

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE
TERMS AND CONDITIONS**

ITEMS BELOW APPLY TO AND BECOME A PART OF BID
ANY EXCEPTIONS THERETO MUST BE IN WRITING

1. Bidding Requirements:

- 1.1 Bidders must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of this form.
- 1.2 Bids should be submitted on this form. Bidders must price per unit shown. Unit prices shall govern in the event of extension errors. If a price quotation is submitted as part of the bid, the quotation must be referenced on the bid document and signed by the bidder to establish formal linkage to the bid.
- 1.3 Bids must be time stamped at the office designated in the solicitation on/or before the hour and date specified for the bid opening. Any bid received at the designated location after the exact time specified will not be considered unless TDCJ determines that it was properly addressed and in the possession of TDCJ prior to the specified time but was late due to mishandling by the agency.

FAXED OR E-MAILED BIDS WILL NOT BE ACCEPTED.

- 1.4 Late and/or unsigned bids will not be considered under any circumstances. Person signing bid must have the authority to bind the firm in a contract.
- 1.5 Quote F.O.B. destination, freight prepaid and allowed, unless otherwise stated within the specifications.
- 1.6 Bid prices are requested to be firm for TDCJ acceptance for 30 days from bid opening date. "Discount from list" bids are not acceptable unless requested. An offer for an early payment discount may be considered in making an award. Cash discounts offered will be taken if earned.
- 1.7 Bidder should enter Texas Identification Number System (T.I.N.S.) number, full firm name and address of bidder on the face of this form. Enter in the space provided, if not shown. Additionally, firm name should appear on each continuation page of a bid, in the block provided in the upper right hand corner. The Texas ID Number is the payee identification number assigned and used by the Comptroller of Public Accounts of Texas to process payment for goods/services. If this number is not known, please visit https://fm.xcpa.texas.gov/fm/pubs/payment/pay_pro_pol/?s=ppp_forms&p=app_tin to set up a Texas Identification Number:

Enter Federal Employer's Identification Number

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In an effort to minimize identity theft, every company MUST have an Employer Identification Number (EIN), also known as a federal tax identification number prior to award of a contract. For information on obtaining your EIN, you may call 800-829-4933 or visit the following website: <http://www.irs.gov/businesses/>.

- 1.8 Bid cannot be altered or amended after opening time. Alterations made before opening time should be initialed by bidder or authorized agent. No bid can be withdrawn after opening time without approval by the TDCJ based on an acceptable written reason.
- 1.9 Purchases made for State use are exempt from the State Sales tax and Federal Excise tax. Do not include tax in bid. Excise Tax Exemption Certificates are available upon request.

1.10 **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 at the sole discretion of the State. The State also reserves the right to accept or reject all or any part of any bid, waive minor technicalities and award the bid to best serve the interests of the State. Any contract may also be extended up to three months at the sole discretion of the State.

1.11 Consistent and continued tie bidding could cause rejection of bids by the TDCJ and/or investigation for antitrust violations.

2. Specification:

- 2.1 Catalogs, brand names or manufacturer's references are descriptive only, and indicate type and quality desired. Bids on brands of like nature and quality will be considered unless advertised as a proprietary purchase under Government Code, Title 10, Subtitle D, Section 2155.067. If bidding on other than reference specification(s), bid should show manufacturer, brand, or trade name, and other description of product offered. If other than brand(s) specified is offered, illustrations and complete description of product offered are requested to be made part of the bid. Failure to take exception to specifications or reference data will require bidder to furnish specified brand names, numbers, etc.
- 2.2 Unless otherwise specified, items bid shall be new and unused and of current production.
- 2.3 All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.
- 2.4 Samples, when requested, must be furnished free of expense to the State. If not destroyed in examination, they will be returned to the bidder, on request, at bidder's expense. Each sample should be marked with bidder's name and address, and bid number. Do not enclose in or attach bid to sample.
- 2.5 The State will not be bound by any oral statement or representation contrary to the written specifications of this Invitation For Bids (IFB).
- 2.6 Manufacturer's standard warranty shall apply unless otherwise stated in the IFB.

3. Tie Bids:

Awards will be made in accordance with 34 TAC Rules 20.207 (c) (2) and 20.306 (preferences).

