Texas Department of Public Safety

Purchase Order

P.O. Date: 4/25/2016

Purchase Order Number

405-16-P006585

SHOW THIS NUMBER ON ALL PACKAGES, INVOICES AND SHIPPING DOCUMENTS.

VENDOR

Vendor Number: 00015932
1208199685700 | CTS CONSOLIDATED TELECOM SERVICES LLC
PO BOX 2110
USA
ROUND ROCK, TX 78680-2110

State Sales Tax Exemption Certificate: The undersigned claims an exemption from taxes under Chapter 20, Title 122A, Revised Civil Statutes of Texas, for purchase of tangible personal property described in this numbered order, purchased from contractor and/or shipper listed above, as this property is being secured for the exclusive use of the State of Texas.

SHIP TO

Texas Department of Public Safety
Law Enforcement Support
5805 North Lamar Blvd
Austin, TX 78752-4431
US
Email: eprocurementshipping@dps.texas.gov
Phone: (512) 424-2000

BILL TO

Texas Department of Public Safety
Finance - Accounts Payable - MSC 0130
PO Box 4087
Austin, TX 78773-0130
US
Email: apinvoices@dps.texas.gov
Phone: (512) 424-2060

Solicitation (Bid) No.: 405-16-B001409

Payment Terms: State of Texas Prompt Pay

Shipping Terms:

Delivery Calendar Day(s) A.R.O.: 0

Item # 1

This Purchase Order (PO) is being issued in accordance with the Texas Department of Public Safety Open market RFO Technology Terms and Conditions, Dated 12/10/14, 18 pages attached.

This Purchase Order incorporates the contract fully executed by Texas Department of Public Safety and Consolidated Telecom Services LLC. dated 04/15/2016

Order of Precedence:
The following documents are incorporated by reference into this PO. In case of conflicting provisions, the documents shall control in the following order of precedence to resolve the conflict:
1. Contract between TXDPS and CTS Consolidated Telecom Services LLC.dated 04/15/2016
2. TXDPS issued Purchase Order
3. TXDPS Technology Terms and Conditions dated 12/10/2014
4. TXDPS Solicitation Request for Offer 405-15-B001409 and any subsequent modifications and amendments.
5. Consolidated Telecom Services LLC response to Request for Offer dated 01/11/2016.

This PO will also be in accordance with CTS Consolidated Telecom Services RFO response dated, 01/11/2016

This Contract will consist of a Base Period from Date of Award through 08/31/16.

The terms, conditions, and rates for all extensions will remain as state in this Contract. The continuation of this Contract for any period of time is subject to the availability of federal and any other applicable funding.

This contract may be renewed for three (3) one (1) year optional renewal periods.

RENEWALS:
1st OPTIONAL TERM
09/01/16 through 08/31/17

2nd OPTIONAL TERM
09/01/17 through 08/31/18

3rd OPTIONAL TERM
09/01/18 through 08/31/19

Pursuant to Government Code 2252.908 TXDPS may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to TXDPS at the time the business entity submits the signed contract to TXDPS. The Texas Ethics Commission has adopted rules and procedures under these provisions:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

Any contract found to violate Government Code 2252.908 is void.

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.

Certification Concerning Restricted Employment for Former State Officers or Employees under Texas Government Code 572.069.

The Respondent 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 the Respondent within two (2) 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.

Please send received notifications, delays, and/or back orders of any products to darren.roberson@dps.texas.gov.

DPS CONTRACT MONITOR: Eddie Wilson
PHONE: 512-424-2689
EMAIL: benjamin.wilson@dps.texas.gov

VENDOR CONTACT: Pamela Faver
PHONE: 512-279-5950
EMAIL: pfaver@ccc411.com

DPS PROCUREMENT CONTACT: Darren K. Roberson, Sr., CTPM
PHONE: 512-424-5239
EMAIL: darren.roberson@dps.texas.gov

Item # 2
Class-Item 920-37

Project Manager, Includes, but not limited to, identifying, designing, and implementing the Texas statewide broadband strategy as part of the (TxPSBP), as well as assisting with the coordination and oversight of activities and assignments as it relates to interoperable communications. The Project Manager may also support the (SWIC) and when directed, will serve as a representative of the Department in meetings relating to (PSBN LTE) and interoperable communications.

TRAVEL AND LODGING WILL BE AN ALLOWABLE EXPENSE AND MUST BE PRE-APPROVED BY THE DEPARTMENT IN WRITING

BASE YEAR:
Date of Award to 08/31/16

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
400.00	$ 150.00	HR	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 60,000.00

LN/FY/Account Code	Dollar Amount
2/16/16-90209-6253-5004- - -1100- - -	$ 60,000.00

Item # 3
Class-Item 920-37

Project Manager, Includes, but not limited to, identifying, designing, and implementing the Texas statewide broadband strategy as part of the (TxPSBP), as well as assisting with the coordination and oversight of activities and assignments as it relates to interoperable communications. The Project Manager may also support the (SWIC) and when directed, will serve as a representative of the Department in meetings relating to (PSBN LTE) and interoperable communications.

TRAVEL AND LODGING WILL BE AN ALLOWABLE EXPENSE AND MUST BE PRE-APPROVED BY THE DEPARTMENT IN WRITING

1st OPTIONAL RENEWAL PERIOD:
09/01/16 to 08/31/17

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
1.00	$ 0.00	HR	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 0.00

LN/FY/Account Code	Dollar Amount
3/16/16-56901-6253-1001- - -1100- - -	$ 0.00

Item # 4
Class-Item 920-37

Project Manager, Includes, but not limited to, identifying, designing, and implementing the Texas statewide broadband strategy as part of the (TxPSBP), as well as assisting with the coordination and oversight of activities and assignments as it relates to interoperable communications. The Project Manager may also support the (SWIC) and when directed, will serve as a representative of the Department in meetings relating to (PSBN LTE) and interoperable communications.

TRAVEL AND LODGING WILL BE AN ALLOWABLE EXPENSE AND MUST BE PRE-APPROVED BY THE DEPARTMENT IN WRITING

2ND OPTIONAL RENEWAL PERIOD:
09/01/17 to 08/31/18

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
1.00	$ 0.00	HR	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 0.00

LN/FY/Account Code	Dollar Amount
4/16/16-90209-6253-5004- - -1100- - -	$ 0.00

Item # 5
Class-Item 920-37

Project Manager, Includes, but not limited to, identifying, designing, and implementing the Texas statewide broadband strategy as part of the (TxPSBP), as well as assisting with the coordination and oversight of activities and assignments as it relates to interoperable communications. The Project Manager may also support the (SWIC) and when directed, will serve as a representative of the Department in meetings relating to (PSBN LTE) and interoperable communications.

TRAVEL AND LODGING WILL BE AN ALLOWABLE EXPENSE AND MUST BE PRE-APPROVED BY THE DEPARTMENT IN WRITING

3RD OPTIONAL RENEWAL PERIOD:
09/01/18 to 08/31/19

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
1.00	$ 0.00	HR	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 0.00

LN/FY/Account Code	Dollar Amount
5/16/16-56901-6253-1001- - -1100- - -	$ 0.00

Item # 10
Class-Item 920-37

Project Supervisor, Includes, but not limited to work assigned, with focus on, but not to be limited to, planning and leading Strategic Advisory Groups, FirstNet data collection, as well as outreach and education in specific disciplinary areas including but not limited to fire, health care, and emergency management. The Project Supervisor will assist with planning, development, outreach and education and implementation of communication focused annual meetings, conferences, workshops, and focus groups as part of State and Local Implementation Grant Program. In addition, they may also support the (SWIC) with the coordination of events, meetings, and conferences as it pertains to the Department, as well as the (PSBN LTE) and interoperable communications.

TRAVEL AND LODGING WILL BE AN ALLOWABLE EXPENSE AND MUST BE PRE-APPROVED BY THE DEPARTMENT IN WRITING

BASE YEAR:
Date of Award to 08/31/16

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
2500.00	$ 75.00	HR	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 187,500.00

LN/FY/Account Code	Dollar Amount
10/16/16-90209-6253-5004- - -1100- - -	$ 187,500.00

Item # 11
Class-Item 920-37

Project Supervisor, Includes, but not limited to work assigned, with focus on, but not to be limited to, planning and leading Strategic Advisory Groups, FirstNet data collection, as well as outreach and education in specific disciplinary areas including but not limited to fire, health care, and emergency management. The Project Supervisor will assist with planning, development, outreach and education and implementation of communication focused annual meetings, conferences, workshops, and focus groups as part of State and Local Implementation Grant Program. In addition, they may also support the (SWIC) with the coordination of events, meetings, and conferences as it pertains to the Department, as well as the (PSBN LTE) and interoperable communications.

TRAVEL AND LODGING WILL BE AN ALLOWABLE EXPENSE AND MUST BE PRE-APPROVED BY THE DEPARTMENT IN WRITING

BASE YEAR:
09/01/17 to 08/31/18

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
1.00	$ 0.00	HR	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 0.00

LN/FY/Account Code	Dollar Amount
11/16/16-56901-6253-1001- - -1100- - -	$ 0.00

Item # 12
Class-Item 920-37

Project Supervisor, Includes, but not limited to work assigned, with focus on, but not to be limited to, planning and leading Strategic Advisory Groups, FirstNet data collection, as well as outreach and education in specific disciplinary areas including but not limited to fire, health care, and emergency management. The Project Supervisor will assist with planning, development, outreach and education and implementation of communication focused annual meetings, conferences, workshops, and focus groups as part of State and Local Implementation Grant Program. In addition, they may also support the (SWIC) with the coordination of events, meetings, and conferences as it pertains to the Department, as well as the (PSBN LTE) and interoperable communications.

TRAVEL AND LODGING WILL BE AN ALLOWABLE EXPENSE AND MUST BE PRE-APPROVED BY THE DEPARTMENT IN WRITING

2ND OPTIONAL RENEWAL PERIOD:
09/01/17 TO 08/31/18

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
1.00	$ 0.00	HR	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 0.00

LN/FY/Account Code	Dollar Amount
12/16/16-90209-6253-5004- - -1100- - -	$ 0.00

Item # 13
Class-Item 920-37

Project Supervisor, Includes, but not limited to work assigned, with focus on, but not to be limited to, planning and leading Strategic Advisory Groups, FirstNet data collection, as well as outreach and education in specific disciplinary areas including but not limited to fire, health care, and emergency management. The Project Supervisor will assist with planning, development, outreach and education and implementation of communication focused annual meetings, conferences, workshops, and focus groups as part of State and Local Implementation Grant Program. In addition, they may also support the (SWIC) with the coordination of events, meetings, and conferences as it pertains to the Department, as well as the (PSBN LTE) and interoperable communications.

TRAVEL AND LODGING WILL BE AN ALLOWABLE EXPENSE AND MUST BE PRE-APPROVED BY THE DEPARTMENT IN WRITING

3RD OPTIONAL RENEWAL PERIOD:
09/01/18 TO 08/31/19

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
1.00	$ 0.00	HR	0.00 %	$ 0.00		$ 0.00	$ 0.00	$ 0.00

LN/FY/Account Code	Dollar Amount
13/16/16-56901-6253-1001- - -1100- - -	$ 0.00

TAX:	$ 0.00
FREIGHT:	$ 0.00
TOTAL:	$ 247,500.00

APPROVED

By: Darren Roberson, CTPM

Phone#: (512) 424-2000

BUYER

SOLICITATION, OFFER, AND AWARD

1. CONTRACT NO.	2. SOLICITATION NO.	3. TYPE OF SOLICITATION	4. DATE ISSUED
405-16-R032316	405-16- B001409	☐ SEALED BID (IFB) ☒ NEGOTIATED (RFO) ☐ NEGOTIATED (RFP)	12/18/2015

SOLICITATION
EMERGENCY PREPARDENESS STAFF AUGMENTATION

5. Sealed offers will be received by the Department until 3:00 P.M. local time on 01/18/2015 and submitted to the issuing office: Texas Department of Public Safety Procurement and Contract Services Bureau 5805 North Lamar, Bldg. A, MC-0266 Austin, Texas 78752 Attention: 405-16-R032316	6. FOR INFORMATION CONTACT: Darren K. Roberson, Sr., CTPM Contract Administrator PHONE: (512) 424-5239 E-MAIL: darren.roberson@dps.texas.gov

OFFER (Will be fully completed by Respondent)

7. DISCOUNT FOR PROMPT PAYMENT:➔	**10 CALENDAR DAYS %**	**20 CALENDAR DAYS %**	**30 CALENDAR DAYS %**	**CALENDAR DAYS %**
8. ACKNOWLEDGMENT OF AMENDMENTS: (The Respondent acknowledges receipt of amendments to this Request for Proposal and related documents numbered and dated:	**AMENDMENT NO.**	**DATE**	**AMENDMENT NO.**	**DATE**
9. NAME AND ADDRESS OF CONTRACTOR:➔		10. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (*Type or Print*)		
11. TELEPHONE NO. (Include area code)	**12. SIGNATURE**	**13. OFFER DATE**		

TO BE COMPLETED AT TIME OF AWARD

Document Type: D
Statutory Cite: Texas Government Code, Section 2157.068
NOTE TO RESPONDENTS: The Department reserves the right, in its sole discretion, to modify this language prior to award.
This award document consummates the Contract which consists of the following documents: (a) this Offer and Award document; (b) the State's solicitation, and solicitation amendments, such provisions, representations, certifications, specifications, and negotiated changes as hereby incorporated and attached to this award; and (c) the Contractor's Offer, points of clarification, responses to clarification request and/or best and final offer (BAFO), and negotiated changes as hereby incorporated and attached to this award.

Any inconsistency or conflict in the Contract documents will be resolved by giving precedence in the following order: this Offer and Award document; negotiated changes; BAFO; points of clarification; RFO as posted; and the Contractor's Offer.

This Contract shall consist of a Base Period from Date of Award through 08/31/16 with THREE (3) ONE (1) year optional renewal periods.

This solicitation's Schedule of Events and instructions for preparation of Offer may be found in Section L. Evaluation Criteria may be found in Section M.

Contractor		**Texas Department of Public Safety**	
By:	_____	By:	_____
Name:	_____	Name:	Steven C. McCraw
Title:	_____	Title:	Director
Date:	_____	Date:	_____

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SECTION A – DEFINITIONS

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

“Authorized Representative” means the person designated in writing to act for and on behalf of a party of this Contract; whose designation has been furnished to the other party as described in Section G.1.

“BAFO” means Best and Final Offer.

“Base Period” means the Date of Award through August 31, 2016.

“Business Days” means Monday through Friday except for federal, state and legal holidays observed by the State of Texas. The terms “business days” and “working days” may be used interchangeably.

“Business Hours” means 8:00 a.m. to 5:00 p.m., Central Time

“Contract” means the written agreement entered into by the Department and the contractor, which will incorporate the contents of this RFO and the Respondent’s Offer, negotiated changes, BAFO, except as specifically provided to the contrary in this Contract and any modifications to a contract resulting from RFO 405-15-R032316.

“Contract Administrator” means the representative of the Department’s Procurement & Contract Services Bureau who is responsible for general administration of this Contract, negotiation of any changes and issuance of written changes/modifications of this Contract as referenced in Section G.2.

“Contract Monitor” means the employee within the Department who is responsible for the monitoring of this Contract as referenced in Section G.1.3.

“Contract Term” means the duration of this Contract as specified in Section F.2.

“Contractor” means the individual, partnership, corporation, business association, trust, joint-stock company, education institution, or other entity awarded this Contract. In the context of submitting an Offer; “Contractor” also means “Contractor” and “Vendor”.

“CPA” means the Texas Comptroller of Public Accounts.

“Date of Award” means the date this Contract is fully executed.

“Days” means calendar days unless otherwise specified.

“Department” means the Texas Department of Public Safety.

"Department Policies" means all written policies, procedures, standards, guidelines, directives, and manuals of the Public Safety Commission and the Department, applicable to providing the deliverables/services specified under this Contract.

“Event of Default” means any of the events or circumstances described in Section E.1.F.

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

“Historically Underutilized Business (HUB) means a business that is certified by the State of Texas that (1) is at least 51% owned by an Asian Pacific American, a Black American, a Hispanic American, a Native American, an American woman, or a Service Related Disabled Veteran, (2) is a for-profit entity that has not exceeded the size standards prescribed by 34 TAC § 20.23, and has its principal place of business in Texas, and (3) has an owner residing in Texas who has a proportionate interest in the business and who actively participates in the control, operations and management of the entity’s affairs. For further explanation, see the Texas Comptroller of Public Accounts HUB rule definitions at 34 TAC § 20.11.

“HUB Subcontracting Plan (HSP)” means the plan required by the Texas Government Code, Chapter 2161.

“IECGP” means Interoperable Emergency Communications Grant Program.

“Invoice” means Contractor’s monthly billing for services rendered.

“Legislative Budget Board (LBB)” means a permanent joint committee of the Texas Legislature that develops budget and policy recommendations for legislative appropriations, completes fiscal analyses for proposed legislation, and conducts evaluations and reviews to improve the efficiency and performance of state and local operations.

“Mandatory” means required, compulsory or obligatory.

“May” means advisory or permissible.

“Must” means required, compulsory or obligatory.

“Payment(s)” means the amount(s) agreed to be paid by the Department to the Contractor for services rendered under this Contract.

“Person” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, court or other tribunal, or government or any agency or political subdivision thereof.

“Project Manager (PM)” means appointee, designee, or alternate designee as assigned by the Contractor and the Department as referenced in Section G.1.4 and G.1.5.

“PSBN LTE” means Public Safety Broadband Network Long Term Evolution.

“PSC” means the Public Safety Commission, the Department’s governing body.

“PSCS” means Public Safety Communications Service.

“RCGP” means Regional Catastrophic Grant Program.

“Responsive Offer” means an Offer submitted which conforms in all material respects to the RFO.

“Respondent” means the individual, business entity, or organization that submits an Offer in response to this RFO with intent to contract with the Department.

“RFO” means Request for Offers (RFO)

“Services” means the furnishing of labor, time, or effort by contractor, which may or may not involve the delivery of a specific end product other than reports.

“Shall” denotes the imperative, required, compulsory or obligatory.

“SHSP’ means State Homeland Security Program.

“SLIGP” means State and Local Implementation Grant Program.

“SWIC” means Statewide Interoperability Coordinator.

‘TxPSBP” means Texas Public Safety Broadband Program.

SECTION B - SERVICES AND PRICES/COSTS

B.1 SERVICE AND PRICING REQUIREMENTS

B.1.2 Pricing Instructions

The Contract will provide services on a no minimum, as needed, as requested by the Department basis. Per, Section B.2, Pricing Schedules, the Respondent shall submit price offers that include all hourly fees, travel and lodging expenses for a Contractor to deliver the services. No other amounts shall be paid for any purpose. This Contract is non-exclusive and the Department may contract for these or similar services at any time in its sole discretion. No payments may be approved or made prior to the Department's written acceptance as provided by Section G.3.1 of this Contract.

A. As per Section B.2, Pricing Schedule, the Respondent shall submit pricing for each position which includes all travel and lodging.

B. The Department reserves the right to negotiate all pricing offered by the Contractor.

C. The Respondent shall honor the negotiated & accepted pricing throughout the term of this Contract, including any optional renewal periods.

D. Multiple Contracts may be awarded for the Request for Offers. The Department reserves the right to make award or awards to best serve the interest of the State. Award will be made to the most responsive, responsible Respondent(s) meeting the specifications. A maximum of two (2) Contracts may be awarded.

B.1.3 Financial Rating

A. The Respondent shall submit a copy of at least one rating from organizations such as Dun & Bradstreet (D&B) Business Information Report or Fitch Ratings. The report shall include the Respondent's Viability Score and the Portfolio Comparison Score or similar ratings. Failure to submit copies of the required financial ratings will result in disqualification.

B. The Respondent shall provide information required by Section G.3.8 and any other financial information reasonably requested by the Department consistent with the services provided by the Contractor or otherwise required by the then applicable Department policies for similar contracts.

B.2 PRICING SCHEDULE

B.2.1 Cost to the Department for positions itemized below:

A. The Respondent shall utilize Table A to document the hourly rates for a Project Manager and Project Supervisor for the base year (date of award to 8/31/16).

Table A

Position Title	Description of Duties	Hourly Rate
Project Manager	Includes, but not limited to, identifying, designing, and implementing the Texas statewide broadband strategy as part of the (TxPSBP), as well as assisting with the coordination and oversight of activities and assignments as it relates to interoperable communications. The Project Manager may also support the (SWIC) and when directed, will serve as a representative of the Department in meetings relating to (PSBN LTE) and interoperable communications.	$
Project Supervisor	Includes, but not limited to work assigned, with focus on, but not to be limited to, planning and leading Strategic Advisory Groups, FirstNet data collection, as well as outreach and education in specific disciplinary areas including but not limited to fire, health care, and emergency management. The Project Supervisor will assist with planning, development, outreach and education and implementation of communication focused annual meetings, conferences, workshops, and focus groups as part of State and Local Implementation Grant Program. In addition, they may also support the (SWIC) with the coordination of events, meetings, and conferences as it pertains to the Department, as well as the (PSBN LTE) and interoperable communications.	$

B. The Respondent shall use Table B to document the hourly rates for the optional renewal periods as shown below:

Table B

Position Title	**Hourly Rates**			
	Base Year: Date of Award – 8/31/16	**1st Optional Renewal Period: 9/01/16 – 8/31/17**	**2nd Optional Renewal Period: 9/01/17 – 8/31/18**	**3rd Optional Renewal Period: 9/01/18 – 8/31/19**
Project Manager	Included			
Project Supervisor	Included			

Hourly rates offered for the base period and any optional renewal periods shall include all travel and lodging costs.

SECTION C - STATEMENT OF WORK

C.1 INTRODUCTION

The Department, Law Enforcement Support Division, Public Safety Communications Service (PSCS) is seeking Project Supervisor(s) and Project Manager(s) to provide assistance with grant funding programs for interoperable communications and public safety broadband plans and projects.

C.2 SCOPE

The scope of work includes identifying, designing, and implementing the Texas statewide broadband strategy as part of the Texas Public Safety Broadband Program (TxPSBP), as well as assisting with the coordination and oversight of activities and assignments as it relates to interoperable communications. The Project Manager(s) may also support the Texas Statewide Interoperability Coordinator (SWIC) and when directed, will serve as a representative of the Department in meetings relating to Public Safety Broadband Network Long Term Evolution (PSBN LTE) and interoperable communications. The scope of work for the Project Supervisor(s) will include duties as assigned, with focus on, but not to be limited to, planning and leading Strategic Advisory Groups, FirstNet data collection, as well as outreach and education in specific disciplinary areas including but not limited to fire, health care, and emergency management. The Project Supervisor(s) will assist with planning, development, outreach and education and implementation of communication focused annual meetings, conferences, workshops, and focus groups as part of (SLIGP). In addition, they may also support the SWIC with the coordination of events, meetings, and conferences as it pertains to the Department, as well as the PSBN LTE and interoperable communications.

C.2.1 Project Manager Requirements:

Throughout the project, the Project Manager shall perform tasks during various stages of this project. The Project Manager shall possess extensive knowledge, skills, ability, and practical experience in the following, which will result in the successful completion of this project.

The Project Manager shall:

A. Have a minimum of five (5) years of project management experience related to strategic planning and enhancing interoperable communications, of which at least one (1) year must be specifically related to PSBN LTE project management;
B. Have a minimum of five (5) years of business process development and optimization experience;
C. Develop and implement major components of the Texas PSBN LTE strategic plan to include governance, planning, support, and outreach and education to stakeholder groups;
D. Support the Texas Statewide Interoperability Coordinator (SWIC) by planning and executing advisory committee conference calls and preparing conference call agendas;
E. Coordinate with key stakeholders and federal partners to track and document meeting action items;

F. Work with major federal communications offices and programs to conduct public safety communications and broadband research and outreach;
G. Possess the ability to develop and implement meeting agendas and be familiar with the common terminology used relating to PSBN LTE;
H. Have proven experience working on state and local land mobile radio communications projects;
I. Be experienced in outreach and education to first responders;
J. Be experienced leading groups to achieve objectives and produce deliverables;
K. Be experienced working with contact management software;
L. Travel as needed to perform required duties; and
M. Be able to pass a Department background investigation

C.2.2 Project Supervisor:

The Project Supervisor shall provide services during various stages of this project. The Project Supervisor shall: possess knowledge, skills, ability, and practical experience in the following, which will result in the successful completion of this project.

