

SOLICITATION, OFFER AND AWARD

1. CONTRACT NO. 696-PS-19-19-C040	2. SOLICITATION NO. 696-PS-19-P003	3. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFO) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	4. DATE ISSUED September 26, 2018
--------------------------------------	---------------------------------------	---	--------------------------------------

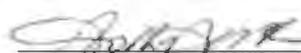
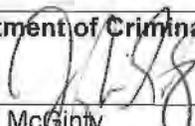
SOLICITATION

5. Sealed offers will be received by the Department until 3:00 p.m. local time on October 12, 2018 , and submitted to: Texas Department of Criminal Justice Contracts and Procurement Department Client Services and Governmental Contracts Branch Two Financial Plaza, Suite 525 Huntsville, Texas 77340 Attention: 696-PS-19-P003	6. FOR INFORMATION CONTACT: Steven Tilley, CTPM, CTCM Contract Specialist PHONE: (936) 437-7031 FAX: (325) 223-0310 E-MAIL: steven.tilley@tdcj.texas.gov
---	--

OFFER (Must be fully completed by Offeror)

7. DISCOUNT FOR PROMPT PAYMENT: ➔	10 CALENDAR DAYS 5 %	20 CALENDAR DAYS 2 %	30 CALENDAR DAYS 1 %	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
	A-001	10/05/2018		
9. NAME AND ADDRESS OF OFFEROR: ➔	TEAM Forensic Services, PLLC PO Box 9153 Huntsville, TX 77340		10. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or Print) Holly A. Miller, PhD Owner	
11. TELEPHONE NO. (Include area code) 936-499-4452	12. SIGNATURE 		13. OFFER DATE 10/12/18	

TO BE COMPLETED AT TIME OF AWARD

Document Type: 9 Statutory Cite: Texas Government Code, Section 500.004 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 the 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 amount for the Base Period (January 1, 2019 – August 31, 2019) shall not exceed \$48,000.00.	
TEAM Forensic Services, PLLC By:  Name: Holly A. Miller, Ph.D., LSOTP-S Title: Owner Date: 12/14/18	Texas Department of Criminal Justice By:  Name: Jerry McGinty Title: Chief Financial Officer Date: 12/23/18

The following items are mutually agreed to by TEAM Forensic Services, PLLC and the Department and are hereby incorporated in this Contract, including revisions made by Amendment A-001.

1. The Solicitation, Offer and Award form has been replaced to add the Contract number, the Contractor and authorized signor's name and title in the Contractor signature block, and the not to exceed amount.
2. Section A, Definitions, ASOTP definition has been added; Contractor has been revised to include the name of the Contractor; and Service Commencement Date definition has been revised to reflect new Service Commencement Date.
3. Section B.1.1, Services Being Acquired, has been revised to include updated language.
4. Section B.1.2, Pricing Instructions, has been hereby deleted.
5. Section B.2, Pricing Schedule, has been revised to include the Contractor's pricing and to reflect new Service Commencement Date.
6. Section C.4.A, Mandatory Requirement for Sex Offender Treatment Providers, has been revised to include updated language.
7. Section C.5.B and C.5.D, Mandatory Requirements for Sex Offender Treatment Providers, have been revised to include updated language.
8. Section F.1, Contract Term, has been revised to reflect new Service Commencement Date.
9. Section G.2.4, Project Manager, has been revised to include the Contractor's response.
10. Section K, Representations, Certifications, and Other Statements of Offerors, has been revised to include the Contractor's responses to subsections K.1.2, K.2, K.4, K.6.14, K.8, K.9, K.10 and K.11.
11. Sections L and M of this Contract are hereby deleted.

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	2
SECTION A - CONTRACT DEFINITIONS	7
SECTION B – SUPPLIES OR SERVICES AND PRICES/COSTS	9
B.1 SERVICES AND PRICES/COSTS	9
B.1.1 Services Being Acquired	9
B.2 PRICING SCHEDULE	10
B.3 ALLOWABLE COSTS	11
B.4 NON-ALLOWABLE COSTS	11
SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT	12
C.1 BACKGROUND	12
C.2 GENERAL DUTIES AND OBLIGATIONS	12
C.3 LOCATION OF TREATMENT SITE	12
C.4 MANDATORY REQUIREMENTS FOR SEX OFFENDER TREATMENT PROVIDERS	12
C.5 MANDATORY REQUIREMENTS FOR SEX OFFENDER TREATMENT SERVICES	13
SECTION D – RESERVED FOR FUTURE USE	16
SECTION E - INSPECTION AND ACCEPTANCE	17
E.1 INSPECTION OF SERVICES	17
E.2 INSPECTION BY STATE EMPLOYEES	17
E.3 MONITORING CRITERIA	17
E.4 AUTHORITY TO AUDIT	18
E.5 AUDITS BY OTHER AGENCIES	18
E.6 FRAUD, WASTE OR ABUSE.....	18
SECTION F - DELIVERIES OR PERFORMANCE	20
F.1 CONTRACT TERM.....	20
SECTION G - CONTRACT ADMINISTRATION DATA	21
G.1 CLAUSES INCORPORATED BY REFERENCE	21
G.2 AUTHORITY – AUTHORIZED REPRESENTATIVE, CONTRACT SPECIALIST, CONTRACT MONITOR AND PROJECT MANAGER	21
G.2.1 Authorized Representative	21
G.2.2 Contract Specialist	21
G.2.3 Contract Monitor.....	22
G.2.4 Project Manager.....	22
G.3 INVOICE REQUIREMENTS	23
G.4 PAYMENTS	23
G.4.1 Late Payment.....	24
G.4.2 Withholding of Payment	24
G.4.3 Payment of Debt Owed to the State of Texas.....	24
G.4.4 Right to Offset.....	25
SECTION H - SPECIAL CONTRACT REQUIREMENTS	26
H.1 INSURANCE REQUIREMENTS	26
H.1.1 Required Provisions	26
H.2 SUBCONTRACTORS	27
H.2.1 Insurance	28

H.3	RESERVED FOR FUTURE USE	28
H.4	RESERVED FOR FUTURE USE	28
H.5	RESERVED FOR FUTURE USE	28
H.6	UTILIZATION OF PRODUCTS AND MATERIALS PRODUCED IN TEXAS.....	28
H.7	CRIMINAL HISTORY INFORMATION COMPLIANCE.....	28
H.8	OTHER CONFIDENTIAL OR SENSITIVE INFORMATION.....	29
H.9	BOOKS AND RECORDS.....	30
H.10	ORGANIZATIONAL NAME CHANGE.....	30
H.11	FREE EXERCISE OF RELIGION	30
H.12	RESERVED FOR FUTURE USE.....	30
H.13	RESERVED FOR FUTURE USE.....	30
H.14	RESERVED FOR FUTURE USE.....	30
H.15	RESERVED FOR FUTURE USE.....	30
H.16	SECURITY.....	30
SECTION I - CONTRACT CLAUSES.....		31
I.1	AVAILABILITY OF FUNDS FOR NEXT FISCAL YEAR.....	31
I.2	ADVERTISING OF AWARD	31
I.3	DEFAULT AND TERMINATION.....	31
I.3.1	Default by the Contractor	31
I.3.2	Further Opportunity to Cure.....	32
I.3.3	Remedy of the Department	32
I.3.4	Termination for Unavailability of Funds	33
I.3.5	Non-Appropriation Effect and Remedy	34
I.3.6	Termination for Convenience	34
I.3.7	Termination by Mutual Agreement	34
I.3.8	Termination Procedures	34
I.3.9	Default by the Department	35
I.3.10	Remedy of the Contractor	35
I.3.11	Dispute Resolution	35
I.4	NO WAIVER OF RIGHTS	36
I.5	INDEMNIFICATION OF THE DEPARTMENT.....	36
I.5.1	Acts or Omissions	36
I.5.2	Infringements	37
I.5.3	Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity.....	37
I.6	NO WAIVER OF DEFENSES	38
I.7	INDEPENDENT CONTRACTOR	38
I.8	LAWS OF TEXAS	38
I.9	ASSIGNMENT	38
I.10	MAINTENANCE OF CORPORATE EXISTENCE AND BUSINESS	39
I.11	APPROVAL OF CONTRACT	39
I.12	NON-DISCRIMINATION	39
I.13	CONFIDENTIALITY AND OPEN RECORDS	39
I.13.1	Confidentiality	39
I.13.2	Open Records	40
I.14	CONTRACT CHANGES	40
I.15	OPTION TO EXTEND THE TERM OF THE CONTRACT	40
I.16	OPTION TO EXTEND SERVICES.....	40
I.17	SEVERABILITY	41
I.18	IMMIGRATION	41
I.19	NO LIABILITY UPON TERMINATION.....	41
I.20	LIMITATION ON AUTHORITY	41

I.21	INTELLECTUAL PROPERTY INDEMNIFICATION.....	41
I.22	ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS, AS REQUIRED BY TEXAS ADMINISTRATIVE CODE, TITLE 1, PART 10, CHAPTER 213	41
I.23	RIGHTS TO DATA, DOCUMENTS AND COMPUTER SOFTWARE (STATE OWNERSHIP).....	42
I.24	FORCE MAJEURE	42
I.25	NOTICES.....	42
I.26	SUBSTITUTIONS	43
I.27	U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM.....	43
I.28	ANTITRUST AFFIRMATION.....	43
SECTION J – RESERVED FOR FUTURE USE		44
SECTION K – REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS		45
K.1	HISTORICALLY UNDERUTILIZED BUSINESS (HUB) REPRESENTATION.....	45
K.1.1	Definition.....	45
K.1.2	HUB Representation	45
K.2	CHILD SUPPORT REPRESENTATION	45
K.3	FRANCHISE TAX REPRESENTATION.....	46
K.4	TYPE OF BUSINESS ORGANIZATION.....	46
K.5	PREFERENCE CLAIM.....	47
K.5.1	Source and Specification Preferences.....	47
K.5.2	Tie-Bid Preferences	47
K.5.3	Additional Preferences	47
K.6	REPRESENTATIONS OF OFFEROR.....	47
K.6.1	Organization and Qualification	47
K.6.2	Authorization	48
K.6.3	No Violation of Agreements, Articles of Incorporation or Bylaws	48
K.6.4	No Defaults under Agreements	48
K.6.5	Compliance with Laws.....	48
K.6.6	No Litigation	48
K.6.7	Taxes	49
K.6.8	Reserved for Future Use.....	49
K.6.9	No Adverse Change.....	49
K.6.10	Disclosure	50
K.6.11	No Collusion.....	50
K.6.12	Ethics	50
K.6.13	No Compensation	51
K.6.14	Contracting with Executive Head of State Agency	51
K.6.15	Limitation on Employment of Former State Officers	51
K.6.16	Notification	51
K.6.17	Suspension, Debarment and Terrorism.....	51
K.6.18	Prohibition of a State Agency Contracting With Companies that Boycott Israel	52
K.6.19	Prohibition of a State Agency Contracting With Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations.....	52
K.6.20	Violation of Federal Law Relating To Reconstruction Efforts As A Result Of Hurricanes Rita, Katrina or Any Other Disaster after September 24, 2005.....	52
K.6.21	Deceptive Trade Practices; Unfair Business Practices	52
K.7	REPRESENTATIONS OF THE DEPARTMENT.....	53
K.7.1	Authorization	53
K.7.2	No Violation of Agreements.....	53
K.7.3	Disclosure	53

K.8 AUTHORIZED NEGOTIATORS.....53
K.9 PAYEE IDENTIFICATION NUMBER53
K.10 POINT OF CONTACT.....54
K.11 CERTIFICATION54

SECTION A - CONTRACT DEFINITIONS

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

ASOTP means Affiliate Sex Offender Treatment Provider actively working under the supervision of an LSOTP-Supervisor.

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.

Caseload means a group of Offenders not to exceed twelve (12).

Contract Specialist means the Department employee responsible for non-technical administration of this Contract, and shall have the meaning as set forth in Section G.2.2.

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

Contractor means TEAM Forensic Services, PLLC.

CSOT means Council on Sex Offender Treatment

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

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

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

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

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

LSOTP means Licensed Sex Offender Treatment Provider.

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

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 supervision or custody of the Department.

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

PD means the Texas Department of Criminal Justice (TDCJ) Personnel Directives.

Provider/Treatment Provider means a person who meets the criteria as established by CSOT and who is licensed in this state to provide Sex Offender Treatment Services, and provides Services for the rehabilitation of Sex Offenders under this Contract.

Contract Monitor means Department employee responsible for technical administration of this Contract, as described in Section G.2.3.

Quarter means the time period that relates to the Department's Fiscal Year, with quarters beginning September 1, December 1, March 1 and June 1, unless specifically noted otherwise.

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

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 January 1, 2019.

Sex Offender means an Offender who is convicted of committing or adjudicated to have committed a sex crime under state or federal law; is awarded deferred adjudication for a sex crime under state or federal law; or is convicted of, adjudicated to have committed, or awarded deferred adjudication for an offense that is based on sexually motivated conduct.

Sex Offender Treatment Services (also referred to as Services) means treatment modalities as described by Texas Administrative Code, Title 22, Part 36, Chapter 810.

TBCJ means the Texas Board of Criminal Justice.

TDCJ-RPD means the Texas Department of Criminal Justice – Rehabilitation Programs Division, a division of the Texas Department of Criminal Justice, an agency of the State of Texas.

Treatment Team means a meeting of the program staff, as described in policy, in order to make collective decisions regarding program Offenders.

Working Day means Monday through Friday, unless a nationally recognized holiday.

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 and otherwise do all things necessary for, or incidental to, providing Sex Offender Treatment Services for felony Offenders, identified by the Department. These Services are needed at the following Department facility:

TDCJ Hightower Unit
902 FM 686
Dayton, TX 77535

A Sex Offender Treatment Services group at no time shall exceed twelve (12) Offenders, unless special situations arise. In the case of such situations, the expanded group size must be approved in writing by the Manager of Sex Offender Rehabilitation Programs or designee.

