



HHS Enterprise Contract and Procurement Services

SOLICITATION DOCUMENT

Check one: Invitation for Bid (IFB) Request for Offer (RFO) Request for Quote (RFQ)
 Check one: FORMAL INFORMAL

Solicitation No. 53700-7-165811		Response Due Date: <u>August 25, 2016 2:00 p.m. C.S.T.</u>				
Issue Date: August 11, 2016		FORMAL responses MUST be mailed to the address below. Faxed or E-mail responses will only be accepted if indicated in the solicitation.				
Respond to: Purchaser: Gwen O'Bannon, CTPM Phone: 512-917-4865 Fax: 512-406-2690 E-mail: pcsbids@hhsc.state.tx.us CC: gwen.obannon@hhsc.state.tx.us		Mail Response: TX Health & Human Services Procurement & Contracting Services Attn: Bid Response Coordinator 1100 West 49 th Street MC2020 Austin, TX 78756		Ship to Location: TX Dept. of State Health Services Lab Operations 1100 West 49 th Street (DHNL) Austin, TX 78756		
Source of Authority		<input type="checkbox"/> CPA/TPASS <input type="checkbox"/> DIR <input type="checkbox"/> Select: <input checked="" type="checkbox"/> Other: Government Code 2155.067				
Line Item No.	Class & Item	Description <i>itemized below</i>	Qty	UOM	Unit Price	Extension
		The TX Dept. of State Health Services (DSHS) Laboratory in Austin, TX is seeking pricing for a BioRad 2200 Reagent Rental Agreement. This solicitation is advertised under TX. Government Code Section 2155.067. The issuing office believes that the requested items and/or services are proprietary to one manufacturer and/or to the specifications. Only responses conforming exactly to these specifications will be considered in determining an award. The issuing office strongly encourages responses from all qualified vendors who may be able to provide the specified items/services.			SEE PAGE 2	
Early Payment Discount _____ % _____ DAYS					Total	
NOTE: Quote F.O.B. Destination Freight Prepaid & Included, otherwise show exact delivery cost and terms. Unless stated otherwise, delivery is considered to be 14 days after receipt of order (ARO).					Estimated Delivery Date:	

By signing this document, respondent certifies that prices shown on this quote are true and correct. Should this bid/offer result in a Purchase Order, respondent agrees to comply with all "Terms and Conditions," which are attached and incorporated into this document.

Check below if preference claimed under Texas Administrative Code (TAC), Title 34, Part 1, Rule 20.38:

Check below to claim a preference under 34 TAC Rule 20.38

- Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
- Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
- Agricultural products grown in Texas
- Agricultural products offered by a Texas bidder
- Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
- Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran
- Texas Vegetation Native to the Region
- USA produced supplies, materials or equipment
- Products of persons with mental or physical disabilities
- Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
- Energy Efficient Products
- Rubberized asphalt paving material
- Recycled motor oil and lubricants
- Products produced at facilities located on formerly contaminated property
- Products and services from economically depressed or blighted areas
- Vendors that meet or exceed air quality standards
- Recycled or Reused Computer Equipment of Other Manufacturers
- Foods of Higher Nutritional Value.

VENDOR / RESPONDENT MUST COMPLETE ALL ITEMS:

X

Signature of Vendor or Authorized Representative

Print Name: _____
 (**Must be manually signed; failure to sign will disqualify response.**)

Texas Vendor Identification No. (or Federal Employer's ID):

Name of Business _____

Street Address _____

City-State-Zip Code _____

Telephone Number _____

Fax Number _____

E-Mail Address _____

*By signing this bid, bidder certifies that if a Texas address is shown as the address of the bidder, bidder qualifies as a Texas Bidder as defined in 34 TAC Rule 20.32(68).
AWARD NOTICE: The State reserves the right to make an award on the basis of low line item bid, low total of line items, or in any other combination that will serve the best interest of the State and to reject any and all bid items in the sole discretion of the State.



HHS Enterprise Contract and Procurement Services

CONTINUED SOLICITATION DOCUMENT

Solicitation No.		53700-7-165811				
Line Item No.	Class & Item	Description <i>itemized below</i>	Qty	UOM	Unit Price	Extension
1	193-52	<p>This is a request for a Reagent Rental Agreement to include three (3) systems - one EVOLIS microplate processor, two BioPlex 2200 reagents, consumables, maintenance and services of equipment for the term of the agreement.</p> <p>Kits must be received within 3-5 days after order is placed. NOTE: Kit must have a minimum 6-month expiration date upon receipt. Upon arrival at the DSHS Laboratory kits must pass internal quality control testing with specimens of graded reactivity. Unacceptable lots will be returned to the vendor.</p> <p>Vendor is to provide pricing in the areas indicated below.</p>	1	YR		

1. EQUIPMENT

1.1 Upon the DSHS's acceptance of the Reagent Rental Agreement, the DSHS shall receive for use the following item(s) of equipment:

<u>Catalog #</u>	<u>Description</u>	<u>Quantity</u>
660-0000	BIOPLEX 2200 System (New)	1
660-0213	HP Printer (New)	1
660-0517	UPS Backup System (New)	1

1.2 Also included in the Reagent Rental Agreement is the following equipment currently on-site:

<u>Catalog #</u>	<u>Description</u>	<u>Quantity</u>
660-0000	BIOPLEX 2200 System (Existing)	1
660-0213	HP Printer (Existing)	1
660-0517	UPS Backup System (Existing)	1

1.3 During the duration of the Agreement, the DSHS shall use the equipment in accordance with the terms of the Agreement and only at the DSHS and shall not remove or transfer it without the prior written consent of the Supplier.

1.4 The DSHS will return one (1) Evolis System, one (1) Elite System and one (1) Autoblot 3000 system currently on-site per previous contract terms.

2. RENTAL CHARGES

2.1 Vendor is to bill DSHS per reportable test based on the BIOPLEX 2200 System "Use Tracking Report" on a monthly basis upon receipt of the faxed report from DSHS. DSHS will be billed at the rates indicated below, which are based on the assumed reportables per quarter indicated below. DSHS will submit the "Use Tracking Report" within thirty days from the date of the agreement execution, after which, the first quarter time frame will begin and the vendor will track compliance to minimum reportable quantities noted below. If the minimum reportable amount is not reached at the end of each quarter, Vendor will invoice DSHS the difference. In the event DSHS does not meet any of the indicated minimum reportables for two

(2) consecutive quarters, vendor may increase any or all of the rates. Cost per reportable (CPR) test will cover rental of the Bioplex 2200 equipment, service and reagent costs.

Catalog #	Description	Minimum Reportable Per Quarter	Price/ CPR
665-1450C	Syphilis IgG	7,813	
665-1650C2	ToRC Rubella, Quant, IgG	78	
665-3455C	HIV Ag-Ab Screen	7,500	

2.2 The following items are to be included in the Agreement at No Charge with the freight paid by the Vendor.

Catalog #	Description
665-1450	Syphilis IgG Reagent Kit
665-1650	ToRC IgG Reagent Kit
665-3455	HIV Ab-Ag Reagent Pack

2.3 DSHS may order as needed the following consumables. These items are to be invoiced at the time of delivery with the freight paid by the Vendor. This is an estimated annual usage volume.

