firm name.
- F. Proposals of the joint venture shall be signed by all members or by a member of the joint venture if there is attached to the proposal a copy of the Joint Venture Agreement evidencing that the proposal is signed by the member who has authority to bind the joint venture.

#### **L.4 PROPOSAL ACCEPTANCE PERIOD**

- A. All proposals will be valid for two hundred forty (240) days after the submission date and will constitute an irrevocable proposal to the Department for the two hundred forty (240) day period.
- B. Such period may be extended beyond the two hundred forty (240) day time upon mutual agreement of both parties.

#### **L.5 CONTRACT AWARD**

- A. The Department will award a Contract(s) resulting from this solicitation to the responsible Offeror(s) whose proposal(s), conforming to this solicitation, will be most advantageous to the Department, cost or price, technical and other factors, specified elsewhere in this solicitation, considered.
- B. The Department may (a) reject any or all proposals if such action is in the public interest, (b) accept other than the lowest priced proposal, and (c) waive minor informalities and minor irregularities in proposals received.
- C. A written award or acceptance of proposal mailed or otherwise furnished to the successful Offeror within the time for acceptance specified in the proposal shall result in a binding Contract without further action by either party.
- D. The Department reserves the right, at its sole discretion, to make an award from this solicitation. The Department reserves the right to not make an award in the event of inconsistent rates and/or the absence of available competition.

#### **L.6 RIGHTS OF THE DEPARTMENT**

- A. The Department reserves the right to waive, change, add or delete any terms or conditions of this solicitation.
- B. The Department reserves the right to reject any one proposal and/or all proposals or portions of proposals submitted in response to this RFP.
- C. The submission of a proposal has the effect of waiving proprietary rights or confidentiality.
- D. All proposals become the property of the Department.
- E. The Department reserves the right to use for its benefit ideas contained in the proposals submitted.

- F. The Department is not liable for any costs or damages that may be incurred by an Offeror(s) or prospective Offeror(s) in the preparation, formulation or presentation of a proposal(s).
- G. In case of ambiguity or lack of clarity, the Department may adopt such interpretations as may be advantageous to the Department.
- H. The Department may at its discretion request Offerors to make an oral presentation to Department representatives in support of their proposals.
- I. Upon review of proposals, the Department may select the Offeror's proposal most advantageous to the Department, in its judgment, with whom to negotiate a final definitive Contract.
- J. Such determination shall be solely at the discretion of the Department. All representations made by the Department are subject to the availability of legislative appropriations and do not represent an obligation on the part of the State of Texas, the Department or the TBCJ.
- K. The Department reserves the right to withdraw this solicitation at any time for any reason.
- L. The Department reserves the right to award no Contract and to solicit additional proposals at a later time.
- M. The Department incurs no obligation regarding this solicitation unless and until a Contract is fully executed by the parties. However, all proposals received by the Department will remain confidential until the evaluation process is complete.

## L.7 PROPOSAL PREPARATION INSTRUCTION

### Purpose of Instructions

These instructions are designed to assure the submission of information essential to the understanding and the comprehensive evaluation of the Offeror's proposal.

Proposals shall be prepared in accordance with these instructions providing all required information in the format specified.

Failure of a proposal to show compliance with these instructions may be grounds for exclusion of the proposal from further consideration.

### Submission of Proposals

It is the Offeror's responsibility to ensure that the proposal is delivered to the individual and address shown on page 1, block 5 of the Solicitation, Offer and Award form by the deadline. The Offeror must complete and sign all required forms, including all required written material, by the proposal closing date and time. Each package received must be marked with the Department's solicitation number. Each page of the proposal must include the name of the firm making the proposal. The Offeror must clearly indicate if any of the information contained in the proposal is confidential or proprietary in nature by applying a legend to the page that indicates confidential or proprietary information is contained on said page. Further, the Offeror must indicate which paragraph contains confidential or proprietary information by

inserting the words "confidential/proprietary information" in bold type, enclosed by parentheses at the beginning of the paragraph containing such information.