A. Demonstrate knowledge and experience of federal grants by maintaining familiarity with federal and state grant regulations, terms, and conditions; including but not limited to the State Homeland Security Program (SHSP), Interoperable Emergency Communications Grant Program (IECGP), and Regional Catastrophic Grant Program (RCGP);
B. Assist with maintaining backup documentation of grant expenditures in electronic formats;
C. Assist in tracking and identifying match requirements as required by specific grants;
D. Travel as needed to perform required duties;
E. Submit required paperwork for purchase approvals and service contracts within the specified time frame of the project;
F. Communicate and work with a wide range of personnel from the Department workforce, other agencies, and vendors;
G. Have a minimum of two (2) years demonstrated grant experience specifically related to communications interoperability and PSBN LTE;
H. Be experienced working with contact management software;
I. Be experienced leading groups to achieve objectives and produce deliverables;
J. Be experienced in outreach and education to first responders;
K. Have knowledge of public safety communications and of the Department, Law Enforcement Support Division, Public Safety Communications Service program and functions;
L. Be able to pass a Department employment background investigation

C.2.3. Time Tracking System

The Respondent shall provide, within its Offer, documentation demonstrating it has an automated, web-based timesheet management system to manage and track time worked and allow the Department to electronically receive timesheets for review and approval. The

system must allow the Department to log in with a password to review and approve timesheets.

C.2.4. Resumes

The Respondent shall provide resumes, within its Offer, for all key personnel it plans to assign to this Contract. Resumes will include but not be limited to: project management experience, supervisory experience, business process experience, application languages, hardware installation abilities, software upgrade experience, programming skills/abilities, and data formats for each qualifying project.

1) Name;
2) Title (current);
3) Education;
4) Experience related to projects the staff member was directly involved in;
a) Project(s) Scope;
b) Role;
c) Related specific technical qualification experience;
d) Start and completion dates (shall include MM/DD/YYYY); and
e) Specific work to be performed and/or deliverables to be provided under this Contract.

C.2.5 References

The Respondent shall identify a minimum of three (3) references and provide them within its Offer. The Respondent shall provide, at a minimum:

1) Name of Reference;
2) Title of reference (current);
3) Email address; and
4) Phone number.

C.3 CRITERIA

The Department has established the following criteria at a minimum (business entity) as qualifications for this RFO:

1. The Respondent shall identify three (3) past contracts that are similar in size and scope to this RFO. Identified projects will include:

    a. Project begin and end dates;
    b. Contact name, e-mail (if available), and telephone number;
    c. Brief description of deliverables;
    d. Overall contract cost; and
    e. Scope of work performed.

2 The Respondent shall possess the ability to commence operations without financial assistance from the Department.

3 The Respondent shall demonstrate the ability to provide upper level management personnel to operate and manage the solicited services that meet or exceed the Department's minimum standards, to include:

a. Name;
b. Title; and
c. Specific work to be performed and/or services to be provided.

SECTION D –REPORTS AND DATA

D.1 CONTRACT COMPLIANCE REPORTS REQUIRED FROM CONTRACTOR

The Contractor shall submit the following reports and documents in this Section during the course of this Contract. These reports and documents may be revised or additional reports may be required at the Department's sole discretion.

FREQUENCY	DUE DATE	REPORT ITEM	AUTHORITY
Monthly	5th business day to Contract Administrator	HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report	Contract, Exhibit J.1
Monthly	1st business day of each month to apinvoices@dps.texas.gov and a copy mailed to the TXDPS – Accounts Payable	Invoices	Contract, Section G.2
Annual	Prior to Execution of Contract and again within one-hundred twenty (120) calendar days after the end of Contractor's fiscal year	Financial Disclosure Reports	Contract, Section G.3.8.A
Other	Prior to Execution of Contract and upon renewal or replacement	Insurance Requirements	Contract, Section I.1

SECTION E - INSPECTION AND ACCEPTANCE

E.1 INSPECTION OF SERVICES

A. Acceptance criteria for all deliverables under this Contract may be found in Section C.

B. The Department has the right to inspect and validate all products, services and deliverables called for by this Contract, to the extent practicable at all times and places during this Contract. The Department shall perform inspections in a manner that will not unduly interfere with the Contractor's performances of this Contract. The Contractor shall furnish, and shall require subcontractors to furnish, at no increase in this Contract's price, all reasonable assistance for the safe and convenient performance of these duties.

C. If any deliverables do not conform to this Contract's requirements, the Department shall require the Contractor to perform the deliverables or services again in conformity with this Contract's requirements, at no increase in this Contract's amount, in addition to all other legal and equitable remedies.

D. The Department shall, subject to limitations provided by law with respect to rights of privacy, have the right to reasonably prompt access and to examine all records of the Contractor, including financial records, maintenance records, employee records including time, and attendance records generated by the Contractor and its subcontractors in connection with performance of this Contract.

E. If subject to the outcome of an audit, it is determined that the Contractor is in non-compliance with any provisions of this Contract and/or that money is owed to the Department by the Contractor, then the Department shall exercise its rights of recovery of money owed as authorized in Section G.3 of this Contract.

F. If any services are non-compliant with this Contract's requirements, the Contractor will be notified describing specific areas of non-compliance. The Contractor shall have a ten (10) calendar day period to file a written response detailing corrective action taken to all such items of non-compliance. The response will include supporting documentation. Unless otherwise specified, or previously agreed to by the Department, the submission of a corrective action plan will not be accepted as corrective action. For all items of non-compliance satisfactorily resolved by agreement between the Contractor and the Department, no further action regarding such items will be taken. If an item of non-compliance cannot be resolved between the Contractor and the Department, and such item remains uncorrected for a period of ten (10) calendar days or longer after written notification to the Contractor, then such item will be declared to be an Event of Default.

E.2 INSPECTION BY STATE EMPLOYEES

A. The Contractor shall provide and maintain all documentation pertaining to quality of the services, acceptance of deliverables, and all reports necessary as per the terms of this Contract, in a manner acceptable to the Department for the deliverables provided under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Department during this Contract's performance and for a period of four (4) years after the termination of this Contract.

B. The Contractor shall provide entry at all times to the Department, the Public Safety Commission any authorized employee/agent for inspections and other official purposes. The Governor, members of the Legislature and all other members of the Executive and Judicial Departments of the State, as well as any other persons designated by the Department including Office of the Inspector General, will be admitted to monitor the delivery of deliverables.

E.3 MONITORING CRITERIA

A. The Department shall devise its own procedures for monitoring the quality of the Contractor's performance under this Contract, and the Department's Policies.

B. The Contractor shall cooperate fully with the Department in obtaining the requisite information needed to complete such audits and to assess the quality of the Contractor's performance.

C. Monitoring may include, but is not limited to, document reviews and on-site audits conducted by the Department. Such monitoring by the Department will not relieve the Contractor of any of its obligations under this Contract.

D. The Contract Monitor and other Department staff shall provide written findings regarding non-compliant conditions, processes, procedures and observations that could, if not addressed by the Contractor, become an item of non-compliance as described in Section E.1, Inspection of Services.

SECTION F - DELIVERIES FOR PERFORMANCE PERIOD

F.1 CONTRACT TERM

This Contract will consist of a Base Period from Date of Award through 08/31/16.

This Contract may also be extended as per Section H. 16, Option to Extend Service

The terms, conditions, and rates for all extensions will remain as stated in this Contract. The continuation of this Contract for any period of time is subject to the availability of federal and any other applicable funding.

This contract may be renewed for three (3) one (1) year optional renewal periods.

SECTION G - CONTRACT ADMINISTRATION DATA

G.1 AUTHORITY – AUTHORIZED REPRESENTATIVE, CONTRACT ADMINISTRATOR, CONTRACT MONITOR

G.1.1 Authorized Representative

A. In reference to the Contractor, it's President or any Vice President shall designate the Authorized Representative in writing. The designation of the Contractor's initial Authorized Representative will be delivered to the Department no later than the effective date of this Contract. The Contractor's Authorized Representative may designate other persons to assist such Authorized Representative in the performance of certain obligations required by this Contract.

B. The Director is hereby designated as the Department's Authorized Representative.

The Director has established designee authority on his behalf for matters requiring signature approval of the Authorized Representative. The Department's Authorized Representatives may designate other persons to assist such Authorized Representatives in the performance of certain obligations of this Contract.

C. Any party may designate any person as its Authorized Representative, at any time, by delivering to the other party a written designation signed, if on behalf of Contractor by its President or any Vice President, or if on behalf of the Department by the Director. Such designations will remain effective until new written instruments are filed with or such notice is given to the other party that such designations have been revoked.

D. The Department's Authorized Representative or his designated Representative is

The only person authorized to make or approve changes in any Contract requirements, and notwithstanding any clauses contained elsewhere in this Contract, the said authority remains solely with the Director or his designated Representative. In the event Contractor makes any change at the direction of any person other than the Director or his designated Representative, the change will be considered to have been made without authority and no adjustment will be made in this Contract price to cover any increase in cost incurred as a result thereof.

G.1.2 Department Contract Administrator

A. The Contract Administrator for administration of this Contract is Darren K. Roberson, Sr.

B. The telephone number for the Contract Monitor is 512-424-5239

C. The e-mail address is darren.roberson@dps.texas.gov

The Contract Administrator is responsible for general administration of this Contract, negotiation of any changes and issuance of written changes/modifications to this Contract.

G.1.3 Department Contract Monitor

A. The Contract Monitor for this Contract is Benjamin "Eddie" Wilson

B. The telephone number for the Contract Monitor is 512-424-2689

C. The e-mail address is benjamin.wilson@dps.texas.gov

The Contract Monitor is not authorized to make any representations or commitments of any kind on behalf of the Director of the Department or the State of Texas.

The Contract Monitor does not have the authority to alter the Contractor's obligations or to change this Contract's specifications, price, terms or conditions.

If, as a result of technical discussions, it is desirable to modify this Contract, changes will be issued in writing in a contract modification and signed by the Department's Authorized Representative or his designee.

G.1.4 Department Project Manager

A. The Project Manager for this Contract is Karla Jurrens

B. The telephone number for the Project Manager is 512-424-2104

C. The e-mail address is karla.jurrens@dps.texas.gov

The Department Project Manager for this Contract who shall be responsible for the overall management and coordination of this Contract and shall act as the central point of contact for the Department. The Project Manager shall have full authority to act for the Department in the performance of this Project. The Project Manager or a designated representative shall meet with the Contractor Project Manager to discuss problems as they occur.

G.1.5 Contractor Project Manager

A. The Contractor Project Manager for this Contract is: _____

B. Contractor Project Manager telephone number is:
_____

C. The e-mail address is: _____

The Contractor shall provide a Project Manager for this Contract who shall be responsible for the overall management and coordination of this Contract and shall act as the central point of contact with the State. The Contractor Project Manager shall report to the Department Project Manager or their designee. The Contractor Project Manager shall have full authority to act for the Contractor in the performance of this Contract. The Contractor Project Manager or a designated representative shall meet with the Contract Monitor and Department Project Manager to discuss problems as they occur. The Contractor Project Manager or designated representative shall respond within three (3) working days after notification of the existence of a problem.

G.2 INVOICE REQUIREMENTS

The Department shall pay the Contractor on the basis of itemized invoices submitted to and approved by the Department, showing the actual deliverables provided and the attendant charge. Itemized invoices will clearly identify the project phase or title, deliverables delivered, the number of hours that each allocated employee worked, and the date range of work performance for this associated charge.

A. The Contractor's Invoice will include the following:

1. This Contract number;
2. Remittance Address; and
3. Prompt Payment Discount (the Contractor may offer a prompt payment discount, i.e., 1%, fifteen (15) days (refer to page 1, block 7 of this Contract) if the Contractor desires expedited Payment).

B. An invoice copy will be sent electronically to apinvoices@dps.texas.gov. An original, hard-copy invoice, if required by Contractor, shall be submitted to the office designated below:

TXDPS - Accounts Payable
P.O. Box 4087
Austin, Texas 78773

The State will not incur any penalty for late payment if the invoice was not mailed to the appropriate address identified herein.

G.3 PAYMENTS

A. It is recommended that the Contractor receive Payments via Electronic Funds Transfer (EFT), also known as Direct Deposit. If the Contractor elects to be set up for Direct Deposit Payment, the Contractor Direct Deposit authorization form may be obtained from the Department Contract Administrator. Upon the effective date of this Contract award, the Contractor shall submit a completed authorization form.

B. Regardless as to whether Direct Deposit is chosen, the Contractor will submit a completed Contractor Direct Deposit/Advance Payment Notification Authorization (Exhibit J.3) and Substitute W-9 Form (Exhibit J.4) to the following address:

TXDPS - Accounts Payable
P.O. Box 4087
Austin, Texas 78773
Attention: Mary Hamilton

Reference: Contractor Set-up for RFO 405-15-R032316

C. Notes: Contact (Darren Roberson when completed at 512-424-5239 or darren.roberson@dps.texas.gov.) If the Contractor has previously submitted a completed Contractor Direct Deposit/Advance Payment Notification Authorization and Substitute W-9 Form to the Department for another separate contract, another form is not required to be submitted. However, the Contractor is required to provide their eleven (11) digit Texas Identification Number (TINS) previously provided to Contractor by the Texas Comptroller of Public Accounts.

TINS: _____

D. In the event the Contractor elects to decline Direct Deposit on the Contractor Direct Deposit/Advance Payment Notification Authorization and Substitute W-9 Form, the payment will be mailed to the following remittance address:

_____

_____

G.3.1 Billing and Payment

A. The Texas Government Code, Chapter 2251 (the "Prompt Payment Act") will govern payment and accrual of interest on any overdue payments.

B. Timesheets: Notwithstanding anything else to the contrary in this Contract, the Department will not make any payments of any amount to the Contractor or any other entity or person, and the Contractor will not submit any invoices, until the Contractor has received from the Department a confirmation by the Department's Contract Monitor specifically stating the Department accepts the work and has reviewed all elements of the current project, referred to on the monthly reports. Once confirmed, the Contractor is authorized to submit an invoice.

C. If the Department, for any reason, including lack of supporting documentation, disputes any items in any invoices submitted by the Contractor, the Department shall place a hold on the disputed items and pay the remaining amount of the invoice. The Department shall timely notify the Contractor of the dispute and request clarification and/or remedial action.

D. If the dispute is resolved in the Contractor's favor, the Department shall pay the remaining portion of the original invoice in accordance with the Prompt Payment Act. If the dispute is resolved in the Department's favor, the Contractor shall resubmit an invoice reflecting all corrections.

G.3.2 Payment Adjustment

A. The Department may elect to deduct from the Contractor Payment as specified in Section G.3.4, Deductions for Unacceptable Compliance and Section G.3.5, Withholding of Payment, any amount specified in or any money determined to be due as specified in Section E.1.E.

B. If it is determined that the remaining amount of the Contractor Payment is not adequate to cover the money determined to be due to the Department, then all

remaining Contractor Payment will be withheld and an invoice issued to the Contractor for the remaining amount due.

C. The Contractor shall pay the invoiced amount within thirty (30) calendar days of receipt unless the Contractor and the Department mutually agree on an alternative payment method.

G.3.3 Late Payment

Any amount owed to the Contractor more than one (1) day beyond the date such amount is due as described in Section G.3 hereof will accrue interest each day that such amount is not paid at the rate specified by Texas Government Code, §2251.025, provided, however, that this provision will not excuse failure by the Department to make payment in strict accordance with this Contract.

G.3.4 Deductions for Unacceptable Compliance

A. The Contractor's failure to meet Compliance Standards will result in a deduction to the invoice Contractor payment.
B. Non-compliance could result in the Department Purchasing Program services for another entity and deducting the cost from the invoice payment.

G.3.5 Withholding of Payment

A. The Department shall have the right to withhold the Contractor Payment until the failures described below have been corrected.

   1. Failure to submit reports required in Section D.1 Contract Compliance Reports required from Contractor;
   2. Failure to respond to audit reports; and
   3. Failure to correct identified areas of non-compliance to the satisfaction of the Department within ten (10) days upon receipt of written notification.

B. The Department will not pay interest to the Contractor for monies so withheld.

C. The Contractor Payment withheld will be released upon the Department's satisfaction that compliance has been achieved for thirty (30) consecutive days.

D. In the event that money is due to the Department for the Contractor's failure to provide adequate maintenance or replacement of the property as required in this Contract, the amount required for the Department to correct deficiencies and replace property will be withheld from the final Payment.

E. With the exception of disputed issues, such withholding of final Payment by the Department will not exceed one-hundred twenty (120) calendar days from date of this Contract's termination.

G.3.6 Payment of Debt Owed to the State of Texas

As required by Texas Government Code, Section 2252.903, payments due under this Contract will be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child

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

G.3.7 Right to Offset

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

G.3.8 Annual Financial Disclosure Reports

A. The Contractor shall submit to the Contract Administrator financial rating information acceptable to the Department as described in Section B.1.3 within one hundred twenty (120) calendar days after the end of the Contractor's fiscal year.

B. In the disclosure of its financial affairs, the Contractor shall allow the Department or its representative's access to all its corporate books relative to the services provided hereunder, to cooperate in any audits thereof.

C. Notwithstanding anything else in this Section G.3.8 or any other provision of this Contract to the contrary, the Contractor shall fully cooperate with state and federal representatives in audits of the Contractor's performance and receipt of funds under this Contract or applicable law, including, but not limited to, the audits described in Section H of this Contract.

SECTION H – TERMS AND CONDITIONS

Any contract resulting from this RFO will include the following Standard Terms and Conditions. Subcontractors shall also comply with these provisions.

H.1 AVAILABILITY OF FUNDS FOR NEXT FISCAL YEAR AND LEGISLATIVE ACTIONS

A. The Department is a state agency whose authority is subject to the actions of the Texas Legislature and the United States Congress. All obligations of the Department are subject to the availability of legislative appropriations or, if applicable, the availability of federal funds applicable to this Contract. The Contractor acknowledges that the ability of the Department to make payments under this Contract is contingent upon the availability of funds. The Contractor further acknowledges that funds may not be specifically appropriated for this Contract and the Departments continual ability to make payments under this Contract is contingent upon the funding levels appropriated to the Department.

B. The Department may immediately terminate this Contract, in whole or in part, without penalty to, or any liability whatsoever on the part of the Department, the State of Texas, and the United States if the Department and/or the subject matter of this Contract become subject to a legislative or regulatory change or the revocation of statutory or regulatory authority that would render the deliverables to be provided under this Contract impossible, unnecessary, void, or substantially amended or that would terminate the appropriations for this Contract. The Department is not required to provide thirty (30) calendar days written notice as termination under this section is immediate.

C. The Department is a state agency receiving grant funding from State or Federal Grantor sources. The Department may immediately terminate this Contract, in whole or in part, without penalty to, or any liability whatsoever on the part of the Department, the State of Texas, and the United States if the State or Federal Grantor terminates or reduces the funding necessary for performance of this Contract The Department is not required to provide thirty (30) calendar days written notice as termination under this section is immediate.

D. The Department may, upon thirty (30) calendar days written notice to Contractor, reduce the deliverables in such manner and for such periods of time as the Department may elect if funding or appropriations for this Contract are reduced by law, the statutory amount of compensation authorized for the Contractor is reduced by law, or the Legislative Budget Board requests the Department to reduce the Department budget by a certain percentage.

H.2 NEWS RELEASES, ADVERTISEMENTS, AND PUBLICITY

A. The Contractor will not make any news releases, public announcements or public disclosures, nor will it have any conversations with representatives of the news media, pertaining to this Contract, without the express, prior written approval of the Department, and then only in accordance with explicit written instructions from the Department.

B. The Contractor will not use the name of the State of Texas or the Department in any advertisement, promotion or otherwise for any purpose regarding this Contract without

the express prior written consent of the Department. The Department is not authorized to provide endorsements.

1. Notwithstanding the foregoing, the Contractor may make any disclosure required by law or regulation without the approval of the Department.

H.3 FURTHER OPPORTUNITY TO CURE

A. If an Event of Default of the type specified in Section H.4.1 occurs and if the Contractor reasonably believes that such Event of Default cannot be cured within the ten (10) business days allowed in Section E.1.F but that such Event of Default can be cured through a diligent, on-going, and conscientious effort on the part of the Contractor, within a reasonable period not to exceed three (3) months, then the Contractor may, within the ten (10) calendar day cure period, submit a detailed plan for curing the Event of Default to the Department.

B. The Department shall promptly review Contractor's plan for curing an Event of Default and at its discretion, may allow, or not allow, the Contractor to pursue such plan of cure.

C. The Department's decision will be communicated in writing to the Contractor.

D. The Department will not exercise its remedies thereunder with respect to such Event of Default while the Contractor diligently, conscientiously, and timely undertakes to cure the Event of Default in accordance with the approved plan.

E. The ten (10) calendar day time period will be tolled during the time the request was pending, if the Department does not allow the Contractor an extension of the cure period.

H.4 TERMINATION

This Contract may be terminated or cancelled in any of the following circumstances:

H.4.1 Termination by Default

The Department shall notify the Contractor in writing of any failure or default if the Contractor fails to carry out or comply with any requirements of this Contract (including but not limited to any statement, representation or warranty in this Contract that is false, misleading, or erroneous in any material respect). The Department's notification will demand that the failure or default be remedied within ten (10) calendar days. The Department shall have the right to cancel this Contract upon ten (10) calendar days from written notice if the Contractor fails to remedy such failure or default within the ten (10) calendar day period.

H.4.2 Termination for Unavailability of Funds

This Contract may be terminated as provided in Section H.1 herein entitled "Availability of Funds for Next Fiscal Year and Legislative Actions." The Parties understand and agree that the obligations of the Department under this Contract are contingent upon the availability of funds to meet the Department's liabilities hereunder. The Department may immediately terminate this Contract without penalty to or any liability whatsoever on the part of the Department, the State of Texas, and the United States, if these funds become unavailable to the Department.

H.4.3 Termination for Convenience

This Contract may be terminated, without penalty, by the Department, without cause by giving thirty (30) calendar days written notice of such termination to the Contractor.

H.4.4 Termination by Mutual Agreement

This Contract may be terminated upon mutual written agreement.

H.4.5 Termination for Cause

This Contract may be terminated by the Department if the Contractor fails to perform as agreed or is otherwise in default, without the necessity of complying with the requirements in Section H.4.1 herein entitled "Termination by Default." The Department shall provide the Contractor with written notice to terminate this Contract, which termination will become effective immediately upon the Contractor's receipt of the notice.

H.4.6 Termination for Listing on Federal Excluded Party List, the Terrorism List (Executive Order 13224) or on the State of Texas Debarred Contractor List

The Department shall have the absolute right to terminate this Contract without recourse as follows: a) if the Contractor becomes listed on the prohibited Contractor list authorized by Executive Order #13224 "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of Treasury, Office of Foreign Assets Control; or b) if the Contractor becomes suspended or debarred from doing business with the federal government as listed in the System for Award Management ("SAM") maintained by the General Services Administration; or c) if the Contractor becomes listed on the State of Texas Debarred Vendor List. The Department shall provide the Contractor with written notice to terminate this Contract, which termination shall become effective immediately upon the Contractor's receipt of the notice.

H.4.7 General Termination Provisions

A. The termination of this Contract, under any circumstances whatsoever, will not affect or relieve the Contractor from any obligation or liability that may have been incurred pursuant to this Contract, and such cancellation by the Department will not limit any other right or remedy available to the Department at law or in equity.

B. This Contract does not grant the Contractor a franchise or any other vested property right. The Department reserves the right, in its sole discretion, to solicit or contract with other contractors for similar services and deliverables under this Contract at any time. Except as expressly authorized by the Department under this Contract during the term of this Contract, the Contractor's provision of self-service or other services deliverables under this Contract is not exclusive. In all events, no minimum number of applications is guaranteed. In all events, no minimum amount of compensation is guaranteed.

C. The Department will not be considered in default or breach of this Contract, nor will it give rise to any liability whatsoever on the part of the Department whether such claims of the Contractor are for compensation of anticipated profits, unabsorbed overhead, interest on borrowing, or for any other reason in the event of termination hereunder.

D. The Contractor shall, unless mutually agreed upon in writing, cease all work immediately upon the effective date of termination. The Department shall be liable for payments limited only to the portion of the work the Department authorized in writing and which the Contractor has completed, delivered to the Department, and which been accepted by the Department. All such work will have been completed, per this Contract's requirements, prior to the effective date of termination.

E. The Contractor shall deliver to the Department all completed, or partially completed work and any and all documentation or other products and results of these services no later than the first calendar day after the termination of this Contract, or at the Department's request. Failure to timely deliver such work or any and all documentation or other products and results of the services will be considered a material breach of this Contract. The Contractor will not make or retain any copies of the work or any and all documentation or other products and results of the services without the prior written consent of the Department.

F. The Department reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to the Department under this Contract or under applicable law, including, but not limited to, attorneys' fees and court costs, if termination is at the Contractor's request or if termination is for cause. This right is in addition to any other remedies available to the Department under this Contract or applicable law. The Department reserves the right to pursue any and all applicable rights and remedies if this Contract is terminated for any reason and the Department expressly waives no such rights or remedies.

G. The Department 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 Contractor if the Contractor defaults on this Contract. The Department will not consider the defaulting Contractor in the re-solicitation and the Department may not consider the defaulting Contractor in future solicitations for the same type of work, unless the specification or scope of work significantly changes. The Department will determine the period of suspension based on the seriousness of the default.

H. The Department and the State of Texas will not be liable to the Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination if this Contract is terminated for any reason. However, the Contractor may be entitled to the remedies provided in Texas Government Code, Chapter 2260.