Catalog #	Description	Estimated Annual Usage	Price
660-2003	Reaction vessel (1000)	67	
660-0820	Bio-Hazard Waste Bag (14x19)	74	
660-0817	Instrument sheath fluid (box of 2)	32	
660-0818	Instrument wash buffer	64	
666-0001	Instrument detector calibration pack	14	
666-0002	Instrument detector clean pack	14	
666-0003	Instrument probe cleaning solution	14	
660-0578	Sodium Hydroxide, 1.0 N (1 liter)	2	
663-1400	Syphilis IgG Calibration set (1x4 vials)	13	
663-1430	Syphilis IgG Controls Set (1x6 vials)	14	
663-1600	ToRC IgG Calibration Set (1x6 vials)	13	
663-1630	ToRC IgG Controls Set (1x4 vials)	14	
663-3405	HIV Ag-Ab Calibrator Set (1x6 vials)	8	
663-3435	HIV Ag-Ab Controls Set (1x4 vials)	4	

2.4 DSHS agrees to purchase the minimum number of tests listed below over the Term. Cost per kit will cover rental of the Evolis Equipment, Supplier Silver Signature Service and reagent cost:

Catalog #	Description	Tests/Year	Price/Test	Price/Kit
32591	GS™ HBsAg 3.0 EIA Kit (480 tests)	1920		
25220	MONOLISA™ Anti-HBs (192 tests)	960		
26174	MONOLISA™ Anti-HBcIgM (192 tests)	576		
26186	MONOLISA™ Anti-HBc (192 tests)	960		
32594	GS™ HBsAg 3.0 Confirmatory Kit (25 tests)	50		
72495	MONOLISA Anti-HAV IgM (192 tests)	576		
72496	MONOLISA Anti-HAV (192 tests)	576		

Catalog #	Consumables	Qty/Year	Price/Kit
25098	Evolis pipette tips 1100 ul (960 tips/box)	2	
25097	Evolis pipette tips 300 ul (960 tips/box)	4	
25219	MONOLISA Anti-HBs Calibrator kit	1	
25115	GSC HBsAG 3.0 Barcode kit	1	
25163	GSC HBsAG 3.0 Confirmatory barcode kit	1	
25280	Anti-HBs EIA Barcode kit	1	
26184	MONOLISA Anti-HBc Barcode kit	1	
26185	MONOLISA Anti-HBc IgM Barcode kit	1	
26189	Anti-HAV MONOLISA Barcode kit	1	
26190	Anti-HAV IgM, MONOLISA Barcode kit	1	

2.4.1 DSHS may purchase the following reagents on an as needed basis over the Term:

Catalog #	Description	Qty/Year	Price/Kit
26217	GS HIV Combo Ag/Ab EIA (192 tests)	1	
26218	GS HIV Combo Ag/Ab EIA (960 tests)	1	
25260	Stopping Solution Bulk Pack (5/pack)	1	
26261	Wash Solution Bulk Pack (15/pack)	1	
930740	Ortho HCV EIA v3.0 480 test	1	
933730	Ortho HCV Wash Solution	1	
933040	Orth HCV Stop Solution	1	
00105	VIROTROL HIV-2, 1x5ml	1	
00106	VIROCLEAR, 1x5ml	1	
00112	VIROCLEAR, 10x4ml	1	
00101	VIROTROL 1, 10x4ml	1	
00104B	VIROTROL II class B, 1x5ml	1	
00110A	VIROTROL III class A, 1x5ml	1	
00111	VIROTROL IV, 1x5ml	1	
239	Torch P UNASSY Pos LIQ, 3x3ml	1	
228	Torch P UNASSY Neg LIQ, 3x3ml	1	
00108	Virotrol HIV-1 AG, 1x5m	1	
00100	VIROTROL 1, 1x5ml	1	
00100A	VIROTROL 1A, 1x5ml	1	
00100B	VIROTROL 1B, 1x5ml	1	
00100C	VIROTROL 1C, 1x5ml	1	
00100E	VIROTROL 1E, 1x5ml	1	
00100F	VIROTROL 1F, 1x5ml	1	
00100H	VIROTROL 1H, 1x5ml	1	

2.5 Vendor , at its sole discretion, may choose to 1) sell, or offer at no-charge, specimen panels to DSHS for the purpose of assisting DSHS in the evaluation of new assays or 2) may refer DSHS to a third-party vendor for DSHS to make its own arrangements to purchase the specimen panels for the evaluation of new assays.

2.6 The LIS interface costs of up to \$10,000.00 will be paid by the Vendor to LIS interface vendor. DSHS will provide Vendor with a copy of the quote from the LIS interface vendor. Vendor will issue a Purchase Order and payment to the LIS interface vendor directly. If DSHS cancels this Agreement before the expiration of the Term, DSHS will reimburse Vendor a pro-rata share of the LIS interface costs.

3. PAYMENT TERMS

3.1 Payment terms are net 30 days from date of invoice.

4. REAGENT SHIPMENTS

4.1 DSHS will be shipped enough of the reagents identified in paragraph 2.2 (the "Reagents") to run the reported tests identified in paragraph 2.1. The reagents are to be shipped at no charge.

5. PRICE CHANGES

5.1 Vendor will agree to hold firm quoted prices for the first year. After the first year, the price may increase each year thereafter by [redacted] % (input amount) for four years.

6. CARE AND SERVICING OF THE EQUIPMENT

6.1 At no additional cost to the DSHS, Vendor will provide telephone assistance 24 hrs. per day, 365 per year.

6.2 As part of the Agreement, Vendor or Vendor appointed personnel will provide on-site service, as needed, to keep the Equipment in good working order. On-site service is to be provided, at no cost to DSHS, Monday through Friday, 8:00am to 6:00pm (local time), excluding national holidays. On-site extended service coverage (Saturday, Sunday, and/or holidays) is to be available, but may not be included in the Agreement. Vendor's Signature Service Agreement Rate Schedule for "Extended Reagent Rental Service Coverage" charges are to be available upon request.

- 6.3 Vendor will not be required to pay the cost of damage to the equipment caused by the DSHS's negligence, abuse, or alteration of the equipment, or by any service performed by unauthorized personnel or by use of any non-Vendor approved reagents, calibrators or disposables.
- 6.4 The DSHS will agree that only Vendor appointed personnel are to service the equipment.
- 6.5 The DSHS will agree to utilize only Vendor approved reagents, calibrators, and disposables on the equipment.
- 6.6 Vendor shall not be responsible for the moving (de-installation and re-installation) of equipment from one location to another, additional operator training, and/or any other extra services not specified in the Agreement.
- 6.7 The DSHS will agree to provide Vendor with an internet connection to each instrument to facilitate remote troubleshooting, problem diagnosis and possible resolution without dispatch of a Vendor Engineer. DSHS will acknowledge that Vendor is not a Business Associate, DSHS is prohibited from disclosing PHI to Vendor and DSHS is solely responsible for safeguarding any PHI that is accessible to Vendor.