The Contract Term will consist of an eight (8) month Base Period, and one (1) one (1) year renewal Option Period.

B.2 PRICING SCHEDULE

Contract Line Item Numbers (CLIN) 001-002

TDCJ Hightower Unit

001 Base Period (January 1, 2019 – August 31, 2019)

Number of Caseloads 2 \$3,000.00 per Caseload

002 Option Period (September 1, 2019 – August 31, 2020)

Number of Caseloads 2 \$3,000.00 per Caseload

B.3 ALLOWABLE COSTS

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

B.4 NON-ALLOWABLE COSTS

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

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

Pursuant to Texas Government Code, Section 500.004, requiring Offenders to participate in treatment programs, the Department requires a Contractor(s) to provide Sex Offender Treatment Services in correctional institutions in specified location(s). Program Offenders shall be incarcerated Offenders who have a history of at least one (1) conviction for sexually deviant behavior and have been required to participate in Sex Offender Treatment Services prior to release from custody.

C.2 GENERAL DUTIES AND OBLIGATIONS

The Contractor shall provide the Services in accordance with applicable federal and state law, including all constitutional, legal and court ordered requirements, whether now in effect or hereinafter effected or implemented. The Contractor shall comply with the Department's policies, procedures, personnel directives and regulations during the Contract Term. The Contractor shall comply with the Department's safety requirements and reporting procedures, as well as all applicable local and state standards, codes and regulations, including zoning, building, fire, health and sanitation.

C.3 LOCATION OF TREATMENT SITE

The Services will be provided at the Hightower Unit in Dayton, Texas. Scheduling for sessions shall be made at the convenience of the Department staff, Offenders, Provider, and the facility.

C.4 MANDATORY REQUIREMENTS FOR SEX OFFENDER TREATMENT PROVIDERS

These requirements apply to each Provider who facilitates Caseloads and conducts individual and group therapy sessions for Offenders under the terms of this Contract.

- A. Providers shall meet criteria established by the Council on Sex Offender Treatment (CSOT) pursuant to the requirements set out in the Texas Occupations Code, Title 3, Chapter 110. The Contractor shall provide acceptable documentation of having met these criteria by submitting a copy of each Provider's current LSOTP or ASOTP license, and a copy of the Provider's current primary professional license. All license and certifications shall be submitted to the Contract Specialist with the proposal.
- B. For continuum of care, it is crucial that the same Provider conduct Caseloads, therefore, prior to any change in Provider, the Contractor shall submit written notification, including the aforementioned credentials of the new Provider, to the Manager of Sex Offender Rehabilitation Programs or designee. The Manager of Sex Offender Rehabilitation Programs or designee must approve the change in Provider before Services are rendered. Payments will be made only after authorized Department approval has been granted. No back payments will be made for Services rendered prior to approval.
- C. Providers shall maintain a professional and courteous relationship with all Department staff and Offenders.
- D. A criminal history check afforded by the Department will be conducted on each Provider and an award will be contingent on a clear criminal history background. If criminal convictions

are exposed, the Department reserves the right to withdraw offer of award. The Department reserves the right to approve any subsequent hires. All prospective Providers who currently 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 Manager of Sex Offender Rehabilitation Programs or designee will determine employment eligibility for any Provider who was previously employed by the Department and resigned during a disciplinary investigation. Providers who have a conviction or deferred adjudication for a sexual offense shall not be approved by the Department to provide Services.

- E. The Contractor shall submit each Provider's background and experience providing treatment and assessments of Sex Offenders. This description shall include the number of years working with Sex Offenders and the average number of Sex Offenders served in a year. The Provider shall have a minimum of two (2) years of experience providing treatment of Sex Offenders.

C.5 MANDATORY REQUIREMENTS FOR SEX OFFENDER TREATMENT SERVICES

- A. Providers shall follow all program policies for the provision of Services. Providers shall provide group therapy and individual sessions, as well as participate in scheduled Treatment Team sessions as part of the Contract.
- B. The program is structured in three (3) phases. Phase I is primarily psychoeducational, with Department Case Managers teaching classes from a structured curriculum. During Phase I the Provider is required to conduct two (2) to four (4) individual sessions, lasting at least thirty (30) minutes each, as well as attend Treatment Teams as needed. During Phase II and III, the Provider is required to conduct one (1), three (3) hour group session weekly, and one (1) individual session with each Offender monthly. Phase promotions and program completions may require attendance in a Treatment Team Meeting. For the Caseload in increments of twelve (12), the Contractor is expected to provide or participate in the following services:

Phase I:

1. Individual Session: two (2) to four (4) sessions, lasting at least thirty (30) minutes each, for each Offender;
2. Treatment Team Meetings;
3. Clinical Documentation; and
4. Staff Meetings.

Phase II and Phase III:

1. Group Therapy: Maximum of twelve (12) Offenders, once weekly for three (3) hour sessions;
2. Individual Session: one (1) monthly session, lasting at least thirty (30) minutes, for each Offender;
3. Treatment Team Meetings;

4. Clinical Documentation; and
 5. Staff Meetings.
- C. The Department shall complete an evaluation for each Offender enrolled in the program. The evaluation will contain a Clinical Interview, Review of Risk Assessment and Personality Assessment Inventory (PAI), along with conclusions and recommendations. The Provider shall ensure this evaluation has been completed for all Offenders in the Caseload.
- D. The Providers shall use group therapy as the primary treatment method. During Phase II and III, the group therapy shall be scheduled once weekly with group size not to exceed twelve (12) Offenders.
- E. In the event an unusual situation arises that is best addressed in individual counseling sessions rather than the group setting, individual sessions beyond those required as a minimum may be provided with advance permission from the Manager of Sex Offender Rehabilitation Programs, the Deputy Director for Sex Offender Programs, or their designee.
- F. A Contractor may waive sessions for the following reasons:
1. Illness of Provider or in Provider's immediate family; or
 2. Provider's vacation (maximum of four weeks per calendar year).
- G. Holidays: Sessions will not be conducted on Department holidays designated as all agencies closed:
1. New Year's Day;
 2. Martin Luther King, Jr. Day;
 3. Presidents' Day;
 4. Memorial Day;
 5. Independence Day;
 6. Labor Day;
 7. Veterans' Day;
 8. Thanksgiving Day and the day after; and
 9. Christmas Eve, Christmas Day, and the day after
- H. The Department will not pay for waived sessions.
- I. The Provider shall place written progress notes in the Offender's record for each session completed and team meetings attended. The records are maintained in the Department's Mainframe system and shall remain the custody of the Department.

- J. The Provider shall prepare written documentation of treatment interventions used to gain compliance and provide motivation to Offenders for their acceptance of responsibility and completion of required assignments. In accordance with the Department Policy regarding graduated sanctions, the Provider may be required to document formal disciplinary cases for processing within the Department for failure to participate in a required treatment program.
- K. The Contractor, Provider, and Manager of Sex Offender Rehabilitation Programs or designee shall jointly agree upon the course of treatment to include modifications to frequency of attendance, duration of program participation (e.g., early completion or extension).

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 the Contract price, all reasonable assistance for the safe and convenient performance of these duties.
- B. From time to time the Department shall, subject to limitations provided by law with respect to rights of privacy, have the right to reasonably prompt access and to examine all records of the Contractor related specifically to the Services being provided, including financial records, employee records (including time, attendance, and payroll records), and any and all records and documents generated by the Contractor and its subcontractors in connection with the 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.4.2 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 the specific areas of non-compliance. The Contractor shall have a twenty (20) Day period to file a written response detailing corrective action(s) taken to address all items of non-compliance. The response must include supporting documentation which verifies execution of corrective action(s) taken. Unless otherwise specified, or previously agreed to by the Department, the submission of a corrective action plan shall not be accepted as corrective action. For all items of non-compliance satisfactorily resolved by agreement between the Contractor and the Department, no further action regarding such items shall be taken.
 2. If any of the Services are non-compliant with the Contract requirements, as identified by a government regulatory agency, the Contractor must resolve all items identified as non-compliant by the deadline established by the agency.

E.2 INSPECTION BY STATE EMPLOYEES

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

E.3 MONITORING CRITERIA

- A. The Department shall devise its own procedures for monitoring the quality of the Contractor's performance under this Contract, and Department Policies.
- B. The Contractor shall cooperate fully with the Department and the Contract Monitor in obtaining the requisite information needed to complete such audits and to assess the quality of the Contractor's performance.

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

E.4 AUTHORITY TO AUDIT

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

E.5 AUDITS BY OTHER AGENCIES

- A. Upon receipt of audits or inspections pertaining to Services under this Contract that are conducted by agencies or entities other than the Department, the Contractor shall provide copies thereof to the Department within thirty (30) Days.
- B. The Contractor shall provide to the Department copies of responses to audits and/or inspections within seven (7) Days of issuance. Audits or inspections may include allegations or complaints involving Services, or the Contractor and its employees (including consultants, independent contractors and their employees and agents and volunteer workers).
- C. The Contractor shall retain all original audits and inspections that are conducted by other agencies. These records shall be maintained in accordance with the Department's Records Retention Schedule. If those records are still in their retention period at the termination of the Contract, all originals shall be physically transferred to the Department.

E.6 FRAUD, WASTE OR ABUSE

- A. In accordance with Texas Government Code, Chapter 321, the State Auditor's Office (SAO) is authorized to investigate specific acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt or use of state funds.
- B. If there is a reasonable cause to believe that fraud, waste or abuse has occurred at this agency, it can be reported to the SAO by calling 1-800-892-8348 or at the SAO's website at www.sao.texas.gov. It can also be reported to the TDCJ Office of the Inspector General at

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

SECTION F - DELIVERIES OR PERFORMANCE

F.1 CONTRACT TERM

The Contract Term will consist of a Base Period of eight (8) months (January 1, 2019 through August 31, 2019), and one (1) one (1) year renewal Option Period (September 1, 2019 through August 31, 2020).

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

This Contract incorporates one (1) or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contract Specialist will make their full text available.

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

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

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

G.2.2 Contract Specialist

- A. The Contract Specialist for administration of this Contract is Steven Tilley.

- B. The telephone number for the Contract Specialist is (936) 437-7031.
- C. The fax number of the Contract Specialist is (325) 223-0310.
- D. The e-mail address for the Contract Specialist is steven.tilley@tdcj.texas.gov.
- E. The Contract Specialist is responsible for general administration of this Contract, negotiation of any changes and final issuance of written changes/modifications to this Contract.

G.2.3 Contract Monitor

- A. The Contract Monitor for this Contract is Joseph Bon-Jorno.
- B. The telephone number for the Contract Monitor is (936) 437-2870.
- C. The facsimile number of the Contract Monitor is (936) 437-7326.
- D. The e-mail address of the Contract Monitor is joseph.bon-jorno@tdcj.texas.gov.
- E. The Contract Monitor is not authorized to make any representations or commitments of any kind on behalf of the Executive Director of the Department or the State of Texas.
- F. The Contract Monitor does not have the authority to alter the Contractor's obligations or to change the Contract specifications, price, terms or conditions
- G. The Contract Monitor assignment for this Contract may be changed at any time by the Department without prior notice to the Contractor.
- H. If, as a result of technical discussions, it is desirable to modify the Contract obligations or Statement of Work, changes will be issued in writing and signed by the Executive Director of the Department or his/her designated representative (Chief Financial Officer).

G.2.4 Project Manager

- A. The Project Manager for this Contract is Holly A. Miller, Ph.D., LSOTP-S.
- B. The telephone number for the Project Manager is (936) 499-4452.
- C. The facsimile number for the Project Manager is (866) 523-1558.
- D. The e-mail address for the Project Manager is dr.miller@teamforensicservices.com.
- E. The Contractor shall provide a Project Manager for this Contract who shall be responsible for the overall management and coordination of this Contract and shall act as the central point of contact with the Department.
- F. The Project Manager shall have full authority to act for the Contractor in the performance of the required Services.
- G. The Project Manager or a designated representative shall meet with the Contract Monitor to discuss problems as they occur.

G.3 INVOICE REQUIREMENTS

- A. The Contractor shall bill the Department for each calendar month, one (1) calendar month in arrears, for the amount due for the services, and the Department shall pay such invoice within thirty (30) Days after receipt of an accurate Contractor's invoice.
- B. The Contractor shall submit an original invoice to the office designated below:
- Texas Department of Criminal Justice
Rehabilitation Programs Division
Attention: Candace Carter, Accountant V
P. O. Box 99
Huntsville, Texas 77342-0099
- C. To constitute a proper invoice, the invoice shall include the following additional information:
1. Name of business concern and invoice date;
 2. Contract number and when Services were provided;
 3. Descriptions, price and quantity of Services rendered;
 4. Payment terms (to include prompt Payment discount, if applicable); and
 5. Name (where practicable), title, phone number and complete mailing address of responsible official to whom Payment is to be sent.
- D. The Department, subject to its usual auditing and accounting procedures, shall pay such invoices thirty (30) Days after receipt of an accurate Contractor's invoice. The Contractor may offer prompt payment discount, for example, one percent (1%), fifteen (15) Days (refer to page 1, block 7 of the Solicitation, Offer and Award form) if the Contractor desires expedited Payment. Prompt payment discounts and payment terms must also be stated on each invoice.

G.4 PAYMENTS

- A. It is recommended that the Contractor receive Payments via Electronic Funds Transfer (EFT), also known as Direct Deposit.
- B. Regardless as to whether Direct Deposit is chosen, upon 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: http://www.tdcj.texas.gov/documents/bfd/TDCJ_Substitute_W-9_Form.pdf.

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:

- C. Payment is to be made monthly by the Department to the Contractor after all Services are rendered and invoices with required reports have been submitted accurately and completely.
- D. Partial Payments may be made when the amount of the invoice is sufficient, in the opinion of the Department, to justify processing the Payment.
- E. The Contractor shall have thirty (30) Days from receipt of Payment to submit a request for consideration to review any discrepancies or inaccuracies.