4. Delivery:

- 4.1 Show number of days required to place material in TDCJ's receiving location under normal conditions. Delivery days means calendar days, unless otherwise specified. Failure to state delivery time obligates bidder to delivery in 14 calendar days. Unrealistic delivery promises may cause bid to be disregarded.
- 4.2 If delay is foreseen, vendor shall give written notice to the TDCJ. Vendor must keep the TDCJ advised at all times of status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the TDCJ to purchase the goods and services of this IFB elsewhere and charge any increased costs for the

goods and services, including the cost of rebidding, to the bidder.

- 4.3 No substitutions permitted without written approval of the TDCJ Contracts and Procurement Department.
- 4.4 Delivery shall be made during normal working hours only, unless prior approval has been obtained from the TDCJ.

5. Inspection And Tests:

All goods will be subject to inspection and test by the State. Authorized TDCJ personnel shall have access to supplier's place of business for the purpose of inspecting merchandise. Tests shall be performed on samples submitted with the bid or on samples taken from regular shipment. All costs shall be borne by the vendor in the event products tested fail to meet or exceed all conditions and requirements of the specification. Goods delivered and rejected in whole or in part may, at the State's option, be returned to the vendor or held for disposition at vendor's expense. Latent defects may result in revocation of acceptance.

6. Award of Contract:

6.1 A response to this IFB is an offer to contract based upon the terms, conditions and specifications contained herein. Bids do not become contracts until they are accepted through a purchase order. The contract shall be governed, construed and interpreted under the laws of the State of Texas as the same may be amended from time to time. The factors listed in Texas Government Code, Title 10, Subtitle D, Section 2155.074 and Section 2156.007 shall also be considered in making an award when specified. Any legal actions must be filed in Travis County, Texas.

6.2 The TDCJ award policy shall consist of, but not be limited to, the following factors in combination, but not necessarily in their order of importance:

- A. Prices;
- B. Bidders previous record of performance and service;
- C. Quality and conformance to specifications;
- D. Any other best value factors so indicated.

7. Advertising of Award

The awarded vendor agrees not to refer to awards in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed or preferred by the TDCJ or is considered by the TDCJ to be superior to other products or services.

8. Payment:

Payment shall be made thirty calendar days after the later of (1) the date an uncontested invoice is received, (2) the date goods are received, and (3) the date services are completed. Refer to Texas Government Code, Chapter 2251.

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE
TERMS AND CONDITIONS**

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9. Vendor Maintenance Direct Deposit and Substitute W-9 Form (Electronic Funds Transfer):

Government Code 403.016 (c) (3) encourages state agencies to transmit payments to vendors through electronic funds transfer (Direct Deposit). To set up your account, contact agency Accounts Payable Branch at (936) 437-8761 or (936) 437-6357. Regardless as to whether Direct Deposit is chosen, the awarded vendor shall submit a completed Vendor Maintenance Direct Deposit and Substitute W-9 Form to TDCJ Accounts Payable. Vendors who have already submitted a form for another separate purchase order are not required to submit another form. The form and instructions are found at the following link on the TDCJ website: https://www.tdcj.texas.gov/divisions/bfd/acct_acct_s_pay.html. To enroll for advance notification of electronic funds transfer to your account, please contact the number listed above. Payment information may be obtained by calling the Comptroller of Public Accounts toll free at (800) 531-5441, ext. 3-3660 or in Austin, Texas, call (512) 463-3660 or to receive via fax, call (512) 936-3461 or via the Internet at <https://fm.xcpa.state.tx.us/fm/payment/index.php>. Vendors may select Option 3 (PIN not required) and enter their vendor identification number and 696 for the agency number.

10. Shipping and Invoice Instructions:

Failure to follow these shipping and invoice instructions may result in merchandise being rejected at the receiving dock and returned to the vendor without notice.

Shipping Instructions:

1. Ensure item(s) is sent to the correct unit/department within the TDCJ as listed on the purchase order.
2. Do not over ship. Overages shall be returned at the vendor's expense unless items are of indeterminable quantity such as sand or gravel.
3. Ship individual line items complete.
4. Each part shipped shall have a part number or be tagged with a part number as it appears on the purchase order. If items are shipped without a part number, they will be returned to the vendor at vendor's expense.
5. Include or mark purchase order numbers on all packing slips, cartons, packages, bundles, etc.