7. TITLE TO THE EQUIPMENT

- 7.1 The Vendor will be the owner of and retain title to the equipment.
- 7.2 DSHS shall not permit or suffer any attachment, encumbrance, lien, or security interest to be filed against the equipment and shall promptly notify Vendor if any of the foregoing is filed or claimed and shall indemnify Vendor for any loss of damage resulting from any of the foregoing.
- 7.3 Upon the request of the Vendor, the DSHS shall execute a financing statement as provided under the Uniform Commercial Code to permit the Vendor to perfect the security in the equipment.

8. RISK OF LOSS AND DAMAGE

- 8.1 The Vendor will be responsible for any damage not caused by the DSHS negligence, and the DSHS shall promptly notify the Supplier of any damage to the equipment described herein.
- 8.2 If the DSHS is liable for damage and if the Vendor, in its discretion, decides the damaged items are not repairable, the DSHS shall pay the Supplier the current catalog price for the item of equipment less depreciation based on a ten (10) year straight line basis (prorated monthly). Thereupon the DSHS will own that item "as is" with all faults and defects.

9. LABEL

- 9.1 The DSHS shall not remove any labels, symbols or serial numbers that are or may be affixed to the items of the equipment being utilized, except as requested by the Vendor in writing.

10. TRANSPORTATION

- 10.1 Transportation charges to (and where applicable) the place of business of the DSHS for equipment and reagents will be paid by the Vendor.

11. WARRANTY

- 11.1 The Supplier will warrant and represent that the equipment will perform in accordance with the Supplier's standard warranty (provided at installation). The warranty period will begin upon DSHS's acceptance date and will remain in effect for one year.

12. TERM

- 12.1 The Agreement will be effective on the DSHS's "go live" date (not to exceed 60-days from installation of Equipment) and will continue in effect for a period of sixty (60) months unless sooner terminated by either party. The Agreement may be terminated, as of any time no less than fifty-eight (58) months following the effective date, by either party, by serving a 60-day written notice of termination upon the other party. The Agreement will terminate automatically on the date as of which the DSHS in any manner acquires title to the equipment. In addition, the Vendor may immediately terminate the Agreement in the event (a) the DSHS fails to make payment when due, (b) materially breaches the Agreement and fails to cure such breach with thirty (30) days of notice by the Vendor of such breach, or (c) the DSHS makes an assignment for the benefit of creditors or proceedings are commenced by or for the DSHS under any bankruptcy, insolvency, or debtor's relief law.

13. RETURN OF THE EQUIPMENT

13.1 Upon termination of the Agreement, for any reason, except taking title to the equipment, the Vendor Service Engineer will carefully pack and return the equipment to the Vendor.

14. ADDING NEW PRODUCTS TO THE CONTRACT

14.1 Following the contract, additional products of the same general category that could have been encompassed in the award of this contract, and that are not already on the contract, may be added via Purchase Order Change Notice (POCN) approved by the DSHS and the Vendor.

15. TRAINING

15.1 For each new BioPlex 2200, the Vendor will provide one-time training for two DSHS Technologists, at no additional charge, at a Vendors facility, which may include airfare and associated fees such as baggage fees, transportation services upon arrival, lodging and meals which will be arranged by the Vendor according to its corporate travel policies. Vendor training slots must be utilized within 12 months of system installation. DSHS will agree to not report results for clinical use until at least one primary operator has attended formal training. Training at the DSHS site will be available outside of the terms of the Agreement on an as needed bases to be billed at the prevailing rate that will be determined and agreed upon by both parties per 4-hour minimum block.

16. BIDDER POINT-OF-CONTACT:

16.1 Respondent is requested to provide the name and phone number of a point-of-contact for the submitted bid response; however, Respondent is hereby advised that this point-of-contact will not be recognized as or accepted in lieu of the "authorized signature" requirement of this Invitation For Bid.

Name: _____

Phone: _____

Fax: _____

E-mail: _____

17. HUB SUBCONTRACTING

In accordance with Texas Government Code [Chapter 2161, Subchapter F, §2161.252 \(b\)](#) a proposal that does not contain a [HUB Subcontracting Plan](#) (HSP) is non-responsive; and in accordance with Texas Administrative Code §20.14 (b) (3) Responses that do not include a completed HUB subcontracting plan in accordance with this subsection shall be rejected due to material failure to comply with Government Code, §2161.252(b).

17.1 Introduction

The sole point of contact for HUB inquires:

Texas Health and Human Services Commission

Michael Herman, HUB Coordinator

Phone: (512) 406-2541

E-mail: michael.herman@hhsc.state.tx.us

HHSC is committed to promoting full and equal business opportunities for businesses in state contracting in accordance with the goals specified in the State of Texas Disparity Study. HHSC encourages the use of Historically Underutilized Businesses (HUBs) through race, ethnic and gender-neutral means. HHSC has adopted administrative rules relating to HUBs and a [Policy on the Utilization of HUBs](#) which is located on HHSC's website.

Pursuant to Texas Government Code [§2161.181](#) and [§2161.182](#) and HHSC's HUB policy and rules, HHSC is required to make a good faith effort to increase HUB participation in its contracts. HHSC may accomplish the goal of increased HUB participation by contracting directly with HUBs or indirectly through subcontracting opportunities.

17.2 HHSC's Administrative Rules

HHSC has adopted the CPA's HUB rules as its own. HHSC's rules are located in the Texas Administrative Code [Title 1, Part 15, Chapter 391, Subchapter G](#) and the CPA rules are located in Texas Administrative Code [Title 34, Part 1, Chapter 20, Subchapter B](#). If there are any discrepancies between HHSC's administrative rules and this IFB, the rules shall take priority.

17.3 Statewide Annual HUB Utilization Goal

The CPA has established **statewide annual HUB utilization goals** for different categories of contracts in Texas Administrative Code [Title 34, Part 1, Chapter 20, Subchapter B, §20.13 of the HUB rules](#). In order to meet or exceed the statewide annual HUB utilization goals, HHSC encourages outreach to certified HUBs. Contractors shall make a good faith effort to include certified HUBs in the procurement process.

This procurement is classified as an **All Other Services** procurement under the CPA rule and therefore has a statewide annual HUB utilization goal of **26.0%** per fiscal year.

17.4 Required HUB Subcontracting Plan

In accordance with Texas Government Code [Chapter 2161, Subchapter F, §2161.252](#) each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest for the contract, determine whether there will be subcontracting opportunities under the contract. If the state agency determines that there is that probability, the agency shall require that each bid, proposal, offer, or other applicable expression of interest for the contract include a historically underutilized business subcontracting plan

In accordance with Texas Administrative Code [Title 34, Part 1, Chapter 20, Subchapter B, §20.14\(a\)\(1\)\(C\)](#) of the HUB Rule, state agencies may determine that subcontracting is probable for only a subset of the work expected to be performed or the funds to be expended under the contract. If an agency determines that subcontracting is probable on only a portion of a contract, it shall document its reasons in writing for the procurement file.

HHSC has determined that subcontracting opportunities are probable for this IFB. As a result, the respondent must submit an HSP with its proposal. The HSP is required whether a respondent intends to subcontract or not.

Submit one (1) copy of the HUB Subcontracting Plan (HSP), in accordance with the IFB, in a separate sealed envelope, with the IFB submission, labeled: HUB Subcontracting Plan (HSP), and include all supporting documentation in accordance with the HSP.