G.4.1 Late Payment

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

G.4.2 Withholding of Payment

- A. The Department shall have the right to withhold the Payment until the failures described below have been corrected.
 - 1. Failure to respond to audit reports as required in Section E.1.C; and
 - 2. Failure to correct identified areas of non-compliance to the satisfaction of the Department within twenty (20) Days upon receipt of written notification.
- B. The Contractor agrees that the Department shall not pay interest to the Contractor for monies so withheld.
- C. The Payment withheld shall be released upon the Department's satisfaction that compliance has been achieved for thirty (30) Days.
- D. With the exception of disputed issues, such withholding of final Payment by the Department shall not exceed one hundred twenty (120) Days from date of Contract termination.

G.4.3 Payment of Debt Owed to the State of Texas

As required by Texas Government Code, Section 2252.903, the Contractor agrees that any Payments due under this Contract shall be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan Payments and

delinquent child support, until the debt is paid in full. The Contractor shall comply with the rules adopted by the Department under Texas Government Code, Sections 403.055, 403.0551, 2252.903 and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

G.4.4 Right to Offset

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

SECTION H - SPECIAL CONTRACT REQUIREMENTS**H.1 INSURANCE REQUIREMENTS**

- A. Prior to the approval of this Contract by the Department, the Contractor shall procure, pay for and maintain the following insurance written by companies approved by the State of Texas and acceptable to the Department. It is recommended that coverage be with a company or companies having both a Financial Strength Rating of "A" or better and Financial Size Category Class of "VII" or better from A.M. Best Company, Inc.
- B. The insurance shall be evidenced by delivery to the Department of certificates of insurance executed by the insurer or its authorized agent stating coverage, limits, expiration dates and compliance with all applicable required provisions.
- C. Upon request, the Department shall be entitled to receive without expense, copies of the policies and all endorsements. Copies and changes to the initial insurance policies, including extensions, renewals, cancellations and revisions shall be submitted to the Contract Specialist within thirty (30) Days of the effective date.
- D. Subject to the Contractor's right to maintain reasonable deductibles, the Contractor shall obtain and maintain in full force and effect for the duration of this Contract and any extension hereof, at the Contractor's sole expense, insurance coverage in the following type(s) and amounts: Professional liability insurance in the minimum amount of \$1,000,000.00 individual occurrence and \$3,000,000.00 aggregate.

H.1.1 Required Provisions

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

- A. Name the Department and its officers, employees and elected representatives as additional insured to all applicable coverages.
- B. Waive subrogation against the Department, its officers, employees and elected representatives, for bodily injury (including death), property damage or any other loss, to all applicable coverages.
- C. Provide that the Contractor's insurance is the primary insurance in regards to the Department, its officers, employees and elected representatives.
- D. Provide that all provisions of this Contract concerning liability, duty and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.
- E. Ensure that all certificates of insurance identify the service or product being provided and the name of responsible party.
- F. The Contractor through an insurance agent licensed by the State of Texas shall obtain all insurance coverage and an insurance company licensed to issue such coverage in this state shall provide such coverage. No "self-insurance" coverage shall be acceptable. All policies shall include a provision requiring written notice of cancellation to the Department.

- G. All insurance coverage obtained by the Contractor shall continue in full force and effect during the Contract Term. No Contract shall be entered into between the Contractor and the Department unless insurance coverage binders are received by the date scheduled for the execution of the Contract. Proof of insurance policies must be delivered prior to the Service Commencement Date.
- H. All insurance coverage is to be provided by insurance carriers permitted to conduct business in Texas.
- I. The Contractor may choose the amount of deductible for any other insurance coverage required (above) to be obtained by the Contractor, but in no event shall such deductible for each occurrence exceed five percent (5%) of the required yearly aggregate limit of coverage.
- J. The Contractor is responsible for the first (1st) dollar defense coverage. All general liability and professional liability policies shall provide defense in addition to the policy limits.
- K. The limits required herein are minimum acceptable. However, these limits are not to be construed as being the maximum any prospective contractor may wish to purchase for their own benefit.
- L. As respect to the total limits of liability required, any combination of primary and/or umbrella coverage may satisfy those totals. However, if an umbrella is used, coverage must be at least as broad as the primary coverage.

H.2 SUBCONTRACTORS

- A. The Contractor may subcontract for the performance of any of its responsibilities to provide Services pursuant to this Contract.
- B. No subcontract may be entered into unless the Department provides prior written approval, which approval may not be unreasonably withheld.
- C. If a subcontractor is deemed to be needed for an event of an emergency nature, verbal approval may be obtained through an authorized Department representative. The Contractor shall submit a written request with supporting documentation for approval, by the Department, as soon as possible.
- D. The Contractor shall furnish to the Department copies of all subcontracts, without regard to the amount of annual payments.
- E. Any arrangement by the Contractor with an affiliate or member company to provide Services for this Contract shall be subject to the subcontractor provisions of this Section.
- F. No contractual relationship shall exist between the Department and any subcontractor and the Department shall accept no responsibility whatsoever for the conduct, actions or omissions of any subcontractor selected by the Contractor.
- G. The Contractor shall be responsible for the management of the subcontractors in the performance of their work.

- H. A subcontractor may not work directly with the Department in any manner and shall not be included in Contract negotiations, renewals, 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, and the required Non-Discrimination clause referenced in Section I.12.

H.2.1 Insurance

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

H.3 RESERVED FOR FUTURE USE

H.4 RESERVED FOR FUTURE USE

H.5 RESERVED FOR FUTURE USE

H.6 UTILIZATION OF PRODUCTS AND MATERIALS PRODUCED IN TEXAS

- A. The Contractor shall comply with Texas Government Code, Section 2155.4441, relating to service contract use of products produced in the State of Texas.
- B. In performing Services under this Contract, the Contractor shall purchase products and materials produced in the State of Texas when they are available at a price and time comparable to products and materials produced outside of Texas.

H.7 CRIMINAL HISTORY INFORMATION COMPLIANCE

The parties hereto acknowledge and agree that in order for the Contractor to perform the Services contemplated herein, the Department may have to provide the Contractor with, or the Contractor may have access to, certain information regarding Offenders and former Offenders known as "criminal history information". Criminal history information means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information and other formal criminal charges

and their dispositions. The term does not include information as to convictions, fingerprint information, and driving records. In the event the Department provides the Contractor with criminal history information, the Contractor agrees to comply with the confidentiality requirements of 28 CFR 20, Part 20, Subpart B, Section 20.21; Section 524 (a) of the Omnibus Crime Control and Safe Streets Act, 42 U.S.C. 3701, et seq., as amended (the "Act"), Texas Government Code, Chapter 411, Section 411.083, and with the FBI Criminal Justice Information Services (CJIS) Security Policy. More specifically, the Contractor agrees and acknowledges as follows:

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

H.8 OTHER CONFIDENTIAL OR SENSITIVE INFORMATION

- A. The parties hereto acknowledge and agree that in order for the Contractor to perform the Services contemplated herein, the Department may have to provide the Contractor with, or the Contractor may have access to, certain information, other than criminal history information, that is confidential pursuant to federal or state laws, rules, or regulations, or that is personal information considered to be "sensitive". The Contractor agrees that such confidential or sensitive information shall only be used for the purpose of performing Services contemplated herein. Such information shall not be disclosed, copied or transmitted for any purpose other than for the performance of Services contemplated herein.
- B. In the event that the Contractor's employee(s) fails to comply with the terms hereof, the Contractor shall take corrective action with the employee(s). Such corrective action must be acceptable to the Department. An intentional or knowing violation may also result in civil and criminal violations under federal and state laws. Additionally, the Contractor shall submit for the Department's approval, the Contractor's corrective action plan to ensure full compliance with the terms hereof. Until such time as the corrective action plan is approved by the Department, the Contractor shall not be authorized to fill any vacant positions unless special authorization is granted in writing by the Department which authorization shall not be unreasonably withheld.

H.9 BOOKS AND RECORDS

The Contractor shall retain all financial records, including supporting documents, statistical records, and any other records or books, relating to the Contractor's performance under the Contract. These records shall be maintained in accordance with the Department's Records Retention Schedule. The Contractor shall grant access to all books, records, and documents pertinent to the Contract to the Department, SAO, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

H.10 ORGANIZATIONAL NAME CHANGE

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

H.11 FREE EXERCISE OF RELIGION

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

H.12 RESERVED FOR FUTURE USE**H.13 RESERVED FOR FUTURE USE****H.14 RESERVED FOR FUTURE USE****H.15 RESERVED FOR FUTURE USE****H.16 SECURITY**

The Contractor's employees and representatives, vehicles and equipment must be under security surveillance at all times and are subject to inspection at any time while on State property. The Contractor agrees to abide by all Department Policies and Unit rules and regulations on State property. These rules, in part, prohibit the introduction of alcohol, narcotics, weapons, gambling 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 Units. Tobacco products are strictly prohibited on Department 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, 2019.
- B. The Department's obligation for performance of this Contract beyond that date is contingent upon legislative approval and the availability of appropriated funds from which Payment for Contract purposes can be made.
- C. No legal liability on the part of the Department for any Payment may arise for performance under this Contract beyond August 31, 2019, until funds are made available to the Department for performance and until the Contractor receives notice of availability.
- D. Refer to Section I.3.4, 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(s) or Service(s) provided are 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, any Court Order, federal or state requirement or law, when such failure continues for a period of twenty (20) Days after the Contractor's receipt of written notice thereof;
- C. The Contractor's Material Failure to comply with any Department Policies for which the Contractor has been expressly required to comply and for which the Contractor has not received a prior written waiver from the Department, when such failure continues for a period of twenty (20) Days after the Contractor's receipt of written notice thereof;
- D. Insolvency of the Contractor as evidenced by any of the following occurrences:
 - 1. Its inability to pay its debts;
 - 2. Any general assignment for the benefit of creditors;

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

I.3.2 Further Opportunity to Cure

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

I.3.3 Remedy of the Department

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

- A. Reducing its claim to a judgment;

- B. Taking action to cure the Event of Default, in which case the Department may offset against any Payments owed to the Contractor all reasonable costs incurred by the Department in connection with its efforts to cure such Event of Default;
- C. Withholding of funds as authorized in Section G.4.7; 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 and the Contractor shall comply with Section H.3 with respect to the transition to new management.
 - 3. The Department may also acquire, in the manner the Department considers appropriate, services similar to those terminated and the Contractor will be liable to the Department for any increase in costs for those services.
 - 4. The Contractor shall not be liable for any increase in costs if the failure to perform the Contract arises from and without the fault or negligence of the Contractor as follows:
 - a. Acts of God or of the public enemy;
 - b. Acts of the State in either its sovereign or contractual capacity;
 - c. Fires;
 - d. Floods;
 - e. Epidemics;
 - f. Quarantine restrictions;
 - g. Strikes;
 - h. Freight embargoes; and
 - i. Unusually severe weather.

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

I.3.4 Termination for Unavailability of Funds

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

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

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

I.3.5 Non-Appropriation Effect and Remedy

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

I.3.6 Termination for Convenience

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

I.3.7 Termination by Mutual Agreement

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

I.3.8 Termination Procedures

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

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

I.3.9 Default by the Department

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

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

I.3.10 Remedy of the Contractor

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

I.3.11 Dispute Resolution

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

The Contractor shall defend, indemnify, and hold harmless the Department and the State of Texas from and against any and all claims, violations, misappropriations or infringement of any patent, trademark, copyright, trade secret or other intellectual property rights and/or other intangible property, publicity or privacy rights, and/or in connection with or arising from: (1) the performance or actions of The Contractor pursuant to this Contract; (2) any deliverable, work product, configured Service or other service provided hereunder; and/or (3) the Department's and/or the Contractor's use of or acquisition of any requested Services or other items provided to the Department by the Contractor or otherwise to which the Department has access as a result of the Contractor's performance under the 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 Texas Attorney General (OAG) 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 OAG. In addition, the Contractor will reimburse the Department and the State of Texas for any claims, damages, costs, expenses or other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. If the Department determines that a conflict exists between its interests and those of the Contractor or if the Department is required by applicable law to select separate counsel, the Department will be permitted to select separate counsel and the Contractor will pay all reasonable costs of the Department's counsel.

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

I.6 NO WAIVER OF DEFENSES

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

I.7 INDEPENDENT CONTRACTOR

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

I.8 LAWS OF TEXAS

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

I.9 ASSIGNMENT

- A. The Contractor may not assign any interest in this Contract without the prior written consent of the Department which consent the Department may withhold at its sole discretion.
- B. If the Department so elects in its sole discretion, this Contract will terminate upon the occurrence of any of the following:
 - 1. More than fifty percent (50%) of the assets of the Contractor are sold;
 - 2. The Contractor is merged into, acquired by, or consolidated with another corporation or business entity; or is otherwise the subject of reorganization; or

3. Any shareholder or owner of the Contractor who owns at least ten percent (10%) beneficial ownership of the Contractor fails to continue to own at least ten percent (10%).
- C. In the event that any sale, transfer, or assignment, as referenced in paragraphs A and B above, is consented to by the Department, the transferee or its legal representative shall agree in writing with the Department to assume, perform and be bound by the covenants, obligations and agreements contained herein.

I.10 MAINTENANCE OF CORPORATE EXISTENCE AND BUSINESS

- A. The Contractor, if incorporated, shall at all times maintain its corporate existence and authority to transact business and be in good standing in its jurisdiction of incorporation and the State of Texas.
- B. The Contractor shall maintain all licenses, permits and franchises necessary for its business 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 and shall not be binding until so approved.
- B. For Contracts valued over \$1,000,000.00 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 AIDS/HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. The Contractor shall post notices setting forth the provisions of this Non-Discrimination Clause in conspicuous places, available to employees and applicants for employment.
- B. In all solicitations or advertisements for employees and/or the purchase of Services, the Contractor shall state that it is an equal opportunity employer; provided, however, that notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting this requirement.
- C. The Contractor shall include the provisions of the foregoing paragraphs in every subcontract so that such provisions shall be binding upon each subcontractor or vendor.