- A. Proposals must be typed or printed on standard letter paper (8-1/2" x 11"), pages numbered, a table of contents included and sections clearly tabbed. Proposals shall be submitted in two (2) volumes as described below.
- B. Offerors are to submit **each volume in an unbound original (suitable for photocopying) with three (3) additional bound copies, with the exception of Volume Two, which six (6) bound copies shall be submitted, and one (1) "read only" Compact Disc.**
- C. Proposals and amendments shall be submitted in sealed envelopes prior to the proposal closing date and time with the solicitation number annotated immediately below the return address on the envelope. Sealed proposals shall be submitted to the address noted on page 1, block 5 of the Solicitation, Offer and Award form (first page). **E-mail and facsimile proposals will not be accepted.**
- D. Prospective Offerors are asked to bear in mind that all material submitted should be directly pertinent to the requirements of the solicitation. Extraneous narrative, elaborate brochures, uninformative public relations material, and other similar documents shall not be submitted.
- E. **Failure to submit all required documentation by proposal closing date may result in disqualification of the proposal from further consideration.**

#### **L.7.1 Volume One – Introductory Portion of Proposal**

This section shall consist of the Offerors description of its organizational capabilities and qualifications and plans to satisfy and support the requirements of this solicitation. **NO PRICING DATA SHALL BE SUBMITTED IN THIS SECTION.**

##### Volume One, Section 1 – Contract Forms

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

- A. Solicitation, Offer and Award form (with amendment(s) noted on this page or signed amendment(s) attached to this form);
- B. Section G.3, Invoices and Payments, remittance address (if not electing to receive direct deposit); and
- C. Section K, Representations, Certifications and other statements (on original forms).

##### Volume One, Section 2 – Information Section

- A. Name, Address, e-mail address, telephone number and fax number of Offeror and all Co-Offerors. Also, identify by name, title, e-mail address, telephone number and fax number of a contact person for all inquiries. The contact person shall be responsible for fielding all inquiries from the Department and providing answers.

- B. Business form of Offeror (e.g., corporation, partnership, etc.), if applicable.
1. If a corporation, include the date and state of incorporation.
  2. Names and addresses of principal officers, directors, or partners.
  3. A brief biography and complete resume of the person or persons who shall operate/manage the programs, including the proposed Facility Director (see Section G.2.4).
- C. The name and address of the Offeror's professional liability insurance carrier, along with a statement of liability from the carrier(s) issuing the policies that such policies are available to the Offeror. For the purpose of responding to this solicitation, Offer will not be required to purchase insurance, but must show the ability to provide such insurance as specified in Section H.1 if the Offeror's proposal is selected.
- D. Documentation from the appropriate State entity which indicates the Offeror is properly certified to conduct business in the State of Texas and not in debt or owing to the State of Texas (e.g., The Certificate of Existence from the Texas Secretary of State and the Franchise Tax Account Status from the Texas Comptroller's Accounts). In the event the Offeror is not a corporation, the Offeror shall state that they are not a corporation and certify that they are not in debt owing to the State of Texas.
- E. Project Schedule: A time schedule shall submitted by the Offeror that outlines the entire project from award of contract to when full operation can begin. Time is of the essence and an expedited schedule is preferred.
- F. Certificate showing qualified individuals have been trained in the Cognitive Intervention Program, a minimum Training for Trainers Certificate.

#### Volume One, Section 3 – Organization Qualifications and Past Performance

This section shall contain a clear description of the entity submitting the proposal, including an outline of organizational capabilities, goals and purposes.

Offerors shall furnish descriptions of all similar services provided for other institutions and government agencies for the past five (5) years, including names, titles, phone numbers and e-mail addresses of reference contacts, contract numbers and dates of performance. The Department reserves the right to contact all references.

Offerors shall include a list of any contracts that have been cancelled or terminated within the past five (5) years, along with an explanation of the cancellation and the name, e-mail addresses and phone number of a contact person from the institution or agency that cancelled the Contract. Offerors shall also include a list of all legal actions pending against their organization and the outcomes of any final judgements within the last 5 years.