In the HSP, a respondent must indicate whether it is a Texas certified HUB. Being a certified HUB does not exempt a respondent from completing the HSP requirement.

HHSC shall review the documentation submitted by the respondent to determine if a good faith effort has been made in accordance with solicitation and HSP requirements. During the good faith effort evaluation, HHSC may, at its discretion, allow revisions necessary to clarify and enhance information submitted in the original HSP.

If HHSC determines that the respondent's HSP was not developed in good faith, the HSP will be considered non-responsive and will be rejected as a material failure to comply with advertised specifications. The reasons for rejection shall be recorded in the procurement file.

17.5 CPA Centralized Master Bidders List

Respondents may search for HUB subcontractors in the CPA's Centralized Master Bidders List (CMBL) HUB Directory, which is located on the CPA's website at <http://www2.cpa.state.tx.us/cmb/cmbhub.html>. For this procurement, HHSC has identified the following class and item codes for potential subcontracting opportunities:

17.5.1 National Institute of Governmental Purchasing (NGIP) Class/Item Code(s):

- **115-05 Biochemical Reagents and Tests: Antibiotic Assays, Differentiation Discs,**
- **962-86 Transportation of Goods and Other Freight Services.**

Respondents are not required to use, nor limited to using, the class and item codes identified above, and may identify other areas for subcontracting.

HHSC does not endorse, recommend nor attest to the capabilities of any company or individual listed on the CPA's CMBL. The list of certified HUBs is subject to change, so respondents are encouraged to refer to the CMBL often to find the most current listing of HUBs.

17.6 HUB Subcontracting Procedures – If a Respondent Intends to Subcontract

An HSP must demonstrate that the respondent made a good faith effort to comply with HHSC's HUB policies and procedures. The following subparts outline the items that HHSC will review in determining whether an HSP meets the good faith effort standard. A respondent that intends to subcontract must complete the HSP to document its good faith efforts.

17.6.1 Identify Subcontracting Areas and Divide Them into Reasonable Lots

A respondent should first identify each area of the contract work it intends to subcontract. Then, to maximize HUB participation, it should divide the contract work into reasonable lots or portions, to the extent consistent with prudent industry practices.

17.6.2 Notify Potential HUB Subcontractors

The HSP must demonstrate that the respondent made a good faith effort to subcontract with HUBs. The respondent's good faith efforts shall be shown through utilization of all methods in conformance with the development and submission of the HSP and by complying with the following steps:

Divide the contract work into reasonable lots or portions to the extent consistent with prudent industry practices. The respondent must determine which portions of work, including goods and services, will be subcontracted.

Use the appropriate method(s) to demonstrate good faith effort. The respondent can use either method(s) 1, 2, 3, 4 or 5:

17.6.2.1 Method 1: Respondent Intends to Subcontract with only HUBs:

The respondent must identify in the HSP the HUBs that will be utilized and submit written documentation that confirms 100% of all available subcontracting opportunities will be performed by one or more HUBs; or,

17.6.2.2 Method 2: Respondent Intends to Subcontract with HUB Protégé(s):

The respondent must identify in the HSP the HUB Protégé(s) that will be utilized and should:

- include a fully executed copy of the Mentor Protégé Agreement, which must be registered with the CPA prior to submission to HHSC, and
- identify areas of the HSP that will be performed by the Protégé.

HHSC will accept a Mentor Protégé Agreement that has been entered into by a respondent (Mentor) and a certified HUB (Protégé) in accordance with Texas Government Code §2161.065. When a respondent proposes to subcontract with a Protégé(s), it does not need to provide notice to three (3) HUB vendors for that subcontracted area.

Participation in the Mentor Protégé Program, along with the submission of a Protégé as a subcontractor in an HSP, constitutes a good faith effort for the particular area subcontracted to the protégé; or,

17.6.2.3 Method 3: Respondent Intends to Subcontract with HUBs and Non-HUBs (Meet or Exceed the Goal):

The respondent must identify in the HSP and submit written documentation that one or more HUB subcontractors will be utilized and that the aggregate expected percentage of subcontracts with HUBs will meet or exceed the goal specified in this solicitation. When utilizing this method, only HUB subcontractors that have existing contracts with the respondent for five years or less may be used to comply with the good faith effort requirements.

When the aggregate expected percentage of subcontracts with HUBs meets or exceeds the goal specified in this solicitation, respondents may also use non-HUB subcontractors; **or**,

17.6.2.4 Method 4: Respondent Intends to Subcontract with HUBs and Non-HUBs (Does Not Meet or Exceed the Goal):

The respondent must identify in the HSP and submit documentation regarding both of the following requirements:

- Written notification to trade organizations and/or development centers to assist in identifying potential HUBs of the subcontracting opportunities the respondent intends to subcontract.

Respondents must give trade organizations and/or development centers at least seven (7) working days prior to submission of the respondent's response for dissemination of the subcontracting opportunities to their members. A list of trade organizations and/or development centers is located on CPA's website under the [Minority and Women Organization Links](#).

- Written notification to at least three (3) HUB businesses of the subcontracting opportunities that the respondent intends to subcontract. The written notice must be sent to potential HUB subcontractors prior to submitting proposals and must include:
 - a description of the scope of work to be subcontracted;
 - information regarding the location to review project plans or specifications;
 - information about bonding and insurance requirements;
 - required qualifications and other contract requirements; and
 - a description of how the subcontractor can contact the respondent.
- Respondents must give potential HUB subcontractors a reasonable amount of time to respond to the notice, at least seven (7) working days prior to submission of the respondent's response unless circumstances require a different time period, which is determined by the agency and documented in the contract file.
- Respondents must also use the CMBL, the HUB Directory, and Internet resources when searching for HUB subcontractors. Respondents may rely on the services of contractor groups, local, state and federal business assistance offices, and other organizations that provide assistance in identifying qualified applicants for the HUB program.

17.6.3 Written Justification of the Selection Process

HHSC will make a determination if a good faith effort was made by the respondent in the development of the required HSP. One or more of the methods identified in the previous sections may be applicable to the respondent's good faith efforts in developing and submission of the HSP. HHSC may require the respondent to submit additional documentation explaining how the respondent made a good faith effort in accordance with the solicitation.

A respondent must provide written justification of its selection process if it chooses a non-HUB subcontractor. The justification should demonstrate that the respondent negotiated in good faith with qualified HUB bidders and did not reject qualified HUBs who were the best value responsive bidders.

17.7 Method 5: Respondent Does Not Intend to Subcontract

When the respondent plans to complete all contract requirements with its own equipment, supplies, materials and/or employees, it is still required to complete an HSP.

The respondent must complete the "Self Performance Justification" portion of the HSP, and attest that it does not intend to subcontract for any goods or services, including the class and item codes identified in Section 4.5. In addition, the respondent must identify the sections of the proposal that describe how it will complete the Scope of Work using its own resources or provide a statement explaining how it will complete the Scope of Work using its own resources. The respondent must agree to comply with the following if requested by HHSC:

- provide evidence of sufficient respondent staffing to meet the IFB requirements;
- provide monthly payroll records showing the respondent staff fully dedicated to the contract;

- allow HHSC to conduct an on site review of company headquarters or work site where services are to be performed and,
- provide documentation proving employment of qualified personnel holding the necessary licenses and certificates required to perform the Scope of Work.