I.13 CONFIDENTIALITY AND OPEN RECORDS

I.13.1 Confidentiality

Any confidential information provided to or developed by the Contractor in the performance of the Contract shall be kept confidential unless otherwise provided by law and shall not be made

available to any individual or organization by the Contractor or the Department without prior approval of the other party.

I.13.2 Open Records

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

I.14 CONTRACT CHANGES

- A. Changes/modifications to this Contract (except Contract extensions in accordance with Sections I.15 and I.16; administrative changes; such as changing the Contract Specialist designation; correcting typographical errors; or other unilateral changes discussed elsewhere in the Contract) shall be mutually agreed to by the parties and executed in writing with the authorized signatures.
- B. The Department, at its sole discretion, may revise funding during the course of this Contract by issuing a unilateral modification to the Contractor.

I.15 OPTION TO EXTEND THE TERM OF THE CONTRACT

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

I.16 OPTION TO EXTEND SERVICES

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

- D. The Department may exercise the option by written notice to the Contractor within the period specified in Section I.15.

I.17 SEVERABILITY

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

I.18 IMMIGRATION

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

I.19 NO LIABILITY UPON TERMINATION

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

I.20 LIMITATION ON AUTHORITY

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

I.21 INTELLECTUAL PROPERTY INDEMNIFICATION

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

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

- A. Effective September 1, 2006 State Agencies and Institutions of Higher Education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in Texas Administrative Code, Title 1, Part 10, Chapter 213, when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

- B. The Contractor shall provide the Department with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under the Rehabilitation Act, Section 508), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Contractors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide the Department with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

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

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials prepared by the Contractor in the performance of its obligations under this Contract shall be the exclusive property of the State of Texas and all such materials shall be delivered to the Department by the Contractor upon completion, termination, or cancellation of this Contract. The Contractor may, at its own expense, keep copies of all its writings for its personal files. The Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of the Contractor's obligations under this Contract without the prior written consent of the Department; provided, however, that the Contractor shall be allowed to use non-confidential materials for writing samples in pursuit of the work. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

I.24 FORCE MAJEURE

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

I.25 NOTICES

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

Notices to the Department shall be sent to:

Steven Tilley, Contract Specialist
 Texas Department of Criminal Justice
 Contracts and Procurement Department
 Client Services and Governmental Contracts Branch

Two Financial Plaza, Suite 525
Huntsville, Texas 77340
Steven.tilley@tdcj.texas.gov

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

I.26 SUBSTITUTIONS

Substitutions are not permitted without written approval of the Department.

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

A. By entering into this Contract, the Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

1. All persons employed to perform duties within Texas, during the Contract Term; and
2. All persons (including subcontractors) assigned by the Contractor to perform work pursuant to the Contract, within the United States of America.

B. The Contractor shall provide, upon request of the Department, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Contractor, and the Contractor's subcontractors, as proof that this provision is being followed.

C. If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the State and at no fault to the State, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the State must undertake to replace the terminated Contract.

I.28 ANTITRUST AFFIRMATION

The Contractor shall confirm, under penalty of perjury of the laws of the State of Texas that (1) in connection with the Contract, neither the Contractor nor any representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (2) in connection with this Contract, neither the Contractor nor any representative of the Contractor have violated any federal antitrust law; and (3) neither the Contractor nor any representative of the Contractor have directly or indirectly communicated any of the contents of this Contract to a competitor of the Contractor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contractor.

SECTION J – RESERVED FOR FUTURE USE

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

K.1 HISTORICALLY UNDERUTILIZED BUSINESS (HUB) REPRESENTATION

K.1.1 Definition

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

K.1.2 HUB Representation

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

K.2 CHILD SUPPORT REPRESENTATION

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

 x 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.

FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Texas Family Code Section 231.006 requires a bid or an application for a contract, grant, or loan paid from State funds to include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least twenty-five percent (25%) of the business entity submitting the bid or application. The Social Security number(s) will be kept confidential and only disclosed in accordance with Texas Family Code Section 231.302.

<u>Holly A. Miller</u>	<u>[REDACTED]</u>	_____	_____
Print Name	SSN	Print Name	SSN
_____	_____	_____	_____
Print Name	SSN	Print Name	SSN

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

K.3 FRANCHISE TAX REPRESENTATION

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

K.4 TYPE OF BUSINESS ORGANIZATION

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

- A. It operates as [] a corporation incorporated under the laws of the state of Texas, [] an individual, [] a partnership, [] a nonprofit organization or [] a joint venture; or
- B. If the Offeror is a foreign entity, it operates as [] an individual, [] a partnership, [] a nonprofit organization, [] a joint venture, or [] a corporation, registered for business in _____ (country).

K.5 PREFERENCE CLAIM

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

K.5.1 Source and Specification Preferences

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

K.5.2 Tie-Bid Preferences

- Goods produced or offered by a Texas bidder that is owned by a Texas Resident Service-Disabled Veteran.*
- Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas Resident Service-Disabled Veteran.*
- Agricultural products produced or grown in Texas.
- Agricultural products or services offered by Texas bidders.*
- Services offered by a Texas bidder that is owned by a Texas Resident Service-Disabled Veteran.*
- Services offered by a Texas bidder that is not owned by a Texas Resident Service-Disabled Veteran.*
- Texas vegetation native to the region.
- USA produced supplies, materials, equipment or agricultural products.

K.5.3 Additional Preferences

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

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

K.6 REPRESENTATIONS OF OFFEROR

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

K.6.1 Organization and Qualification

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

K.6.2 Authorization

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

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

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

K.6.4 No Defaults under Agreements

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

K.6.5 Compliance with Laws

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

K.6.6 No Litigation

- A. The Offeror certifies that there is not now pending, or to its knowledge threatened, any action, suit or proceeding to which the Offeror, or any of its employees, are a party, before or by any court or governmental agency or body, which may result in any material adverse change in the Offeror's ability to perform its obligations under this Contract, or any such action, suit or proceeding related to environmental or civil rights matters.
- B. The Offeror further certifies that no labor disturbance by the employees of the Offeror exists or is imminent which may be expected to materially and adversely affect the Offeror's ability to perform its obligations under this Contract.

- C. Prior to the Department making an award of this Contract, the Department may require Offerors being considered for the award to recertify the representations set forth above. The Department, in its sole discretion, may disqualify any Offeror that in the opinion of the Department is a party, or who has any employees that are a party, to any action, suit or proceeding that may result in any material adverse change in the Offeror's ability to perform its obligations under this Contract.
- D. During the term of this Contract, to include extensions hereof, the Offeror shall notify the Department in writing within five (5) Days of the Offeror having received knowledge of any actions, suits or proceedings filed against the Offeror, or any of its employees, or to which the Offeror, or any of its employees, are a party, before or by any court or governmental agency or body, which:
 - 1. May result in any material adverse change in the Offeror's ability to perform its obligations under this Contract;
 - 2. Filed in any federal court, state court, or federal or state administrative hearing within the State of Texas regardless as to any anticipated material adverse change in the Offeror's ability to perform its obligations under this Contract; and
 - 3. Is brought by or on behalf of a State of Texas Offender regardless as to any anticipated material adverse change in the Offeror's ability to perform its obligations under this Contract.
- E. The Contractor shall provide in writing, to the Contract Specialist, a quarterly report listing litigation identified in the above requirements.

K.6.7 Taxes

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

K.6.8 Reserved for Future Use

K.6.9 No Adverse Change

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

K.6.10 Disclosure

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

K.6.11 No Collusion

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

K.6.12 Ethics**K.6.12.1 Conflict of Interest**

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

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

K.6.12.2 Disclosure of Interested Parties

In accordance with Texas Government Code, Section 2252.908, a governmental entity or State Agency may not enter into a contract valued at \$1,000,000.00 or greater with a business entity unless the business entity, in accordance with Texas Administrative Code, Title 1, Part 2, Chapter 46, Rules 46.1, 46.3 and 46.5, submits a disclosure of interested parties to the governmental entity or State Agency at the time the business entity submits the signed Contract to the governmental entity or State Agency.

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

K.6.12.3 No Gratuities

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

K.6.13 No Compensation

Pursuant to Texas Government Code, Section 2155.004, the Offeror has not received compensation for participation in the preparation of the specifications for this proposal. Under Texas Government Code, Section 2155.004, the Offeror certifies that the individual or business entity named in this proposal or Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and Payment withheld if this certification is inaccurate.

K.6.14 Contracting with Executive Head of State Agency

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

Name of Former Executive: _____ N/A _____

Name of State Agency: _____

Date of Separation from State Agency: _____

Date of Employment with Offeror: _____

K.6.15 Limitation on Employment of Former State Officers

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

K.6.16 Notification

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

K.6.17 Suspension, Debarment and Terrorism

The Department is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal

General Services Administration's System for Award Management (SAM, <https://www.sam.gov>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

K.6.18 Prohibition of a State Agency Contracting With Companies that Boycott Israel

The Contractor certifies that they are in compliance with Texas Government Code, Chapter 2270 relating to the prohibition of a State Agency contracting with companies that boycott Israel or boycotts Israel during the term of the Contract. The Contractor certifies that the individual or business entity named in this proposal or Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and Payment withheld if this certification is inaccurate.

K.6.19 Prohibition of a State Agency Contracting With Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations

The Contractor certifies that they are in compliance with Texas Government Code, Chapter 2252.152 relating to the prohibition of a State Agency contracting with companies that are engaged in business with Iran, Sudan, or foreign terrorist organizations. 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.6.20 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 assessed a penalty in a federal, civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery or reconstruction efforts as a result of Hurricane Rita, 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.6.21 Deceptive Trade Practices; Unfair Business Practices

The Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practice 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 of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

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 Solicitation: (list names, titles and telephone numbers of the authorized negotiators).

_____ Holly A. Miller, Owner of TEAM Forensic Services, PLLC _____
 _____ (936) 499-4452 _____

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: 47-5007106

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: Holly A. Miller Title: Owner

Phone Number: (936) 499-4452 Fax Number: (866) 523-1558

Street Address: PO Box 9153

City: Huntsville State: Texas Zip Code: 77340

E-mail Address: dr.miller@teamforensicservices.com

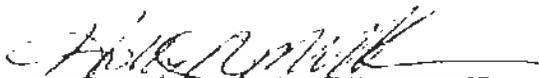
K.11 CERTIFICATION

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.

TEAM Forensic Services, PLLC
Name of Offeror

696-PS-19-P003
Solicitation No.


Signature of Authorized Individual

10/12/18
Date

Holly A. Miller, Owner
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.

SOLICITATION, OFFER AND AWARD

1. CONTRACT NO.	2. SOLICITATION NO. 696-PS-19-P003	3. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFO) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	4. DATE ISSUED September 26, 2018
-----------------	---------------------------------------	---	--------------------------------------

SOLICITATION

5. Sealed offers will be received by the Department until 3:00 p.m. local time on October 12, 2018 , and submitted to: Texas Department of Criminal Justice Contracts and Procurement Department Client Services and Governmental Contracts Branch Two Financial Plaza, Suite 525 Huntsville, Texas 77340 Attention: 696-PS-19-P003	6. FOR INFORMATION CONTACT: Steven Tilley, CTPM, CTCM Contract Specialist PHONE: (936) 437-7031 FAX: (325) 223-0310 E-MAIL: steven.tilley@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 (<i>Type or Print</i>)	
11. TELEPHONE NO. (<i>Include area code</i>)	12. SIGNATURE		13. OFFER DATE	

TO BE COMPLETED AT TIME OF AWARD

Document Type: 9 Statutory Cite: Texas Government Code, Section 500.004	
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 the 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 amount for the Base Period (December 1, 2018 – August 31, 2018) shall not exceed \$ _____.	
Contractor By: _____ Name: _____ Title: _____ Date: _____	Texas Department of Criminal Justice By: _____ Jerry McGinty Title: Chief Financial Officer Date: _____

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	2
SECTION A - CONTRACT DEFINITIONS.....	6
SECTION B – SUPPLIES OR SERVICES AND PRICES/COSTS.....	8
B.1 SERVICES AND PRICES/COSTS	8
B.1.1 Services Being Acquired	8
B.2 PRICING SCHEDULE	9
B.3 ALLOWABLE COSTS.....	10
B.4 NON-ALLOWABLE COSTS.....	10
SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT	11
C.1 BACKGROUND	11
C.2 GENERAL DUTIES AND OBLIGATIONS	11
C.3 LOCATION OF TREATMENT SITE.....	11
C.4 MANDATORY REQUIREMENTS FOR SEX OFFENDER TREATMENT PROVIDERS.....	11
C.5 MANDATORY REQUIREMENTS FOR SEX OFFENDER TREATMENT SERVICES.....	12
SECTION D – RESERVED FOR FUTURE USE.....	15
SECTION E - INSPECTION AND ACCEPTANCE	16
E.1 INSPECTION OF SERVICES.....	16
E.2 INSPECTION BY STATE EMPLOYEES	16
E.3 MONITORING CRITERIA.....	16
E.4 AUTHORITY TO AUDIT	17
E.5 AUDITS BY OTHER AGENCIES.....	17
E.6 FRAUD, WASTE OR ABUSE	17
SECTION F - DELIVERIES OR PERFORMANCE	19
F.1 CONTRACT TERM.....	19
SECTION G - CONTRACT ADMINISTRATION DATA	20
G.1 CLAUSES INCORPORATED BY REFERENCE	20
G.2 AUTHORITY – AUTHORIZED REPRESENTATIVE, CONTRACT SPECIALIST, CONTRACT MONITOR AND PROJECT MANAGER	20
G.2.1 Authorized Representative	20
G.2.2 Contract Specialist.....	20
G.2.3 Contract Monitor	21
G.2.4 Project Manager	21
G.3 INVOICE REQUIREMENTS	22
G.4 PAYMENTS	22
G.4.1 Late Payment	23
G.4.2 Withholding of Payment.....	23
G.4.3 Payment of Debt Owed to the State of Texas	24
G.4.4 Right to Offset.....	24
SECTION H - SPECIAL CONTRACT REQUIREMENTS	25
H.1 INSURANCE REQUIREMENTS.....	25
H.1.1 Required Provisions	25
H.2 SUBCONTRACTORS.....	26
H.2.1 Insurance.....	27
H.3 RESERVED FOR FUTURE USE.....	27
H.4 RESERVED FOR FUTURE USE.....	27
H.5 RESERVED FOR FUTURE USE.....	27