H.5 DISPUTE RESOLUTION

A. Any dispute arising under this Contract, which is not disposed of by mutual agreement between the Department and the Contractor will be resolved as follows:

1. The dispute resolution process provided for in Texas Government Code, Chapter 2260, shall be used, as further described herein, by the Contractor to attempt to resolve all disputes or contract claims arising under this Contract.

2. The Contractor's claim for breach of this Contract that the parties cannot resolve in the ordinary course of business will be submitted to the negotiation process provided in Texas Government Code, Chapter 2260, Subchapter B.

3. The Contractor shall initiate the process by submitting written notice, as required by Subchapter B, to the Procurement and Contract Services Director or designee, at 5805 North Lamar Blvd, Bldg. A, Austin, Texas 78752.

4. Said notice will specifically state that the provisions of the Texas Government Code, Chapter 2260, Subchapter B, are being invoked, and will also be given to all other representatives of the Department and the Contractor otherwise entitled to notice under this Contract.

5. Compliance by the Contractor with the Texas Government Code, Chapter 2260, Subchapter B, is a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C.

6. The contested case process provided in Texas Government Code, Chapter 2260, Subchapter C, is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of this Contract by the Department if the parties are unable to resolve a dispute under this subparagraph (A).

7. Compliance with the contested case process provided in the Texas Government Code, Chapter 2260, Subchapter C, is a condition precedent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code.

8. Neither the execution of this Contract by the Department nor any other conduct of any representative of the Department related to this Contract will be considered a waiver of sovereign immunity to suit.

B. In addition to complying with Texas Government Code, Chapter 2260, the Contractor shall comply with the Department administrative rules published in the Texas Administrative Code, Title 37, Public Safety and Corrections, Part I, Texas Department of Public Safety, Chapter 34, Negotiation and Mediation of Certain Contract Disputes.

C. The Contractor shall continue providing the deliverables as directed, in a diligent manner and without delay, and shall conform to Department directives, decisions, or orders, be governed by all applicable provisions of this Contract, unless directed otherwise in writing by the Department at all times during the course of the dispute resolution process. The Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

H.6 INDEMNIFICATION

H.6.1 Acts or Omissions

CONTRACTOR SHALL DEFEND INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE DEPARTMENT, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THIS

CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THIS CONTRACT. THE DEFENSE WILL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND THE CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. THE CONTRACTOR AND THE DEPARTMENT SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

H.6.2 Infringements

A. CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE DEPARTMENT, 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 THE CONTRACTOR PURSUANT TO THIS CONTRACT. THE CONTRACTOR AND THE DEPARTMENT SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. THE CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE WILL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

B. THE CONTRACTOR 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 MODIFICATIONS MADE TO THE PRODUCT WITHOUT CONTRACTOR'S WRITTEN APPROVAL, (III) ANY MODIFICATIONS MADE TO THE PRODUCT BY THE CONTRACTOR PURSUANT TO THE DEPARTMENT'S SPECIFIC INSTRUCTIONS, (IV) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO THE DEPARTMENT, OR (V) ANY USE OF THE PRODUCT OR SERVICE BY THE DEPARTMENT THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT.

C. IF THE CONTRACTOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR THE DEPARTMENT PROVIDES THE CONTRACTOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, THE CONTRACTOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST THE DEPARTMENT, SHALL), AT THE CONTRACTOR'S SOLE OPTION AND EXPENSE; (I) PROCURE FOR THE DEPARTMENT 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 THE DEPARTMENT'S USE IS NON-INFRINGING.

H.6.3 Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

A. THE CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF THE CONTRACTOR'S AND THE CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES UNDER THIS CONTRACT. THE CONTRACTOR SHALL COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE DEPARTMENT AND/OR THE STATE WILL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY.

B. THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE DEPARTMENT, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE WILL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND THE CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. THE CONTRACTOR AND THE DEPARTMENT SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

H.7 NO WAIVER OF DEFENSES

Nothing in this Contract will be construed as a waiver of the state's sovereign immunity. This Contract will not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Contract or under applicable law will not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or to be considered as a basis for estoppel. The Department does not waiver any privileges, rights, defenses, or immunities available to the Department by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

H.8 INDEPENDENT CONTRACTOR

The Contractor and its employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under this Contract. The Contractor and its employees, representatives, agents and any subcontractors will not be employees of the Department. Should the Contractor subcontract any of the services provided under this Contract, the Contractor expressly understands and acknowledges that in entering into such subcontracts, the Department is in no manner liable to any subcontractor(s) of the Contractor. In no event will this provision relieve the Contractor of

the responsibility for ensuring the services rendered under all subcontracts are rendered in compliance with this Contract.

H.9 APPLICABLE LAW; VENUE

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

H.10 ASSIGNMENT

The Contractor will not assign or transfer any interest in or duty under this Contract without the express, prior written consent of the Department at its sole discretion. An attempted assignment in violation of this clause is null and void. Any approved assignment will not relieve the assignor of any liability or obligation under this Contract.

H.11 MAINTENANCE OF CORPORATE EXISTENCE AND BUSINESS

A. The Contractor, if incorporated, shall at all times maintain its corporate existence and authority to transact business and be in good standing in its jurisdiction of incorporation and the State of Texas.

B. The Contractor shall maintain all licenses, permits and franchises necessary for its businesses where the failure to so maintain may have a material adverse effect on the Contractor's ability to perform its obligations under this Contract.

H.12 APPROVAL OF CONTRACT

This Contract is subject to written approval of the Department Director or the Director's designated representative and will not be binding until so approved.

H.13 NON-DISCRIMINATION

A. In the performance of this Contract, the Contractor warrants that it will not discriminate against any person, employee, subcontractor, participant or provider on the basis of race, color, disability or perceived disability, religion, sex, sexual orientation, national origin, creed, political belief, genetic information, or age, and in accordance with the following:

B. The Contractor will not discriminate against employees, subcontractors, participants or providers who have or are perceived to have a disability because of AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. The Contractor shall post notices setting forth the provisions of this non-discrimination clause in conspicuous places, available to employees and applicants for employment.

C. The Contractor shall state that it is an equal opportunity employer in all solicitations or advertisements for employees and/or the purchase of services, provided however, that notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for the purpose of meeting this requirement.

D. The Contractor shall include the provisions of the foregoing paragraphs in every subcontract so that such provisions will be binding upon each subcontractor or the Contractor.

E. Contractor represents and warrants that it shall comply with the requirements of the Americans with Disabilities Act (ADA).

H.14 AMENDMENTS

Except as provided in Sections H.15 and H.16 of this Contract, this Contract may be amended only upon written agreement between the Department and Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas will be void ab initio.

H.15 OPTION TO EXTEND THE TERM OF THE CONTRACT

A. The Department may, at its sole discretion, extend the term of this Contract by written Contract modification to the Contractor prior to this Contract's expiration.

B. The preliminary notice does not commit the Department to an extension.

C. If the Department exercises this option, the extended Contract will be considered to include this option provision.

H.16 OPTION TO EXTEND SERVICES

A. The Department may require continued performance of any services within the limits and at the rates specified in this Contract.

B. The Department reserves the right to extend this Contract for a ninety (90) calendar day period at the end of this Contract and/or extension period for the purpose of re-advertising the service, awarding a new Contract, and transitioning into a new Contract.

C. This option provision may be exercised more than once, but the total extension of performance hereunder will not exceed six (6) months.

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

H.17 SEVERABILITY

In the event that any provision of this Contract is held invalid, void, unenforceable or illegal in any respect by a final order/judgment of the State Office of Administrative Hearings or a court of competent jurisdiction, then the remaining terms, provisions, covenants, and conditions of this Contract will remain in full force and effect, and will in no way be affected, impaired, or invalidated.

H.18 U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM

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 Contractor to perform work pursuant to the Contract, within the United States of America.

The Contractor shall provide, upon request of the Department an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three 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.

H.19 LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS

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

H.20 PUBLIC SAFETY COMMISSION CONTRACT REVIEW

The Texas Public Safety Commission or the Commission's designee (Commission) will receive notification of the following contracts awarded by the Texas Department of Public Safety (Department) since the last Commission meeting:

A. Contracts valued at one-million and no/100 dollars ($1,000,000.00) or more, including available renewal options;

B. Contract amendments (other than exercise of available renewal options) valued at one-hundred thousand and no/100 dollars ($100,000.00) or more that increase the value of the original contracts by 50% or more; and

C. Contract amendments (other than exercise of available renewal options) valued at five hundred thousand and no/100 dollars ($500,000.00) or more.

The Assistant Director, Administration, shall submit these reports to the Commission. The Commission shall review contracts prior to or after award by the Department if required by applicable law.

H.21 STRICT COMPLIANCE

Time is of the essence in the delivery of deliverables as set forth in this Contract. Contractor shall strictly comply with all of the deadlines, requirements, and Standards of Performance for this Contract.

H.22 APPLICABLE LAW AND CONFORMING AMENDMENTS

The Contractor shall comply with all laws, regulations, requirements and guidelines applicable to a Contractor providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. The Department reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for the Department or the Contractor's compliance with all applicable State and federal laws, and regulations.

H. 23 COMPLIANCE WITH STATE, FEDERAL, AND LOCAL LAWS, RULES, AND REGULATIONS

A. The Contractor shall comply with all applicable state, federal and local laws and ordinances in providing deliverables to the Department under this Contract. Without limiting the generality of the foregoing, the Contractor shall be able to demonstrate compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of W-2s to common law employees. The Contractor shall provide both federal and state unemployment insurance coverage and standard workers' compensation insurance coverage. The Contractor shall comply with all federal and state tax laws and withholding requirements. The Department will not be liable to the Contractor/subcontractor(s) or its employees for any unemployment insurance or workers' compensation coverage or federal or state tax withholding requirements. The Contractor may be required to demonstrate compliance with such laws at the written request of the Department.

B. Except as stated otherwise in this Contract, the Contractor shall provide all labor and equipment necessary to furnish the deliverables under this Contract. All employees of the Contractor will be a minimum of seventeen (17) years of age and experienced in the type of work to be performed. Absent prior, written permission from the Department, no visitors or relatives of the Contractor's employees and subcontractors will be allowed on State property unless they are bona fide employees or subcontractors of the Contractor performing work under this Contract.

C. The Contractor shall ensure that at all times its personnel shall observe and comply with all laws, regulations and rules pertaining to state facilities, including but not limited to parking and security regulations and non-smoking policies. Additionally, the Contractor and the Contractor personnel shall comply with all relevant Department policies and requirements that relate to the security of data and confidentiality of information, which requirements may include the Federal Bureau of Investigation Criminal Justice Information Services ("CJIS) Security Policy and Security Addendum, as they now exist and as they may thereafter be amended.

D. The Department shall have the right to require the Contractor to remove any of the Contractor's personnel from involvement in this Contract who have failed to comply with such laws, regulations or rules.

H.24 FORCE MAJEURE

Neither the Contractor nor the Department shall be liable to the other for any delay in, or failure of performance, any requirement contained herein 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 shall 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.

H.25 FORESEEABLE DELAY

If a delivery delay is foreseeable and the delay is not caused by a force majeure event, the Contractor shall give written notice to the Department. The Department has the right to extend the delivery date if reasons appear valid. The Contractor shall keep the Department advised at all times of status of the deliverable. Default in promised (without accepted reasons) or failure to meet specifications authorizes the Department to purchase deliverables elsewhere and charge full increase in costs, if any, to the Contractor, in addition to all other legal and equitable remedies.

H.26 NO SUBSTITUTIONS AND DELIVERY TIMES

No substitutes or cancellations are permitted without written approval of the Department. Delivery will be made during normal business hours only, unless approval for late delivery has been obtained from the Department in writing.

H.27 PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS

THE CONTRACTOR SHALL DEFEND, INDEMNIFY, SAVE AND HOLD HARMLESS THE STATE OF TEXAS FROM AND AGAINST CLAIMS OF PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHTS, VIOLATIONS OR INFRINGEMENTS ARISING FROM THE STATE'S OR THE CONTRACTOR'S USE OF OR ACQUISITION OF ANY SERVICES OR OTHER ITEMS PROVIDED TO THE STATE OF TEXAS BY THE CONTRACTOR OR OTHERWISE TO WHICH THE STATE OF TEXAS HAS ACCESS AS A RESULT OF THE CONTRACTOR'S PERFORMANCE UNDER THIS CONTRACT, PROVIDED THAT THE STATE SHALL NOTIFY THE CONTRACTOR OF ANY SUCH CLAIM WITHIN A REASONABLE TIME OF THE STATE'S RECEIVING NOTICE OF ANY SUCH CLAIM. IF THE CONTRACTOR IS NOTIFIED OF ANY CLAIM SUBJECT TO THIS SECTION, THE CONTRACTOR SHALL NOTIFY THE DEPARTMENT OF SUCH CLAIM WITHIN FIVE (5) BUSINESS DAYS OF SUCH NOTICE. NO SETTLEMENT OF ANY SUCH CLAIM WILL BE MADE BY THE CONTRACTOR WITHOUT THE DEPARTMENTS PRIOR WRITTEN APPROVAL. THE CONTRACTOR SHALL REIMBURSE THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, LOSSES, COSTS, EXPENSES, JUDGMENTS OR ANY OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. THE CONTRACTOR SHALL PAY ALL REASONABLE COSTS OF THE STATE'S COUNSEL AND SHALL ALSO PAY COSTS OF MULTIPLE COUNSEL, IF REQUIRED TO AVOID CONFLICTS OF INTEREST. THE CONTRACTOR REPRESENTS THAT IT HAS DETERMINED WHAT LICENSES, PATENTS AND PERMITS ARE REQUIRED UNDER THIS CONTRACT AND HAS ACQUIRED ALL SUCH LICENSES, PATENTS AND PERMITS.

H.28 SURVIVAL

Termination of this Contract for any reason will not release the Contractor from any liability or obligation set forth in this Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice and fees verification, and any other provisions of this Contract that impose continuing obligations on either of the parties or that govern the rights and limitations of either of the parties after the expiration or termination of this Contract.

H.29 SUCCESSORS

This Contract will be binding upon and will inure to the benefit of the parties hereto and their respective successors, heirs, administrators, personal representatives, legal representatives, and permitted assigns.

H.30 EMPLOYEE NON-SOLICITATION

The Contractor will not, during the term of this Contract and for a period of twelve (12) months thereafter, solicit for employment any person who is a Department employee or was a Department employee during the previous twelve (12) months with whom the Contractor had substantial contact in the course of performing its obligations under this Contract. Indirect solicitations, such as newspaper and internet announcements, are not prohibited by this section.

H.31 COMMENCEMENT OF WORK

Work performed before final execution of this Contract will be at the Contractor's risk and if a cost reimbursement contract, that work will not be reimbursed without prior written authorization from the Department for the Contractor to begin work.

H.32 ROLLING ESTOPPEL

A. The Department will be conclusively deemed to have fulfilled its obligations under this Contract, unless the Department receives a deficiency report from the Contractor within five (5) business days of the occurrence of the alleged deficiencies and the Contractor identifies specific deficiencies in the Department's fulfillment of its obligations in that report. Deficiencies will be described in terms of how they have impacted the specific performance requirements of the Contractor. The Contractor is estopped from claiming that a situation has arisen that might otherwise justify changes in the project timetable, the standards of performance under this Contract, or the project cost, if the Contractor knew of that problem and failed to include it in the applicable report. The deficiency report will be sent to the Department's Contract Monitor.

B. In the event the Contractor identifies a situation wherein the Department is impairing the Contractor's ability to perform for any reason, the Contractor's deficiency report will contain the Contractor's suggested solutions to the situation(s). These suggestions should be in sufficient detail so that the Department Contract Monitor can make a prompt decision as to the best method of dealing with the problem and continuing the project in an unimpeded fashion.

H.33 SALES AND USE TAX

The Department, as an agency of the State of Texas, qualifies for exemption from state and local sales and use taxes pursuant to the provisions of the Texas Limited Sales, Excise, and Use Tax Act. The Contractor may claim exemption from payment of applicable state taxes by complying with such procedures as may be prescribed by the Texas Comptroller of Public Accounts.

H.34 NOTICES

Any notice required or permitted under this Contract will be directed to the Contractor's Project Manager as specified in Section G.1.6 and the Department's Contract Administrator as specified in Section G.1.2 and will be deemed received:

1. When delivered in hand and a receipt granted;

2. Three days after it is deposited in the United States mail by certified mail, return receipt requested; or

3. When received if sent by confirmed facsimile or confirmed electronic mail.

Either of the parties may change its address or designated individual(s) to receive notices by giving the other party written notice as provided above, specifying the new address and/or individual and the date upon which it will become effective.

H.35 MOST FAVORED CUSTOMER

The Contractor represents and warrants that all prices, charges, benefits, warranties and terms granted to the Department pursuant to this Contract are comparable to, or more favorable to, the Department than the price, charges, benefits, warranties, and terms that the Contractor has heretofore offered to any person or entity for the products and/or services covered under any other agreement. If at any time during the term of this Contract, the Contractor shall contract with any other person or entity for prices, charges, benefits, warranties and terms more favorable to such person or entity, the Contractor shall notify the Department of such more favorable terms and the Department, in its sole discretion, may require that such more favorable prices, charges, benefits, warranties or other terms be available to the Department under this Contract, and be retroactive to the effective date of this Contract.

H.36 STATE EXCULPATION

The Department will not be liable to the Contractor for any increased costs or expenses that may be incurred by the Contractor, or for any other damages that may be suffered by the Contractor as a result of any act or omission of any other Contractor to the State of Texas or the Department.

H.37 TITLE AND RISK OF LOSS

Title and risk of loss for deliverables will not pass to the Department until the Department actually receives, takes possession, and accepts the deliverables at the point or points of delivery (F.O.B. Destination).

H.38 AVAILABILITY OF DEPARTMENT MANPOWER

All of the Department's obligations and requirements in this Contract are subject to the availability of the Department manpower and are subject to the practicability of the Department to perform such obligations and requirements. The determination regarding availability of the Department manpower and the practicability of the Department to perform such obligations and requirements is within the sole discretion of the Department's management.

H.39 INTERPRETATION AGAINST DRAFTER

Ambiguities in this Contract or the language at issue will not be interpreted against the drafting party regardless of which party drafted this Contract or the language at issue.

H.40 NON-INCORPORATION CLAUSE

This Contract embodies the entire agreement between the Parties regarding the deliverables described herein, and there have been and are no oral or written covenants, agreements, understandings, representations, warranties or restrictions between the parties regarding the deliverables described in this Contract other than those specifically set forth herein.

H.41 HEADINGS

The headings, captions, and arrangements used in this Contract are, unless specified otherwise, for convenience only and will not be deemed to limit, amplify, or modify the terms of this Contract, nor to affect the meaning thereof.

H.42 ATTACHMENTS

The Department reserves the right, in its sole discretion, to reject any of the Contractor's terms and conditions or other documents or attachments as part of the Contractor's Offer.

H.43 UNACCEPTABLE CONTRACTOR TERMS

No Department action, including, but not limited to, issuance of a Contract, will constitute an acceptance of conflicting terms and conditions, if any, that are expressly identified as such in this Contract. Such negotiated terms and conditions will take precedence over the other documents that collectively constitute this Contract as specifically provided in this Contract.

Contractor terms and conditions that may violate Texas law or may be unacceptable to the Department for inclusion in this Contract include:

A. Incorporation of laws of a State other than Texas;

B. Requirements for prepayment;

C. Limitations on the Department's remedies;

D. Requirements that the Department indemnify the Contractor;

E. Requirements that the Contractor's documents control in case of conflict;

F. Requirements that the Contractor's documents control even if the Contractor accepts or acknowledges this Contract; and

G. Disclaimer of warranties.

H.44 RECALL NOTICE

The Contractor shall immediately upon discovery of same, advise the Department of any or all required replacements or modifications to any equipment or hardware provided under this Contract or the withdrawal of any such equipment or hardware by reason of safety hazard or recall regardless of the nature of same. Verbal notification will be confirmed in writing within twenty-four (24) hours of such verbal notification. The Contractor shall submit all such formal notices to the Department Contract Monitor.

H.45 COMPETENCY ACKNOWLEDGEMENT

The Contractor has read and fully understands this Contract between the Department and the Contractor. The Contractor is legally competent to execute this Contract and has done so with the Contractor's own free will and accord, without reliance on any representation of any kind or character by the Department which is not expressly set forth herein. The Contractor understands that it has an opportunity to consult with a lawyer prior to signing this Contract.

H.46 MULTIPLE CONTRACTS

This Contract may be executed in a number of identical counterparts, each of which will be deemed an original for all purposes. In making proof of this Contract, it will not be necessary to produce or account for more than one (1) such counterpart.

H.47 LITIGATION OR FELONY CRIMINAL CONVICTIONS

The Contractor represents and warrants that it is not aware of and has received no notices of any court or governmental actions, proceedings, or investigations, etc., pending or threatened against the Contractor that would or could impair the Contractor's performance under this Contract or would otherwise be relevant to the Department entering into this Contract. The Contractor represents and warrants that the Contractor has not and the Contractor's employees and subcontractors have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, the Contractor has fully advised the Department as to the facts and circumstances surrounding the conviction.

H.48 PROHIBITED USE OF APPROPRIATED OR OTHER FUNDS UNDER CONTROL OF STATE AGENCY; LOBBYING

The Contractor represents and warrants that the Department payments to the Contractor and the Contractor's receipt of appropriated or other funds under this Contract are not prohibited by the Texas Government Code, Sections 556.005 and 556.008.

H.49 FALSE STATEMENTS

The Contractor makes all the representations, warranties, guarantees, certifications, and affirmations included in this Contract. If the Contractor signs this Contract with a false statement or it is subsequently determined that the Contractor has violated any of the representations, warranties, guarantees, certifications, or affirmations included in this

Contract, the Contractor will be in default under this Contract and the Department may terminate or void this Contract for cause and pursue other remedies available to the Department under this Contract and applicable law.

H.50 PUBLIC INFORMATION ACT

A. Notwithstanding any provisions of this Contract to the contrary, the Contractor understands that the Department is subject to and shall comply with the Texas Public Information Act, Texas Government Code, Chapter 552, as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. The Department shall notify the Contractor in writing within a reasonable time from receipt of a request for information related to the Contractor's work under this Contract. The Contractor shall cooperate with the Department in the production of documents responsive to the request. The Department shall make a determination whether to submit a Public Information Act request to the Attorney General. The Contractor shall notify the Department within twenty-four (24) hours of receipt of any third party requests for information that was provided by the State of Texas for use in performing this Contract. This Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Contractor shall maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers.

B. Contractor shall make any information created or exchanged with the state pursuant to this Contract, and not otherwise exempt 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.

H.51 APPROVAL OF EMPLOYEES

A. The Contractor shall retain no upper level management personnel for administration of the Services without prior approval of each selection by the Department's Authorized Representative or his designee which approval will not be unreasonably withheld.

B. The Contractor shall provide the name of the employee, all pending investigations and disciplinary actions and previous disciplinary actions upon request by the Department.

H.52 PERSONNEL

H.53.1 Qualifications of Personnel

A. The Contractor warrants that all persons assigned to this Contract are employees or subcontractors of the Contractor, and meet all qualifications as defined herein and Section C to perform the work required.

B. Replacement of personnel, if approved by the Department, shall be with personnel of equal or greater ability and qualifications. The Department will be the arbiter of whether the replacement personnel have equal or greater ability and qualifications than the personnel being replaced.

C. The Contractor shall assign all personnel identified in this Contract to complete all of its planned and assigned responsibilities in connection with performance of this Contract.

The Department shall have the right to approve the assignment and replacement by the Contractor of all personnel assigned to provide deliverables or to provide on-site representation of the Contractor.

D. The Contractor shall notify the Department before assigning a replacement individual for any of the personnel commitments identified in the Contractor's Offer. The Contractor shall notify the Department of the proposed assignment, shall introduce the individual to the appropriate representatives of the Department, shall provide a transfer of knowledge validation and shall provide to the Department a resume and any other information about the individual reasonably requested by the Department. The Department reserves the right to interview the individual before granting approval. The Contractor shall obtain prior written approval for any replacement personnel before beginning any work assignments.

H.53.2 Replacement of Personnel at the Departments Request

A. The Department reserves the right to require the Contractor to replace the Contractor personnel whom the Department judges to be incompetent, careless, unsuitable or otherwise objectionable, or whose continued use is deemed contrary to the best interests of the Department or the State of Texas. Before a written request is issued, representatives of the Department and the Contractor shall discuss the circumstances. Upon receipt of a written request from the Department's Contract Administrator, the Contractor shall be required to proceed with the replacement. The replacement request will include the desired replacement date and the reason for the request. The Contractor shall use its best efforts to effect the replacement in a manner that does not degrade deliverable quality. The Contractor shall also provide the Department with evidence of a sufficient transfer of knowledge to the proposed replacement.