17.8 Post-award HSP Requirements

The HSP shall be reviewed and evaluated prior to contract award and, if accepted, the finalized HSP will become part of the contract with the successful respondent(s).

After contract award, HHSC will coordinate a post-award meeting with the successful respondent to discuss HSP reporting requirements. The contractor must maintain business records documenting compliance with the HSP and must submit monthly subcontract reports to HHSC by completing the HUB HSP [Prime Contractor Progress Assessment Report](#). This monthly report is required as a condition for payment to report to the agency the identity and the amount paid to all subcontractors.

As a condition of award, the Contractor is required to send notification to all selected subcontractors as identified in the accepted/approved HSP. In addition, a copy of the notification must be provided to the agency's Contract Manager and/or HUB Program Office within 10 days of the contract award.

During the term of the contract, if the parties in the contract amend the contract to include a change to the scope of work or add additional funding, HHSC will evaluate to determine the probability of additional subcontracting opportunities. When applicable, the Contractor must submit an HSP change request for HHSC review. The requirements for an HSP change request will be covered in the post-award meeting.

When making a change to an HSP, the Contractor will obtain prior written approval from HHSC before making any changes to the HSP. Proposed changes must comply with the HUB Program good faith effort requirements relating to the development and submission of a HSP.

If the Contractor decides to subcontract any part of the contract after the award, it must follow the good faith effort procedures outlined in Section 4.6 of this IFB (e.g., divide work into reasonable lots, notify at least three (3) vendors per subcontracted area, provide written justification of the selection process, and/or participate in the Mentor Protégé Program).

For this reason, HHSC encourages respondents to identify, as part of their HSP, multiple subcontractors who are able to perform the work in each area the respondent plans to subcontract. Selecting additional subcontractors may help the selected contractor make changes to its original HSP, when needed, and will allow HHSC to approve any necessary changes expeditiously.

Failure to meet the HSP and post-award requirements will constitute a breach of contract and will be subject to remedial actions. HHSC may also report noncompliance to the CPA in accordance with the provisions of the Vendor Performance and Debarment Program.

**HHS PROCUREMENT AND CONTRACTING SERVICES
TERMS AND CONDITIONS BELOW APPLY TO THIS CONTRACT**

1. RESPONSE REQUIREMENTS:

- 1.1. Respondent must show price per unit. Facsimile (fax) submissions will be accepted. The telephone number for FAX submission of bids is 1-512-406-2690. Response must be submitted on form provided and returned to the location indicated.
- 1.2. Person signing response must have the authority to bind the firm in a contract.
- 1.3. Quote F.O.B. destination, freight prepaid and allowed. Otherwise, show exact delivery cost and terms.
- 1.4. Response must include Texas Identification Number (TIN), or Federal Employer's Identification Number (FEIN), full firm name and address of respondent on the response.
- 1.5. Additional terms and conditions attached to this solicitation will not be considered unless specifically referred to on this solicitation and may result in disqualification.

2. SPECIFICATION:

- 2.1. Catalog, brand names or manufacturer's references are descriptive only. Response must include the brand name and model number for exact product that is being offered. Any manufacturers' names, trade names, brand names, or catalog numbers used in the specifications are there for the purpose of establishing and describing style, general performance, and quality levels. Such references are not intended to be restrictive, and bids are invited on these and comparable brands or products of any manufacture
- 2.2. No substitutions permitted without written approval of the HHS agency
- 2.3. All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC, NEMA, or FCC.
- 2.4. Respondent agrees to comply with Texas Government Code, Title 10, Subtitle D, Section 2155.4441, relating to use of products produced in the State of Texas when performing services under this contract.
- 2.5. Prior to the response submission deadline, a respondent may:
 - 2.5.1. (1) withdraw its response by submitting a written request to the HHS Agency Point of Contact, or
 - 2.5.2. (2) Modify its proposal by submitting a written amendment to the HHS agency Point of Contact. The HHS agency may request proposal modifications at any time.

3. SAFETY STANDARDS:

- 3.1. All electrical items shall meet applicable safety standards of the federal occupational safety and health administration (OSHA). By signature on the response the respondent certifies that item or item(s) offered meet these standards
- 3.2. Vendor agrees to observe and encourage its employees and agents to observe safety measures and proper operating procedures at HHS agency sites at all times.
- 3.3. Vendor will direct their employees or agents to immediately report to HHSC any defect or unsafe condition encountered while on HHSC premises.

4. REQUIRED AFFIRMATIONS: By signing this response the respondent affirms the following:

- 4.1. The respondent 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 this solicitation.
- 4.2. Pursuant to Texas Government Code, Title 10, Subtitle D, Section 2155.004(a), the respondent has not received compensation for participation in the preparation of specifications for this solicitation.
- 4.3. Antitrust - Pursuant to 15 U.S.C. Sec. 1, et seq. and Tex. Bus. & Comm. Code Sec. 15.01, et seq. neither the respondent nor the firm, corporation, partnership, or institution represented by the respondent, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the response made to any competitor or any other person engaged in such line of business. Vendor hereby assigns to ordering agency any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States 15 U.S.C.A., Section 1, et seq. (1973), and which arise under the antitrust laws of the State of Texas, Texas Business & Commerce Code, Ann., Sec. 15.01, et seq. (1967).
- 4.4. "Under Section 2155.006(b) of the Texas Government Code, a state agency may not accept a bid 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-year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) 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, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified contract and acknowledges that any contract resulting from this IFB may be terminated and payment withheld if this certification is inaccurate."
- 4.5. Under Gov't Code § 2155.004, no person who prepared the specifications or this RFP has any financial interest in Respondent's Proposal. If Respondent is not eligible, then any contract resulting from this RFP shall be immediately terminated. Furthermore, "under Section 2155.004, Government Code, the vendor [Respondent] certifies that the individual or business entity named in this bid 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."
- 4.6. If applicable, pursuant to Texas Family Code, Title 5, Subtitle D, Section 231.006(d), regarding child support, the respondent certifies that the individual or business entity named in this solicitation is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any respondent subject to Section 231.006 must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the response. This information must be provided prior to award.

5. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION:

- 5.1. Responder certifies to the best of their knowledge and belief that by signing this solicitation response, the following:
 - 5.1.1. It is not ineligible for participation in federal or state assistance programs under Executive Order 12549, Debarment and Suspension.
 - 5.1.2. Neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
 - 5.1.3. It has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency.
 - 5.1.4. It is not subject to an outstanding judgment in a suit against vendor for collection of the balance of a debt.
 - 5.1.5. Where vendor/responder is unable to certify to any of the statements in this article, vendor/responder shall attach an explanation.
 - 5.1.6. Vendor/Responder shall not contract with a sub recipient nor procure goods or services from a subcontractor, at any tier, which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549.
 - 5.1.7. That none of the funds paid under this Contract will be used to pay any person for influencing or attempting to influence an officer or employee of any agency, a member, officer or employee of Congress or the state legislature or for obtaining any federal or state contract.