Invoicing Instructions:

1. The invoice must be itemized with the description, unit price, unit of measure and extension exactly as listed on the purchase order.
2. Only items listed on the purchase order may be billed and paid for by the TDCJ.
3. Any changes to the purchase order are only valid upon receipt of a purchase order change notice (POCN) from the authorized purchaser.
4. Invoices must reference the purchase order number. Only one purchase order number on an invoice. (Purchase order number always begins with an "E", example – EX000123)
5. Vendor must supply a valid payee identification number (PIN) on each invoice.

6. Invoices must be sent to Accounts Payable, P.O. Box 4018, Huntsville, TX 77342-4018. *Only discounted invoices may be emailed.
7. Discounted invoices may be emailed to tdcj.ap-invsvs@tdcj.texas.gov.
8. Submit separate invoices for each shipment/per location.

11. Indemnification:

11.1 Acts or Omissions

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

11.2 Infringements

- A. Vendor shall indemnify, defend, and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.
- B. Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity

with the terms of any applicable license agreement.

- C. If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense; (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

- 11.3 The parties agree that the terms, covenants and provisions of paragraphs 11.1, and 11.2, shall survive the termination of this purchase order.

12. Vendor Assignments:

Vendor hereby assigns to TDCJ 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 the antitrust laws of the State of Texas. TEX. Bus. & Comm. Code Ann. Sec. 15.01 et seq. (1967).

13. Recycled Products:

Any product(s) being bid on this solicitation containing recycled material, whether post-consumer or pre-consumer, or is a product that has been remanufactured, rebuilt, or otherwise restored to a like new condition, shall be indicated as such on the appropriate line items as having either a recycled content or is a remanufactured product.

14. Material Safety Data Sheets:

When applicable, Material Safety Data Sheets are to be provided with each shipment.

15. Electronic and Information Resources Accessibility Standards, as required by 1 TAC Chapter 213:

- 15.1 State agencies shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
- 15.2 Vendor shall provide the TDCJ with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services' Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide the TDCJ with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

16. E-Verify System

The TDCJ shall require the following as a condition of all service contracts:

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

TERMS AND CONDITIONS

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

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

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

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

17. Bidder Affirmation:

Signing this bid with a false statement is a material breach of contract and shall void the submitted bid or any resulting contracts, and the bidder shall be removed from all bid lists. By signature hereon affixed, the bidder hereby certifies that:

- 17.1 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 https://www.sam.gov.
17.2 The bidder has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted bid.
17.3 Neither the bidder nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this State or the Federal Antitrust Laws (see section 12, above), nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
17.4 Pursuant to Section 2155.004, Government Code, neither the bidder nor any person or entity which will participate financially in any contract resulting from this IFB has received compensation for participation in the preparation of the specifications for this IFB. Under Section 2155.004, Government Code, the bidder 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. Section 2155.004

prohibits a person or entity from receiving a state contract if they received compensation for participating in preparing the solicitation or specifications for the contract.

- 17.5 Pursuant to Section 231.006 (d), Family Code re: child support, the bidder certifies that the individual or business entity named in this bid 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 bidder 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 bid.

Enter Name & Social Security Numbers for each person. This information must be provided prior to contract award.

Name: _____

Social Security Number: _____

Name: _____

Social Security Number: _____

Name: _____

Social Security Number: _____

Name: _____

Social Security Number: _____

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

- 17.6 Sections 2155.006 and 2261.053, Government Code, prohibit state agencies from awarding contracts to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004, Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2155.0061, Government Code, the bidder 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.