B. This provision will not give the Department the right to require the Contractor to terminate any Contractor employee's employment. Rather, this provision gives the Department the right to require the Contractor to discontinue using particular personnel in the performance of deliverables for the Department.

H.53.3 Unauthorized Removal of Personnel

It is critical to the overall success of the project that the Contractor not remove or reassign, without the Departments prior written approval, any of the assigned personnel until such time as the personnel have completed all of their planned and assigned responsibilities in connection with performance of the Contractor's obligations under this Contract. Without prior written approval from the Department, personnel shall only be changed in the event of death, personal injury, debilitating illness, or termination of employment with the Contractor. The unauthorized removal of personnel by the Contractor will be considered by the Department as a material breach of this Contract and grounds for termination.

H.54 UTILIZATION OF PRODUCTS AND MATERIALS PRODUCED IN TEXAS

The Contractor shall comply with Texas Government Code, Section 2155.4441, in the performance of this Contract. In performing services under this Contract, the Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside of Texas.

H.55 BOOKS AND RECORDS

All records and documents pertinent to the services contracted hereunder will be kept for a minimum of four (4) years after termination hereof. If any litigation, claim, or audit involving these records begins before the retention period expires, the Contractor shall continue to retain said records and documents until all litigation, claims or audit findings are resolved, meaning that there is a final court order from which no further appeal may be made, or written agreement is entered in to between the Contractor and the Department.

H.56 ORGANIZATIONAL AND NAME CHANGE

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

H.57 DEPARTMENT POLICIES AND PROCEDURES

A. The Contractor's Authorized Representative shall provide the following to the Department's Program Manager within ten (10) calendar days of executing this Contract:

   1. The completed Department Contractor Background Information form (HR-22) for all proposed personnel; and

   2. Acceptable fingerprints for all proposed personnel.

B. The Contractor will not allow any personnel to work on the project that have not submitted to and successfully completed a Department fingerprint-based Criminal History Background Investigation. The Department has the right to prevent the Contractor's personnel from gaining access to the Department building(s) and computer systems if the Department determines that such personnel did not pass the background check or failed to otherwise maintain a security clearance. Reference Section I.9 entitled "Criminal History Background Checks" for details on this requirement.

C. The Department issued identification cards will be worn at all times and will be worn in a visible location.

H.58 WARRANTIES

H.58.1 Third Party Warranties

If, under this Contract, the Contractor procures any materials or products for the Department, the Contractor shall assign or otherwise transfer to the Department, or afford the Department the benefits of, any manufacturer's warranty for such materials or products.

H.58.2 Contractor Warranties

The Contractor/subcontractor(s) make the following representations and warranties, including without limitation, the following:

A. The Contractor/subcontractor(s) shall create and deliver all services and deliverables in accordance with applicable professional standards of a Contractor providing the services. The Contractor represents and warrants it has the requisite qualifications, experience, personnel and other resources to perform in the manner required by this Contract.

B. The Contractor/subcontractor(s) shall assign only qualified personnel to this Contract.

C. The Contractor/subcontractor(s) shall efficiently supply all resources or services necessary to provide the deliverables that are required under this Contract.

D. The Contractor/subcontractor(s) shall use its best efforts to create and deliver the deliverables in the most cost-effective manner consistent with the required level of quality and performance.

E. The Contractor/subcontractor(s) shall create and deliver the deliverables in a manner that does not infringe the proprietary rights of any third party.

F. The Contractor/subcontractor(s) shall create and deliver the deliverables in a manner that complies with all applicable laws and regulations.

G. The Contractor has duly authorized the execution, delivery, and performance of this Contract.

H. The Contractor/subcontractor(s) has not provided any gifts, payments, or other inducements to any officer, employee, or agent of the Department.

I. The Contractor/subcontractor(s) will not infringe any intellectual property right of any third party. In the course of performing work under this Contract, the Contractor/subcontractor(s) will not use or copy any intellectual property owned by a third party without paying any required license fees or royalties.

H.59 DRUG-FREE WORKPLACE

The Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the Contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

H.60 AUTHORITY TO AUDIT

A. The Contractor understands that acceptance of funds directly under this Contract or indirectly through a subcontract 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 during the term of this Contract and for a period of four (4) years after termination of this Contract. The Contractor shall cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Additionally, the State Auditor's

Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the Contractor relating to this Contract.

B. The Contractor shall ensure that this clause concerning the authority to audit funds, received either directly or indirectly, and the requirement to cooperate fully with the State Auditor's Office is included in any subcontract it awards.

C. The Contractor shall reimburse the State of Texas for all costs associated with enforcing this provision.

D. The Department reserves the right to audit the Contractor's records and documents regarding compliance with this Contract. The Contractor is also subject to audit by any other department or agency, including federal agencies, responsible for determining that the Department and the Contractor have complied with the applicable laws.

E. In the event such an audit reveals any errors by the Department or the Contractor, the Contractor shall refund the Department the full amount of such overpayments within thirty (30) calendar days of such audit findings, or the Department at its option, reserves the right to deduct such amount owing to the Department from any payments to the contractor.

H.61 FRAUD, WASTE OR ABUSE

A. In accordance with the Texas Government Code, Chapter 321, the State Auditor's Office (SAO) is authorized to investigate specific acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt or use of state funds.

B. If there is a reasonable cause to believe that fraud, waste or abuse has occurred at the Department, it can be reported to the SAO by calling 1-800-892-8348 or on the SAO's website at www.sao.state.tx.us. It can also be reported to the Department's Office of the Inspector General at (512) 424-2015, the Department Chief Auditor's Office at 512-424-4403, or Crime Stoppers at 1-800-832-8477.

H.62 REDACTED DOCUMENTATION

The Contractor shall provide an electronic copy of the Contractor's Offer with specified private information removed, plus an overview of the nature of the information removed per Section L.11.

H.63 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS, AS REQUIRED BY 1 TAC CHAPTER 213

Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC, Chapter 213 and 1 TAC, Chapter 206 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

H.64 RIGHTS TO DATA, DOCUMENTS AND COMPUTER SOFTWARE (STATE OWNERSHIP)

A. Any biographic data, demographic data, image data inclusive of fingerprints, photograph and signatures or any other data or metadata in any form acquired or accessed by the Contractor in the performance of its obligations under this Contract will be the exclusive property of the State of Texas and all such data will be delivered to the Department by the Contractor upon completion, termination, or cancellation of this Contract.

B. The Contractor will not use, willingly allow, or cause to have such data used for any purpose other than the performance of the Contractor's obligations under this Contract without the prior written consent of the Department.

C. The ownership rights described herein will include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

D. The Contractor shall provide, at no additional charge, appropriate licenses for the Department to use and access the System and the Contractor's pre-existing software or other intellectual or proprietary property that the Contractor determines is necessary to facilitate the performance of the Contractor's obligations under this Contract.

H.65 NOTE TO CONTRACTOR

Any terms and conditions attached to the Contractor's Offer will not be considered unless specifically referred to in the Contractor's Offer and may result in disqualification.

H.67 NOTICE OF POTENTIAL CONFLICTS OF INTEREST

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 Contractor. Any contract found to violate Government Code 2261.252 is void.

SECTION I – SUPPLEMENTAL TERMS AND CONDITIONS

Any contract resulting from this RFO will include the following Supplemental Terms and Conditions. Subcontractors shall also comply with these provisions.

I.1 INSURANCE REQUIREMENTS

A. Prior to the execution of this Contract, the Contractor shall provide the Department with proof of insurance coverage(s) and shall maintain the insurance coverage(s) listed herein throughout the term of this Contract.

B. The insurance coverage(s) will be evidenced by immediate delivery to the Department upon its request of certificates of insurance executed by the insurer, or its authorized agent, stating the coverage, limits, expiration dates and compliance with all applicable required provisions.

C. Copies and changes to insurance coverage(s), including extensions, renewals, cancellations and revisions will be submitted to the Contract Administrator within thirty (30) calendar days of the effective date.

D. The Contract represents and warrants all required policies contain endorsements prohibiting cancellation except upon at least thirty (30) calendar day's prior written notice to the Department. The Certificate(s) will be addressed to the Texas Department of Public Safety as the Certificate holder.

E. The Contractor represents and warrants that, within five (5) business days of receipt of notice of tentative contract award, it shall provide the Department with proof of coverage and represents and warrants that it shall maintain the following coverage throughout the term of this Contract, at the Contractor's sole expense:

1. **Workers' Compensation and Employers' Liability:** The Contractor shall maintain Workers' Compensation insurance coverage in accordance with statutory limits and maintain such coverage throughout the life of this Contract.

   Coverage A – Workers' Compensation (WC) Statutory limits for the State of Texas or for any state the Contractor's employee resides in.

   Coverage B – Employer's Liability (EL) $1,000,000 each accident limit / $1,000,000 Disease Policy / $1,000,000 Disease each employee limit.

   The Contractor shall waive all rights against the Department, its board, trustees, officers, employees, agents, and volunteers for recovery of damages to the extent they are covered by WC and EL.

2. **Business Automobile Liability Insurance:** The Contractor shall maintain Business Automobile insurance coverage for all owned, hired, and non-owned vehicles, with a minimum **combined single limit of $1,000,000** for each accident for bodily injury and property damage. Such insurance will include coverage for loading and unloading hazards.

   If Contractor will carry pollutants or hazardous materials, endorsements for Pollution Liability Coverage for Automobile and Motor Carrier Act will be included.

The Contractor shall waive all rights against the Department, its board, trustees, officers, employees, agents, and volunteers for recovery of damages to the extent they are covered by the business auto liability insurance (or any other applicable auto physical damage coverage.)

3. **Commercial General Liability Insurance:** The Contractor shall maintain Commercial General Liability coverage that will include, but not be limited to, premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability.

    1. $1,000,000 each occurrence
    2. $2,000,000 General Aggregate limit
    3. $2,000,000 Products and Completed Products
    4. $1,000,000 Personal/Advertising injury
    5. $50,000 Damage to Premises
    6. $5,000 Medical Payments

a. If this insurance is written on a claims-made form, coverage will be continuous (by renewal or extended reporting period) for not less than sixty (60) months following completion of this Contract and acceptance by the Department.

b. Coverage, including any renewals, will have the same retroactive date as the original policy applicable to this Contract. Civil Rights Liability will be provided with the same liability limits. It may be included within the General Liability policy or written on a separate policy.

c. Liability coverage will include coverage for damage to property and injury to persons caused by boiler and/or other equipment malfunction. The policy will contain an endorsement to include coverage for the property of third parties.

d. The Department will be named as an additional insured by using endorsement CG2026 or broader.

e. The Contractor's coverage will include an endorsement for waiver of subrogation and a 30 Day Notice of Cancellation to the Department. The Contractor shall waive all rights against the Department, its board, trustees, officers, employees, agents, and volunteers.

4. **Professional Liability:** The Contractor shall maintain Professional Liability insurance coverage (including Errors and Omissions [required only for contracts for Professional Services] including coverage for the rendering of, or failure to render, professional services with minimum limits:

    1. $1,000,000 per occurrence,
    2. $2,000,000 annual aggregate.

a. If this insurance is written on a claims-made form, coverage will be continuous (by renewal or extended reporting period) for not less than twenty-four (24) months following completion of this Contract and acceptance by the Department.

b. Coverage, including any renewals, will have the same retroactive date as the original policy applicable to this Contract.

5. **Commercial Crime Insurance:** The Contractor shall maintain Commercial Crime insurance coverage to cover losses from Employee Dishonesty with a minimum limit of: **$50,000 each occurrence.**
Coverage will be endorsed to cover third party property and the Department will be a joint loss payee.

6. **Cyber Insurance:** The Contractor shall maintain Cyber insurance to cover any and all losses, security breaches, privacy breaches, unauthorized distributions, or releases or uses of any data transferred to or accessed by Contractor under or as a result of this Contract. This insurance shall provide sufficient coverage(s) for the Contractor, the Department, and affected third parties for the review, repair, notification, remediation and other response to such events, including but not limited to, breaches or similar incidents under Chapter 521, Texas Business and Commerce Code. The Department may, in its sole discretion, confer with the Texas Department of Insurance to review such coverage(s) prior to approving them as acceptable under this Contract. The Contractor shall obtain modified coverage(s) as reasonably requested by the Department within ten (10) calendar days of the Contractor's receipt of such request from the Department.

7. **Umbrella / Excess Liability:** The Contractor may combine its primary and Excess / Umbrella Liability limits to meet the minimum required coverage for any line of coverage; however, if it chooses this option, the coverage will be written at least as broad as those requirements defined above. **$1,000,000 Minimum Limit**.

I.1.1 ADDITIONAL PROVISIONS

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

A. Name the Department and its board, trustees, officers, employees, agents, representatives and volunteers as additional insured to all applicable policies.

B. Waiver of subrogation against the Department and its board, trustees, officers, employees, agents, and volunteers, for bodily injury (Including death), property damage or any other loss to all policies.

C. The Contractor's insurance will be the primary insurance in regards to the Department and its board, trustees, officers, employees, agents, and volunteers.

D. All provisions of this Contract concerning liability, duty and standard of care, together with the indemnification provision, will be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

E. All Certificates of Insurance will identify the service or product being provided and the name of the responsible party.

F. No “self-insurance” coverage will be acceptable.

G. The Contractor’s insurance coverage will continue in full force and effect during the term of this Contract. No Contract will be entered into between the Contractor and the Department unless acceptable insurance certificates are received by the Department by the date scheduled for the execution of this Contract. Proof of insurance policies in a form acceptable to the Department will be delivered prior to the effective date of this Contract.

H. All insurance coverage will be provided by insurance carrier(s) duly licensed, admitted and authorized to do business in Texas. All insurance carriers will be, at a minimum, rated “A” or better by A.M. Best or equivalent rating by a similar insurance rating service.

I. The Contractor may choose the amount of deductible for any other insurance coverage required (above) to be obtained by the Contractor; however except as it relates to professional liability insurance, in no event will such deductible for each occurrence exceed five (5) percent of the required yearly aggregate limit of coverage.

J. The Contractor shall be responsible for the first dollar defense coverage. All general liability and professional liability policies will provide defense in addition to the policy limits.

K. The limits required herein are the minimum acceptable limits. These limits will not to be construed as being the maximum the Contractor may wish to purchase for its own benefit.

L. As respect to the total limits of liability required, any combination of primary and/or umbrella / excess liability coverage may satisfy those totals. However, if an umbrella / excess liability policy is used, coverage will be at least as broad as the primary coverage.

I.1.2 SUBCONTRACTOR’S INSURANCE

The Contractor’s insurance policies will provide coverage for the Contractor’s principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under this Contract.

I.2 SUBCONTRACTS

A. The Contractor shall assume full responsibility for all deliverables under this Contract. The Department shall consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges under this Contract. If any part of the deliverables is planned to be subcontracted, the Contractor shall include a list of all subcontractors, including the firm name, address, and contact person of each subcontractor, a complete description of the deliverables to be subcontracted, financial statements for each subcontractor, and descriptive information concerning each subcontractor’s qualifications.

B. The Contractor will not delegate any duties under this Contract to a subcontractor unless the Department has given written consent to the delegation. The Department shall approve all subcontractors and to require the Contractor to replace any subcontractor found, in the opinion of the Department, either initially or based on performance, to be unacceptable.

C. The management of any subcontractor shall be the sole responsibility of the Contractor, and failure by a subcontractor to perform will be deemed to be failure of the Contractor. The Contractor shall make all payments to subcontractors and suppliers. The Department will not direct payments for deliverables acquired in connection with this Contract other than to the Contractor, nor shall the Department release the Contractor from having to perform any obligations under this Contract, notwithstanding the fact that a subcontractor may have been engaged by the Contractor to perform those obligations.

D. The Contractor will furnish to the Department copies of all subcontracts. All subcontracts will include all applicable provisions contained in this Contract and any provisions required by law.

I.3 HISTORICALLY UNDERUTILIZED BUSINESSES (HUB) PARTICIPATION

A. The Contractor shall make a good faith effort to comply with all state Historically Underutilized Business (HUB) requirements pursuant to Texas Government Code, Chapter 2261 and administrative rules, if applicable. The Contractor shall also comply with the attached HUB Subcontracting Plan.

B. The Contractor shall submit a HUB Subcontracting Plan (HSP) submitted as part of its Offer submission and shall comply with implementation of the HSP. The Contractor shall seek written approval from the Department prior to making any modifications to its HSP.

C. A detailed description of the HSP and required forms will be submitted with the Offer submission which is included as Exhibit J.1, HUB Subcontracting Plan (HSP). HSP Forms, if not completed in full or missing from the Contractor's original Proposal, will be disqualified.

D. The Contractor shall provide notice to all subcontractors of their selection as a subcontractor for this Contract. The notice will specify, at a minimum, the Department's name, the name of the Contract Administrator, this Contract's assigned contract number, the subcontracting opportunity the subcontractor will perform, the approximate dollar value of the subcontract and the expected percentage of this Contract's total value that the subcontract represents. A copy of the notice will be provided to the Contract Administrator no later than ten (10) business days after the effective date of this Contract.

E. The Contractor shall submit to the Contract Administrator on a monthly basis (by the 5th day of the following month) the Prime Vendor Progress Assessment Report, which is included as Exhibit J.1, HUB Subcontracting Plan.

F. The Contractor shall include the non-discrimination clauses in Section H.13 in all subcontracts.

I.4 LIQUIDATED DAMAGES

A. The Department reserves the right to assess liquidated damages at an amount up to five hundred dollars ($500.00) per day for each business day the Contractor fails to meet the standards set out in this Agreement by providing the services as described in Section C. The parties acknowledge that the harm that will be caused to the Department by such a delay is difficult to estimate; however, the amount of liquidated damages listed herein is a reasonable estimate and is enforceable.

B. The Contractor will not be responsible and liquidated damages may not be assessed due to any delay caused by schedule amendments requested by the Department, delays as the result of activity that is the responsibility of the Department's Project Team, as long as the Contractor timely files its deficiency report as required by the Section H.33 herein entitled "Rolling Estoppel" or delays that the Department deems were outside the control of the Contractor. The burden of proof that the delay is attributable to the Department rests with the Contractor.

C. Any liquidated damages assessed under this Contract may, at the Department's option, be deducted from any payments due to the Contractor. The Department has the right to offset any liquidated damages payable to the Department, as specified above, against any payments due to the Contractor. If insufficient payments are available to offset such liquidated damages, then Contractor shall pay to the Department any remaining liquidated damages within fifteen (15) calendar days following receipt of written notice of the amount due.

I.6 OTHER CONTRACTS

During the course of this Contract, the Department may award additional contracts to other contractors for similar services. The Department shall provide notification to the Contractor regarding the additional contractor and the scope of work that the additional contractor will be performing. The Contractor shall work cooperatively with the additional contractor in order to ensure that the performance of the services and/or capital improvements is not unnecessarily delayed. The Contractor will not commit or permit any act that would unduly interfere with the performance of work by any other contractor(s).

I.7 SUSPENSION OF WORK

A. The Department may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of this Contract for the period of time that the Contract Monitor determines appropriate for the convenience of the Department.

B. If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed, or interrupted:

1. By an act of the Contract Monitor in the administration of this Contract, or

2. By the Contract Monitor's failure to act within the time specified in this Contact (or within a reasonable time if not specified), an adjustment will be made for any increase in the cost of performance of this Contract (excluding profit) necessarily

caused by the unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly.

C. A claim under this clause will not be allowed:

1. For any costs incurred more than twenty (20) calendar days before the Contractor will have notified the Contract Administrator in writing of the act or failure to act involved (but this requirement will not apply as to a claim resulting from a suspension order; and

2. Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under this Contract.

I.8 STOP-WORK ORDER

A. The Contract Administrator may at the request of the Department, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, or the work called for by this Contract for a period of up to ninety (90) calendar days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order will be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall, at the Department's expense, immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost allocable to the work covered by the order during the period of work stoppage. Within a period of up to ninety (90) calendar days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contract Administrator may either:

1. Cancel the stop-work order; or

2. Terminate the Work covered by the order as provided in the stop-work order of this Contact.

B. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume Work. The Department will make an equitable adjustment in the delivery completion schedule, the estimated cost, or both, and this Contract will be modified, in writing accordingly, if:

1. The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and

2. The Contractor asserts its right to the adjustment within thirty (30) calendar days after the end of the period of work stoppage; provided that the Contract Administrator decides the facts justify the action, the Contract Administrator may receive and approve the claim submitted at any time before final payment under this Contract.

C. If a stop-work order is not canceled and the Work covered by the order is terminated, the Contract Administrator may allow reasonable cost resulting from the stop-work order in arriving at the termination settlement.

D. An appropriate equitable adjustment may be made in any related contract of the Contractor that provides for adjustment and is affected by any stop-work order under this clause. The Department will not be liable to the Contractor for damages or loss of profits because of a stop-work order issued under this clause.

I.9 WORK MADE FOR HIRE

For the purposes of this Contract, the term “Work” is defined as all reports, statistical analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research, materials, intellectual property or other property developed, produced, or generated in connection with this Contract. All work performed pursuant to this Contract is made the exclusive property of the Department. All rights, title and interest in and to said property will vest in the Department upon creation and will be deemed to be a work 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 Department, or such Work may not be considered a Work made for hire, all rights, title and interest therein are hereby irrevocably assigned to the Department. The Department 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. The Contractor shall give the Department and/or the State of Texas, as well as any person designated by the Department and/or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to the Contractor for services rendered under this Contract.

SECTION J - LIST OF EXHIBITS

EXHIBIT NO.	TITLE NUMBER OF	PAGES
J.1	HUB Sub-Contracting Plan	9
J.2	Application for Texas Identification Number	2
J.3	Direct Deposit Form	2
J.4	Request for Taxpayer Identification Number and Certifications	4
J.5	References	16
J.6	Experience	16

SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF RESPONDENTS

K.1 HISTORICALLY UNDERUTILIZED BUSINESS (HUB) REPRESENTATION

K.1.1 Definition

A. "Historically Underutilized Business" means an entity with its principal place of business in this State that is:

1. A corporation formed for the purpose of making a profit in which fifty-one (51) percent or more of all classes of the shares of stock or other equitable securities are owned by one or more economically disadvantaged persons who have a proportionate interest and actively participate in the corporation's control, operation and management;

2. A sole proprietorship created for the purpose of making a profit that is completely owned, operated and controlled by an economically disadvantaged person;

3. A partnership formed for the purpose of making a profit in which fifty-one (51) percent or more of the assets and interest in the partnership are owned by one or more economically disadvantaged persons who have a proportionate interest and actively participate in the partnership's control, operation, and management;

4. A joint venture in which each entity in the venture is a Historically Underutilized Business, as determined under another paragraph of this subdivision; or

5. A supplier contract between a Historically Underutilized Business as determined under another paragraph of this subdivision and a prime contractor under which the historically underutilized business is directly involved in the manufacture or distribution of the goods or otherwise warehouses and ships the goods.

B. "Economically disadvantaged person" means a person who is economically disadvantaged because of the person's identification as a member of a certain group including Black Americans, Hispanic Americans, Women, Asian Pacific Americans, Native Americans and Service Related Disabled Veterans, and who has suffered the effects of discriminatory practices or other similar insidious circumstances over which the person has no control.

K.1.2 Representation

The Respondent represents and certifies as part of its Offer that it [ ] is, or [ ] is not, a HUB certified by the Texas Procurement and Support Services (TPASS).

K.2 CHILD SUPPORT REPRESENTATION

A. Under the Texas Family Code, Section 231.006, a child support obligor who is more than thirty (30) days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder or owner with an ownership interest of at least twenty-five (25) percent is not eligible to receive payments from State funds under a contract to provide property, materials or services.

B. Governmental entities and any business entity, including a non-profit corporation, that does not have a majority shareholder who is a natural person capable of being a child support obligor, are not subject to Section 231.006.

Check ONE:

_____ Respondent DOES NOT have a sole proprietor, majority stockholder or substantial owner who is a natural person capable of being a child support obligor therefore IS NOT subject to Section 231.006.

_____ Respondent DOES have a sole proprietor, majority stockholder or substantial owner who is a natural person capable of being a child support obligor therefore IS subject to Section 231.006.

If subject to Section 231.006, an Offer will include names and social security numbers of each person with at least a twenty-five (25) percent ownership of the business entity submitting the Offer.

_____	_____	_____	_____
Print Name	SSN	Print Name	SSN
_____	_____	_____	_____
Print Name	SSN	Print Name	SSN

The Respondent certifies that the individual or business entity named in this Offer is not ineligible to receive the specified payments and acknowledges that any resultant contract may be terminated and payment may be withheld if this certification is inaccurate.

K.3 FRANCHISE TAX REPRESENTATION

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

K.4 TYPE OF BUSINESS ORGANIZATION

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

A. It operates as [ ] a corporation incorporated under the laws of the State of _____, [ ] an individual, [ ] a partnership, [ ] a nonprofit organization or [ ] a joint venture; or

B. If the Respondent is a foreign entity, it operates as [ ] an individual, [ ] a partnership,

[ ] a nonprofit organization, [ ] a joint venture, or [ ] a corporation, registered for business in _____ (country).