### **L.7.2 Volume Two – Technical Portion of Proposal**

#### Volume Two, Section 1

- A. This section of the proposal shall consist of the Offeror's response to the requirements in Section C and shall use the same organizational format as Section C.

- B. The Offeror shall also identify all exceptions it takes to the technical requirements in Section C of the Solicitation and all deviations for which it requests approval.
- C. NO PRICING DATA SHALL BE SUBMITTED IN THIS VOLUME.
- D. In the technical portion of the proposal, Offeror shall cross-reference the specific section and page number of the Operational Plan that details the policies and procedures relating to the specific section. This volume should include, but not limited to, the following items:
  - 1. Complete program description;
  - 2. Offeror's Operational Plan; and
  - 3. Organizational Chart.

Volume Two, Section 2 – Solicitation Compliance and Exceptions or Deviations

- A. In this Section, the Offeror shall indicate compliance with solicitation requirements set forth in Sections E through I. It is not necessary to respond on a paragraph by paragraph basis, for example, if the Offeror agrees to the terms of Sections E through I of the Contract in its entirety, a single statement to that effect will suffice.
- B. For the purpose of facilitating discussions, for every instance where the Offeror does not propose to comply or agree to a requirement, the Offeror shall propose an alternative and describe its reasoning therefore.

**L.7.3 Volume Three – Business/Cost Proposal**

- A. In this section, the Offeror shall also provide its detailed price proposal, including a budget narrative, complete breakdown of how the price was derived (material, direct labor, overhead, general and administrative expenses, other direct costs, profit, etc.) to provide the Services specified in Section C.
- B. Offeror shall further disclose the Indirect Costs. A detail of the various cost components used to justify the percentage of indirect costs will be required. The Department has the authority to deem the proposal non-responsive if detail justification in a line item format is not provided.
- C. Offeror shall also disclose its profit margin in providing the services requested by the Department in this proposal.
- D. The following Contract sections shall be completed and included in this section:
  - 1. Section B.2, Pricing Schedule;
  - 2. Exhibit J.1, Budget Justification Forms and Staffing Plans. An electronic copy compatible with Microsoft Excel shall also be submitted.
- E. Offeror shall submit a copy of the last annual fiscal report and a copy of the last independent audit report, including management letter and response.

**L.7.4 Volume Four – HUB Subcontracting Plan**

Offerors are required to submit a HUB Subcontracting Plan (HSP) in accordance with Exhibit J.2. For information on filling out the HSP, please contact Sharon Schultz at (936) 437-7026. **Responses that do not include a completed HSP shall be rejected pursuant to Texas Government Code, Section 2161.252(b).**

**L.8 DISCUSSION AND CORRESPONDENCE**

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

Tanya Hollas, Contract Specialist II  
 Texas Department of Criminal Justice  
 Contracts and Procurement, Client Services and Governmental Contracts Branch  
 Two Financial Plaza, Suite 525  
 Huntsville, Texas 77340  
 Facsimile: (325) 223-0310  
 E-mail: tanya.hollas@tdcj.texas.gov

- B. Questions concerning any technical aspect of the solicitation must be submitted in writing (e-mail and facsimile transmission is acceptable). The Offeror's question(s) shall only be to clarify specific provisions in this Request for Proposal and shall reference the specific section that requires clarification. Written answers to the clarification will then be provided to all parties requesting copies of the solicitation through the Client Services and Governmental Contracts Branch. Offerors should only rely on the written information provided in this manner. Offerors are specifically barred from making contact with any Department personnel involved in this solicitation for the purpose of discussing their proposal.
- C. Offerors are reminded that July 20, 2015 at 1:00 p.m. is the last day to submit written questions for clarification by the Department. The Offeror is specifically cautioned against relying on any oral information. The responsiveness of each proposal will be evaluated upon the written instructions given in the solicitation and any amendments thereto. Unauthorized contacts with Department personnel could result in the proposal being rejected in its entirety.
- D. The Department will post answers to all questions in a form of an amendment, and all amendments to this RFP will be available for downloading in .pdf format via the Texas Electronic State Business Daily (ESBD) at the following address:  
<http://esbd.cpa.state.tx.us/>.