- 17.7 As required by Section 2252.903, Government Code, bidder agrees that any payments due under a purchase order or contract resulting from this IFB shall be directly applied towards eliminating

any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support, regardless of when debt is incurred, until the debt is paid in full. Bidder shall comply with rules adopted by the Comptroller of Public Accounts under Sections 403.055, 403.0551, 2252.903, Government Code and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

- 17.8 Bidder 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, bidder will complete the following information in order for the bid to be evaluated:

Name of Former Executive: _____

Name of State Agency: _____

Date of Separation from State Agency: _____

Position with Bidder: _____

Date of Employment with Bidder: _____

- 17.9 In accordance with Section 2155.4441, Government Code, bidder agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

- 17.10 Bidder represents and warrants that payment to the bidder and the bidder's receipt of appropriated or other funds under any contract resulting from this IFB are not prohibited by Section 556.005 or Section 556.008, Government Code, relating to the prohibition of using state funds for lobbying activities.

- 17.11 Bidder represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to TDCJ under the IFB and any resulting contract, if any, and that bidder's provision of the requested items under the IFB and any resulting contract, if any, would not reasonably create an appearance of impropriety.

- 17.12 Bidder certifies that they are in compliance with Section 572.069 of the Government Code relating to employment of a former state officer or employee. A former state officer or employee of the TDCJ who during the period of state service or employment participated on behalf of the TDCJ on a procurement or contract negotiation involving a business entity may not accept employment from that business entity before the second anniversary of the date the officer's or employee's service or employment with the TDCJ ceased.

- 17.13 If the bidder is required to make a certification pursuant to Texas Government Code, Section 2270.002, the bidder certifies that they are in compliance with Chapter 2270 of the Government Code relating to the prohibition of a state agency contracting with companies that boycott Israel or boycotts Israel during the term of the Contract. The bidder 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 the certification is inaccurate.

- 17.14 Bidder certifies that they are in compliance with Chapter 2252.152 of the Government Code relating to the prohibition of a state agency

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE
TERMS AND CONDITIONS**

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ANY EXCEPTIONS THERETO MUST BE IN WRITING

contracting with companies that are engaged in business with Iran, Sudan, or foreign terrorist organizations. The bidder 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.

18. Note to Bidder:

Any terms and conditions attached to a bid will not be considered unless specifically referred to on this bid form and may result in disqualification of the bid.

19. Protest Procedures:

Any actual or prospective bidder who is aggrieved in connection with this IFB, evaluation, or award of any contract resulting from this IFB, may formally protest as provided in TDCJ's rules found in Texas Administrative Code, Title 37, Part 6, Chapter 155, Subchapter D, Rule 155.41.

20. Dispute Resolution:

Any dispute arising under this Contract that is not disposed of by mutual agreement between the TDCJ and Contractor shall be resolved according to "Procedures for Resolving Contract Claims and Disputes," Rule Section 155.31, Texas Administrative Code, Title 37, Part 6, Chapter 155, Subchapter C.

- A. If authorized to adjudicate a breach of contract claim against the TDCJ under Chapter 114, Civil Practice and Remedies Code, Contractor, prior to filing suit, shall comply with the dispute resolution process in subsections 155.31(h) – (q) of Rule 155.31 "Procedures for Resolving Contract Claims and Disputes." However, references therein to Chapter 2260 or the State Office of Administrative Hearings shall be inapplicable if contractor files suit under Chapter 114, Civil Practice and Remedies Code, after completion of the dispute resolution process.
- B. Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the contractor, in whole or in part.
- C. This provision shall not be construed to prohibit contractor from seeking any other legal or equitable remedy to which it is entitled.

21. Availability of Funds for Next Fiscal Year

Funds are not presently available for performance under this contract beyond the current fiscal year for which the contract becomes effective. (Note: a state agency's fiscal year begins September 1st and runs through August 31st). TDCJ's obligation for performance of this contract beyond the fiscal year for which the contract becomes effective is contingent upon legislative approval and the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of TDCJ for any payment may arise for performance under this contract beyond the fiscal year for which the contract becomes effective until funds are made available to TDCJ for performance and until the contractor receives notice of availability. Refer to Section 23, Paragraph 2, Termination for Unavailability of Funds, for TDCJ's right to terminate this contract in the event it is appropriated insufficient funds.

22. Termination for Unavailability of Funds

- Rev.07/20/2020

The payment of money by TDCJ or the State under any provisions hereof is contingent upon the availability of funds appropriated by the Legislature to an agency or department of the State to cover the provisions hereof. Neither the State, TDCJ nor its elected officials, officers, employees, agents, attorneys or other individuals acting on behalf of the State, make any representations or warranty as to whether any appropriation will, from time to time during the term of this contract, be made by the Legislature of the State.

