

TEXAS DEPARTMENT OF PUBLIC SAFETY (TXDPS)
STANDARD TERMS AND CONDITIONS
ITEMS BELOW APPLY TO AND BECOME PART OF PURCHASE ORDER. (PO)
“CONTRACT” AND “PO” ARE USED INTERCHANGEABLY
ANY EXCEPTIONS THERETO MUST BE IN WRITING.

1. PAYMENT:

Payment shall be made in accordance with Chapter 2251, Gov't Code.

2. VENDOR ASSIGNMENTS:

Vendor hereby assigns to TXDPS any and all claims for overcharges associated with this Contract arising under the antitrust laws of the United States 15 U.S.C.A. §1, et seq., and the antitrust laws of the State of Texas, Tex. Bus. & Comm. Code §15.01, et seq.

3. VENDOR AFFIRMATIONS:

Signing or accepting this Contract with a false statement is a material breach of contract and shall void this Contract, and Vendor shall be removed from all bid lists. Vendor, by its signature on or acceptance of this Contract, hereby certifies to TXDPS and affirms to TXDPS all of the following:

- 3.01 Vendor has not given, offered to give, , and does not intend 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 Contract. Violation of this requirement may result in termination of this Contract at TXDPS' discretion..
- 3.02 Vendor waives any claim against and releases TXDPS, its officers, employees, agents, and attorneys from liability with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by Vendor and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act.
- 3.03 Vendor will promptly notify TXDPS in the event that any representations and warranties provided in this Contract are no longer true and correct, Vendor acknowledges that all of its representations and warranties contained in this Contract are material and have been relied upon by TXDPS in selecting Vendor for the award of this Contract. Further, Vendor warrants and represents that all of its statements and representations made to TXDPS prior to being awarded this Contract, and those made during the negotiation of this Contract, are material, true and correct.
- 3.04 Under §231.006(d), Texas Family Code (relating to child support), Vendor, certifies that it is not ineligible to receive payments under this Contract and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
- 3.05 Vendor certifies that it is exempt or not delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Texas Tax Code. If Vendor is a qualifying business entity type per Texas Comptroller of Public Accounts guidelines and is not set up in the Texas Franchise Tax System, Vendor must do so prior to contracting with TXDPS.
- 3.06 Under §2155.004, Gov't Code, Vendor certifies that the individual or business entity named in this 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. §2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation or specifications for the contract.
- 3.07 Under §2252.903, Gov't Code, Vendor agrees that any payments due under this Contract shall be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support, until the debt is paid in full. Vendor shall comply with rules adopted by the state under §§403.055, 403.0551, 2252.903, Gov't Code and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.
- 3.08 Vendor certifies it is in compliance with §669.003, Gov't Code, relating to contracting with an executive of a state agency. : TXDPS may not enter into a Contract with a person who employs a current or former executive head of any state agency until four years has passed since that person was the executive head of the state agency. Vendor certifies that it does not employ any person who was the executive head of any state agency in the past four (4) years 3.09 Vendor agrees that no person will, on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract or PO. Vendor will comply with Executive Order 11246, "Equal Employment Opportunity", as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor."
- 3.10 In accordance with §2155.4441, Gov't Code, Vendor shall, during the performance of this Contract, 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.
- 3.11 Vendor certifies that the 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 Vendor is in compliance with the State of Texas statutes and rules relating to procurement and that Vendor 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>
- 3.12 §§2155.006 and 2261.053 of the Gov't 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 §418.004, Gov't Code, occurring after September 24, 2005. Under §2155.006, Gov't Code, Vendor certifies that the individual or business entity named in this Contract is not ineligible to receive a contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- 3.13 Under §572.069 of the Gov't Code, Vendor certifies that it has not employed and will not employ a former TXDPS or state officer who participated in a procurement or contract negotiation for TXDPS involving Vendor within two years after the state officer or employee left state agency employment or service. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.
- 3.14 Vendor represents and warrants that payment to Vendor and Vendor's receipt of appropriated or other funds under this Contract are not prohibited by §556.005 or §556.008, Gov't Code, relating to the prohibition of using state funds for lobbying activities.
- 3.15 Vendor certifies that it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage.
- 3.16 Vendor certifies that to the best of its knowledge and belief, there are no suits or proceedings pending or threatened against or affecting it, which if determined adversely to it will have a material adverse effect on its ability to fulfill its obligations under this Contract.