6. COMPLIANCE:

- 6.1. Awarded Vendor shall comply with any and all applicable federal, state, and local laws, including, but not limited to: The Immigration Reform and Control Act of 1986, All applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), and Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- 6.2. Immigration Reform: by this reference, Vendor will comply with all requirements of the Immigration Reform and Control Act of 1986 and the Immigration Act of 1990 (8 U.S.C. §1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after November 6, 1986, who will perform any labor or services under this Agreement.
- 6.3. Respondent certifies that they are in compliance with section 669.003 of the Government Code, relating to contracting with executive head of a State agency. If section 669.003 applies, respondent will complete the following information in order for the response to be evaluated:

- 6.4. Name of Former Executive; Name of State Agency; Date of Separation from State Agency; Position and Date of Employment with respondent
- 6.5. Conflict of Interest: Vendor will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain. Vendor will operate with complete independence and objectivity without actual, potential or apparent conflict of interest with respect to the activities conducted under this Agreement with the State of Texas.
- 6.6. Legal Requirements & Permits: Respondent has obtained all licenses, certifications, permits, and authorizations necessary to perform the Services under this Agreement and currently is in good standing with all regulatory agencies that regulate any or all aspects of Respondent's performance of this Agreement. Respondent will maintain all required certifications, licenses, permits, and authorizations during the term of this Agreement
- 6.7. Independent Contractor: It is understood and agreed that the awarded contractor is an independent contractor that neither party is, nor shall be considered to be, an agent, distributor or representative of the other. Neither party shall act or represent itself, directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf of, or in the name of the other.

7. HHS Uniform EIR Accessibility Clause:

- 7.1. (a) Applicability. This section applies if the contract requires the CONTRACTOR to procure or develop Electronic and Information Resources (EIR) for [HHS AGENCY], or to change any of [HHS AGENCY's] EIR. This section also applies if the contract requires the CONTRACTOR to perform a service or supply goods that include EIR that: (i) [HHS AGENCY] employees are required or permitted to access; or (ii) members of the public are required or permitted to access.
- 7.2. This section does not apply to incidental uses of EIR in the performance of a contract, unless the parties agree that the EIR will become property of the state or will be used by the HHS agency's Client/Recipient after completion of the contract.
- 7.3. Nothing in this section is intended to prescribe the use of particular designs or technologies or to prevent the use of alternative technologies, provided they result in substantially equivalent or greater access to and use of a product / service.
- 7.4. (b) Definitions.
- 7.4.1. "Accessibility Standards" means the Electronic and Information Resources Accessibility Standards and the Web Site Accessibility Standards/Specifications.
- 7.4.2. "Electronic and Information Resources" means information resources, including information resources technologies, and any equipment or interconnected system of equipment that is used in the creation, conversion, duplication, or delivery of data or information. The term includes, but is not limited to, telephones and other telecommunications products, information kiosks, transaction machines, Internet websites, multimedia resources, and office equipment, including copy machines and fax machines.
- 7.4.3. "Electronic and Information Resources Accessibility Standards" means the accessibility standards for electronic and information resources contained in Volume 1 Texas Administrative Code Chapter 213.
- 7.4.4. "Web Site Accessibility Standards/Specifications" means standards contained in Volume 1 Texas Administrative Code Chapter 206.
- 7.4.5. "Products" means information resources technologies that are, or are related to, EIR.
- 7.5. (c) Accessibility Requirements. Under Texas Government Code Chapter 2054, Subchapter M, and implementing rules of the Texas Department of Information Resources, [HHS AGENCY] must procure Products that comply with the Accessibility Standards when such Products are available in the commercial marketplace or when such Products are developed in response to a procurement solicitation. Accordingly, CONTRACTOR must provide electronic and information resources and associated Product documentation and technical support that comply with the Accessibility Standards.
- 7.6. (d) Evaluation, Testing and Monitoring.
- 7.7. [HHS AGENCY] may review, test, evaluate and monitor CONTRACTOR'S Products and associated documentation and technical support for compliance with the Accessibility Standards. Review, testing, evaluation and monitoring may be conducted before and after the award of a contract. Testing and monitoring may include user acceptance testing.
- 7.8. Neither (1) the review, testing (including acceptance testing), evaluation or monitoring of any Product, nor (2) the absence of such review, testing, evaluation or monitoring, will result in a waiver of the State's right to contest the CONTRACTOR'S assertion of compliance with the Accessibility Standards.
- 7.9. CONTRACTOR agrees to cooperate fully and provide [HHS AGENCY] and its representatives timely access to Products, records, and other items and information needed to conduct such review, evaluation, testing and monitoring.
- 7.10. (e) Representations and Warranties.
- 7.11. CONTRACTOR represents and warrants that: (i) as of the effective date of the contract, the Products and associated documentation and technical support comply with the Accessibility Standards as they exist at the time of entering the contract, unless and to the extent the Parties otherwise expressly agree in writing; and (ii) if the Products will be in the custody of the state or an HHS agency's client or recipient after the contract expiration or termination, the Products will continue to comply with such Accessibility Standards after the expiration or termination of the contract term, unless [HHS AGENCY and/or Client/Recipient, as applicable] uses the Products in a manner that renders it noncompliant.
- 7.12. In the event CONTRACTOR should have known, becomes aware, or is notified that the Product and associated documentation and technical support do not comply with the Accessibility Standards, CONTRACTOR represents and warrants that it will, in a timely manner and at no cost to [HHS AGENCY], perform all necessary steps to satisfy the Accessibility Standards, including but not limited to remediation, replacement, and upgrading of the Product, or providing a suitable substitute.
- 7.13. CONTRACTOR acknowledges and agrees that these representations and warranties are essential inducements on which [HHS AGENCY] relies in awarding this contract.
- 7.14. CONTRACTOR's representations and warranties under this subsection will survive the termination or expiration of the contract and will remain in full force and effect throughout the useful life of the Product.
- 7.15. (f) Remedies.
- 7.16. Pursuant to Texas Government Code Sec. 2054.465, neither CONTRACTOR nor any other person has cause of action against [HHS AGENCY] for a claim of a failure to comply with Texas Government Code Chapter 2054, Subchapter M, and rules of the Department of Information Resources.
- 7.17. In the event of a breach of CONTRACTOR's representations and warranties, CONTRACTOR will be liable for direct and consequential damages and any other remedies to which [HHS AGENCY] may be entitled. This remedy is cumulative of any and all other remedies to which [HHS AGENCY] may be entitled under this contract and other applicable law.

8. SECURITY OF INFORMATION:

- 8.1. The HHS agency may be in possession of confidential information and material which require protection under applicable laws and regulations, as well as policies and procedures, of the State of Texas and the United States. Confidential information and material obtained within or from the HHS agency may not be discussed, communicated, copied, extracted, or used in any manner by Awarded Vendor other than in fulfillment of the contract resulting from this solicitation. All confidential material must be returned to the HHS agency on completion or as requested.
- 8.2. By entering into contract, or purchase order, with a Texas Health & Human Services agency, you agree to be bound by the terms of the HHS Data Use Agreement (HHS-GC.DUA) Data Use Agreement: This is the general version that should be used for all contractors who access agency confidential information. It is available on the DUA website: http://www.hhsc.state.tx.us/about_hhsc/BusOpp/data-use-agreement.pdf. Information that explains the terms of the DUA and what laws require us to protect and safeguard agency confidential data can be found at: <http://hhscx.hhsc.state.tx.us/data-use-agreement-compliance/docs/understanding-dua.pdf>.