The contractor acknowledges that TDCJ does not receive a "line item appropriation". If the funds appropriated are not sufficient to pay for TDCJ's operating expenses, contractual obligations and other financial obligations, TDCJ, in its sole discretion, will determine what operating expenses, contractual obligations and other financial obligations it will pay. In the event TDCJ determines it was not appropriated sufficient money, TDCJ may terminate this contract without paying contractor any additional money or penalty; provided that TDCJ will pay the contractor for obligation that occurred up to the time of termination.

23. Texas Public Information Act

Notwithstanding any provisions of this IFB to the contrary, bidder understands that TDCJ will comply with the Texas Public Information Act (Chapter 552, Government Code) as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to the Texas Public Information Act. Within three (3) days of receipt, bidder will refer to TDCJ any third party requests, received directly by bidder, for information to which bidder has access as a result of or in the course of performance under any contract resulting from this IFB. Any part of the solicitation response that is of a confidential or proprietary nature must be clearly and prominently marked as such by the bidder.

The requirements of Subchapter J, Chapter 552, Government Code, may apply to this bid or contract/purchase order and the contractor or vendor agrees that the contract/purchase order can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter. Respondent represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code.

24. Right to Audit

- 24.1 In addition to and without limitation on the other audit provisions of this IFB, pursuant to Section 2262.154, Texas Government Code, the state auditor may conduct an audit or investigation of the bidder or any other entity or person receiving funds from the state directly under this contract or indirectly through a subcontract under this contract. The acceptance of funds by the bidder or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the bidder or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This IFB or

any contract resulting from this IFB may be amended unilaterally by TDCJ to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.003, Texas Government Code. Bidder will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the bidder and the requirement to cooperate is included in any subcontract it awards.

- 24.2 The parties agree that the terms, covenants and provisions of paragraph 25.1 shall survive the termination of this purchase order.

25. Fraud, Waste or Abuse

In accordance with Texas Government Code, Chapter 321, the State Auditor's Office (SAO) is authorized to investigate specific acts or allegations of impropriety, malfeasance or nonfeasance in the obligation, expenditure, receipt or use of state funds. If there is a reasonable cause to believe that fraud, waste or abuse has occurred at this agency, it can be reported to the SAO by calling 1-800-892-8348 or at the SAO's website at <http://sao.fraud.texas.gov>. It can also be reported to the TDCJ Office of the Inspector General at 1-866-372-8329, the TDCJ Internal Audit Division at 1-936-437-7100, or Crime Stoppers at 1-800-832-8477.

26. Conflict of Interest

Under Section 2155.003, Government Code, a TDCJ employee may not have an interest in, or in any manner be connected with a contract or bid for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Section 1.2 of the State of Texas Procurement Manual, which outlines the ethical standards required of public purchasers, employees, and bidders who interact with public purchasers in the conduct of state business, and with any opinions of or rules adopted by the Texas Ethics Commission. Entities who are interested in seeking business opportunities with the State must be mindful of these restrictions when interacting with public purchasers.

27. Disclosure of Interested Parties

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

The disclosure of interested parties must be submitted on a form, and in a manner, prescribed by the Texas Ethics Commission. The Disclosure of Interested Parties Form (Form 1295) and instructions may be found at: https://www.ethics.state.tx.us/whatsnew/elf_info_for_m1295.htm.

28. Force Majeure:

Neither bidder nor TDCJ shall be liable to the other for any delay in, or failure of performance, of any requirement included in any contract resulting from this IFB caused by force majeure. The existence of

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
TERMS AND CONDITIONS

ITEMS BELOW APPLY TO AND BECOME A PART OF BID
ANY EXCEPTIONS THERETO MUST BE IN WRITING

such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

29. Independent Contractor:

Bidder is and shall remain an independent contractor in relationship to the TDCJ. The TDCJ shall not be responsible for withholding taxes from payments made under any contract resulting from this IFB. Bidder shall have no claim against the TDCJ for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

30. Rights to Data, Documents and Computer Software (State Ownership)

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