- 3.17 To the extent applicable to the scope of this Contract, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328.
- 3.18 Vendor represents and warrants that neither it nor its employees and subcontractors have an actual or potential conflict of interest in signing or accepting this Contract. Vendor also represents and warrants that entering into or accepting this Contract will not create the appearance of impropriety. Any existing or potential conflict of interest has been disclosed to TXDPS. This requirement to disclose any actual or potential conflict of interest will continue during the term of this Contract, and will survive until the end of the applicable recordkeeping requirements identified for this Contract. Vendor has disclosed or does not employ any personnel who are current or former officers or employees of TXDPS or who are related, within the third degree by consanguinity (as defined by §573.023, Gov't Code) or within the second degree of affinity (as defined by §573.025, Gov't Code), to any current or former officers or employees of TXDPS.
- 4. DISPUTE RESOLUTION:**
The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used by the Vendor, as further described herein, by the TXDPS rules adopted under Chapter 2260 codified in the Texas Administrative Code, Title 37, Part 1, Chapter 34, Subchapter C.
- 5. NON-APPROPRIATION OF FUNDS:**
This Contract is subject to termination or cancellation, without penalty to TXDPS, either in whole or in part, subject to the availability of state or grant funds. TXDPS is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TXDPS becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated or grant funds which would render TXDPS' or Vendor's delivery or performance under this Contract impossible or unnecessary, TXDPS may immediately terminate this Contract without penalty to or any liability whatsoever on the part of TXDPS, the State of Texas, and the United States if these funds become unavailable to TXDPS.
- 6. TEXAS PUBLIC INFORMATION ACT:**
6.01 Notwithstanding any provisions of this Contract to the contrary, Vendor understands that TXDPS will comply with the Texas Public Information Act (Chapter 552, Gov't 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 Contract may be subject to public disclosure pursuant to the Texas Public Information Act. Within three (3) days of receipt, Vendor will refer to TXDPS any third party requests, received directly by Vendor, for information to which Vendor has access as a result of this Contract. Any part of this Contract that is of a confidential or proprietary nature must be clearly and prominently marked as such by Vendor.
6.02 Vendor shall make any information created or exchanged with the state pursuant to this Contract, and not otherwise exempted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state
- 7. CONFLICT OF INTEREST:**
Under §2155.003, Gov't Code, a TXDPS 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 Vendors 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.
- 8. FORCE MAJEURE:**
Neither Vendor nor TXDPS shall be liable to the other for any delay in, or failure of performance, of any requirement included in this Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. 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.
- 9. INDEPENDENT CONTRACTOR:**
Vendor and its employees, representatives, agents and any subcontractor(s) shall serve as an independent contractor in providing services under this Contract. Vendor and its employees, representatives, agents and any subcontractors shall not be employees of TXDPS. Should Vendor subcontract any of the services provided under this Contract, Vendor expressly understands and acknowledges that in entering into such subcontracts, TXDPS is in no manner liable to any subcontractor(s) of Vendor. In no event shall this provision relieve Vendor of the responsibility for ensuring the services rendered under all subcontracts are rendered in compliance with this Contract.
- 10. INDEMNIFICATION:**
VENDOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TXDPS, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, VENDORS, 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 VENDOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THIS 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 TXDPS AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.
- 11. RIGHT TO AUDIT:**
In addition to and without limitation on the other audit provisions of this Contract, pursuant to §2262.154, Gov't Code, the state auditor may conduct an audit or investigation of Vendor 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 Vendor 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, Vendor shall provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This Contract may be amended unilaterally by TXDPS to comply with any rules and procedures of the state auditor in the implementation and enforcement of §2262.154, Gov't Code. Vendor shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards.
- 12. ABANDONMENT OR DEFAULT:**

If Vendor defaults on this Contract, TXDPS reserves the right to cancel this Contract without notice and either re-solicit or re-award this Contract to the next best responsive and responsible Vendor. The defaulting Vendor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by the agency based on the seriousness of the default.

13. ASSIGNMENT:

Without the prior written consent of TXDPS Vendor may not assign this Contract, in whole or in part, and may not assign any right or duty required under it.

14. NOTICE:

Any written notices to the Vendor required under this Contract will be by email or hand delivery to Vendor's office address specified on Page 1 of this Contract or by U.S. Mail, certified, return receipt requested. Notice to TXDPS, shall be delivered to the Contract Administrator noted on page 1 of this Contract at 5805 N. Lamar Blvd., Austin, Texas 78752. Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this Section by written notification to the other party.

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

By entering into this Contract, the Vendor 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:

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

The Vendor shall provide, upon request of TXDPS, 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 Vendor, and Vendor'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 TXDPS and at no fault to TXDPS, with no prior notification. The Vendor shall also be responsible for the costs of any re-solicitation that TXDPS must undertake to replace the terminated Contract.

16. NOTICE UNDER GOVERNMENT CODE 2261.252

Pursuant to Government Code 2261.252 the Department may not enter into a contract for the purchase of goods or services with a private vendor if members of the Public Safety Commission or certain positions within the agency including the Executive Director, the General Counsel or the Procurement Director or their covered family members have a financial interest in the vendor. Any contract found to violate Government Code 2261.252 is void.

17. LIMITATIONS.

The Parties are aware that there may be constitutional and statutory limitations on the authority of TXDPS (a state agency) to enter into certain terms and conditions of this contract, including, but not limited to, those terms and conditions relating to liens on the STATE's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on TXDPS except to the extent authorized by the laws and Constitution of the State of Texas.