K.5 PREFERENCE CLAIM

In accordance with Texas Administrative Code 34 (TAC) Rule 20.38, the Respondent shall check below if claiming a preference. If the appropriate line is not marked, a preference will not be granted unless other documents included in the Offer show a right to the preference.

K.5.1 Source and Specification Preferences

[ ] Products of persons with mental or physical disabilities.

[ ] Products made of recycled, remanufactured, or environmental sensitive materials including recycled steel.

[ ] Energy efficient products.

[ ] Rubberized asphalt paving material.

[ ] Recycled motor oil and lubricants.

[ ] Disabled Veterans – with at least twenty (20) percent disability

K.5.2 Tie-Bid Preferences

[ ] Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran.*

[ ] Goods produced in Texas or offered by a Texas bidder that is not owned by a

Texas resident service-disabled veteran.*

[ ] Agricultural products produced or grown in Texas.

[ ] Agricultural products or services offered by Texas Bidders.*

[ ] Services offered by a Texas bidder that is owned by a Texas resident serviced-disabled veteran.*

[ ] Services offered by a Texas bidder that is not owned by a Texas resident serviced–disabled veteran.

[ ] Texas Vegetation Native to the Region.

[ ] USA produced supplies, materials, equipment or agricultural products.

K.5.3 Additional Preferences

[ ] Products produced at facilities located on formerly contaminated property.

[ ] Products and services from economically depressed or blighted areas.

[ ] Contractors that meet or exceed air quality standards.

[ ] Recycled or reused computer equipment of other manufacturers.

[ ] Foods of higher nutritional value (for consumption in a public cafeteria only).

[ ] Commercial production company or advertising agency located in Texas.

*By signing this Offer, the Respondent certifies that if a Texas address is shown as the address of the Respondent, the Respondent qualifies as a Texas Resident Bidder as defined in 34 TAC Rule 20.32 (68).

K.6 REPRESENTATIONS OF OFFEROR

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

K.6.1 Organization and Qualification

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

K.6.2 Authorization

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

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

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

K.6.4 No Defaults under Agreements

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

K.6.5 Compliance with Laws

Neither the Contractor nor its officers and directors purporting to act on its behalf have been advised or have reason to believe that the Contractor or such officers and directors have

not been conducting business in compliance with all applicable laws, rules and regulations of the jurisdictions in which the Contractor is conducting business, including all safety laws and laws with respect to discrimination in hiring, promotion or pay of employees or other laws affecting employees generally, except where failure to be in compliance would not materially and adversely affect the Contractor's ability to perform its obligations under this Contract.

K.6.6 No Litigation

A. The Contractor certifies that there is not now pending, or to its knowledge threatened, any action, suit or proceeding to which the Contractor, or any of its employees, are a party, before or by any court or governmental agency or body, which may result in any material adverse change in the Contractor's ability to perform its obligations under this Contract, or any such action, suit or proceeding related to environmental or civil rights matters.

B. The Contractor further certifies that no labor disturbance by the employees of the Contractor exists or is imminent which may be expected to materially and adversely affect the Contractor ability to perform its obligations under this Contract.

C. Prior to the execution of this Contract, the Department may require the Contractor to recertify the representations set forth above. The Department, in its sole discretion, may disqualify any Contractor that in the opinion of the Department is a party, or who has any employees that are a party, to any action, suit or proceeding that may result in any material adverse change in the Contractor's ability to perform its obligations under this Contract.

D. During the term of this Contract, to include extensions hereof, the Contractor shall notify Department in writing within five (5) business days of the Contractor having received knowledge of any actions, suits or proceedings filed against the Contractor, or any of its employees, or to which the Contractor, or any of its employees, are a party, before or by any court or governmental agency or body, which:

1. May result in any material adverse change in the Contractor's ability to perform its obligations under this Contract;

2. Filed in any federal court, state court, or federal or state administrative hearing within the State of Texas regardless as to any anticipated material adverse change in the Contractor's ability to perform its obligations under this Contract;

3. Is brought by or on behalf of a State of Texas Offender regardless as to any anticipated material adverse change in the Contractor's ability to perform its obligations under this Contract; and

4. The Contractor shall provide in writing, to the Contract Administrator, a quarterly report listing litigation identified in the above requirements.

K.6.7 Taxes

A. The Contractor has filed all necessary federal, state and foreign income and franchise tax returns and has paid all taxes as shown to be due thereon.

B. The Contractor has no knowledge of any tax deficiency which has been or might be asserted against it and which would materially and adversely affect the Contractor's ability to perform its obligations under this Contract.

K.6.8 Financial Statements

The Respondent shall submit a copy of at least one rating from organizations such as Dun & Bradstreet (D&B) Business Information Report or Fitch Ratings to the Contract Administrator listed above. The report will include the Contractor's Viability Score and the Portfolio Comparison Score or similar ratings. Failure to submit copies of the required financial ratings will result in disqualification.

The Respondent shall provide information and any other financial information reasonably requested by the Department consistent with the services provided by the Contractor or otherwise required by the then applicable Department policies for similar products.

K.6.9 No Adverse Change

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

K.6.10 Disclosure

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

K.6.11 No Collusion

A. The Contractor represents and certifies its employees, agents and representatives have not and will not discuss or disclose the terms of its Offer and its submission or response thereto with any third party other than the persons or entities, which the Contractor engaged to assist it with respect to such response or submission.

B. Neither the Contractor nor the firm, corporation, partnership or institution represented by the Contractor or anyone acting for such firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the offer made to any competitor or any other person engaged in such line of business.

K.6.12 Ethics

K.6.12.1 Conflict of Interest

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

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

K.6.12.2 No Gratuities

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

K.6.13 No Compensation

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

K.6.14 Contracting With Executive Head Of State Agency

A. The Contractor represents and certifies that it is in compliance with Texas Government Code, Section 669.003 relating to contracting with the executive head of a state agency.

B. If Section 669.003 applies, the Contractor shall complete the following information in order for the Offer to be evaluated:

Name of Former Executive: _____

Name of State Agency: _____

Date of Separation from State Agency: _____

Date of Employment with Contractor: _____

K.6.15 Notification

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

K.6.16 Suspension, Debarment And Terrorism

The Department is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing Contractors with the Federal General Services Administration's Excluded Parties List System (EPLS, https://www.sam.gov/portal/SAM/#1), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list. Contents of EO 13224 may be viewed by accessing the following website: **http://www.treasury.gov/resource-center/sanctions/Programs/Documents/terror.pdf.**

K.6.17 Violation of Federal Law Relating To Reconstruction Efforts As A Result Of Hurricanes Rita, Katrina Or Any Other Disaster After September 24, 2005

Pursuant to Texas Government Code, Section 2261.053, a state agency may not accept an offer or award a Contract that includes proposed financial participation by a person who, during the five (5) year period preceding the date of the offer or award, has been convicted of violating a federal law or accessed a penalty in a federal, civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery or reconstruction efforts as a result of Hurricane Rita, Katrina or any other disaster occurring after September 24, 2005. Under Texas Government Code, Section 2261.053, the Contractor certifies that the individual or business entity named in this Offer or Contract is not **ineligible** to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

K.6.18 Deceptive Trade Practices; Unfair Business Practices

The Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Texas Business and Commerce Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that the Contractor has not been found to be liable for such practices in such proceedings. The Contractor certifies that it has no officers who have served as officers of other entities who have been the subject allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

K.6.19 Former Executives

The Contractor represents and warrants that no relationship, whether by relative, business associate, capital funding contract or by any other such kinship exist between the Contractor and an employee of the Department, and the Contractor has not been an employee of the Department within the immediate twelve (12) months prior to the Contractor's Offer. By signature hereon, the Contractor certifies that it is in compliance with Section 669.003, Texas Government Code, relating to contracting with an executive head of a state agency. All such disclosures will be subject to administrative review and approval prior to execution of this Contract. The Contractor acknowledges that any Purchase Order / Contract resulting from this solicitation may be terminated at any time, and payments withheld, if this information is false.

K.6.20 OSHA

The Contractor represents and warrants that all articles and services quoted in response to this Contract meet or exceed the safety standards established and promulgated under the *Federal Occupational Safety and Health Law* and its regulations in effect or proposed as of the effective date of this Contract.

K.6.21 EEOC

The Contractor represents and warrants its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.

K.6.22 Americans with Disabilities Act (ADA)

The Contractor represents and warrants its compliance with the requirements of the Americans with Disabilities Act (ADA).

K.6.23 Buy In Texas

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

K.6.24 Government Code Chapter 556

The Respondent represents and warrants that CPA's payments to the Respondent and the Respondent's receipt of appropriated or other funds under any purchase order / contract resulting from this RFO are not prohibited by Texas Government Codes, Section 556.005 or Section 556.008.

K.6.25 Computer Equipment

If the Respondent is submitting an offer for the purchase or lease of computer equipment, then the Respondent hereby certifies its compliance with Subchapter Y, Chapter 361, Texas Health and Safety Code and the Texas Commission on Environmental Quality rules, 30 TAC, Chapter 328.

K.6.26 Lawsuits, Court Actions

By signature hereon, and by checking or initialing either Subsection (A) <u>or</u> Subsection (B), as applicable, the Respondent represents and warrants the following:

A. [ ] The Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against the Respondent or any of the individuals or entities included in Section H.9, Laws of Texas, of this document that would or could impair the Respondent's performance under any purchase order / contract resulting from this RFO, relate to the solicited or similar goods or services, or otherwise be relevant to the agency's consideration of the Respondent's Offer. The Respondent represents and warrants that it is not aware of any such court or governmental agency actions, proceedings or investigations, etc. against the Respondent or any of these individuals or entities within the five (5) calendar years immediately preceding the submission of the

Respondent's Offer in response to this RFO. In addition, the Respondent represents and warrants that it shall notify the Department in writing within five (5) business days of any changes to the representations or warranties in this Subsection (a) and understands that failure to so timely update the Department shall constitute breach of contract and may result in immediate termination of the resulting purchase order / contract.

B. [ ] The Respondent is unable to make the representation and warranty in Subsection (a) above and instead represents and warrants that it has included as a detailed attachment in its Offer, which expressly references this Subsection (b), a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc., and specifically addresses whether any of such past, pending or threatened actions, proceedings or investigations, etc., would or could (1) impair Respondent's performance under any purchase order / contract resulting from this RFO; (2) relate to the solicited or similar goods or services; or (3) be otherwise relevant to the Department's consideration of the Respondent's Offer. In addition, the Respondent represents and warrants that it shall notify the Department in writing within five (5) business days of any changes to the representations or warranties in this Subsection (b) or attachments in response to Subsection (b) and understands that failure to so timely update the Department shall constitute breach of contract and may result in immediate termination of the purchase order / contract.

K.6.27 Agreement to Terms

The Respondent represents and warrants that it has read and agrees to all terms and conditions of this RFO, unless the Respondent specifically takes an exception and offers an alternative provision in the Respondent's Offer as provided in Section L.8.2.I. Inclusion of such conflicting terms may result in disqualification of the Offer in the Department's sole discretion.

K.7 AUTHORIZED NEGOTIATORS

The Respondent represents that the following persons are authorized to negotiate on its behalf with the Department in connection with this RFO: (list names, titles and telephone numbers of the authorized negotiators).

_____

_____

_____

K.8 PAYEE IDENTIFICATION NUMBER

The Payee ID number is the taxpayer number assigned and used by the Comptroller of Public Accounts of Texas. The Respondent shall provide its payee identification number in the space provided below. If this number is not known, the Respondent shall provide the Federal Taxpayer Identification number.

Payee Identification Number:_____.

Federal Taxpayer Identification Number: _____.

K.9 POINT OF CONTACT

The Respondent shall provide the name, address and phone number of a point-of-contact for questions concerning the submitted Offer.

Name: _____ Title: _____

Phone Number: (__)_____ Fax Number: (__)_____

Street Address: _____

City:_____ State: _____ Zip Code: _____

Email Address: _____

K.10 CERTIFICATION

By signature hereon, The Respondent represents and warrants that the individual signing this document and the documents made part of the submitted Offer is authorized to sign such documents on behalf of the company and to bind the company under any purchase order / contract which may result from the submission of this Offer.

By signing hereon, The Respondent represents and warrants that all statements and information prepared and submitted in response to this RFO are current, complete and accurate.

To be completed by the Respondent: (The Respondent shall check or complete all appropriate boxes or blanks in the Representations and Certifications, on the preceding pages). The Representations and Certifications will be executed below by an individual authorized to bind the Respondent.

The Respondent makes the foregoing Representations and Certifications as part of its Offer.

_____ _____
Name of Respondent Solicitation No.

_____ _____
Signature of Authorized Individual Date

_____
Typed Name of Authorized Individual

Note: The penalty for making false statements shall void the submitted Offer or any resulting contracts, and the Respondent shall be removed from all bid lists.

SECTION L - INSTRUCTIONS, CONDITIONS, AND NOTICES TO RESPONDENTS

L.1 OFFER PREPARATION INSTRUCTIONS

Purpose of Instructions

A. These instructions are designed to assure the submission of information essential to the understanding and the comprehensive evaluation of the Respondent's Offer.

B. The Respondent shall be available twenty-four (24) hours a day, seven (7) days a week to include weekends and holidays to provide clarification responses, attend requested meetings throughout the Request for Offer evaluation phase.

C. Offers will be prepared in accordance with these instructions providing all required information in the format specified.

D. Failure of an offer to show compliance with these instructions and submit all documentation may be grounds for disqualification of the offer from further consideration unless stated otherwise within this solicitation.

Submission of Offers

A. Offers will be typed or printed using Arial twelve (12) point font on standard letter paper (8-1/2" x 11") (except for graphic information being requested). The Respondent's Offer will be paginated, contain a full table of contents, and have component sections clearly identified via tabs.

B. Sealed offers will be received by the Department no later than the deadline established and submitted to:

Texas Department of Public Safety
Procurement and Contract Services
5805 North Lamar Boulevard, Building A
Austin, Texas 78752
Attention: Darren K. Roberson, Sr., CTPM
Request for Offer No. 405-16-R032316

C. The Respondent shall ensure that its Offer is clearly labeled on the outside of the package(s). If a delivery service is utilized that prohibits such markings on the outside of the package, this information shall be placed in plain view on the outside of an interior envelope or package.

D. The Respondent shall submit each volume in one (1) unbound <u>original</u> (suitable for photocopying) with three (3) additional bound copies and one flash drive.

E. Offers will demonstrate that the Respondent's operations conform to applicable State and Federal Standards and the Department Policies and Standards.

F. The Respondent shall submit only material directly pertinent to the requirements of the solicitation. Extraneous narrative, elaborate brochures, uninformative public relations material, including the Respondent's policies, procedures, and post orders for which no

deviation to Department Policy is being requested, and other similar documents will not be submitted.

L.2 AMENDMENTS TO THE RFO

A. If this RFO is amended all terms and conditions which are not modified remain unchanged.

B. Respondents shall acknowledge receipt of all amendment(s) to this RFO by signing and returning the amendment(s), identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer or by letter.

C. The Respondent shall submit the acknowledgement to the Department by the time specified for receipt of offers.

D. Failure to acknowledge amendment(s) by the Respondent may subject its Offer to rejection.

L.3 LATE SUBMISSIONS, MODIFICATIONS AND WITHDRAWALS OF OFFERS

A. Offers will be timed stamped at the office designated in the RFO on or before the date and time on Page 1, Solicitation, Offer and Award.

B. Any offer received at the designated location after the specified time will not be considered.

C. Offers cannot be altered, amended or modified by e-mail, fax or otherwise after opening time.

D. Alterations made before opening time will be initialed by the Respondent or its authorized agent.

E. No offer can be withdrawn after opening time without approval by the Department. The withdrawal request will be submitted in writing, and will be based on an acceptable reason.

L.4 SIGNATURES ON OFFER SUBMITTED

A. Offers from a partnership will be signed in the firm name by at least one general partner or in the firm name by an Attorney-in-fact.

B. Offers signed by an Attorney-in-fact, will include a Power of Attorney evidencing the authority to sign offer, dated and executed by all partners in the firm.

C. Offers from a corporation will have the correct corporate name thereon and the signature of an authorized officer of the corporation.

D. The title of office held by the person signing for the corporation will appear below the signature of the officer.

E. Offers from an individual doing business under a firm or fictitious name will be signed in the same name of the individual doing business under the proper firm name.

F. Joint venture offers will be signed by all members or by a member of the joint venture if there is attached to the offer a copy of the Joint Venture Agreement evidencing that the offer is signed by the member with authority to bind the Joint Venture.

L.5 OFFER ACCEPTANCE PERIOD

A. All offers will be valid for one-hundred eighty (180) calendar days after the RFO opening date and will constitute an irrevocable offer to the Department for the one-hundred eighty (180), calendar day period.

B. Such period may be extended beyond the one-hundred eighty (180) calendar days upon mutual written agreement of both parties.

L.6 CONTRACT AWARD

A. The Department may award multiple Contract(s) resulting from this RFO to the responsible Contractor(s), whose Offer(s), meeting or exceeding specifications and will be most advantageous to the Department, cost or price and other factors, specified elsewhere in this Contract, will be considered.

B. A written award or acceptance of Offer mailed or otherwise furnished to the successful Contractor(s) within the time for acceptance specified in the Offer(s) will result in a binding Contract(s) without further action by either party.

L.7 RIGHTS OF DEPARTMENT

A. The Department reserves the right to waive, change, add or delete any terms or conditions of this RFO.

B. The Department may:

1. reject any or all offers if such action is in the public interest;

2. accept other than the lowest priced offer, and

3. waive minor informalities and minor irregularities in offers received.

C. Waiver of deviations in any offers will not constitute a modification of this RFO and will not preclude the Department from asserting all rights against the Respondent for failure to fully comply with all terms and conditions of this RFO. Copyrighted offers are unacceptable and are subject to disqualification as non-responsive. The Department reserves the right to make any corrections or include additional requirements in the resulting contract prior to issuance which are necessary for the Department's compliance, as an agency of the State of Texas, with all state and federal requirements. The Department reserves the right to disqualify any offer which asserts any copyright on any Department-created form which is specifically designated by this RFO to be a form that will be completed and included in an offer submitted in response to this RFO.

D. The Department reserves the right to reject any one offer and/or all offers or portions of offers submitted in response to this RFO.

E. The submission of an offer has the effect of waiving proprietary rights or confidentiality.

F. All offers and any content provided by the Respondent are considered the property of the Department for utilization for the life of any resulting contract as determined by the Department with respect to the scope of the project.

G. The Department reserves the right to use for its benefit ideas contained in the offers submitted.

H. The Department is not liable for any costs or damages that may be incurred by Respondents or prospective contractors in the preparation, formulation, or presentation of an offer.

I. In case of ambiguity or lack of clarity, the Department may adopt such interpretations as may be advantageous to the Department.

J. Upon review of offers, the Department may select the Respondent's Offer(s) most advantageous to the Department, in its judgment, with whom to negotiate a final definitive contract(s).

K. Such determination will be solely at the discretion of the Department. All representations made by the Department are subject to the availability of legislative appropriations and do not represent an obligation on the part of the State of Texas, the Department or the Public Safety Commission.

L. The Department reserves the right to withdraw this RFO at any time for any reason.

M. The Department reserves the right to award no contract and to solicit additional Offers at a later time.

N. The Department incurs no obligation regarding this RFO unless and until a contract is fully executed by the parties. However, all offers received by the Department will remain confidential until the evaluation process is complete.

O. The Department will not hold a public offer closing event.

L.8 OFFER SUBMISSION INSTRUCTIONS

L.8.1 Volume One – Contract Forms and Required Response Information

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

A. Section A, Solicitation, Offer and Award Form (with amendment(s) noted on this page or signed amendment(s) attached to this form);

B. Section B.1.3, Financial Rating;

C. Section G.1.5, Contractor's Project Manager;

D. Section G.3.D, Payments, remittance address (if not electing to receive direct deposit);

E. Section I.1, The name and address of the Respondent's insurance carrier(s), along with a statement of liability from the carrier(s) issuing the policies saying that such policies are available to the Respondent. For the purpose of responding to this RFO,

the Respondent will not be required to purchase insurance, but shall show the ability to provide such insurance as specified in Section I.1, Insurance Requirements, if the Respondent's Offer is selected.

F. Section H.63, a Redacted RFO / Contract response if applicable;

G. Exhibit J.3, completed if choosing direct deposit as a possible payment option;

H. Exhibit J.4 , completed W-9 form;

I. Section K (ALL), Representations, Certifications and Other Statements (on original forms); and,

J. Documentation from the appropriate state entity that indicates that the Respondent is properly certified to conduct business in the State of Texas (e.g., The Certificate of Existence from the Texas Secretary of State and the Certificate of Good Standing from the Texas Comptroller of Public Accounts) per Section K.6.1.

L.8.2 Volume Two – Information Section

A. Cover Page: List name and address of the Respondent, date of Offer, RFO identifier, and signature of authorized official.

B. Introduction: Clear expression of who is the Respondent for the Offer including an outline of organizational capabilities, goals, project management process approach, business process management design, other previous accolades, and a listing of all Subcontractors.

C. Information Sheet: Including all information required of the prime contractor (Respondent), and any subcontractors.

1. Name and address (including telephone number) of the Respondent and all subcontractors.

2. Business form of the Respondent and its subcontractors (e.g., corporation, partnership, etc.).

3. Date and state of incorporation.

4. Names and addresses of principal officers, directors, or partners.

5. A brief biography and resumes of key personnel who will be providing services in any resulting contract, both Respondent and subcontractor employees. These biographies should include the percentage of time each person will dedicate to any resulting contract. The Offer will include Key Project Personnel as follows:

    A. Demonstrated experience in providing the services requested in this RFO for each key project personnel.

    B. The Respondent shall identify a minimum of three (3) references.

    C. Organizational, biographical, and / or financial information for the Respondent and all third-party / subcontractors proposed to fulfill service requirements. This is in addition to requirement L.8.1.B.

D. Sufficient detail to clearly demonstrate the Respondent's compliance with all requirements, both technical and administrative, stated throughout this document. The Respondent is encouraged to provide a response narrative for each Section and Subsection in the format which requirements are presented. Supplemental justification and / or documentation can be provided as attachments. The Respondent shall ensure that all material submitted should be directly pertinent to the requirements of this RFO and will be formatted as to the specific requirement of the RFO Sections.

E. Section H.64 Electronic and Information Resources Accessibility Standards, as Required by 1 TAC Chapter 206 and 213. The Respondent shall provide documentation of compliance with the stated TAC Chapters.

F. The Respondent shall identify all exceptions it takes to the technical requirements stated in this RFO and all deviations from the RFO for which it requests approval. **For the purpose of facilitating discussions, for every instance where the Respondent does not propose to comply or agree to a requirement, the Respondent shall propose alternative section language, and describe its reasoning therefore.**

NOTE: It is not necessary to respond on a paragraph by paragraph basis except as required for clarity; for example, if the Respondent agrees to the terms of Sections D through I of the RFO in their entirety, a single statement to that effect will suffice.

L.8.3 Volume Three – HUB Subcontracting Plan

A. The Respondent shall provide a completed HSP as required per Section I.3 and Exhibit J.1

NOTE: Failure to submit the HUB Subcontracting Plan with the appropriate forms will subject the Respondent's Offer to rejection from further consideration.

L.8.4 Volume Four – Cost and Pricing Proposal

A. The Respondent shall provide updated pricing schedules in the exact format in which they are provided in Section B.2.

NOTE: The Respondent may offer alternate or additional services, but shall provide such offered services within the same format as detailed within Section B.2.

L.9 DISCUSSION AND CORRESPONDENCE

A. All communications and questions concerning this RFO, including any of a technical nature, will be made in writing only to:

Darren K. Roberson, Sr., CTPM, Contract Administrator
Texas Department of Public Safety
Procurement and Contract Services
5805 North Lamar Blvd., Bldg. A
Austin, Texas 78752
E-mail: darren.roberson@dps.texas.gov

B. Written responses to the questions will then be provided to all parties requesting copies of the RFO through the Department's Procurement and Contract Services Bureau, Major Contracts Branch.

C. The Respondent shall rely only on the written information provided in this manner.

D. All Respondents are specifically barred from making contact with any Department personnel involved in this RFO for the purpose of discussing their offers.

E. The Respondent may; however, seek clarifications of the RFO through the written process described above.

F. The Respondent is reminded that 12/30/2015 at 3:00 P.M. Central Time is the last day to submit written questions for clarification by the Department.

G. The Respondent is specifically cautioned against relying on any oral information.

H. The responsiveness of each Offer will be evaluated upon the written instructions provided by throughout this RFO and as described in Section M, Evaluation Criteria.

I. Unauthorized contacts with Department personnel by any Respondent may result in the Respondent's Offer being rejected in its entirety.