8.2.1. If this box is checked, Section 8.2 does not apply to the contract, or purchase order, because the contractor will not have access to confidential information.

9. VENDOR CERTIFICATION INFORMATION TECHNOLOGY STAFF AUGMENTATION:

- 9.1. In addition to those Vendor Certifications included in the Department of Information Resources' Appendix A "Standard Terms and Conditions for INFORMATION TECHNOLOGY STAFF AUGMENTATION SERVICES," Vendor certifies on behalf of Vendor and its designated Order Fulfillers that they:
- 9.1.1. will use any information received while providing services to an individual customer under the Contract only for the purpose of providing those services;
- 9.1.2. will treat any information so received as confidential and will not disclose, reveal, communicate, impart, or divulge the information or any summary or synopsis of the information in any manner or any form whatsoever without prior written authorization to do so from the relevant individual customer; and
- 9.1.3. are not authorized to make any representations concerning the work done for an individual customer to third parties for promotional, research, or other commercial or proprietary purposes without the individual customer's written advance approval.

10. FELONY CONVICTION NOTICE: "Contractor represents and warrants that Contractor has not and Contractor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised the HHS agency as to the facts and circumstances surrounding the conviction."

11. AWARD: 11.1. The HHS agency reserves the right to waive minor informalities in a proposal and award a contract that is in the best interest of the State of Texas. A "minor informality" is an omission or error that, in the HHS agency's determination, if waived or modified when evaluating proposals, would not give a bidder an unfair advantage over other bidders or result in a material change in the response requirements. When the HHS agency determines that a response contains a minor informality, it may at its discretion provide the respondent with the opportunity to correct.

11.2. SAM-Suspension, debarment, and terrorism: bidder certifies that the bidding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that bidder is in compliance with the state of Texas statutes and rules relating to procurement and that bidder is not listed on the federal government's terrorism watch list as described in executive order 13224 entities ineligible for federal procurement are listed at <http://www.sam.gov>

11.3. The State reserves the right to make an award on the basis of low line item, low total of line items, or in any other combination that will serve the best interest of the State.

11.4. Tie responses-Awards will be made in accordance with Texas Administrative Code, Title 34, Part 1, 20.36(b)(3) (Awards), and 20.38 (Preferences).

11.5. A response to this solicitation is an offer to contract based upon the terms, conditions and specifications contained herein. Responses do not become orders until a purchase order and/or contract is released by an HHS agency Purchasing Agent or designee through a written purchase order/contract. The contract shall be governed, construed, and interpreted under the laws of the State of Texas.

11.6. Option to Extend Services: The respondent by submission of a response to this solicitation agrees that the HHSC may require continued performance, beyond the initial term or renewal contract term, of any of the herein described services at the rates specified herein. This option may be exercised more than once, for the purpose of meeting HHS agency procurement goals but the total extension of performance hereunder shall not exceed one hundred twenty (120) calendar days. Such extension of services shall be subject to all specifications and terms and conditions of the contract resulting from this procurement, with the sole and limited exception that the original date of termination shall be extended pursuant to this provision. The HHS agency may exercise this option upon notice to the awarded respondent.

11.7. As a result of the consolidation due to House Bill 2292 (HB 2292), some of the contracting and procurement activities for the HHS Agencies have been assigned to the Procurement and Contracting Services (PCS) section of HHSC. As such, PCS will administer the initial stages of the procurement process, prior to the contract award, including announcement and publication, handling of communications from the respondent, as well as managing the receipt and handling of valid responses for final review and evaluation. PCS directs the execution of the contract after the awarded vendor has been selected. The contract(s) issued as a result of this solicitation may be utilized by one or all of the Texas Health and Human Services (HHS) agencies listed below:

- Health and Human Services Commission (HHSC)
- Department of Family and Protective Services (DFPS)
- Department of State Health Services (DSHS)
- Department of Assistive and Rehabilitative Services (DARS)
- Department of Aging and Disability Services (DADS)

HHSC/PCS will issue an individual purchase order, contract or release for each HHS agency, region, city, or location-requiring goods or services under the contract(s). Each purchase order will include the delivery/service location and bill to address for the HHS agency requesting goods/services.

12. DELIVERY:

12.1. Respondent must show number of days required to place material in receiving agency's designated location under normal conditions. Failure to state delivery time obligates respondent to deliver in 14 calendar days. Delivery shall be made during normal working hours only, unless prior approval has been obtained from the HHS agency.

12.2. If delivery will be delayed, contractor shall notify the HHS agency. Default in promised delivery or failure to meet specifications authorizes the HHS agency to purchase goods and/or services elsewhere and charge full increase, if any, in cost and handling to defaulting Contractor. Any damages incurred by the HHS agency as a result of the default may also be assessed to the defaulting Awarded Vendor.

12.3. Products delivered that fail to meet specifications or are not the actual item(s) awarded on the contract shall be rejected or returned at the vendor's expense. Item(s) will be purchased on the open market, and any resulting increase in price shall be charged to awarded vendor.

13. CANCELLATION OR EARLY TERMINATION:

13.1. CONVENIENCE: The HHS agency reserves the right to terminate, in whole or in part without recourse or penalty 30 days written notice to the Contractor, of its intent to terminate the contract.

13.2. CAUSE OR DEFAULT - This contract may be terminated immediately by the HHS agency for any failure of the awarded vendor(s) to comply with the terms and conditions of the contract.

13.3. EXCESS OBLIGATIONS - The purchase order and/or contract awarded from this solicitation is subject to termination or cancellation, without penalty to HHSC, either in whole or in part, subject to the availability of state funds. HHSC is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. HHSC will not be liable to respondent for any damages, which are caused or associated with such termination or cancellation and HHSC will not be required to give notice.

13.4. Abandonment or Default: If the Respondent abandons or defaults work on this contract and causes the work to be re-bid, the Respondent may not be considered on future bids to perform similar work. Damages for abandonment or default of this contract by the Respondent may be assessed at HHSC's option.

13.5. HHSC may cancel all or any part of the resulting purchase order and /or contract if the awarded contractor fails to comply with any requirement of the purchase order and/or contract, including but not limited to this solicitation and its General Terms and Conditions. HHSC may also obtain substitute goods and services, may withhold acceptance and payments to the awarded respondent and may pursue all rights and remedies against the awarded respondent under the purchase order and/or contract and any applicable law. In addition, HHSC will report defaulting awarded contractor to the Texas Procurement and Support Services (TPASS) for possible action against defaulting contractor, including but not limited to removal from the TPASS Centralized Master Bidders List (CMBL).

13.6. Right to Recover: HHSC reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to HHSC under the purchase order and/or contract under applicable law, including, but not limited to, attorneys' fees and court costs, if termination or cancellation is at contractor's request or if termination or cancellation is for cause. This right is in addition to any other remedies available to HHSC under the purchase order and/or contract or under applicable law.

14. RESPONSIBILITY FOR NEGLIGENCE: Awarded Vendor agrees to bear all risk of loss or damage to the product due to defects therein, unfitness or obsolescence thereof, and negligence or willful misconduct of Awarded Vendor or its employees, agents, or representatives.