H.6 UTILIZATION OF PRODUCTS AND MATERIALS PRODUCED IN TEXAS27
 H.7 CRIMINAL HISTORY INFORMATION COMPLIANCE.....28
 H.8 OTHER CONFIDENTIAL OR SENSITIVE INFORMATION28
 H.9 BOOKS AND RECORDS.....29
 H.10 ORGANIZATIONAL NAME CHANGE29
 H.11 FREE EXERCISE OF RELIGION.....29
 H.12 RESERVED FOR FUTURE USE.....29
 H.13 RESERVED FOR FUTURE USE.....29
 H.14 RESERVED FOR FUTURE USE.....29
 H.15 RESERVED FOR FUTURE USE.....29
 H.16 SECURITY29

SECTION I - CONTRACT CLAUSES.....30

I.1 AVAILABILITY OF FUNDS FOR NEXT FISCAL YEAR30
 I.2 ADVERTISING OF AWARD30
 I.3 DEFAULT AND TERMINATION30
 I.3.1 Default by the Contractor.....30
 I.3.2 Further Opportunity to Cure31
 I.3.3 Remedy of the Department31
 I.3.4 Termination for Unavailability of Funds.....32
 I.3.5 Non-Appropriation Effect and Remedy.....33
 I.3.6 Termination for Convenience33
 I.3.7 Termination by Mutual Agreement33
 I.3.8 Termination Procedures33
 I.3.9 Default by the Department34
 I.3.10 Remedy of the Contractor34
 I.3.11 Dispute Resolution34
 I.4 NO WAIVER OF RIGHTS.....35
 I.5 INDEMNIFICATION OF THE DEPARTMENT35
 I.5.1 Acts or Omissions.....35
 I.5.2 Infringements.....36
 I.5.3 Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity.....36
 I.6 NO WAIVER OF DEFENSES37
 I.7 INDEPENDENT CONTRACTOR.....37
 I.8 LAWS OF TEXAS37
 I.9 ASSIGNMENT37
 I.10 MAINTENANCE OF CORPORATE EXISTENCE AND BUSINESS38
 I.11 APPROVAL OF CONTRACT.....38
 I.12 NON-DISCRIMINATION38
 I.13 CONFIDENTIALITY AND OPEN RECORDS38
 I.13.1 Confidentiality38
 I.13.2 Open Records39
 I.14 CONTRACT CHANGES39
 I.15 OPTION TO EXTEND THE TERM OF THE CONTRACT.....39
 I.16 OPTION TO EXTEND SERVICES39
 I.17 SEVERABILITY.....40
 I.18 IMMIGRATION.....40
 I.19 NO LIABILITY UPON TERMINATION40
 I.20 LIMITATION ON AUTHORITY.....40
 I.21 INTELLECTUAL PROPERTY INDEMNIFICATION.....40
 I.22 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS, AS REQUIRED BY TEXAS ADMINISTRATIVE CODE, TITLE 1, PART 10, CHAPTER 213.....40
 I.23 RIGHTS TO DATA, DOCUMENTS AND COMPUTER SOFTWARE (STATE OWNERSHIP)41
 I.24 FORCE MAJEURE41
 I.25 NOTICES41
 I.26 SUBSTITUTIONS42
 I.27 U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM42

I.28 ANTITRUST AFFIRMATION42

SECTION J – RESERVED FOR FUTURE USE43

SECTION K – REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS44

K.1 HISTORICALLY UNDERUTILIZED BUSINESS (HUB) REPRESENTATION..... 44

 K.1.1 Definition..... 44

 K.1.2 HUB Representation..... 44

K.2 CHILD SUPPORT REPRESENTATION..... 44

K.3 FRANCHISE TAX REPRESENTATION 45

K.4 TYPE OF BUSINESS ORGANIZATION 45

K.5 PREFERENCE CLAIM 46

 K.5.1 Source and Specification Preferences 46

 K.5.2 Tie-Bid Preferences..... 46

 K.5.3 Additional Preferences 46

K.6 REPRESENTATIONS OF OFFEROR 46

 K.6.1 Organization and Qualification 46

 K.6.2 Authorization..... 47

 K.6.3 No Violation of Agreements, Articles of Incorporation or Bylaws 47

 K.6.4 No Defaults under Agreements 47

 K.6.5 Compliance with Laws..... 47

 K.6.6 No Litigation..... 47

 K.6.7 Taxes..... 48

 K.6.8 Reserved for Future Use 48

 K.6.9 No Adverse Change 48

 K.6.10 Disclosure 49

 K.6.11 No Collusion 49

 K.6.12 Ethics 49

 K.6.13 No Compensation..... 50

 K.6.14 Contracting with Executive Head of State Agency 50

 K.6.15 Limitation on Employment of Former State Officers 50

 K.6.16 Notification..... 50

 K.6.17 Suspension, Debarment and Terrorism 50

 K.6.18 Prohibition of a State Agency Contracting With Companies that Boycott Israel 51

 K.6.19 Prohibition of a State Agency Contracting With Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations 51

 K.6.20 Violation of Federal Law Relating To Reconstruction Efforts As A Result Of Hurricanes Rita, Katrina or Any Other Disaster after September 24, 2005..... 51

 K.6.21 Deceptive Trade Practices; Unfair Business Practices 51

K.7 REPRESENTATIONS OF THE DEPARTMENT 52

 K.7.1 Authorization..... 52

 K.7.2 No Violation of Agreements..... 52

 K.7.3 Disclosure..... 52

K.8 AUTHORIZED NEGOTIATORS 52

K.9 PAYEE IDENTIFICATION NUMBER..... 52

K.10 POINT OF CONTACT..... 53

K.11 CERTIFICATION..... 53

SECTION L – INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS54

L.1 RESERVED FOR FUTURE USE..... 54

L.2 AMENDMENTS TO SOLICITATIONS..... 54

L.3 LATE SUBMISSIONS, MODIFICATIONS AND WITHDRAWALS OF PROPOSALS 54

L.4 SIGNATURES ON PROPOSAL SUBMITTED 54

L.5 PROPOSAL ACCEPTANCE PERIOD..... 55

L.6 CONTRACT AWARD..... 55

L.7 RIGHTS OF THE DEPARTMENT 55

- L.8 PROPOSAL PREPARATION INSTRUCTIONS56
 - L.8.1 Volume One – Business/Technical Proposal57
 - L.8.2 Volume Two – Cost Proposal58
- L.9 RESERVED FOR FUTURE USE.....58
- L.10 DISCUSSION AND CORRESPONDENCE58
- L.11 LEGISLATIVE BUDGET BOARD (LBB) POSTINGS59
- L.12 RESERVED FOR FUTURE USE.....59
- L.13 SUMMARY OF KEY DATES60
- SECTION M - EVALUATION FACTORS FOR AWARD61**
 - M.1 SELECTION PROCESS61
 - M.2 MINIMUM QUALIFICATIONS.....62
 - M.3 EVALUATION CRITERIA62
 - M.3.1 Cost62
 - M.3.2 Qualifications62
 - M.3.3 Past Performance.....62

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.

Caseload means a group of Offenders not to exceed twelve (12).

Contract Specialist means the Department employee responsible for non-technical administration of this Contract, and shall have the meaning as set forth in Section G.2.2.

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

Contractor means _____.

CSOT means Council on Sex Offender Treatment

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

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

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

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

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

LSOTP means Licensed Sex Offender Treatment Provider.

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

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 supervision or custody of the Department.

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

PD means the Texas Department of Criminal Justice (TDCJ) Personnel Directives.

Provider/Treatment Provider means a person who meets the criteria as established by CSOT and who is licensed in this state to provide Sex Offender Treatment Services, and provides Services for the rehabilitation of Sex Offenders under this Contract.

Contract Monitor means Department employee responsible for technical administration of this Contract, as described in Section G.2.3.

Quarter means the time period that relates to the Department's Fiscal Year, with quarters beginning September 1, December 1, March 1 and June 1, unless specifically noted otherwise.

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

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 December 1, 2018.

Sex Offender means an Offender who is convicted of committing or adjudicated to have committed a sex crime under state or federal law; is awarded deferred adjudication for a sex crime under state or federal law; or is convicted of, adjudicated to have committed, or awarded deferred adjudication for an offense that is based on sexually motivated conduct.

Sex Offender Treatment Services (also referred to as Services) means treatment modalities as described by Texas Administrative Code, Title 22, Part 36, Chapter 810.

TBCJ means the Texas Board of Criminal Justice.

TDCJ-RPD means the Texas Department of Criminal Justice – Rehabilitation Programs Division, a division of the Texas Department of Criminal Justice, an agency of the State of Texas.

Treatment Team means a meeting of the program staff, as described in policy, in order to make collective decisions regarding program Offenders.

Working Day means Monday through Friday, unless a nationally recognized holiday.

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 and otherwise do all things necessary for, or incidental to, providing Sex Offender Treatment Services for felony Offenders, identified by the Department. These Services are needed at the following Department facility:

TDCJ Hightower Unit
902 FM 686
Dayton, TX 77535

A Sex Offender Treatment Services group at no time shall exceed twelve (12) Offenders, unless special situations arise. In the case of such situations, the expanded group size must be approved in writing by the Manager of Sex Offender Rehabilitation Programs or designee.

The Contract Term will consist of a nine (9) month Base Period, and one (1) one (1) year renewal Option Period.

B.1.2 Pricing Instructions

The Department anticipates award of a firm fixed-price Contract for Payment of these Services. Price shall be evaluated in accordance with the evaluation factors identified within Section M. Offerors shall complete the Pricing Schedule in Section B.2.

B.2 PRICING SCHEDULE

Contract Line Item Numbers (CLIN) 001-002

TDCJ Hightower Unit

001 Base Period (December 1, 2018 – August 31, 2019)

Number of Caseloads _____ \$_____ per Caseload

002 Option Period (September 1, 2019 – August 31, 2020)

Number of Caseloads _____ \$_____ per Caseload

B.3 ALLOWABLE COSTS

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

B.4 NON-ALLOWABLE COSTS

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

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

Pursuant to Texas Government Code, Section 500.004, requiring Offenders to participate in treatment programs, the Department requires a Contractor(s) to provide Sex Offender Treatment Services in correctional institutions in specified location(s). Program Offenders shall be incarcerated Offenders who have a history of at least one (1) conviction for sexually deviant behavior and have been required to participate in Sex Offender Treatment Services prior to release from custody.

C.2 GENERAL DUTIES AND OBLIGATIONS

The Contractor shall provide the services in accordance with applicable federal and state law, including all constitutional, legal and court ordered requirements, whether now in effect or hereinafter effected or implemented. The Contractor shall comply with the Department's policies, procedures, personnel directives and regulations during the service period. The Contractor shall comply with the Department's safety requirements and reporting procedures, as well as all applicable local and state standards, codes and regulations, including zoning, building, fire, health and sanitation.

C.3 LOCATION OF TREATMENT SITE

The services will be provided at the Hightower Unit in Dayton, Texas. Scheduling for sessions shall be made at the convenience of the Department staff, Offenders, Provider, and the facility.

C.4 MANDATORY REQUIREMENTS FOR SEX OFFENDER TREATMENT PROVIDERS

These requirements apply to each Provider who facilitates Caseloads and conducts individual and group therapy sessions for Offenders under the terms of this Contract.

- A. Providers shall meet criteria established by the Council on Sex Offender Treatment (CSOT) pursuant to the requirements set out in the Texas Occupations Code, Title 3, Chapter 110. The Contractor shall provide acceptable documentation of having met these criteria by submitting a copy of each Provider's current LSOTP license and a copy of the Provider's current primary professional license. All license and certifications shall be submitted to the Contract Specialist with the proposal.
- B. For continuum of care, it is crucial that the same Provider conduct Caseloads, therefore, prior to any change in Provider, the Contractor shall submit written notification, including the aforementioned credentials of the new Provider, to the Manager of Sex Offender Rehabilitation Programs or designee. The Manager of Sex Offender Rehabilitation Programs or designee must approve the change in Provider before services are rendered. Payments will be made only after authorized Department approval has been granted. No back payments will be made for services rendered prior to approval.
- C. Providers shall maintain a professional and courteous relationship with all Department staff and Offenders.

- D. A criminal history check afforded by the Department will be conducted on each Provider and an award will be contingent on a clear criminal history background. If criminal convictions are exposed, the Department reserves the right to withdraw offer of award. The Department reserves the right to approve any subsequent hires. All prospective Providers who currently 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 Manager of Sex Offender Rehabilitation Programs or designee will determine employment eligibility for any Provider who was previously employed by the Department and resigned during a disciplinary investigation. Providers who have a conviction or deferred adjudication for a sexual offense shall not be approved by the Department to provide services.
- E. The Contractor shall submit each Provider's background and experience providing treatment and assessments of Sex Offenders. This description shall include the number of years working with Sex Offenders and the average number of Sex Offenders served in a year. The Provider shall have a minimum of two (2) years of experience providing treatment of Sex Offenders.