L.10 LEGISLATIVE BUDGET BOARD (LBB) POSTINGS

For major contracts, the Offer submitted by the awarded Respondent is subject to public access on the Legislative Budget Board's website in accordance with Texas Government Code, Section 322.020. Within five (5) business days of the awarded Respondent's receipt of the Contract for signature, the awarded Respondent shall deliver to the Department's Procurement and Contract Services Bureau one flash drive of its complete Offer, to include clarification responses and negotiated Best and Final Offer. The flash drive will contain a copy of the awarded Respondent's complete Offer, in searchable PDF format, which has been excised, blacked out, or otherwise redacted information that the awarded Respondent considers to be confidential and exempt from public disclosure under the Texas Public Information Act, Texas Government Code, Chapter 552. This should be a minimized portion, if any of the Respondent's Offer, such as copyrighted material, proprietary information, social security numbers, Deployment Plans, Staffing Plans, etc. The CD will also contain an appendix for the Respondent's complete Offer which provides a cross reference for the location of all information redacted by the Respondent and a general description of the redacted information. The flash drive will be entitled "For Public Release: Redacted Version of [Name of awarded Respondent's Offer and Exhibits, Department Solicitation Number 405-15-R032316]".

L.11 ANTICIPATED SCHEDULE OF EVENTS

The Department currently anticipates that the selection of successful Respondents and award of any contract resulting from this RFO will proceed according to the following schedule:

12/18/2015	RFO Posted to ESBD
12/30/2015	Last day to submit written questions for clarification to the Department
01/06/2015	Estimated date for Department to post Question and Answer (Q&A) document to ESBD
01/18/2016	Deadline for Department to receive Offers
01/22/2016	Anticipated date of Contract Award

The Department reserves the right, in its sole discretion, to change the above date(s). Notices of changes to items directly impacting the original RFO or Offer process will be posted on the Electronic State Business Daily (ESBD) located at: http://esbd.cpa.state.tx.us. The Respondent shall check the ESBD frequently for updates. The Respondent is solely responsible for verifying receipt of its questions, if applicable, and responding by the deadlines stated. A Respondent's failure to periodically check the ESBD for updates will in no way release the awarded Respondent from compliance with any requirements in posted "addenda or additional information" although such compliance may results in additional costs to meet the requirements.

Questions regarding this RFO will be in writing and will be submitted to the Department's Contract Administrator as specified in Section G.1.2, no later than November 05, 2015, 3:00 P.M., Central Time. Telephone inquiries will not be accepted. Questions may be submitted by either facsimile or e-mail. The Department intends to post answers to these questions on the ESBD on or before Friday, November 6, 2015 , 5:00 P.M., Central Time. The Respondent is solely responsible for verifying the Departments timely receipt of its questions by the stated deadlines.

L.12 PUBLIC INFORMATION

After award, information, documentation, and other material in connection with this RFO or any resulting contract may be subject to public disclosure pursuant to Texas Government Code, Chapter 522 (the "Public Information Act"). **Any part of an offer that is of a proprietary nature shall be clearly and prominently marked as such by the Respondent.**

SECTION M - EVALUATION FACTORS FOR AWARD

M.1 OVERALL RELATIVE IMPORTANCE OF EVALUATION CRITERIA

A. Selection of an Offer will be based on "Best Value" to the Department. The Department shall solely determine the "Best Value" through evaluation of each Offer.

B. A Contractor's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of Texas Government Code, Sections 2155.074 and 2155.75, 2156.007, 2157.003, and 2157.125. Respondents may fail this selection criteria for any of the following conditions: a) a score of less than 90% in the Vendor Performance System; b) currently under an action plan through the Texas Comptroller of Public Accounts (CPA); c) having repeated negative Vendor Performance Reports for the same reason; or d) having purchase orders that have been cancelled in the previous 12 months for non-performance (i.e., late delivery, etc.). Contractor performance information is located on the CPA website at:

http://www.window.state.tx.us/procurement/prog/vendor_performance/

The Department may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 Texas Administrative Code, § 20.108), the Department may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of the Department, and any negative findings, as determined by the Department, may result in non-award to the Respondent.

M.2 DETAILED EVALUATION CRITERIA

The following are evaluation criteria. While negotiations may be held, Respondents are advised to submit their most competitive cost and technical Offers.

M.2.1 Cost (40 points)

M.2.2 Technical Capabilities & Qualifications Requirements (60 points)

A. Qualifications, relative experience: 35 Point
B. Time Tracking System: 15 Points
C. References/Past Performance: 10 points

Total: 100 points

SOLICITATION, OFFER, AND AWARD

1. CONTRACT NO.	2. SOLICITATION NO.	3. TYPE OF SOLICITATION	4. DATE ISSUED
405-16-P006585	405-16-B001409	☐ SEALED BID (IFB) ☒ NEGOTIATED (RFO) ☐ NEGOTIATED (RFP)	April 15, 2016

EMERGENCY PREPAREDNESS STAFF AUGMENTATION

5. Sealed offers will be received by the Department until 3:00 P.M. local time on 01/18/2015 and submitted to the issuing office:	6. FOR INFORMATION CONTACT:
Texas Department of Public Safety Procurement and Contract Services Bureau 5805 North Lamar, Bldg. A, MC-0266 Austin, Texas 78752 Attention: 405-16-R032316	Darren K. Roberson, Sr., CTPM Contract Administrator PHONE: (512) 424-5239 E-MAIL: darren.roberson@dps.texas.gov

7. DISCOUNT FOR PROMPT PAYMENT:➔	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %
8. ACKNOWLEDGMENT OF AMENDMENTS: (The Respondent acknowledges receipt of amendments to this Request for Proposal and related documents numbered and dated:	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
	01	1/6/2016		
	02	1/6/2016		
9. NAME AND ADDRESS OF CONTRACTOR:➔ CTS Consolidated Telecom Services, LLC 204 Texas Avenue, Ste. A Round Rock, TX 78664	PO Box 210 Round Rock, TX 78680		10. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (*Type or Print*) Pamela Faver, President	
11. TELEPHONE NO. (Include area code) PH:512-279-5950 FAX:512-852-7886	12. SIGNATURE On File		13. OFFER DATE January 11, 2016	

TO BE COMPLETED AT TIME OF AWARD

Document Type: D
Statutory Cite: Texas Government Code, Section 2157.068
NOTE TO CONTRACTOR: The Department reserves the right, in its sole discretion, to modify this language prior to award.
This award document consummates the Contract which consists of the following documents: (a) this Offer and Award document; (b) the Department's solicitation, and solicitation amendments, such provisions, representations, certifications, specifications, and negotiated changes as hereby incorporated and attached to this award; and (c) the Contractor's Offer, points of clarification, responses to clarification request and/or best and final offer (BAFO), and negotiated changes as hereby incorporated and attached to this award.

Any inconsistency or conflict in the Contract documents will be resolved by giving precedence in the following order: this Offer and Award document; negotiated changes; BAFO; points of clarification; RFO as posted; and the Contractor's Offer.

This Contract shall consist of a Base Period from Date of Award through 08/31/16 with THREE (3) ONE (1) year optional renewal periods.

CTS Consolidated Telecom Services, LLC	Texas Department of Public Safety
By: Pam Faver	By: [signature]
Name: Pamela Faver	Name: Steven C. McCraw
Title: President	Title: Director
Date: 03/29/2016	Date: 4/15/16

OGC

The following items are mutually agreed to by the Contractor and the Department and are hereby incorporated into this Contract.

1. The Solicitation, Offer and Award form has been revised to update the Contract Number, remove the offer preparation instructions, and to add the Contractor's name in the Contractor signature block.

2. Section A, Definitions, has been revised as follows:

   - Delete definition of "Best and Final Offer (BAFO)";
   - Revise definition of "Contract" to include the awarded firm.
   - Revise definition of "Contractor" to include the awarded firm;
   - Add definition of "Long Distance Travel";
   - Delete definition of "May";
   - Delete definition of "Responsive Offer";
   - Delete definition of "Respondent";
   - Delete definition of "RFO"; and

3. Section B.1.2, Pricing Instructions, has been renumbered to read B.1.1 and has been revised to include contract language rather than solicitation language.

4. Section B.1.3, Financial Rating, has been renumbered to read B.1.2 and has been revised to include contract language rather than solicitation language.

5. Section B.2, Pricing Schedule, has been revised to include contract language rather than solicitation language and to incorporate the negotiated rates under this Contract.

6. Section B.2.1, Cost to the Department for Positions Itemized Below, has been revised to include contract language rather than solicitation language and to document negotiated pricing.

   - Table A, has been renamed, Base Year Pricing; and
   - Table B, has been renamed, Optional Renewal Period Pricing.

7. Section C, Statement of Work, has been revised throughout to include contract rather than solicitation language and to reflect negotiations of the Department and the Contractor.

8. Section C.2.5, References, has been deleted.

9. Section C.3, Criteria, has been deleted.

10. Section G.1.5, Contractor Project Manager, has been revised to include contact information for the Contractor's Project Manager.

11. Section H, Terms and Conditions, has been revised to delete solicitation language under the header title for Section H.

12. Section H.67, Notice Under Government Code 2261.252 has been added.

13. Section H.68, Notice Under Government Code 2252.908 has been added.

14. Section H 69, Notice Under Government Code 572.069 has been added.

15. Section I, Supplemental Terms and Conditions, has been revised to delete solicitation language under header title for Section I.

16. Section I.3, Historically Underutilized Business (HUB) Participated, has been revised to reflect contract language rather than solicitation language.

17. Exhibit J.1, Historically Underutilized Business Subcontracting Plan, is hereby incorporated into this Contract as completed by the Contractor.

18. Exhibit J.2, Application for Texas Identification Number, has been deleted as this document is on file with the Department.

19. Exhibit J.3. Direct Deposit Form, has been deleted as this document is on file with the Department.

20. Exhibit J.4, W-9 Form, has been deleted as this document is on file with the Department.

21. Exhibit J.5 References, has been deleted as this document is on file with the Department

22. Exhibit J.6 Experience, has been deleted as this document is on file with the Department.

23. Section K, Representations, Certifications, and Other Statements of Contractor, as issued by the Department has been deleted for purposes of this list of revisions; however, this Section, as completed by the Contractor, is part of the solicitation incorporated by reference into this Contract as described on page 1 of this Contract.

24. Section L and M of the solicitation as issued by the Department have been deleted for purposes of this list of revisions; however, these Sections are part of the solicitation incorporated by reference into this Contract as described on page 1 of this Contract.

25. Minor conforming and clarifications changes have been made throughout the document.

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SECTION A – DEFINITIONS

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

"Authorized Representative" means the person designated in writing to act for and on behalf of a party of this Contract; whose designation has been furnished to the other party as described in Section G.1.

"Base Period" means the Date of Award through August 31, 2016.

"Business Days" means Monday through Friday except for federal, state and legal holidays observed by the State of Texas. The terms "business days" and "working days" may be used interchangeably.

"Business Hours" means 8:00 a.m. to 5:00 p.m., Central Time

"Contract" means this Contract entered into by the Department and the Contractor, as noted on page 1 of this Contract. .

"Contract Administrator" means the representative of the Department's Procurement & Contract Services Bureau who is responsible for general administration of this Contract, negotiation of any changes and issuance of written changes/modifications of this Contract as referenced in Section G.2.

"Contract Monitor" means the employee within the Department who is responsible for the monitoring of this Contract as referenced in Section G.1.3.

"Contract Term" means the duration of this Contract as specified in Section F.2.

"Contractor" means CTS Consolidated Telecom Services, LLC.

"CPA" means the Texas Comptroller of Public Accounts.

"Date of Award" means the date this Contract is fully executed.

"Days" means calendar days unless otherwise specified.

"Department" means the Texas Department of Public Safety.

"Department Policies" means all written policies, procedures, standards, guidelines, directives, and manuals of the Public Safety Commission and the Department, applicable to providing the deliverables/services specified under this Contract.

"Event of Default" means any of the events or circumstances described in Section E.1.F.

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

"Historically Underutilized Business (HUB) means a business that is certified by the State of Texas that (1) is at least 51% owned by an Asian Pacific American, a Black American, a Hispanic American, a Native American, an American woman, or a Service Related Disabled Veteran, (2) is a for-profit entity that has not exceeded the size standards

prescribed by 34 TAC § 20.23, and has its principal place of business in Texas, and (3) has an owner residing in Texas who has a proportionate interest in the business and who actively participates in the control, operations and management of the entity's affairs. For further explanation, see the Texas Comptroller of Public Accounts HUB rule definitions at 34 TAC § 20.11.

"Hourly Rate" means hourly rates that are all inclusive of all amounts of all types except for Long Distance Travel.

"HUB Subcontracting Plan (HSP)" means the plan required by the Texas Government Code, Chapter 2161.

"IECGP" means Interoperable Emergency Communications Grant Program.

"Invoice" means Contractor's monthly billing for services rendered.

"Legislative Budget Board (LBB)" means a permanent joint committee of the Texas Legislature that develops budget and policy recommendations for legislative appropriations, completes fiscal analyses for proposed legislation, and conducts evaluations and reviews to improve the efficiency and performance of state and local operations.

"Local Non Travel Hourly Rate" means hourly rates that are all inclusive and do not involve travel, lodging or any other similar expenses of any kind.

"Long Distance Travel means travel with lodging, that is travel outside the assigned duty station territory, approved by the Department in writing in advance as falling within the "Long Distance Travel" provisions of this Contract.

"Mandatory" means required, compulsory or obligatory.

"Must" means required, compulsory or obligatory.

"Payment(s)" means the amount(s) agreed to be paid by the Department to the Contractor for services rendered under this Contract.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, court or other tribunal, or government or any agency or political subdivision thereof.

"Project Manager (PM)" means appointee, designee, or alternate designee as assigned by the Contractor and the Department as referenced in Section G.1.4 and G.1.5.

"PSBN LTE" means Public Safety Broadband Network Long Term Evolution.

"PSC" means the Public Safety Commission, the Department's governing body.

"PSCS" means Public Safety Communications Service.

"RCGP" means Regional Catastrophic Grant Program.

"Services" means the furnishing of labor, time, or effort by contractor, which may or may not involve the delivery of a specific end product other than reports.

"Shall" denotes the imperative, required, compulsory or obligatory.

"SHSP' means State Homeland Security Program.

"SLIGP" means State and Local Implementation Grant Program.

"SWIC" means Statewide Interoperability Coordinator.

'TxPSBP" means Texas Public Safety Broadband Program.

SECTION B - SERVICES AND PRICES/COSTS

B.1 SERVICE AND PRICING REQUIREMENTS

B.1.1 Pricing Instructions

The Contractor shall provide services on a no minimum, as needed, as requested by the Department basis. All hourly fees, travel and lodging expenses for the provision of services under this Contract are identified in Section B.2, Pricing Schedules. No other amounts shall be paid for any purpose. This Contract is non-exclusive and the Department may contract for these or similar services at any time in its sole discretion. No payments may be approved or made prior to the Department's written acceptance as provided by Section G.3.1 of this Contract.

A. The Pricing Schedules, Section B.2, are individually identified as firm fixed pricing throughout the term of this Contract and will be applicable to the services requested by the Department and received by the Department in compliance with this Contract. The Contractor shall adhere to the Pricing Schedules for each position

   The Department shall approve in writing in advance all Long Distance Travel and no other travel is paid other than as encompassed within the Local Non Travel Hourly Rates.

   All Long Distance Travel is subject to the then current State of Texas Travel Guidelines found at https://fmx.cpa.state.tx.us/fm/travel/travelrates.php.

B. The Contractor's sole compensation is reflected in the Pricing Schedules at time of execution of this Contract and these amounts shall remain firm throughout the term of this Contract, including any optional renewal periods.

B.1.2 Financial Rating

A. The Contractor shall provide information required by Section G.3.8 and any other financial information reasonably requested by the Department consistent with the services provided by the Contractor or otherwise required by the then applicable Department policies for similar contracts.

B.2 PRICING SCHEDULE

B.2.1 Cost to the Department for positions itemized below:

- A. The Contractor's sole compensation under this Contract is as provided in this Table A, Base Period Pricing, reflecting the negotiated hourly rates for Project Managers and Project Supervisors (date of award to 8/31/16).

Table A, Base Period Pricing

Position Title	Description of Duties	Hourly Rate
Project Manager	Includes, but not limited to, identifying, designing, and implementing the Texas statewide broadband strategy as part of the (TxPSBP), as well as assisting with the coordination and oversight of activities and assignments as it relates to interoperable communications. The Project Manager may also support the (SWIC) and when directed, will serve as a representative of the Department in meetings relating to (PSBN LTE) and interoperable communications.	$150.00
Project Manager	Includes, but not limited to, identifying, designing, and implementing the Texas statewide broadband strategy as part of the (TxPSBP), as well as assisting with the coordination and oversight of activities and assignments as it relates to interoperable communications. The Project Manager may also support the (SWIC) and when directed, will serve as a representative of the Department in meetings relating to (PSBN LTE) and interoperable communications.	$75.00

B. The Contractor's sole compensation under this Contract is as provided in this Table B, Optional Renewal Periods, reflecting the negotiated hourly rates for the optional renewal periods as shown below:

Table B, Optional Renewal Periods

Position Title	Hourly Rates			
	Base Year: Date of Award – 8/31/16	**1st Optional Renewal Period: 9/01/16 – 8/31/17**	**2nd Optional Renewal Period: 9/01/17 – 8/31/18**	**3rd Optional Renewal Period: 9/01/18 – 8/31/19**
Project Manager	Included	$150.00	$150.00	$150.00
Project Manager	Included	$75.00	$75.50	$75.00

SECTION C - STATEMENT OF WORK

C.1 INTRODUCTION

The Department and the Contractor enter into this Contract under which the Contractor provides contracted services on an as needed, as requested by the Department basis, for interoperable communications and public safety broadband plans and projects.

C.2 SCOPE

This Statement of Work includes identifying, designing, and implementing the Texas statewide broadband strategy as part of the Texas Public Safety Broadband Program (TxPSBP), as well as assisting with the coordination and oversight of activities and assignments as it relates to interoperable communications. The Project Manager(s) may also support the Texas Statewide Interoperability Coordinator (SWIC) and when directed, will serve as a representative of the Department in meetings relating to Public Safety Broadband Network Long Term Evolution (PSBN LTE) and interoperable communications. The scope of work for the Project Supervisor(s) will include duties as assigned, with focus on, but not to be limited to, planning and leading Strategic Advisory Groups, FirstNet data collection, as well as outreach and education in specific disciplinary areas including but not limited to fire, health care, and emergency management. The Project Supervisor(s) will assist with planning, development, outreach and education and implementation of communication focused annual meetings, conferences, workshops, and focus groups as part of (SLIGP). In addition, they may also support the SWIC with the coordination of events, meetings, and conferences as it pertains to the Department, as well as the PSBN LTE and interoperable communications.

C.2.1 Project Manager Requirements:

Throughout the project, the Contractor's Project Manager shall perform tasks during various stages of Contract and shall possess extensive knowledge, skills, ability, and practical experience in the following:

The Project Manager shall:

A. Have a minimum of five (5) years of project management experience related to strategic planning and enhancing interoperable communications, of which at least one (1) year must be specifically related to PSBN LTE project management;
B. Have a minimum of five (5) years of business process development and optimization experience;
C. Develop and implement major components of the Texas PSBN LTE strategic plan to include governance, planning, support, and outreach and education to stakeholder groups;
D. Support the Texas Statewide Interoperability Coordinator (SWIC) by planning and executing advisory committee conference calls and preparing conference call agendas;
E. Coordinate with key stakeholders and federal partners to track and document meeting action items;
F. Work with major federal communications offices and programs to conduct public safety communications and broadband research and outreach;

G. Possess the ability to develop and implement meeting agendas and be familiar with the common terminology used relating to PSBN LTE;
H. Have proven experience working on state and local land mobile radio communications projects;
I. Be experienced in outreach and education to first responders;
J. Be experienced leading groups to achieve objectives and produce deliverables;
K. Be experienced working with contact management software;
L. Travel as needed to perform required duties; and
M. Be able to pass a Department background investigation

C.2.2 Project Supervisor:

The Contractor's Project Supervisor shall provide services during various stages of this Contract and shall possess knowledge, skills, ability, and practical experience in the following, :

A. Demonstrate knowledge and experience of federal grants by maintaining familiarity with federal and state grant regulations, terms, and conditions; including but not limited to the State Homeland Security Program (SHSP), Interoperable Emergency Communications Grant Program (IECGP), and Regional Catastrophic Grant Program (RCGP);
B. Assist with maintaining backup documentation of grant expenditures in electronic formats;
C. Assist in tracking and identifying match requirements as required by specific grants;
D. Travel as needed to perform required duties;
E. Submit required paperwork for purchase approvals and service contracts within the specified time frame of the project;
F. Communicate and work with a wide range of personnel from the Department workforce, other agencies, and vendors;
G. Have a minimum of two (2) years demonstrated grant experience specifically related to communications interoperability and PSBN LTE;
H. Be experienced working with contact management software;
I. Be experienced leading groups to achieve objectives and produce deliverables;
J. Be experienced in outreach and education to first responders;
K. Have knowledge of public safety communications and of the Department, Law Enforcement Support Division, Public Safety Communications Service program and functions;
L. Be able to pass a Department employment background investigation

C.2.3. Time Tracking System

The Contractor shall maintain an automated, web-based timesheet management system to manage and track time worked and to allow the Department to electronically receive timesheets for review and approval. The Contractor's system shall allow the Department to log in with a password to review and approve timesheets.

C.2.4. Resumes

The Contractor has provided for key personnel that will be assigned to this Contract, and shall provide for future key personnel, detailed resumes the Contractor plans to assign to this Contract. Resumes will include but not be limited to: project management experience, supervisory experience, business process experience, application languages, hardware installation abilities, software upgrade experience, programming skills/abilities, and data formats for each qualifying project.

1) Name;
2) Title (current);
3) Education;
4) Experience related to projects the staff member was directly involved in;
a) Project(s) Scope;
b) Role;
c) Related specific technical qualification experience;
d) Start and completion dates (shall include MM/DD/YYYY); and
e) Specific work to be performed and/or deliverables to be provided under this Contract.

SECTION D –REPORTS AND DATA

D.1 CONTRACT COMPLIANCE REPORTS REQUIRED FROM CONTRACTOR

The Contractor shall submit the following reports and documents in the table below during the course of this Contract. These reports and documents may be revised or additional reports may be required at the Department's sole discretion.

FREQUENCY	DUE DATE	REPORT ITEM	AUTHORITY
Monthly	5th business day to Contract Administrator	HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report	Contract, Section I.3, Exhibit J.1
Monthly	1st business day of each month to apinvoices@dps.texas.gov; lisa.salathia@dps.texas.gov; jasmine.robinson@dps.texas.gov and a copy mailed to the TXDPS – Accounts Payable	Invoices	Contract, Section G.2
Annual	Prior to Execution of Contract and again within one-hundred twenty (120) calendar days after the end of Contractor's fiscal year	Financial Ratings Reports	Contract, Section G.3.8.A
Other	Prior to Execution of Contract and upon renewal or replacement	Insurance Requirements	Contract, Section I.1

SECTION E - INSPECTION AND ACCEPTANCE

E.1 INSPECTION OF SERVICES

A. Acceptance criteria for all deliverables under this Contract may be found in Section C.

B. The Department has the right to inspect and validate all products, services and deliverables called for by this Contract, to the extent practicable at all times and places during this Contract. The Department shall perform inspections in a manner that will not unduly interfere with the Contractor's performances of this Contract. The Contractor shall furnish, and shall require subcontractors to furnish, at no increase in this Contract's price, all reasonable assistance for the safe and convenient performance of these duties.

C. If any deliverables do not conform to this Contract's requirements, the Department shall require the Contractor to perform the deliverables or services again in conformity with this Contract's requirements, at no increase in this Contract's amount, in addition to all other legal and equitable remedies.

D. The Department shall, subject to limitations provided by law with respect to rights of privacy, have the right to reasonably prompt access and to examine all records of the Contractor, including financial records, maintenance records, employee records including time, and attendance records generated by the Contractor and its subcontractors in connection with performance of this Contract.

E. If subject to the outcome of an audit, it is determined that the Contractor is in non-compliance with any provisions of this Contract and/or that money is owed to the Department by the Contractor, then the Department shall exercise its rights of recovery of money owed as authorized in Section G.3 of this Contract.

F. If any services are non-compliant with this Contract's requirements, the Contractor will be notified describing specific areas of non-compliance. The Contractor shall have a ten (10) calendar day period to file a written response detailing corrective action taken to all such items of non-compliance. The response will include supporting documentation. Unless otherwise specified, or previously agreed to by the Department, the submission of a corrective action plan will not be accepted as corrective action. For all items of non-compliance satisfactorily resolved by agreement between the Contractor and the Department, no further action regarding such items will be taken. If an item of non-compliance cannot be resolved between the Contractor and the Department, and such item remains uncorrected for a period of ten (10) calendar days or longer after written notification to the Contractor, then such item will be declared to be an Event of Default.