15. FORCE MAJEURE: Neither party shall be liable for any failure or delay in performing its contract obligations if such failure or delay is due to any cause beyond the reasonable control of such party, including, but not limited to, unusually severe weather, strikes, natural disasters, fire, civil disturbance, epidemic, war, court order or acts of God.

16. PATENTS OR COPYRIGHTS: Awarded Vendor(s) must defend, at its own expense, any action brought against the State of Texas to the extent that it is based on a claim that the product(s) supplied by Awarded Vendor or the operation of such product(s) pursuant to the current release and modification level on any programming aid, infringes a United States patent, copyright, or trade secret. Awarded Vendor(s) must pay those costs and damages finally awarded against the State of Texas in any such claim.

17. WORK MADE FOR HIRE. All work performed pursuant to this Contract, developed or prepared for the HHS agency, is the exclusive property of the HHS agency. All right, title and interest in and to said property shall vest in the HHS agency upon creation and shall be deemed to be a work made for hire and made in the course of the services rendered pursuant to this Contract. To the extent that title to any such work may not, by operation of law, vest in the HHS agency, or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to the HHS agency. The HHS agency shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor must give the HHS agency and the State of Texas, as well as any person designated by the HHS agency and the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to Contractor for the services rendered under this Contract.

18. REPRODUCTION RIGHTS: Awarded Vendor(s) agrees that the HHS agency is free to reproduce, without royalty, all manuals, publications, maintenance programs, diagnostics and documents for exclusive use by the HHS agency for State of Texas business. The HHS agency is free to reproduce, without royalty, necessary material selectively extracted from publications provided, for incorporation into the HHS agency-published manuals, which are for exclusive use by State-authorized systems. Any proprietary statement contained in any document will be referenced if that document, or any part thereof, is used.

19. TEXAS PUBLIC INFORMATION ACT: Responses submitted to this solicitation are subject to release by the HHS agency under Texas Government Code, Chapter 552 (Texas Public Information Act), unless responses, or specific parts thereof, can be shown to fall within one or more of the exceptions listed in the Act. If the Respondent believes that parts of a response are exempt from disclosure under the Texas Public Information Act, Respondent must specify those parts and the exception(s) that it believes apply, with specific detailed reasons. Vague and general claims to confidentiality are not acceptable; the HHS agency must have sufficient

information to give to the Attorney General of Texas if his/her opinion is requested. The Attorney General of Texas has previously ruled that the exception in Texas Government Code, Section 552.014 (advantage to competitors or respondents), generally does not apply after the contract has been awarded.

20. REQUESTS FOR INFORMATION The Contractor shall not provide information generated or otherwise obtained in the performance of its responsibilities under this Contract to any party other than the HHS agency and its authorized agents except as otherwise provided by this Contract or after obtaining written permission of the HHS agency.

21. INDEMNIFICATION: Awarded Vendor shall defend, indemnify, and hold harmless the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of Awarded Vendor or any agent, employee, subcontractor, or supplier of Awarded Vendor in the execution or performance of this contract.

22. RIGHT TO AUDIT: 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. 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. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.

23. DEFAULT: Contractor shall comply with and act in good faith in the performance of all provisions of this Contract and any amendments.

REMEDIES AND SANCTIONS: In accordance with §2261.101, Government Code Remedies and Sanctions: – agencies shall incorporate language which shall hold contractors accountable for breach of contract or substandard performance without unfairly limiting competition.

23.1. The HHS agency may impose remedies and sanctions as described in this solicitation for Contractor's default under this Contract.

23.2. The HHS agency at its own discretion may impose as many remedies and sanctions as appropriate on a case-by-case basis.

24. RECORDS RETENTION: Contractor must retain all invoices, records and other documents pertinent to this contract until four (4) years following the expiration or termination of this contract, until any audits in progress are completed or until any lawsuits relating to this contract are resolved whichever is later.

25. PAYMENT: Prior to any payment being made, the HHS agency must certify that the goods and services being invoiced have been received and accepted. Awarded Vendor shall submit an itemized invoice showing the HHS agency purchase order or contract number. Payment shall be made in accordance with the Texas Government Code, Chapter 2251 (Texas Prompt Payment Act).

26. ASSIGNMENT BY CONTRACTOR: Awarded Vendor shall not assign all or any portion of its rights under or interests in this contract without prior written consent of the HHS agency contract manager. Any written request for assignment must be accompanied by written acceptance of the assignment by the assignee. Except where otherwise agreed in writing by the HHS agency contract manager, assignment will not release Awarded Vendor from its obligations pursuant to this contract.

27. PAYMENT OF CONTRACTOR DEBT: In accordance with Texas Government Code, Section 403.055(h), Respondent agrees that any payments due to the Awarded Vendor under this contract will be applied toward any debt, including but not limited to delinquent taxes and child support, which is owed by the Awarded Vendor to the State of Texas. Payments will be so applied until such debts and back taxes are paid in full. Federal law may super cede this requirement.

28. DISCLOSURE OF INFORMATION: The Comptroller General of the United States, or any of its duly authorized representatives, must have access to any books, documents, papers and records of the Awarded Vendor which are directly pertinent to this contract.

29. GOVERNING LAW: This contract is being executed and delivered to the State of Texas. This contract is intended to be performed in the State of Texas and the laws of Texas shall govern the validity, construction, enforcement and interpretation of this contract. The venue of any suit brought as a result of the contract/agreement shall be held in any competent court of jurisdiction in the county in which the goods and services are received. If any part of the contract shall be held unenforceable, the rest of the contract will nevertheless remain in full force and effect. The contract represents the entire agreement of the parties; any amendment thereof must be in writing and signed by the parties.

30. DISPUTE RESOLUTION: The dispute resolution process, provided for in Texas Government Code, Title 10, Chapter 2260, shall be used by HHS Agency and the contractor to attempt to resolve any claim for breach of contract made by the contractor.

31. COMPLIANCE WITH STATE AND FEDERAL ANTI-DISCRIMINATION LAWS

31.1. Contractor agrees to comply with state and federal anti-discrimination laws, including without limitation: 1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.); 2) Sec. 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794); 3) Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); 4) Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107); 5) Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688); 6) Food Stamp Act of 1977 (7 U.S.C. §200 et seq.); 7) HHSC's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement. Contractor agrees to comply with all amendments to the referenced laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any aid, care, service or other benefits provided by Federal or State funding, or otherwise be subjected to discrimination.

31.2. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. Applicable state and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. CONTRACTOR agrees to ensure that its policies do not have the effect of excluding or limiting the participation of persons in its programs, benefits, and activities on the basis of national origin. Contractor also agrees to take reasonable steps to provide

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services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.

31.3. Contractor agrees to comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

31.4. Upon request, Contractor will provide THE HHS agency with copies of all of the Contractor's civil rights policies and procedures.

31.5. Contractor must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Agreement. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this section must be directed to: HHSC Civil Rights Office, 701 W. 51st Street, mail code W206, Austin, Texas 78751. Phone toll free: (888) 388-6332; phone: (512) 438-7232; TTY Toll free: (877) 432-7232; Fax: (512) 438-5885