C.5 MANDATORY REQUIREMENTS FOR SEX OFFENDER TREATMENT SERVICES

- A. Providers shall follow all program policies for the provision of services. Providers shall provide group therapy and individual sessions, as well as participate in scheduled Treatment Team sessions as part of the Contract.
- B. The program is structured in three (3) phases. Phase I is primarily psychoeducational, with Department Case Managers teaching classes from a structured curriculum. During Phase I the Provider is required to conduct two (2) to four (4) individual sessions, lasting at least thirty (30) minutes each, as well as attend Treatment Teams as needed. During Phase II and III, the Provider is required to conduct two (2), one-and-one-half (1.5) hour group sessions weekly, and one (1) individual session with each Offender monthly. Phase promotions and program completions may require attendance in a Treatment Team Meeting. For the Caseload in increments of twelve (12), the Contractor is expected to provide or participate in the following services:

Phase I:

1. Individual Session: two (2) to four (4) sessions, lasting at least thirty (30) minutes each, for each Offender;
2. Treatment Team Meetings;
3. Clinical Documentation; and
4. Staff Meetings.

Phase II and Phase III:

1. Group Therapy: Maximum of twelve (12) Offenders, twice weekly for one-and-one-half (1.5) hour sessions;
2. Individual Session: one (1) monthly session, lasting at least thirty (30) minutes, for each Offender;

3. Treatment Team Meetings;
 4. Clinical Documentation; and
 5. Staff Meetings.
- C. The Department shall complete an evaluation for each Offender enrolled in the program. The evaluation will contain a Clinical Interview, Review of Risk Assessment and Personality Assessment Inventory (PAI), along with conclusions and recommendations. The Provider shall ensure this evaluation has been completed for all Offenders in the Caseload.
- D. The Providers shall use group therapy as the primary treatment method. During Phase II and III, the group therapy shall be scheduled twice weekly with group size not to exceed twelve (12) Offenders.
- E. In the event an unusual situation arises that is best addressed in individual counseling sessions rather than the group setting, individual sessions beyond those required as a minimum may be provided with advance permission from the Manager of Sex Offender Rehabilitation Programs, the Deputy Director for Sex Offender Programs, or their designee.
- F. A Contractor may waive sessions for the following reasons:
1. Illness of Provider or in Provider's immediate family; or
 2. Provider's vacation (maximum of four weeks per calendar year).
- G. Holidays: Sessions will not be conducted on Department holidays designated as all agencies closed:
1. New Year's Day;
 2. Martin Luther King, Jr. Day;
 3. Presidents' Day;
 4. Memorial Day;
 5. Independence Day;
 6. Labor Day;
 7. Veterans' Day;
 8. Thanksgiving Day and the day after; and
 9. Christmas Eve, Christmas Day, and the day after
- H. The Department will not pay for waived sessions.

- I. The Provider shall place written progress notes in the Offender's record for each session completed and team meetings attended. The records are maintained in the Department's Mainframe system and shall remain the custody of the Department.
- J. The Provider shall prepare written documentation of treatment interventions used to gain compliance and provide motivation to Offenders for their acceptance of responsibility and completion of required assignments. In accordance with the Department Policy regarding graduated sanctions, the Provider may be required to document formal disciplinary cases for processing within the Department for failure to participate in a required treatment program.
- K. The Contractor, Provider, and Manager of Sex Offender Rehabilitation Programs or designee shall jointly agree upon the course of treatment to include modifications to frequency of attendance, duration of program participation (e.g., early completion or extension).

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 the Contract price, all reasonable assistance for the safe and convenient performance of these duties.
- B. From time to time the Department shall, subject to limitations provided by law with respect to rights of privacy, have the right to reasonably prompt access and to examine all records of the Contractor related specifically to the Services being provided, including financial records, employee records (including time, attendance, and payroll records), and any and all records and documents generated by the Contractor and its subcontractors in connection with the 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.4.2 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 the specific areas of non-compliance. The Contractor shall have a twenty (20) Day period to file a written response detailing corrective action(s) taken to address all items of non-compliance. The response must include supporting documentation which verifies execution of corrective action(s) taken. Unless otherwise specified, or previously agreed to by the Department, the submission of a corrective action plan shall not be accepted as corrective action. For all items of non-compliance satisfactorily resolved by agreement between the Contractor and the Department, no further action regarding such items shall be taken.
 - 2. If any of the Services are non-compliant with the Contract requirements, as identified by a government regulatory agency, the Contractor must resolve all items identified as non-compliant by the deadline established by the agency.

E.2 INSPECTION BY STATE EMPLOYEES

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

E.3 MONITORING CRITERIA

- A. The Department shall devise its own procedures for monitoring the quality of the Contractor's performance under this Contract, and Department Policies.
- B. The Contractor shall cooperate fully with the Department and the Contract Monitor in obtaining the requisite information needed to complete such audits and to assess the quality of the Contractor's performance.

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

E.4 AUTHORITY TO AUDIT

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

E.5 AUDITS BY OTHER AGENCIES

- A. Upon receipt of audits or inspections pertaining to Services under this Contract that are conducted by agencies or entities other than the Department, the Contractor shall provide copies thereof to the Department within thirty (30) Days.
- B. The Contractor shall provide to the Department copies of responses to audits and/or inspections within seven (7) Days of issuance. Audits or inspections may include allegations or complaints involving Services, or the Contractor and its employees (including consultants, independent contractors and their employees and agents and volunteer workers).
- C. The Contractor shall retain all original audits and inspections that are conducted by other agencies. These records shall be maintained in accordance with the Department's Records Retention Schedule. If those records are still in their retention period at the termination of the Contract, all originals shall be physically transferred to the Department.

E.6 FRAUD, WASTE OR ABUSE

- A. In accordance with Texas Government Code, Chapter 321, the State Auditor's Office (SAO) is authorized to investigate specific acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt or use of state funds.
- B. If there is a reasonable cause to believe that fraud, waste or abuse has occurred at this agency, it can be reported to the SAO by calling 1-800-892-8348 or at the SAO's website at www.sao.texas.gov. It can also be reported to the TDCJ Office of the Inspector General at

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

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

The Contract Term will consist of a Base Period of nine (9) months (December 1, 2018 through August 31, 2019), and one (1) one (1) year renewal Option Period (September 1, 2019 through August 31, 2020).

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

This Contract incorporates one (1) or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contract Specialist will make their full text available.

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

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

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

G.2.2 Contract Specialist

- A. The Contract Specialist for administration of this Contract is Steven Tilley.

- B. The telephone number for the Contract Specialist is (936) 437-7031.
- C. The fax number of the Contract Specialist is (325) 223-0310.
- D. The e-mail address for the Contract Specialist is steven.tilley@tdcj.texas.gov.
- E. The Contract Specialist is responsible for general administration of this Contract, negotiation of any changes and final issuance of written changes/modifications to this Contract.

G.2.3 Contract Monitor

- A. The Contract Monitor for this Contract is Joseph Bon-Jorno.
- B. The telephone number for the Contract Monitor is (936) 437-2870.
- C. The facsimile number of the Contract Monitor is (936) 437-7326.
- D. The e-mail address of the Contract Monitor is joseph.bon-jorno@tdcj.texas.gov.
- E. The Contract Monitor is not authorized to make any representations or commitments of any kind on behalf of the Executive Director of the Department or the State of Texas.
- F. The Contract Monitor does not have the authority to alter the Contractor's obligations or to change the Contract specifications, price, terms or conditions
- G. The Contract Monitor assignment for this Contract may be changed at any time by the Department without prior notice to the Contractor.
- H. If, as a result of technical discussions, it is desirable to modify the Contract obligations or Statement of Work, changes will be issued in writing and signed by the Executive Director of the Department or his/her designated representative (Chief Financial Officer).

G.2.4 Project Manager

- A. The Project Manager for this Contract is (To be named by the Contractor).
- B. The telephone number for the Project Manager is _____.
- C. The facsimile number for the Project Manager is _____.
- D. The e-mail address for the Project Manager is _____.
- E. The Contractor shall provide a Project Manager for this Contract who shall be responsible for the overall management and coordination of this Contract and shall act as the central point of contact with the Department.
- F. The Project Manager shall have full authority to act for the Contractor in the performance of the required Services.
- G. The Project Manager or a designated representative shall meet with the Contract Monitor to discuss problems as they occur.

G.3 INVOICE REQUIREMENTS

- A. The Contractor shall bill the Department for each calendar month, one (1) calendar month in arrears, for the amount due for the services, and the Department shall pay such invoice within thirty (30) Days after receipt of an accurate Contractor's invoice.
- B. The Contractor shall submit an original invoice to the office designated below:
- Texas Department of Criminal Justice
Rehabilitation Programs Division
Attention: Candace Carter, Accountant V
P. O. Box 99
Huntsville, Texas 77342-0099
- C. To constitute a proper invoice, the invoice shall include the following additional information:
1. Name of business concern and invoice date;
 2. Contract number and when Services were provided;
 3. Descriptions, price and quantity of Services rendered;
 4. Payment terms (to include prompt Payment discount, if applicable); and
 5. Name (where practicable), title, phone number and complete mailing address of responsible official to whom Payment is to be sent.
- D. The Department, subject to its usual auditing and accounting procedures, shall pay such invoices thirty (30) Days after receipt of an accurate Contractor's invoice. The Contractor may offer prompt payment discount, for example, one percent (1%), fifteen (15) Days (refer to page 1, block 7 of the Solicitation, Offer and Award form) if the Contractor desires expedited Payment. Prompt payment discounts and payment terms must also be stated on each invoice.

G.4 PAYMENTS

- A. It is recommended that the Contractor receive Payments via Electronic Funds Transfer (EFT), also known as Direct Deposit.
- B. Regardless as to whether Direct Deposit is chosen, upon 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: http://www.tdcj.texas.gov/documents/bfd/TDCJ_Substitute_W-9_Form.pdf.

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:

- C. Payment is to be made monthly by the Department to the Contractor after all Services are rendered and invoices with required reports have been submitted accurately and completely.
- D. Partial Payments may be made when the amount of the invoice is sufficient, in the opinion of the Department, to justify processing the Payment.
- E. The Contractor shall have thirty (30) Days from receipt of Payment to submit a request for consideration to review any discrepancies or inaccuracies.

G.4.1 Late Payment

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

G.4.2 Withholding of Payment

- A. The Department shall have the right to withhold the Payment until the failures described below have been corrected.
 - 1. Failure to respond to audit reports as required in Section E.1.C; and
 - 2. Failure to correct identified areas of non-compliance to the satisfaction of the Department within twenty (20) Days upon receipt of written notification.
- B. The Contractor agrees that the Department shall not pay interest to the Contractor for monies so withheld.
- C. The Payment withheld shall be released upon the Department’s satisfaction that compliance has been achieved for thirty (30) Days.
- D. With the exception of disputed issues, such withholding of final Payment by the Department shall not exceed one hundred twenty (120) Days from date of Contract termination.

G.4.3 Payment of Debt Owed to the State of Texas

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

G.4.4 Right to Offset

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

SECTION H - SPECIAL CONTRACT REQUIREMENTS

H.1 INSURANCE REQUIREMENTS

- A. Prior to the approval of this Contract by the Department, the Contractor shall procure, pay for and maintain the following insurance written by companies approved by the State of Texas and acceptable to the Department. It is recommended that coverage be with a company or companies having both a Financial Strength Rating of "A" or better and Financial Size Category Class of "VII" or better from A.M. Best Company, Inc.
- B. The insurance shall be evidenced by delivery to the Department of certificates of insurance executed by the insurer or its authorized agent stating coverage, limits, expiration dates and compliance with all applicable required provisions.
- C. Upon request, the Department shall be entitled to receive without expense, copies of the policies and all endorsements. Copies and changes to the initial insurance policies, including extensions, renewals, cancellations and revisions shall be submitted to the Contract Specialist within thirty (30) Days of the effective date.
- D. Subject to the Contractor's right to maintain reasonable deductibles, the Contractor shall obtain and maintain in full force and effect for the duration of this Contract and any extension hereof, at the Contractor's sole expense, insurance coverage in the following type(s) and amounts: Professional liability insurance in the minimum amount of \$1,000,000.00 individual occurrence and \$3,000,000.00 aggregate.

H.1.1 Required Provisions

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

- A. Name the Department and its officers, employees and elected representatives as additional insured to all applicable coverages.
- B. Waive subrogation against the Department, its officers, employees and elected representatives, for bodily injury (including death), property damage or any other loss, to all applicable coverages.
- C. Provide that the Contractor's insurance is the primary insurance in regards to the Department, its officers, employees and elected representatives.
- D. Provide that all provisions of this Contract concerning liability, duty and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.
- E. Ensure that all certificates of insurance identify the service or product being provided and the name of responsible party.
- F. The Contractor through an insurance agent licensed by the State of Texas shall obtain all insurance coverage and an insurance company licensed to issue such coverage in this state shall provide such coverage. No "self-insurance" coverage shall be acceptable. All policies shall include a provision requiring written notice of cancellation to the Department.

- G. All insurance coverage obtained by the Contractor shall continue in full force and effect during the Contract Term. No Contract shall be entered into between the Contractor and the Department unless insurance coverage binders are received by the date scheduled for the execution of the Contract. Proof of insurance policies must be delivered prior to the Service Commencement Date.
- H. All insurance coverage is to be provided by insurance carriers permitted to conduct business in Texas.
- I. The Contractor may choose the amount of deductible for any other insurance coverage required (above) to be obtained by the Contractor, but in no event shall such deductible for each occurrence exceed five percent (5%) of the required yearly aggregate limit of coverage.
- J. The Contractor is responsible for the first (1st) dollar defense coverage. All general liability and professional liability policies shall provide defense in addition to the policy limits.
- K. The limits required herein are minimum acceptable. However, these limits are not to be construed as being the maximum any prospective contractor may wish to purchase for their own benefit.
- L. As respect to the total limits of liability required, any combination of primary and/or umbrella coverage may satisfy those totals. However, if an umbrella is used, coverage must be at least as broad as the primary coverage.