E.2 INSPECTION BY STATE EMPLOYEES

A. The Contractor shall provide and maintain all documentation pertaining to quality of the services, acceptance of deliverables, and all reports necessary as per the terms of this Contract, in a manner acceptable to the Department for the deliverables provided under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Department during this Contract's performance and for a period of four (4) years after the termination of this Contract.

B. The Contractor shall provide entry at all times to the Department, the Public Safety Commission any authorized employee/agent for inspections and other official purposes. The Governor, members of the Legislature and all other members of the Executive and Judicial Departments of the State, as well as any other persons designated by the Department including Office of the Inspector General, will be admitted to monitor the delivery of deliverables.

E.3 MONITORING CRITERIA

A. The Department shall devise its own procedures for monitoring the quality of the Contractor's performance under this Contract, and the Department's Policies.

B. The Contractor shall cooperate fully with the Department in obtaining the requisite information needed to complete such audits and to assess the quality of the Contractor's performance.

C. Monitoring may include, but is not limited to, document reviews and on-site audits conducted by the Department. Such monitoring by the Department will not relieve the Contractor of any of its obligations under this Contract.

D. The Contract Monitor and other Department staff shall provide written findings regarding non-compliant conditions, processes, procedures and observations that could, if not addressed by the Contractor, become an item of non-compliance as described in Section E.1, Inspection of Services.

SECTION F - DELIVERIES OR PERFORMANCE PERIOD

F.1 CONTRACT TERM

This Contract will consist of a Base Period from Date of Award through 08/31/16.

This Contract may also be extended as per Section H.16, Option to Extend Service

The terms, conditions, and rates for all extensions will remain as stated in this Contract. The continuation of this Contract for any period of time is subject to the availability of federal and any other applicable funding.

This Contract may be renewed for three (3) one (1) year optional renewal periods.

SECTION G - CONTRACT ADMINISTRATION DATA

G.1 AUTHORITY – AUTHORIZED REPRESENTATIVE, CONTRACT ADMINISTRATOR, CONTRACT MONITOR

G.1.1 Authorized Representative

A. In reference to the Contractor, it's President or any Vice President shall designate the Authorized Representative in writing. The designation of the Contractor's initial Authorized Representative will be delivered to the Department no later than the effective date of this Contract. The Contractor's Authorized Representative may designate other persons to assist such Authorized Representative in the performance of certain obligations required by this Contract.

B. The Director is hereby designated as the Department's Authorized Representative.

The Director has established designee authority on his behalf for matters requiring signature approval of the Authorized Representative. The Department's Authorized Representatives may designate other persons to assist such Authorized Representatives in the performance of certain obligations of this Contract.

C. Any party may designate any person as its Authorized Representative, at any time, by delivering to the other party a written designation signed, if on behalf of Contractor by its President or any Vice President, or if on behalf of the Department by the Director. Such designations will remain effective until new written instruments are filed with or such notice is given to the other party that such designations have been revoked.

D. The Department's Authorized Representative or his designated Representative is

The only person authorized to make or approve changes in any Contract requirements, and notwithstanding any clauses contained elsewhere in this Contract, the said authority remains solely with the Director or his designated Representative. In the event Contractor makes any change at the direction of any person other than the Director or his designated Representative, the change will be considered to have been made without authority and no adjustment will be made in this Contract price to cover any increase in cost incurred as a result thereof.

G.1.2 Department Contract Administrator

A. The Contract Administrator for administration of this Contract is Darren K. Roberson, Sr.

B. The telephone number for the Contract Monitor is 512-424-5239

C. The e-mail address is darren.roberson@dps.texas.gov

The Contract Administrator is responsible for general administration of this Contract, negotiation of any changes and issuance of written changes/modifications to this Contract.

G.1.3 Department Contract Monitor

A. The Contract Monitor for this Contract is Benjamin "Eddie" Wilson

B. The telephone number for the Contract Monitor is 512-424-2689

C. The e-mail address is benjamin.wilson@dps.texas.gov

The Contract Monitor is not authorized to make any representations or commitments of any kind on behalf of the Director of the Department or the State of Texas.

The Contract Monitor does not have the authority to alter the Contractor's obligations or to change this Contract's specifications, price, terms or conditions.

If, as a result of technical discussions, it is desirable to modify this Contract, changes will be issued in writing in a contract modification and signed by the Department's Authorized Representative or his designee.

G.1.4 Department Project Manager

A. The Project Manager for this Contract is Karla Jurrens

B. The telephone number for the Project Manager is 512-424-2104

C. The e-mail address is karla.jurrens@dps.texas.gov

The Department Project Manager for this Contract who shall be responsible for the overall management and coordination of this Contract and shall act as the central point of contact for the Department. The Project Manager shall have full authority to act for the Department in the performance of this Contract. The Project Manager or a designated representative shall meet with the Contractor Project Manager to discuss problems as they occur.

G.1.5 Contractor Project Manager

A. The Contractor Project Manager for this Contract is: Pamela Faver

B. Contractor Project Manager Telephone number is: 512-279-5950

C. The e-mail address is: pfaver411@ccc.com

The Contractor shall provide a Project Manager for this Contract who shall be responsible for the overall management and coordination of this Contract and shall act as the central point of contact with the State. The Contractor Project Manager shall report to the Department Project Manager or their designee. The Contractor Project Manager shall have full authority to act for the Contractor in the performance of this Contract. The Contractor Project Manager or a designated representative shall meet with the Contract Monitor and Department Project Manager to discuss problems as they occur. The Contractor Project Manager or designated representative shall respond within three (3) working days after notification of the existence of a problem.

G.2 INVOICE REQUIREMENTS

The Department shall pay the Contractor on the basis of itemized invoices submitted to and approved by the Department, showing the actual deliverables provided and the attendant charge. Itemized invoices will clearly identify the project phase or title, deliverables delivered, the number of hours that each allocated employee worked, and the date range of work performance for this associated charge.

A. The Contractor's Invoice will include the following:

1. This Contract number;
2. Remittance Address; and
3. Prompt Payment Discount (the Contractor may offer a prompt payment discount, i.e., 1%, fifteen (15) days (refer to page 1, block 7 of this Contract) if the Contractor desires expedited Payment).

B. An invoice copy will be sent electronically to apinvoices@dps.texas.gov; lisa.salathia@dps.texas.gov and jasmine.robinson@dps.texas.gov. An original, hard-copy invoice, if required by the Contractor, shall be submitted to the office designated below:

TXDPS - Accounts Payable
P.O. Box 4087
Austin, Texas 78773

The State will not incur any penalty for late payment if the invoice was not delivered to the appropriate address identified herein.

G.3 PAYMENTS

A. It is recommended that the Contractor receive Payments via Electronic Funds Transfer (EFT), also known as Direct Deposit. If the Contractor elects to be set up for Direct Deposit Payment, the Contractor Direct Deposit authorization form may be obtained from the Department Contract Administrator. Upon the effective date of this Contract award, the Contractor shall submit a completed authorization form.

B. Regardless as to whether Direct Deposit is chosen, the Contractor will submit a completed Contractor Direct Deposit/Advance Payment Notification Authorization (Exhibit J.3) and Substitute W-9 Form (Exhibit J.4) to the following address:

TXDPS - Accounts Payable
P.O. Box 4087
Austin, Texas 78773
Attention: Mary Hamilton

Reference: Contractor Set-up for RFO 405-15-R032316

C. Notes: Contact (Darren Roberson when completed at 512-424-5239 or darren.roberson@dps.texas.gov.) If the Contractor has previously submitted a

completed Contractor Direct Deposit/Advance Payment Notification Authorization and Substitute W-9 Form to the Department for another separate contract, another form is not required to be submitted. However, the Contractor is required to provide their eleven (11) digit Texas Identification Number (TINS) previously provided to Contractor by the Texas Comptroller of Public Accounts.

TINS: _____

D. In the event the Contractor elects to decline Direct Deposit on the Contractor Direct Deposit/Advance Payment Notification Authorization and Substitute W-9 Form, the payment will be mailed to the following remittance address:

_____

_____

G.3.1 Billing and Payment

A. The Texas Government Code, Chapter 2251 (the "Prompt Payment Act") will govern payment and accrual of interest on any overdue payments.

B. Timesheets: Notwithstanding anything else to the contrary in this Contract, the Department will not make any payments of any amount to the Contractor or any other entity or person, and the Contractor will not submit any invoices, until the Contractor has received from the Department a confirmation by the Department's Contract Monitor specifically stating the Department accepts the work and has reviewed all elements of the current project, referred to on the monthly reports. Once confirmed, the Contractor is authorized to submit an invoice.

C. If the Department, for any reason, including lack of supporting documentation, disputes any items in any invoices submitted by the Contractor, the Department shall place a hold on the disputed items and pay the remaining amount of the invoice. The Department shall timely notify the Contractor of the dispute and request clarification and/or remedial action.

D. If the dispute is resolved in the Contractor's favor, the Department shall pay the remaining portion of the original invoice in accordance with the Prompt Payment Act. If the dispute is resolved in the Department's favor, the Contractor shall resubmit an invoice reflecting all corrections.

G.3.2 Payment Adjustment

A. The Department may elect to deduct from the Contractor Payment as specified in Section G.3.4, Deductions for Unacceptable Compliance and Section G.3.5, Withholding of Payment, any amount specified in or any money determined to be due as specified in Section E.1.E.

B. If it is determined that the remaining amount of the Contractor Payment is not adequate to cover the money determined to be due to the Department, then all remaining Contractor Payment will be withheld and an invoice issued to the Contractor for the remaining amount due.

C. The Contractor shall pay the invoiced amount within thirty (30) calendar days of receipt unless the Contractor and the Department mutually agree on an alternative payment method.

G.3.3 Late Payment

Any amount owed to the Contractor more than one (1) day beyond the date such amount is due as described in Section G.3 hereof will accrue interest each day that such amount is not paid at the rate specified by Texas Government Code, §2251.025, provided, however, that this provision will not excuse failure by the Department to make payment in strict accordance with this Contract.

G.3.4 Deductions for Unacceptable Compliance

A. The Contractor's failure to meet Compliance Standards will result in a deduction to the invoice Contractor payment.
B. Non-compliance could result in the Department Purchasing Program services for another entity and deducting the cost from the invoice payment.

G.3.5 Withholding of Payment

A. The Department shall have the right to withhold the Contractor Payment until the failures described below have been corrected.

1. Failure to submit reports required in Section D.1 Contract Compliance Reports required from Contractor;
2. Failure to respond to audit reports; and
3. Failure to correct identified areas of non-compliance to the satisfaction of the Department within ten (10) days upon receipt of written notification.

B. The Department will not pay interest to the Contractor for monies so withheld.

C. The Contractor Payment withheld will be released upon the Department's satisfaction that compliance has been achieved for thirty (30) consecutive days.

D. In the event that money is due to the Department for the Contractor's failure to provide adequate maintenance or replacement of the property as required in this Contract, the amount required for the Department to correct deficiencies and replace property will be withheld from the final Payment.

E. With the exception of disputed issues, such withholding of final Payment by the Department will not exceed one-hundred twenty (120) calendar days from date of this Contract's termination.

G.3.6 Payment of Debt Owed to the State of Texas

As required by Texas Government Code, Section 2252.903, payments due under this Contract will be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support, until the debt is paid in full. The Contractor shall comply with rules adopted by the Department under Texas Government Code, Sections 403.055, 403.0551, 2252.903, and

other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

G.3.7 Right to Offset

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

G.3.8 Annual Financial Rating Reports

A. The Contractor shall submit to the Contract Administrator financial rating information acceptable to the Department as described in Section B.1.2 within one hundred twenty (120) calendar days after the end of the Contractor's fiscal year.

B. In the disclosure of its financial affairs, the Contractor shall allow the Department or its representative's access to all its corporate books relative to the services provided hereunder, to cooperate in any audits thereof.

C. Notwithstanding anything else in this Section G.3.8 or any other provision of this Contract to the contrary, the Contractor shall fully cooperate with state and federal representatives in audits of the Contractor's performance and receipt of funds under this Contract or applicable law, including, but not limited to, the audits described in Section H of this Contract.

SECTION H – TERMS AND CONDITIONS

Subcontractors shall also comply with these provisions.

H.1 AVAILABILITY OF FUNDS FOR NEXT FISCAL YEAR AND LEGISLATIVE ACTIONS

A. The Department is a state agency whose authority is subject to the actions of the Texas Legislature and the United States Congress. All obligations of the Department are subject to the availability of legislative appropriations or, if applicable, the availability of federal funds applicable to this Contract. The Contractor acknowledges that the ability of the Department to make payments under this Contract is contingent upon the availability of funds. The Contractor further acknowledges that funds may not be specifically appropriated for this Contract and the Departments continual ability to make payments under this Contract is contingent upon the funding levels appropriated to the Department.

B. The Department may immediately terminate this Contract, in whole or in part, without penalty to, or any liability whatsoever on the part of the Department, the State of Texas, and the United States if the Department and/or the subject matter of this Contract become subject to a legislative or regulatory change or the revocation of statutory or regulatory authority that would render the deliverables to be provided under this Contract impossible, unnecessary, void, or substantially amended or that would terminate the appropriations for this Contract. The Department is not required to provide thirty (30) calendar days written notice as termination under this section is immediate.

C. The Department is a state agency receiving grant funding from State or Federal Grantor sources. The Department may immediately terminate this Contract, in whole or in part, without penalty to, or any liability whatsoever on the part of the Department, the State of Texas, and the United States if the State or Federal Grantor terminates or reduces the funding necessary for performance of this Contract The Department is not required to provide thirty (30) calendar days written notice as termination under this section is immediate.

D. The Department may, upon thirty (30) calendar days written notice to Contractor, reduce the deliverables in such manner and for such periods of time as the Department may elect if funding or appropriations for this Contract are reduced by law, the statutory amount of compensation authorized for the Contractor is reduced by law, or the Legislative Budget Board requests the Department to reduce the Department budget by a certain percentage.

H.2 NEWS RELEASES, ADVERTISEMENTS, AND PUBLICITY

A. The Contractor will not make any news releases, public announcements or public disclosures, nor will it have any conversations with representatives of the news media, pertaining to this Contract, without the express, prior written approval of the Department, and then only in accordance with explicit written instructions from the Department.

B. The Contractor will not use the name of the State of Texas or the Department in any advertisement, promotion or otherwise for any purpose regarding this Contract without

the express prior written consent of the Department. The Department is not authorized to provide endorsements.

1. Notwithstanding the foregoing, the Contractor may make any disclosure required by law or regulation without the approval of the Department.

H.3 FURTHER OPPORTUNITY TO CURE

A. If an Event of Default of the type specified in Section H.4.1 occurs and if the Contractor reasonably believes that such Event of Default cannot be cured within the ten (10) business days allowed in Section E.1.F but that such Event of Default can be cured through a diligent, on-going, and conscientious effort on the part of the Contractor, within a reasonable period not to exceed three (3) months, then the Contractor may, within the ten (10) calendar day cure period, submit a detailed plan for curing the Event of Default to the Department.

B. The Department shall promptly review Contractor's plan for curing an Event of Default and at its discretion, may allow, or not allow, the Contractor to pursue such plan of cure.

C. The Department's decision will be communicated in writing to the Contractor.

D. The Department will not exercise its remedies thereunder with respect to such Event of Default while the Contractor diligently, conscientiously, and timely undertakes to cure the Event of Default in accordance with the approved plan.

E. The ten (10) calendar day time period will be tolled during the time the request was pending, if the Department does not allow the Contractor an extension of the cure period.

H.4 TERMINATION

This Contract may be terminated or cancelled in any of the following circumstances:

H.4.1 Termination by Default

The Department shall notify the Contractor in writing of any failure or default if the Contractor fails to carry out or comply with any requirements of this Contract (including but not limited to any statement, representation or warranty in this Contract that is false, misleading, or erroneous in any material respect). The Department's notification will demand that the failure or default be remedied within ten (10) calendar days. The Department shall have the right to cancel this Contract upon ten (10) calendar days from written notice if the Contractor fails to remedy such failure or default within the ten (10) calendar day period.

H.4.2 Termination for Unavailability of Funds

This Contract may be terminated as provided in Section H.1 herein entitled "Availability of Funds for Next Fiscal Year and Legislative Actions." The Parties understand and agree that the obligations of the Department under this Contract are contingent upon the availability of funds to meet the Department's liabilities hereunder. The Department may immediately terminate this Contract without penalty to or any liability whatsoever on the part of the Department, the State of Texas, and the United States, if these funds become unavailable to the Department.

H.4.3 Termination for Convenience

This Contract may be terminated, without penalty, by the Department, without cause by giving thirty (30) calendar days written notice of such termination to the Contractor.

H.4.4 Termination by Mutual Agreement

This Contract may be terminated upon mutual written agreement.

H.4.5 Termination for Cause

This Contract may be terminated by the Department if the Contractor fails to perform as agreed or is otherwise in default, without the necessity of complying with the requirements in Section H.4.1 herein entitled "Termination by Default." The Department shall provide the Contractor with written notice to terminate this Contract, which termination will become effective immediately upon the Contractor's receipt of the notice.

H.4.6 Termination for Listing on Federal Excluded Party List, the Terrorism List (Executive Order 13224) or on the State of Texas Debarred Contractor List

The Department shall have the absolute right to terminate this Contract without recourse as follows: a) if the Contractor becomes listed on the prohibited Contractor list authorized by Executive Order #13224 "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of Treasury, Office of Foreign Assets Control; or b) if the Contractor becomes suspended or debarred from doing business with the federal government as listed in the System for Award Management ("SAM") maintained by the General Services Administration; or c) if the Contractor becomes listed on the State of Texas Debarred Vendor List. The Department shall provide the Contractor with written notice to terminate this Contract, which termination shall become effective immediately upon the Contractor's receipt of the notice.

H.4.7 General Termination Provisions

A. The termination of this Contract, under any circumstances whatsoever, will not affect or relieve the Contractor from any obligation or liability that may have been incurred pursuant to this Contract, and such cancellation by the Department will not limit any other right or remedy available to the Department at law or in equity.

B. This Contract does not grant the Contractor a franchise or any other vested property right. The Department reserves the right, in its sole discretion, to solicit or contract with other contractors for similar services and deliverables under this Contract at any time. Except as expressly authorized by the Department under this Contract during the term of this Contract, the Contractor's provision of self-service or other services deliverables under this Contract is not exclusive. In all events, no minimum number of applications is guaranteed. In all events, no minimum amount of compensation is guaranteed.

C. The Department will not be considered in default or breach of this Contract, nor will it give rise to any liability whatsoever on the part of the Department whether such claims of the Contractor are for compensation of anticipated profits, unabsorbed overhead, interest on borrowing, or for any other reason in the event of termination hereunder.

D. The Contractor shall, unless mutually agreed upon in writing, cease all work immediately upon the effective date of termination. The Department shall be liable for payments limited only to the portion of the work the Department authorized in writing and which the Contractor has completed, delivered to the Department, and which been accepted by the Department. All such work will have been completed, per this Contract's requirements, prior to the effective date of termination.

E. The Contractor shall deliver to the Department all completed, or partially completed work and any and all documentation or other products and results of these services no later than the first calendar day after the termination of this Contract, or at the Department's request. Failure to timely deliver such work or any and all documentation or other products and results of the services will be considered a material breach of this Contract. The Contractor will not make or retain any copies of the work or any and all documentation or other products and results of the services without the prior written consent of the Department.

F. The Department reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to the Department under this Contract or under applicable law, including, but not limited to, attorneys' fees and court costs, if termination is at the Contractor's request or if termination is for cause. This right is in addition to any other remedies available to the Department under this Contract or applicable law. The Department reserves the right to pursue any and all applicable rights and remedies if this Contract is terminated for any reason and the Department expressly waives no such rights or remedies.

G. The Department 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 Contractor if the Contractor defaults on this Contract. The Department will not consider the defaulting Contractor in the re-solicitation and the Department may not consider the defaulting Contractor in future solicitations for the same type of work, unless the specification or scope of work significantly changes. The Department will determine the period of suspension based on the seriousness of the default.

H. The Department and the State of Texas will not be liable to the Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination if this Contract is terminated for any reason. However, the Contractor may be entitled to the remedies provided in Texas Government Code, Chapter 2260.

H.5 DISPUTE RESOLUTION

A. Any dispute arising under this Contract, which is not disposed of by mutual agreement between the Department and the Contractor will be resolved as follows:

1. The dispute resolution process provided for in Texas Government Code, Chapter 2260, shall be used, as further described herein, by the Contractor to attempt to resolve all disputes or contract claims arising under this Contract.

2. The Contractor's claim for breach of this Contract that the parties cannot resolve in the ordinary course of business will be submitted to the negotiation process provided in Texas Government Code, Chapter 2260, Subchapter B.

3. The Contractor shall initiate the process by submitting written notice, as required by Subchapter B, to the Procurement and Contract Services Director or designee, at 5805 North Lamar Blvd, Bldg. A, Austin, Texas 78752.

4. Said notice will specifically state that the provisions of the Texas Government Code, Chapter 2260, Subchapter B, are being invoked, and will also be given to all other representatives of the Department and the Contractor otherwise entitled to notice under this Contract.

5. Compliance by the Contractor with the Texas Government Code, Chapter 2260, Subchapter B, is a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C.

6. The contested case process provided in Texas Government Code, Chapter 2260, Subchapter C, is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of this Contract by the Department if the parties are unable to resolve a dispute under this subparagraph (A).

7. Compliance with the contested case process provided in the Texas Government Code, Chapter 2260, Subchapter C, is a condition precedent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code.

8. Neither the execution of this Contract by the Department nor any other conduct of any representative of the Department related to this Contract will be considered a waiver of sovereign immunity to suit.

B. In addition to complying with Texas Government Code, Chapter 2260, the Contractor shall comply with the Department administrative rules published in the Texas Administrative Code, Title 37, Public Safety and Corrections, Part I, Texas Department of Public Safety, Chapter 34, Negotiation and Mediation of Certain Contract Disputes.

C. The Contractor shall continue providing the deliverables as directed, in a diligent manner and without delay, and shall conform to Department directives, decisions, or orders, be governed by all applicable provisions of this Contract, unless directed otherwise in writing by the Department at all times during the course of the dispute resolution process. The Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

H.6 INDEMNIFICATION

H.6.1 Acts or Omissions

CONTRACTOR SHALL DEFEND INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE DEPARTMENT, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THIS

CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THIS CONTRACT. THE DEFENSE WILL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND THE CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. THE CONTRACTOR AND THE DEPARTMENT SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

H.6.2 Infringements

A. CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE DEPARTMENT, 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 THE CONTRACTOR PURSUANT TO THIS CONTRACT. THE CONTRACTOR AND THE DEPARTMENT SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. THE CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE WILL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

B. THE CONTRACTOR 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 MODIFICATIONS MADE TO THE PRODUCT WITHOUT CONTRACTOR'S WRITTEN APPROVAL, (III) ANY MODIFICATIONS MADE TO THE PRODUCT BY THE CONTRACTOR PURSUANT TO THE DEPARTMENT'S SPECIFIC INSTRUCTIONS, (IV) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO THE DEPARTMENT, OR (V) ANY USE OF THE PRODUCT OR SERVICE BY THE DEPARTMENT THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT.

C. IF THE CONTRACTOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR THE DEPARTMENT PROVIDES THE CONTRACTOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, THE CONTRACTOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST THE DEPARTMENT, SHALL), AT THE CONTRACTOR'S SOLE OPTION AND EXPENSE; (I) PROCURE FOR THE DEPARTMENT 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 THE DEPARTMENT'S USE IS NON-INFRINGING.

H.6.3 Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

A. **THE CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF THE CONTRACTOR'S AND THE CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES UNDER THIS CONTRACT. THE CONTRACTOR SHALL COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE DEPARTMENT AND/OR THE STATE WILL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY.**

B. **THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE DEPARTMENT, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE WILL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND THE CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. THE CONTRACTOR AND THE DEPARTMENT SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

H.7 NO WAIVER OF DEFENSES

Nothing in this Contract will be construed as a waiver of the state's sovereign immunity. This Contract will not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Contract or under applicable law will not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or to be considered as a basis for estoppel. The Department does not waiver any privileges, rights, defenses, or immunities available to the Department by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

H.8 INDEPENDENT CONTRACTOR

The Contractor and its employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under this Contract. The Contractor and its employees, representatives, agents and any subcontractors will not be employees of the Department. Should the Contractor subcontract any of the services provided under this Contract, the Contractor expressly understands and acknowledges that in entering into such subcontracts, the Department is in no manner liable to any subcontractor(s) of the Contractor. In no event will this provision relieve the Contractor of

the responsibility for ensuring the services rendered under all subcontracts are rendered in compliance with this Contract.

H.9 APPLICABLE LAW; VENUE

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

H.10 ASSIGNMENT

The Contractor will not assign or transfer any interest in or duty under this Contract without the express, prior written consent of the Department at its sole discretion. An attempted assignment in violation of this clause is null and void. Any approved assignment will not relieve the assignor of any liability or obligation under this Contract.

