



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. 53700-7-172733		Response Due Date: <u>January 25, 2017 2:00 pm</u>				
Issue Date: January 11, 2017		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: Procurement & Contracting Svcs Attn: Response Coordinator 1100 W. 49 th Street (MC 20202) Austin, TX 78756		Ship to Location: TX Dept. of State Health Services TB/HIVSTD Unit 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 2155.144				
Line Item No.	Class & Item	Description <i>itemized below</i>	Qty	UOM	Unit Price	Extension
		The TX Dept. of State Health Services is accepting bids for HIV and STD reagents and medical supplies for the HIV/STD Prevention and Care Branch in Austin, Texas. Products requested are from Bio-Rad Laboratories <i>OR EQUAL</i>			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.		53700-7-171766				
Line Item No.	Class & Item	Description <i>itemized below</i>	Qty	UOM	Unit Price	Extension
1	115-05	#26218 Biorad HIV Combo Ag/Ab EIA Test Kits (96/kit)	14	KIT		
2	115-05	#72461 Biorad Geenius Supplemental HIV-1/HIV-2 Test Kits	16	KIT		
3	115-05	#25030 Biorad Captia Syphilis IgG960 Test Kit	8	KIT		
4	115-05	#25029 Biorad CAPTIA Syphilis IgG 96 Test Kit	24	KIT		
5	115-05	Shipping/Handling	1	EA		
					TOTAL	

PCS.111 Revised 02.02.16
Page 1 of 5 VERSION 4.0

**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 are to be sent to 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 PCS.111 Revised 02.02.16

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