H.2 SUBCONTRACTORS

- A. The Contractor may subcontract for the performance of any of its responsibilities to provide Services pursuant to this Contract.
- B. No subcontract may be entered into unless the Department provides prior written approval, which approval may not be unreasonably withheld.
- C. If a subcontractor is deemed to be needed for an event of an emergency nature, verbal approval may be obtained through an authorized Department representative. The Contractor shall submit a written request with supporting documentation for approval, by the Department, as soon as possible.
- D. The Contractor shall furnish to the Department copies of all subcontracts, without regard to the amount of annual payments.
- E. Any arrangement by the Contractor with an affiliate or member company to provide Services for this Contract shall be subject to the subcontractor provisions of this Section.
- F. No contractual relationship shall exist between the Department and any subcontractor and the Department shall accept no responsibility whatsoever for the conduct, actions or omissions of any subcontractor selected by the Contractor.
- G. The Contractor shall be responsible for the management of the subcontractors in the performance of their work.

- H. A subcontractor may not work directly with the Department in any manner and shall not be included in Contract negotiations, renewals, 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, and the required Non-Discrimination clause referenced in Section I.12.

H.2.1 Insurance

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

H.3 RESERVED FOR FUTURE USE

H.4 RESERVED FOR FUTURE USE

H.5 RESERVED FOR FUTURE USE

H.6 UTILIZATION OF PRODUCTS AND MATERIALS PRODUCED IN TEXAS

- A. The Contractor shall comply with Texas Government Code, Section 2155.4441, relating to service contract use of products produced in the State of Texas.
- B. In performing Services under this Contract, the Contractor shall purchase products and materials produced in the State of Texas when they are available at a price and time comparable to products and materials produced outside of Texas.

H.7 CRIMINAL HISTORY INFORMATION COMPLIANCE

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

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

H.8 OTHER CONFIDENTIAL OR SENSITIVE INFORMATION

- A. The parties hereto acknowledge and agree that in order for the Contractor to perform the Services contemplated herein, the Department may have to provide the Contractor with, or the Contractor may have access to, certain information, other than criminal history information, that is confidential pursuant to federal or state laws, rules, or regulations, or that is personal information considered to be "sensitive". The Contractor agrees that such confidential or sensitive information shall only be used for the purpose of performing Services contemplated herein. Such information shall not be disclosed, copied or transmitted for any purpose other than for the performance of Services contemplated herein.
- B. In the event that the Contractor's employee(s) fails to comply with the terms hereof, the Contractor shall take corrective action with the employee(s). Such corrective action must be

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

H.9 BOOKS AND RECORDS

The Contractor shall retain all financial records, including supporting documents, statistical records, and any other records or books, relating to the Contractor's performance under the Contract. These records shall be maintained in accordance with the Department's Records Retention Schedule. The Contractor shall grant access to all books, records, and documents pertinent to the Contract to the Department, SAO, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

H.10 ORGANIZATIONAL NAME CHANGE

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

H.11 FREE EXERCISE OF RELIGION

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

H.12 RESERVED FOR FUTURE USE

H.13 RESERVED FOR FUTURE USE

H.14 RESERVED FOR FUTURE USE

H.15 RESERVED FOR FUTURE USE

H.16 SECURITY

The Contractor's employees and representatives, vehicles and equipment must be under security surveillance at all times and are subject to inspection at any time while on State property. The Contractor agrees to abide by all Department Policies and Unit rules and regulations on State property. These rules, in part, prohibit the introduction of alcohol, narcotics, weapons, gambling 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 Units. Tobacco products are strictly prohibited on Department 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, 2019.
- B. The Department's obligation for performance of this Contract beyond that date is contingent upon legislative approval and the availability of appropriated funds from which Payment for Contract purposes can be made.
- C. No legal liability on the part of the Department for any Payment may arise for performance under this Contract beyond August 31, 2019, until funds are made available to the Department for performance and until the Contractor receives notice of availability.
- D. Refer to Section I.3.4, 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(s) or Service(s) provided are 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, any Court Order, federal or state requirement or law, when such failure continues for a period of twenty (20) Days after the Contractor's receipt of written notice thereof;
- C. The Contractor's Material Failure to comply with any Department Policies for which the Contractor has been expressly required to comply and for which the Contractor has not received a prior written waiver from the Department, when such failure continues for a period of twenty (20) Days after the Contractor's receipt of written notice thereof;
- D. Insolvency of the Contractor as evidenced by any of the following occurrences:
 - 1. Its inability to pay its debts;
 - 2. Any general assignment for the benefit of creditors;

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

I.3.2 Further Opportunity to Cure

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

I.3.3 Remedy of the Department

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

- A. Reducing its claim to a judgment;

- B. Taking action to cure the Event of Default, in which case the Department may offset against any Payments owed to the Contractor all reasonable costs incurred by the Department in connection with its efforts to cure such Event of Default;
- C. Withholding of funds as authorized in Section G.4.7; 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 and the Contractor shall comply with Section H.3 with respect to the transition to new management.
 - 3. The Department may also acquire, in the manner the Department considers appropriate, services similar to those terminated and the Contractor will be liable to the Department for any increase in costs for those services.
 - 4. The Contractor shall not be liable for any increase in costs if the failure to perform the Contract arises from and without the fault or negligence of the Contractor as follows:
 - a. Acts of God or of the public enemy;
 - b. Acts of the State in either its sovereign or contractual capacity;
 - c. Fires;
 - d. Floods;
 - e. Epidemics;
 - f. Quarantine restrictions;
 - g. Strikes;
 - h. Freight embargoes; and
 - i. Unusually severe weather.

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

I.3.4 Termination for Unavailability of Funds

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

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

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

I.3.5 Non-Appropriation Effect and Remedy

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

I.3.6 Termination for Convenience

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

I.3.7 Termination by Mutual Agreement

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

I.3.8 Termination Procedures

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

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

I.3.9 Default by the Department

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

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

I.3.10 Remedy of the Contractor

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

I.3.11 Dispute Resolution

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

The Contractor shall defend, indemnify, and hold harmless the Department and the State of Texas from and against any and all claims, violations, misappropriations or infringement of any patent, trademark, copyright, trade secret or other intellectual property rights and/or other intangible property, publicity or privacy rights, and/or in connection with or arising from: (1) the performance or actions of The Contractor pursuant to this Contract; (2) any deliverable, work product, configured Service or other service provided hereunder; and/or (3) the Department's and/or the Contractor's use of or acquisition of any requested Services or other items provided to the Department by the Contractor or otherwise to which the Department has access as a result of the Contractor's performance under the 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 Texas Attorney General (OAG) 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 OAG. In addition, the Contractor will reimburse the Department and the State of Texas for any claims, damages, costs, expenses or other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. If the Department determines that a conflict exists between its interests and those of the Contractor or if the Department is required by applicable law to select separate counsel, the Department will be permitted to select separate counsel and the Contractor will pay all reasonable costs of the Department's counsel.

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

I.6 NO WAIVER OF DEFENSES

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

I.7 INDEPENDENT CONTRACTOR

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

I.8 LAWS OF TEXAS

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

I.9 ASSIGNMENT

- A. The Contractor may not assign any interest in this Contract without the prior written consent of the Department which consent the Department may withhold at its sole discretion.
- B. If the Department so elects in its sole discretion, this Contract will terminate upon the occurrence of any of the following:
 - 1. More than fifty percent (50%) of the assets of the Contractor are sold;
 - 2. The Contractor is merged into, acquired by, or consolidated with another corporation or business entity; or is otherwise the subject of reorganization; or

3. Any shareholder or owner of the Contractor who owns at least ten percent (10%) beneficial ownership of the Contractor fails to continue to own at least ten percent (10%).
- C. In the event that any sale, transfer, or assignment, as referenced in paragraphs A and B above, is consented to by the Department, the transferee or its legal representative shall agree in writing with the Department to assume, perform and be bound by the covenants, obligations and agreements contained herein.

I.10 MAINTENANCE OF CORPORATE EXISTENCE AND BUSINESS

- A. The Contractor, if incorporated, shall at all times maintain its corporate existence and authority to transact business and be in good standing in its jurisdiction of incorporation and the State of Texas.
- B. The Contractor shall maintain all licenses, permits and franchises necessary for its business 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 and shall not be binding until so approved.
- B. For Contracts valued over \$1,000,000.00 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 AIDS/HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. The Contractor shall post notices setting forth the provisions of this Non-Discrimination Clause in conspicuous places, available to employees and applicants for employment.
- B. In all solicitations or advertisements for employees and/or the purchase of Services, the Contractor shall state that it is an equal opportunity employer; provided, however, that notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting this requirement.
- C. The Contractor shall include the provisions of the foregoing paragraphs in every subcontract so that such provisions shall be binding upon each subcontractor or vendor.

I.13 CONFIDENTIALITY AND OPEN RECORDS

I.13.1 Confidentiality

Any confidential information provided to or developed by the Contractor in the performance of the Contract shall be kept confidential unless otherwise provided by law and shall not be made

available to any individual or organization by the Contractor or the Department without prior approval of the other party.

I.13.2 Open Records

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

I.14 CONTRACT CHANGES

- A. Changes/modifications to this Contract (except Contract extensions in accordance with Sections I.15 and I.16; administrative changes; such as changing the Contract Specialist designation; correcting typographical errors; or other unilateral changes discussed elsewhere in the Contract) shall be mutually agreed to by the parties and executed in writing with the authorized signatures.
- B. The Department, at its sole discretion, may revise funding during the course of this Contract by issuing a unilateral modification to the Contractor.

I.15 OPTION TO EXTEND THE TERM OF THE CONTRACT

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

I.16 OPTION TO EXTEND SERVICES

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

- D. The Department may exercise the option by written notice to the Contractor within the period specified in Section I.15.

I.17 SEVERABILITY

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

I.18 IMMIGRATION

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

I.19 NO LIABILITY UPON TERMINATION

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

I.20 LIMITATION ON AUTHORITY

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

I.21 INTELLECTUAL PROPERTY INDEMNIFICATION

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

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

- A. Effective September 1, 2006 State Agencies and Institutions of Higher Education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in Texas Administrative Code, Title 1, Part 10, Chapter 213, when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

- B. The Contractor shall provide the Department with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under the Rehabilitation Act, Section 508), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Contractors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide the Department with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

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

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials prepared by the Contractor in the performance of its obligations under this Contract shall be the exclusive property of the State of Texas and all such materials shall be delivered to the Department by the Contractor upon completion, termination, or cancellation of this Contract. The Contractor may, at its own expense, keep copies of all its writings for its personal files. The Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of the Contractor's obligations under this Contract without the prior written consent of the Department; provided, however, that the Contractor shall be allowed to use non-confidential materials for writing samples in pursuit of the work. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

I.24 FORCE MAJEURE

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

I.25 NOTICES

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

Notices to the Department shall be sent to:

Steven Tilley, Contract Specialist
Texas Department of Criminal Justice
Contracts and Procurement Department
Client Services and Governmental Contracts Branch

Two Financial Plaza, Suite 525
Huntsville, Texas 77340
Steven.tilley@tdcj.texas.gov

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

I.26 SUBSTITUTIONS

Substitutions are not permitted without written approval of the Department.

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

- A. By entering into this Contract, the Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:
1. All persons employed to perform duties within Texas, during the Contract Term; and
 2. All persons (including subcontractors) assigned by the Contractor to perform work pursuant to the Contract, within the United States of America.
- B. The Contractor shall provide, upon request of the Department, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Contractor, and the Contractor's subcontractors, as proof that this provision is being followed.
- C. If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the State and at no fault to the State, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the State must undertake to replace the terminated Contract.

I.28 ANTITRUST AFFIRMATION

The Contractor shall confirm, under penalty of perjury of the laws of the State of Texas that (1) in connection with the Contract, neither the Contractor nor any representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (2) in connection with this Contract, neither the Contractor nor any representative of the Contractor have violated any federal antitrust law; and (3) neither the Contractor nor any representative of the Contractor have directly or indirectly communicated any of the contents of this Contract to a competitor of the Contractor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contractor.

SECTION J – RESERVED FOR FUTURE USE

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

K.1.2 HUB Representation

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

K.2 CHILD SUPPORT REPRESENTATION

- A. Under the Texas Family Code, Section 231.006, a child support obligor who is more than thirty (30) Days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder or owner with an ownership interest of at least

twenty-five percent (25%) is not eligible to receive payments from State funds under a contract to provide property, materials or services.

- B. Governmental entities and any business entity, including a non-profit corporation, that does not have a majority shareholder who is a natural person capable of being a child support obligor, are not subject to 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.

FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Texas Family Code Section 231.006 requires a bid or an application for a contract, grant, or loan paid from State funds to include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least twenty-five percent (25%) of the business entity submitting the bid or application. The Social Security number(s) will be kept confidential and only disclosed in accordance with Texas Family Code Section 231.302.

_____	_____	_____	_____
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 D, Division 2, Rule 20.306, the Offeror shall check below if claiming a preference. If the appropriate line is not marked, a preference will not be granted unless other documents included in the proposal show a right to the preference.

K.5.1 Source and Specification Preferences

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

K.5.2 Tie-Bid Preferences

- Goods produced or offered by a Texas bidder that is owned by a Texas Resident Service-Disabled Veteran.*
- Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas Resident Service-Disabled Veteran.*
- Agricultural products produced or grown in Texas.
- Agricultural products or services offered by Texas bidders.*
- Services offered by a Texas bidder that is owned by a Texas Resident Service-Disabled Veteran.*
- Services offered by a Texas bidder that is not owned by a Texas Resident Service-Disabled Veteran.*
- Texas vegetation native to the region.
- USA produced supplies, materials, equipment or agricultural products.