**L.9 LEGISLATIVE BUDGET BOARD (LBB) POSTINGS**

After award of Contract(s), information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Texas Government Code, Chapter 552 (the "Texas Public Information Act"). Any part of the solicitation response that is of a proprietary nature must be clearly and prominently marked as such by the Offeror. **For major contracts, the proposal submitted by the awarded Contractor is subject to public access on the Legislative Budget Board's website in accordance with Texas Government Code, Section 322.020. Within five (5) business days of awarded Contractor's receipt of Contract for signature, the awarded Contractor must deliver to the TDCJ Contracts and Procurement Department one (1)**

CD of its complete proposal, to include clarification responses and negotiated Best and Final Offer. The CD must contain a copy of the awarded Contractor’s complete proposal, in searchable .pdf format, which has been excised, blacked out, or otherwise redacted information from its complete proposal that the awarded Contractor considers to be confidential and exempt from public disclosure under the Texas Public Information Act, Texas Government Code, Chapter 552 (this should be a de minimis portion, if any of the Contractor’s proposal, such as copyrighted material, proprietary information, social security numbers, deployment plans, shift staffing plans, etc.). The CD shall also contain an appendix for the Contractor’s complete proposal which provides a cross reference for the location of all information redacted by the Contractor and a general description of the redacted information. The CD should be entitled “For Public Release: Redacted Version of [Name of awarded Contractor]’s Proposal and Exhibits, Department Solicitation Number 696-PF-15-P025.”

**L.10 PRE-PROPOSAL CONFERENCE**

- A. A Pre-Proposal Conference is scheduled for Thursday, July 16, 2015 at 9:00 a.m. at the Texas Prison Museum located at 491 SH 75 North Huntsville, Texas 77320.
- B. If, in the opinion of the Department, local weather conditions preclude safe travel to the Pre-Proposal Conference, the Department reserves the right to reschedule it to another day and time.
  - 1. If extreme weather conditions are predicted by the National Weather Service on the day of the Pre-Proposal Conference, contact the individual whose name appears in Section L.8 for rescheduling information.
  - 2. The responsibility of obtaining any cancellation and reschedule information is strictly that of the Offeror.
  - 3. Attendance is not mandatory, however, the Department will not be held responsible for any information discussed at the Pre-Proposal Conference.

**L.11 SUMMARY OF KEY DATES FOR PROPOSAL SUBMISSION**

July 20, 2015	1:00 p.m.	Last Day to Submit Written Questions for Clarification by Department
July 31, 2015	3:00 p.m.	Deadline for Department Receipt of Proposals In Huntsville
November 1, 2015		Service Commencement Date

**SECTION M - EVALUATION FACTORS FOR AWARD****M.1 SELECTION PROCESS**

Selection of proposal for award will be based on the "Best Value" to the Department. The Department will solely determine the "Best Value" through evaluation of each proposal. Once the Department evaluates and deems the proposal technically acceptable, the Department reserves the right, at its sole discretion, to award based on price.

In accordance with Texas Government Code, Section 2155.074, vendor performance may be used as a factor in the award.

The following are evaluation criteria. While negotiation of proposals may be held, Offerors are advised to submit their most competitive price and technical proposals.

**M.1.1 Cost (45%)****M.1.2 Programs and Services (40%)****M.1.3 Experience (5%)**

Experience will be evaluated based upon Offerors' experience operating and managing facilities and performing services of a like nature as being proposed.

**M.1.4 Past Performance (5%)**

Past Performance will be evaluated based upon information provided by references listed in Offerors' proposal and upon information the Department may obtain from other sources.

**M.1.5 Financial Strength (5%)**