K.5.3 Additional Preferences

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

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

K.6 REPRESENTATIONS OF OFFEROR

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

K.6.1 Organization and Qualification

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

K.6.2 Authorization

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

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

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

K.6.4 No Defaults under Agreements

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

K.6.5 Compliance with Laws

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

K.6.6 No Litigation

- A. The Offeror certifies that there is not now pending, or to its knowledge threatened, any action, suit or proceeding to which the Offeror, or any of its employees, are a party, before or by any court or governmental agency or body, which may result in any material adverse change in the Offeror's ability to perform its obligations under this Contract, or any such action, suit or proceeding related to environmental or civil rights matters.
- B. The Offeror further certifies that no labor disturbance by the employees of the Offeror exists or is imminent which may be expected to materially and adversely affect the Offeror's ability to perform its obligations under this Contract.

- C. Prior to the Department making an award of this Contract, the Department may require Offerors being considered for the award to recertify the representations set forth above. The Department, in its sole discretion, may disqualify any Offeror that in the opinion of the Department is a party, or who has any employees that are a party, to any action, suit or proceeding that may result in any material adverse change in the Offeror's ability to perform its obligations under this Contract.
- D. During the term of this Contract, to include extensions hereof, the Offeror shall notify the Department in writing within five (5) Days of the Offeror having received knowledge of any actions, suits or proceedings filed against the Offeror, or any of its employees, or to which the Offeror, or any of its employees, are a party, before or by any court or governmental agency or body, which:
 - 1. May result in any material adverse change in the Offeror's ability to perform its obligations under this Contract;
 - 2. Filed in any federal court, state court, or federal or state administrative hearing within the State of Texas regardless as to any anticipated material adverse change in the Offeror's ability to perform its obligations under this Contract; and
 - 3. Is brought by or on behalf of a State of Texas Offender regardless as to any anticipated material adverse change in the Offeror's ability to perform its obligations under this Contract.
- E. The Contractor shall provide in writing, to the Contract Specialist, a quarterly report listing litigation identified in the above requirements.

K.6.7 Taxes

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

K.6.8 Reserved for Future Use

K.6.9 No Adverse Change

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

K.6.10 Disclosure

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

K.6.11 No Collusion

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

K.6.12 Ethics**K.6.12.1 Conflict of Interest**

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

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

K.6.12.2 Disclosure of Interested Parties

In accordance with Texas Government Code, Section 2252.908, a governmental entity or State Agency may not enter into a contract valued at \$1,000,000.00 or greater with a business entity unless the business entity, in accordance with Texas Administrative Code, Title 1, Part 2, Chapter 46, Rules 46.1, 46.3 and 46.5, submits a disclosure of interested parties to the governmental entity or State Agency at the time the business entity submits the signed Contract to the governmental entity or State Agency.

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

K.6.12.3 No Gratuities

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

K.6.13 No Compensation

Pursuant to Texas Government Code, Section 2155.004, the Offeror has not received compensation for participation in the preparation of the specifications for this proposal. Under Texas Government Code, Section 2155.004, the Offeror certifies that the individual or business entity named in this proposal or Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and Payment withheld if this certification is inaccurate.

K.6.14 Contracting with Executive Head of State Agency

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

Name of Former Executive: _____

Name of State Agency: _____

Date of Separation from State Agency: _____

Date of Employment with Offeror: _____

K.6.15 Limitation on Employment of Former State Officers

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

K.6.16 Notification

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

K.6.17 Suspension, Debarment and Terrorism

The Department is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal

General Services Administration's System for Award Management (SAM, <https://www.sam.gov>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

K.6.18 Prohibition of a State Agency Contracting With Companies that Boycott Israel

The Contractor certifies that they are in compliance with Texas Government Code, Chapter 2270 relating to the prohibition of a State Agency contracting with companies that boycott Israel or boycotts Israel during the term of the Contract. The Contractor certifies that the individual or business entity named in this proposal or Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and Payment withheld if this certification is inaccurate.

K.6.19 Prohibition of a State Agency Contracting With Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations

The Contractor certifies that they are in compliance with Texas Government Code, Chapter 2252.152 relating to the prohibition of a State Agency contracting with companies that are engaged in business with Iran, Sudan, or foreign terrorist organizations. 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.6.20 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 assessed a penalty in a federal, civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery or reconstruction efforts as a result of Hurricane Rita, 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.6.21 Deceptive Trade Practices; Unfair Business Practices

The Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practice 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 of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

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 Solicitation: (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-PS-19-P003
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 RESERVED FOR FUTURE USE****L.2 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://www.txsmartbuy.com/sp>.
- 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 of the Solicitation, Offer and Award form; or by letter or e-mail.
- D. The Department must receive the acknowledgment by the date and time specified for receipt of the proposals.
- E. Failure to acknowledge amendment(s) may subject proposal to rejection.

L.3 LATE SUBMISSIONS, MODIFICATIONS AND WITHDRAWALS OF PROPOSALS

- A. Proposals must be time stamped at the office designated in this Solicitation on or before the hour and date specified.
- B. Proposal received at the designated location after the exact date and time specified will not be considered.
- C. Proposals cannot be altered, amended or modified by telegram, fax, e-mail or otherwise after the closing date and time.
- D. Alterations made before the closing date and time should be initialed by the Offeror or its authorized agent.
- E. Proposals cannot be withdrawn after the closing date and time without approval by the Department based on an acceptable written reason.

L.4 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 the 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. The 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 from a 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.5 PROPOSAL ACCEPTANCE PERIOD

- A. All proposals will be valid for fifty (50) Days after the submission date and will constitute an irrevocable proposal to the Department for the fifty (50) Day period.
- B. Such period may be extended beyond the two fifty (50) Day period upon mutual agreement of both parties.

L.6 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 a proposal mailed or otherwise furnished to the successful Offeror within the time for acceptance specified in the proposal shall result in a binding Contract(s) without further action by either party.

L.7 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 Solicitation.
- 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. 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 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.
- N. 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.8 PROPOSAL PREPARATION INSTRUCTIONS

Purpose of Instructions

- A. These instructions are designed to assure the submission of information essential to the understanding and the comprehensive evaluation of the Offeror's proposal.
- B. Proposals shall be prepared in accordance with these instructions providing all required information in the format specified.
- C. Failure of a proposal to show compliance with these instructions may be grounds for exclusion of the proposal from further consideration.

Submission of Proposals

- A. It is the Offeror's responsibility to ensure that the proposal is delivered to the address shown on Page 1, Block 5 of the Solicitation, Offer and Award form by the deadline.
- B. The Offeror must complete and sign all required forms, including all required written material by the proposal closing date and time.
- C. Each package received must be marked with the Department's Solicitation number.
- D. Each page of the proposal must include the name of the Offeror making the proposal.

- E. 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. 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.
- F. Proposals must be typed or printed on standard letter paper (8 ½” x 11”), pages numbered, a table of contents included and sections clearly tabbed.
- G. Proposals shall be submitted in two (2) volumes as described below.
- H. Offerors are to submit each volume in an unbound original (suitable for photocopying), to include one (1) read only compact disc (CD) or USB flash drive and **three (3) additional bound copies of Volume One; and four (4) additional bound copies of Volume Two.**
- I. Each proposal must demonstrate that the operations conform to applicable state and federal standards and Department Policies. Cost proposals and Staffing Plans, etc. may differ according to the Facility. In such cases, the Offeror shall clearly indicate for which Facility the information is applicable.
- J. Sealed proposals shall be submitted prior to the proposal closing date and time with the Solicitation number annotated immediately below the return address on the envelope(s)/package(s). **E-mailed or faxed proposals will not be accepted.**
- K. Prospective Offerors are asked to bear in mind that all material submitted should be directly pertinent to the requirements of this Solicitation. Extraneous narrative, elaborate brochures, uninformative public relations material, and other similar documents shall not be submitted.
- L. **Failure to submit all required documentation by the proposal closing date and time may result in disqualification of the proposal from further consideration.**

L.8.1 Volume One – Business/Technical Proposal

This volume shall include four sections as outlined below. NO PRICING DATA SHALL BE SUBMITTED IN THIS VOLUME.

Volume One, Section 1 – Contract Forms

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

- A. Section A, Solicitation, Offer and Award Form (with amendment(s) noted on this page or signed amendment(s) attached to this form);
- B. Section G.2.4, Project Manager;
- C. Section G.4.B, Payments, remittance address (if not electing to receive direct deposit); and
- D. Section K, Representations, Certifications and Other Statements (on original forms).

Volume One, Section 2 – Qualifications and Past Performance

- A. Documentation required by Section C.4.A (CSOT registration).
- B. Complete description of background and experience in assessing and treating Sex Offenders, including the number of years of experience working with Sex Offenders and the average number of Sex Offenders served per year, for each Provider, as required in Section C.4.E.
- 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, Offeror 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. Name, address, telephone number, and e-mail address of references with which the Offeror has had a contract. The Department reserves the right to contact these references.

Volume One, Section 3 – Solicitation Compliance and Exceptions or Deviations

- A. In this section Offerors shall indicate compliance with solicitation requirements set forth in Sections D 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 D through I of the RFP in their entirety, a single statement to that effect will suffice.
- B. If the Offeror does not certify compliance with any of the above listed sections, he/she shall also include in this section any assumptions used in preparing the proposal and any exceptions and/or requested changes. All deviations from the solicitation requirements or terms and conditions shall be fully explained and justified.

L.8.2 Volume Two – Cost Proposal

In this volume of the proposal, the Offeror shall include a completed Pricing Schedule (Section B.2), utilizing the instructions given in Section B.1.2. Financial and cost data may be requested to support the proposed prices.

L.9 RESERVED FOR FUTURE USE**L.10 DISCUSSION AND CORRESPONDENCE**

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

Steven Tilley, Contract Specialist
 Texas Department of Criminal Justice
 Contracts and Procurement Department
 Client Services and Governmental Contracts Branch
 Two Financial Plaza, Suite 525
 Huntsville, Texas 77340
 Steven.tilley@tdcj.texas.gov

- B. Questions concerning any technical aspect of this Solicitation must be submitted in writing (e-mail and fax transmission is acceptable). The Offeror's question(s) shall only be to clarify specific provisions in this Solicitation 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 **October 3, 2018 at 5:00 p.m.** is the last Day to submit written questions for clarification to 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 contact 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 Solicitation will be available for downloading in .pdf format via the Texas Electronic State Business Daily (ESBD) at the following address: <http://www.txsmartbuy.com/sp>.

L.11 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) Working Days of the awarded Contractor's receipt of the Contract for signature, the awarded Contractor must deliver to the TDCJ Contracts and Procurement Department one (1) CD or USB flash drive of its complete proposal, to include clarification responses and negotiated Best and Final Offer. The CD or USB flash drive 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 or USB flash drive 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 or USB flash drive should be entitled "For Public Release: Redacted Version of [Name of awarded Contractor]'s Proposal and Exhibits, Department Solicitation Number 696-PS-19-P003."**

L.12 RESERVED FOR FUTURE USE

L.13 SUMMARY OF KEY DATES

October 3, 2018	3:00 p.m.	Last Day to Submit Written Questions for Clarification by Department
October 12, 2018	3:00 p.m.	Deadline for Receipt of Proposals in Huntsville
December 1, 2018		Service Commencement Date

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

- A. The Department will assemble an Evaluation Committee to review, evaluate and rank proposals. The Evaluation Committee, at its sole option, may choose to validate any aspect of the written proposal. No information will be provided about the status of the proposals while they are under evaluation.
- B. Selection of a 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 in accordance with Texas Government Code, Title 10, Subchapter B, Section 2155.074(b). Once the Department evaluates and deems the proposal technically acceptable, the Department reserves the right, at its sole discretion, to award based on cost.
- C. At any stage in the process, the Department may request clarification or additional information to assist in determining the qualifications, competence and ability of the Offeror to provide the required Service. The Department reserves the right to accept or reject all or part of any proposal, waive minor technicalities and award the Contract to best serve the interest of the State.
- D. The Department may select proposals within a competitive range with whom to negotiate. The Department may notify in writing any or all Offerors whose proposals have been found to be responsive in the detailed evaluation phase.
- E. In accordance with Texas Government Code, Sections 2155.074 and 2155.075, vendor performance may be used as a factor in the award. An Offeror’s past performance will be measured based upon pass/fail criteria in compliance with applicable provisions of Texas Government Code, Sections 2155.074, 2155.075, and 2156.007. Offerors may fail this selection criterion for any of the following conditions:
 - 1. A score of less than “C” or Legacy Unsatisfactory in the Vendor Performance System;
 - 2. Currently under a Corrective Action Plan through the Texas Comptroller of Public Accounts;
 - 3. Having repeated negative Vendor Performance Reports for the same reason; or
 - 4. Having purchase orders or contracts that have been cancelled in the previous twelve (12) months for non-performance (i.e. late delivery, etc.).

Contractor performance information is located on the Texas Comptroller of Public Accounts website at: <http://www.txsmartbuy.com/vpts>.

The Department may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter C, Division 2, Rule 20.208), the Department may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts.

Any such investigations shall be at the sole discretion of the Department, and any negative findings, as determined by the Department, may result in non-award to the Offeror.

F. An offer for an early payment discount may be considered in making an award.

M.2 MINIMUM QUALIFICATIONS

The Department has established the following criteria as minimum Contractor (business entity) qualifications to be eligible to submit a proposal to this Solicitation. Offers from business entities not meeting these qualifications shall be disqualified from further consideration:

- A. Offerors must possess the ability to submit the Provider's current LSOTP and primary professional license required by this solicitation.
- B. The Offerors must possess the ability to obtain the minimum commercial insurance required by this Solicitation.
- C. The Offerors must possess the ability to commence operations (start-up) without financial assistance from the Department.

M.3 EVALUATION CRITERIA

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

M.3.1 Cost (50%)

M.3.2 Qualifications (45%)

M.3.3 Past Performance (5%)