H.11 MAINTENANCE OF CORPORATE EXISTENCE AND BUSINESS

A. The Contractor, if incorporated, shall at all times maintain its corporate existence and authority to transact business and be in good standing in its jurisdiction of incorporation and the State of Texas.

B. The Contractor shall maintain all licenses, permits and franchises necessary for its businesses where the failure to so maintain may have a material adverse effect on the Contractor's ability to perform its obligations under this Contract.

H.12 APPROVAL OF CONTRACT

This Contract is subject to written approval of the Department Director or the Director's designated representative and will not be binding until so approved.

H.13 NON-DISCRIMINATION

A. In the performance of this Contract, the Contractor warrants that it will not discriminate against any person, employee, subcontractor, participant or provider on the basis of race, color, disability or perceived disability, religion, sex, sexual orientation, national origin, creed, political belief, genetic information, or age, and in accordance with the following:

B. The Contractor will not discriminate against employees, subcontractors, participants or providers who have or are perceived to have a disability because of AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. The Contractor shall post notices setting forth the provisions of this non-discrimination clause in conspicuous places, available to employees and applicants for employment.

C. The Contractor shall state that it is an equal opportunity employer in all solicitations or advertisements for employees and/or the purchase of services, provided however, that notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for the purpose of meeting this requirement.

D. The Contractor shall include the provisions of the foregoing paragraphs in every subcontract so that such provisions will be binding upon each subcontractor or the Contractor.

E. Contractor represents and warrants that it shall comply with the requirements of the Americans with Disabilities Act (ADA).

H.14 AMENDMENTS

Except as provided in Sections H.15 and H.16 of this Contract, this Contract may be amended only upon written agreement between the Department and Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas will be void ab initio.

H.15 OPTION TO EXTEND THE TERM OF THE CONTRACT

A. The Department may, at its sole discretion, extend the term of this Contract by written Contract modification to the Contractor prior to this Contract's expiration.

B. The preliminary notice does not commit the Department to an extension.

C. If the Department exercises this option, the extended Contract will be considered to include this option provision.

H.16 OPTION TO EXTEND SERVICES

A. The Department may require continued performance of any services within the limits and at the rates specified in this Contract.

B. The Department reserves the right to extend this Contract for a ninety (90) calendar day period at the end of this Contract and/or extension period for the purpose of re-advertising the service, awarding a new Contract, and transitioning into a new Contract.

C. This option provision may be exercised more than once, but the total extension of performance hereunder will not exceed six (6) months.

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

H.17 SEVERABILITY

In the event that any provision of this Contract is held invalid, void, unenforceable or illegal in any respect by a final order/judgment of the State Office of Administrative Hearings or a court of competent jurisdiction, then the remaining terms, provisions, covenants, and conditions of this Contract will remain in full force and effect, and will in no way be affected, impaired, or invalidated.

H.18 U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM

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 Contractor to perform work pursuant to the Contract, within the United States of America.

The Contractor shall provide, upon request of the Department an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three 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 Department and at no fault to the Department, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the Department must undertake to replace the terminated Contract.

H.19 LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS

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

H.20 PUBLIC SAFETY COMMISSION CONTRACT REVIEW

The Texas Public Safety Commission or the Commission's designee (Commission) will receive notification of the following contracts awarded by the Texas Department of Public Safety (Department) since the last Commission meeting:

A. Contracts valued at one-million and no/100 dollars ($1,000,000.00) or more, including available renewal options;

B. Contract amendments (other than exercise of available renewal options) valued at one-hundred thousand and no/100 dollars ($100,000.00) or more that increase the value of the original contracts by 50% or more; and

C. Contract amendments (other than exercise of available renewal options) valued at five hundred thousand and no/100 dollars ($500,000.00) or more.

The Assistant Director, Administration, shall submit these reports to the Commission. The Commission shall review contracts prior to or after award by the Department if required by applicable law.

H.21 STRICT COMPLIANCE

Time is of the essence in the delivery of deliverables as set forth in this Contract. Contractor shall strictly comply with all of the deadlines, requirements, and Standards of Performance for this Contract.

H.22 APPLICABLE LAW AND CONFORMING AMENDMENTS

The Contractor shall comply with all laws, regulations, requirements and guidelines applicable to a Contractor providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. The Department reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for the Department or the Contractor's compliance with all applicable State and federal laws, and regulations.

H. 23 COMPLIANCE WITH STATE, FEDERAL, AND LOCAL LAWS, RULES, AND REGULATIONS

A. The Contractor shall comply with all applicable state, federal and local laws and ordinances in providing deliverables to the Department under this Contract. Without limiting the generality of the foregoing, the Contractor shall be able to demonstrate compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of W-2s to common law employees. The Contractor shall provide both federal and state unemployment insurance coverage and standard workers' compensation insurance coverage. The Contractor shall comply with all federal and state tax laws and withholding requirements. The Department will not be liable to the Contractor/subcontractor(s) or its employees for any unemployment insurance or workers' compensation coverage or federal or state tax withholding requirements. The Contractor may be required to demonstrate compliance with such laws at the written request of the Department.

B. Except as stated otherwise in this Contract, the Contractor shall provide all labor and equipment necessary to furnish the deliverables under this Contract. All employees of the Contractor will be a minimum of seventeen (17) years of age and experienced in the type of work to be performed. Absent prior, written permission from the Department, no visitors or relatives of the Contractor's employees and subcontractors will be allowed on State property unless they are bona fide employees or subcontractors of the Contractor performing work under this Contract.

C. The Contractor shall ensure that at all times its personnel shall observe and comply with all laws, regulations and rules pertaining to state facilities, including but not limited to parking and security regulations and non-smoking policies. Additionally, the Contractor and the Contractor personnel shall comply with all relevant Department policies and requirements that relate to the security of data and confidentiality of information, which requirements may include the Federal Bureau of Investigation Criminal Justice Information Services ("CJIS) Security Policy and Security Addendum, as they now exist and as they may thereafter be amended.

D. The Department shall have the right to require the Contractor to remove any of the Contractor's personnel from involvement in this Contract who have failed to comply with such laws, regulations or rules.

H.24 FORCE MAJEURE

Neither the Contractor nor the Department shall be liable to the other for any delay in, or failure of performance, any requirement contained herein 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 shall 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.

H.25 FORESEEABLE DELAY

If a delivery delay is foreseeable and the delay is not caused by a force majeure event, the Contractor shall give written notice to the Department. The Department has the right to extend the delivery date if reasons appear valid. The Contractor shall keep the Department advised at all times of status of the deliverable. Default in promised (without accepted reasons) or failure to meet specifications authorizes the Department to purchase deliverables elsewhere and charge full increase in costs, if any, to the Contractor, in addition to all other legal and equitable remedies.

H.26 NO SUBSTITUTIONS AND DELIVERY TIMES

No substitutes or cancellations are permitted without written approval of the Department. Delivery will be made during normal business hours only, unless approval for late delivery has been obtained from the Department in writing.

H.27 PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS

THE CONTRACTOR SHALL DEFEND, INDEMNIFY, SAVE AND HOLD HARMLESS THE STATE OF TEXAS FROM AND AGAINST CLAIMS OF PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHTS, VIOLATIONS OR INFRINGEMENTS ARISING FROM THE STATE'S OR THE CONTRACTOR'S USE OF OR ACQUISITION OF ANY SERVICES OR OTHER ITEMS PROVIDED TO THE STATE OF TEXAS BY THE CONTRACTOR OR OTHERWISE TO WHICH THE STATE OF TEXAS HAS ACCESS AS A RESULT OF THE CONTRACTOR'S PERFORMANCE UNDER THIS CONTRACT, PROVIDED THAT THE STATE SHALL NOTIFY THE CONTRACTOR OF ANY SUCH CLAIM WITHIN A REASONABLE TIME OF THE STATE'S RECEIVING NOTICE OF ANY SUCH CLAIM. IF THE CONTRACTOR IS NOTIFIED OF ANY CLAIM SUBJECT TO THIS SECTION, THE CONTRACTOR SHALL NOTIFY THE DEPARTMENT OF SUCH CLAIM WITHIN FIVE (5) BUSINESS DAYS OF SUCH NOTICE. NO SETTLEMENT OF ANY SUCH CLAIM WILL BE MADE BY THE CONTRACTOR WITHOUT THE DEPARTMENTS PRIOR WRITTEN APPROVAL. THE CONTRACTOR SHALL REIMBURSE THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, LOSSES, COSTS, EXPENSES, JUDGMENTS OR ANY OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. THE CONTRACTOR SHALL PAY ALL REASONABLE COSTS OF THE STATE'S COUNSEL AND SHALL ALSO PAY COSTS OF MULTIPLE COUNSEL, IF REQUIRED TO AVOID CONFLICTS OF INTEREST. THE CONTRACTOR REPRESENTS THAT IT HAS DETERMINED WHAT LICENSES, PATENTS AND PERMITS ARE REQUIRED UNDER THIS CONTRACT AND HAS ACQUIRED ALL SUCH LICENSES, PATENTS AND PERMITS.

H.28 SURVIVAL

Termination of this Contract for any reason will not release the Contractor from any liability or obligation set forth in this Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice and fees verification, and any other provisions of this Contract that impose continuing obligations on either of the parties or that govern the rights and limitations of either of the parties after the expiration or termination of this Contract.

H.29 SUCCESSORS

This Contract will be binding upon and will inure to the benefit of the parties hereto and their respective successors, heirs, administrators, personal representatives, legal representatives, and permitted assigns.

H.30 EMPLOYEE NON-SOLICITATION

The Contractor will not, during the term of this Contract and for a period of twelve (12) months thereafter, solicit for employment any person who is a Department employee nor was a Department employee during the previous twelve (12) months with whom the Contractor had substantial contact in the course of performing its obligations under this Contract. Indirect solicitations, such as newspaper and internet announcements, are not prohibited by this section.

H.31 COMMENCEMENT OF WORK

Work performed before final execution of this Contract will be at the Contractor's risk and if a cost reimbursement contract, that work will not be reimbursed without prior written authorization from the Department for the Contractor to begin work.

H.32 ROLLING ESTOPPEL

A. The Department will be conclusively deemed to have fulfilled its obligations under this Contract, unless the Department receives a deficiency report from the Contractor within five (5) business days of the occurrence of the alleged deficiencies and the Contractor identifies specific deficiencies in the Department's fulfillment of its obligations in that report. Deficiencies will be described in terms of how they have impacted the specific performance requirements of the Contractor. The Contractor is estopped from claiming that a situation has arisen that might otherwise justify changes in the project timetable, the standards of performance under this Contract, or the project cost, if the Contractor knew of that problem and failed to include it in the applicable report. The deficiency report will be sent to the Department's Contract Monitor.

B. In the event the Contractor identifies a situation wherein the Department is impairing the Contractor's ability to perform for any reason, the Contractor's deficiency report will contain the Contractor's suggested solutions to the situation(s). These suggestions should be in sufficient detail so that the Department Contract Monitor can make a prompt decision as to the best method of dealing with the problem and continuing the project in an unimpeded fashion.

H.33 SALES AND USE TAX

The Department, as an agency of the State of Texas, qualifies for exemption from state and local sales and use taxes pursuant to the provisions of the Texas Limited Sales, Excise, and Use Tax Act. The Contractor may claim exemption from payment of applicable state taxes by complying with such procedures as may be prescribed by the Texas Comptroller of Public Accounts.

H.34 NOTICES

Any notice required or permitted under this Contract will be directed to the Contractor's Project Manager as specified in Section G.1.6 and the Department's Contract Administrator as specified in Section G.1.2 and will be deemed received:

1. When delivered in hand and a receipt granted;

2. Three days after it is deposited in the United States mail by certified mail, return receipt requested; or

3. When received if sent by confirmed facsimile or confirmed electronic mail.

Either of the parties may change its address or designated individual(s) to receive notices by giving the other party written notice as provided above, specifying the new address and/or individual and the date upon which it will become effective.

H.35 MOST FAVORED CUSTOMER

The Contractor represents and warrants that all prices, charges, benefits, warranties and terms granted to the Department pursuant to this Contract are comparable to, or more favorable to, the Department than the price, charges, benefits, warranties, and terms that the Contractor has heretofore offered to any person or entity for the products and/or services covered under any other agreement. If at any time during the term of this Contract, the Contractor shall contract with any other person or entity for prices, charges, benefits, warranties and terms more favorable to such person or entity, the Contractor shall notify the Department of such more favorable terms and the Department, in its sole discretion, may require that such more favorable prices, charges, benefits, warranties or other terms be available to the Department under this Contract, and be retroactive to the effective date of this Contract.

H.36 STATE EXCULPATION

The Department will not be liable to the Contractor for any increased costs or expenses that may be incurred by the Contractor, or for any other damages that may be suffered by the Contractor as a result of any act or omission of any other Contractor to the State of Texas or the Department.

H.37 TITLE AND RISK OF LOSS

Title and risk of loss for deliverables will not pass to the Department until the Department actually receives, takes possession, and accepts the deliverables at the point or points of delivery (F.O.B. Destination).

H.38 AVAILABILITY OF DEPARTMENT MANPOWER

All of the Department's obligations and requirements in this Contract are subject to the availability of the Department manpower and are subject to the practicability of the Department to perform such obligations and requirements. The determination regarding availability of the Department manpower and the practicability of the Department to perform such obligations and requirements is within the sole discretion of the Department's management.

H.39 INTERPRETATION AGAINST DRAFTER

Ambiguities in this Contract or the language at issue will not be interpreted against the drafting party regardless of which party drafted this Contract or the language at issue.

H.40 NON-INCORPORATION CLAUSE

This Contract embodies the entire agreement between the Parties regarding the deliverables described herein, and there have been and are no oral or written covenants, agreements, understandings, representations, warranties or restrictions between the parties regarding the deliverables described in this Contract other than those specifically set forth herein.

H.41 HEADINGS

The headings, captions, and arrangements used in this Contract are, unless specified otherwise, for convenience only and will not be deemed to limit, amplify, or modify the terms of this Contract, nor to affect the meaning thereof.

H.42 ATTACHMENTS

The Department reserves the right, in its sole discretion, to reject any of the Contractor's terms and conditions or other documents or attachments as part of the Contractor's Offer.

H.43 UNACCEPTABLE CONTRACTOR TERMS

No Department action, including, but not limited to, issuance of a Contract, will constitute an acceptance of conflicting terms and conditions, if any, that are expressly identified as such in this Contract. Such negotiated terms and conditions will take precedence over the other documents that collectively constitute this Contract as specifically provided in this Contract.

Contractor terms and conditions that may violate Texas law or may be unacceptable to the Department for inclusion in this Contract include:

A. Incorporation of laws of a State other than Texas;

B. Requirements for prepayment;

C. Limitations on the Department's remedies;

D. Requirements that the Department indemnify the Contractor;

E. Requirements that the Contractor's documents control in case of conflict;

F. Requirements that the Contractor's documents control even if the Contractor accepts or acknowledges this Contract; and

G. Disclaimer of warranties.

H.44 RECALL NOTICE

The Contractor shall immediately upon discovery of same, advise the Department of any or all required replacements or modifications to any equipment or hardware provided under this Contract or the withdrawal of any such equipment or hardware by reason of safety hazard or recall regardless of the nature of same. Verbal notification will be confirmed in writing within twenty-four (24) hours of such verbal notification. The Contractor shall submit all such formal notices to the Department Contract Monitor.

H.45 COMPETENCY ACKNOWLEDGEMENT

The Contractor has read and fully understands this Contract between the Department and the Contractor. The Contractor is legally competent to execute this Contract and has done so with the Contractor's own free will and accord, without reliance on any representation of any kind or character by the Department which is not expressly set forth herein. The Contractor understands that it has an opportunity to consult with a lawyer prior to signing this Contract.

H.46 MULTIPLE CONTRACTS

This Contract may be executed in a number of identical counterparts, each of which will be deemed an original for all purposes. In making proof of this Contract, it will not be necessary to produce or account for more than one (1) such counterpart.

H.47 LITIGATION OR FELONY CRIMINAL CONVICTIONS

The Contractor represents and warrants that it is not aware of and has received no notices of any court or governmental actions, proceedings, or investigations, etc., pending or threatened against the Contractor that would or could impair the Contractor's performance under this Contract or would otherwise be relevant to the Department entering into this Contract. The Contractor represents and warrants that the Contractor has not and the Contractor's employees and subcontractors have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, the Contractor has fully advised the Department as to the facts and circumstances surrounding the conviction.

H.48 PROHIBITED USE OF APPROPRIATED OR OTHER FUNDS UNDER CONTROL OF STATE AGENCY; LOBBYING

The Contractor represents and warrants that the Department payments to the Contractor and the Contractor's receipt of appropriated or other funds under this Contract are not prohibited by the Texas Government Code, Sections 556.005 and 556.008.

H.49 FALSE STATEMENTS

The Contractor makes all the representations, warranties, guarantees, certifications, and affirmations included in this Contract. If the Contractor signs this Contract with a false statement or it is subsequently determined that the Contractor has violated any of the representations, warranties, guarantees, certifications, or affirmations included in this

Contract, the Contractor will be in default under this Contract and the Department may terminate or void this Contract for cause and pursue other remedies available to the Department under this Contract and applicable law.

H.50 PUBLIC INFORMATION ACT

A. Notwithstanding any provisions of this Contract to the contrary, the Contractor understands that the Department is subject to and shall comply with the Texas Public Information Act, Texas Government Code, Chapter 552, as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. The Department shall notify the Contractor in writing within a reasonable time from receipt of a request for information related to the Contractor's work under this Contract. The Contractor shall cooperate with the Department in the production of documents responsive to the request. The Department shall make a determination whether to submit a Public Information Act request to the Attorney General. The Contractor shall notify the Department within twenty-four (24) hours of receipt of any third party requests for information that was provided by the State of Texas for use in performing this Contract. This Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Contractor shall maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers.

B. Contractor shall make any information created or exchanged with the state pursuant to this Contract, and not otherwise exempt 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.

H.51 APPROVAL OF EMPLOYEES

A. The Contractor shall retain no upper level management personnel for administration of the Services without prior approval of each selection by the Department's Authorized Representative or his designee which approval will not be unreasonably withheld.

B. The Contractor shall provide the name of the employee, all pending investigations and disciplinary actions and previous disciplinary actions upon request by the Department.

H.52 PERSONNEL

H.53.1 Qualifications of Personnel

A. The Contractor warrants that all persons assigned to this Contract are employees or subcontractors of the Contractor, and meet all qualifications as defined herein and Section C to perform the work required.

B. Replacement of personnel, if approved by the Department, shall be with personnel of equal or greater ability and qualifications. The Department will be the arbiter of whether the replacement personnel have equal or greater ability and qualifications than the personnel being replaced.

C. The Contractor shall assign all personnel identified in this Contract to complete all of its planned and assigned responsibilities in connection with performance of this Contract.

The Department shall have the right to approve the assignment and replacement by the Contractor of all personnel assigned to provide deliverables or to provide on-site representation of the Contractor.

D. The Contractor shall notify the Department before assigning a replacement individual for any of the personnel commitments identified in the Contractor's Offer. The Contractor shall notify the Department of the proposed assignment, shall introduce the individual to the appropriate representatives of the Department, shall provide a transfer of knowledge validation and shall provide to the Department a resume and any other information about the individual reasonably requested by the Department. The Department reserves the right to interview the individual before granting approval. The Contractor shall obtain prior written approval for any replacement personnel before beginning any work assignments.

H.53.2 Replacement of Personnel at the Departments Request

A. The Department reserves the right to require the Contractor to replace the Contractor personnel whom the Department judges to be incompetent, careless, unsuitable or otherwise objectionable, or whose continued use is deemed contrary to the best interests of the Department or the State of Texas. Before a written request is issued, representatives of the Department and the Contractor shall discuss the circumstances. Upon receipt of a written request from the Department's Contract Administrator, the Contractor shall be required to proceed with the replacement. The replacement request will include the desired replacement date and the reason for the request. The Contractor shall use its best efforts to effect the replacement in a manner that does not degrade deliverable quality. The Contractor shall also provide the Department with evidence of a sufficient transfer of knowledge to the proposed replacement.

B. This provision will not give the Department the right to require the Contractor to terminate any Contractor employee's employment. Rather, this provision gives the Department the right to require the Contractor to discontinue using particular personnel in the performance of deliverables for the Department.

H.53.3 Unauthorized Removal of Personnel

It is critical to the overall success of the project that the Contractor not remove or reassign, without the Departments prior written approval, any of the assigned personnel until such time as the personnel have completed all of their planned and assigned responsibilities in connection with performance of the Contractor's obligations under this Contract. Without prior written approval from the Department, personnel shall only be changed in the event of death, personal injury, debilitating illness, or termination of employment with the Contractor. The unauthorized removal of personnel by the Contractor will be considered by the Department as a material breach of this Contract and grounds for termination.

H.54 UTILIZATION OF PRODUCTS AND MATERIALS PRODUCED IN TEXAS

The Contractor shall comply with Texas Government Code, Section 2155.4441, in the performance of this Contract. In performing services under this Contract, the Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside of Texas.

H.55 BOOKS AND RECORDS

All records and documents pertinent to the services contracted hereunder will be kept for a minimum of four (4) years after termination hereof. If any litigation, claim, or audit involving these records begins before the retention period expires, the Contractor shall continue to retain said records and documents until all litigation, claims or audit findings are resolved, meaning that there is a final court order from which no further appeal may be made, or written agreement is entered in to between the Contractor and the Department.

H.56 ORGANIZATIONAL AND NAME CHANGE

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

H.57 DEPARTMENT POLICIES AND PROCEDURES

A. The Contractor's Authorized Representative shall provide the following to the Department's Program Manager within ten (10) calendar days of executing this Contract:

   1. The completed Department Contractor Background Information form (HR-22) for all proposed personnel; and

   2. Acceptable fingerprints for all proposed personnel.

B. The Contractor will not allow any personnel to work on the project that have not submitted to and successfully completed a Department fingerprint-based Criminal History Background Investigation. The Department has the right to prevent the Contractor's personnel from gaining access to the Department building(s) and computer systems if the Department determines that such personnel did not pass the background check or failed to otherwise maintain a security clearance. Reference Section I.9 entitled "Criminal History Background Checks" for details on this requirement.

C. The Department issued identification cards will be worn at all times and will be worn in a visible location.

H.58 WARRANTIES

H.58.1 Third Party Warranties

If, under this Contract, the Contractor procures any materials or products for the Department, the Contractor shall assign or otherwise transfer to the Department, or afford the Department the benefits of, any manufacturer's warranty for such materials or products.

H.58.2 Contractor Warranties

The Contractor/subcontractor(s) make the following representations and warranties, including without limitation, the following:

A. The Contractor/subcontractor(s) shall create and deliver all services and deliverables in accordance with applicable professional standards of a Contractor providing the services. The Contractor represents and warrants it has the requisite qualifications, experience, personnel and other resources to perform in the manner required by this Contract.

B. The Contractor/subcontractor(s) shall assign only qualified personnel to this Contract.

C. The Contractor/subcontractor(s) shall efficiently supply all resources or services necessary to provide the deliverables that are required under this Contract.

D. The Contractor/subcontractor(s) shall use its best efforts to create and deliver the deliverables in the most cost-effective manner consistent with the required level of quality and performance.

E. The Contractor/subcontractor(s) shall create and deliver the deliverables in a manner that does not infringe the proprietary rights of any third party.

F. The Contractor/subcontractor(s) shall create and deliver the deliverables in a manner that complies with all applicable laws and regulations.

G. The Contractor has duly authorized the execution, delivery, and performance of this Contract.

H. The Contractor/subcontractor(s) has not provided any gifts, payments, or other inducements to any officer, employee, or agent of the Department.

I. The Contractor/subcontractor(s) will not infringe any intellectual property right of any third party. In the course of performing work under this Contract, the Contractor/subcontractor(s) will not use or copy any intellectual property owned by a third party without paying any required license fees or royalties.

H.59 DRUG-FREE WORKPLACE

The Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the Contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

H.60 AUTHORITY TO AUDIT

A. The Contractor understands that acceptance of funds directly under this Contract or indirectly through a subcontract 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 during the term of this Contract and for a period of four (4) years after termination of this Contract. The Contractor shall cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Additionally, the State Auditor's

Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the Contractor relating to this Contract.

B. The Contractor shall ensure that this clause concerning the authority to audit funds, received either directly or indirectly, and the requirement to cooperate fully with the State Auditor's Office is included in any subcontract it awards.

C. The Contractor shall reimburse the State of Texas for all costs associated with enforcing this provision.

D. The Department reserves the right to audit the Contractor's records and documents regarding compliance with this Contract. The Contractor is also subject to audit by any other department or agency, including federal agencies, responsible for determining that the Department and the Contractor have complied with the applicable laws.

E. In the event such an audit reveals any errors by the Department or the Contractor, the Contractor shall refund the Department the full amount of such overpayments within thirty (30) calendar days of such audit findings, or the Department at its option, reserves the right to deduct such amount owing to the Department from any payments to the contractor.

H.61 FRAUD, WASTE OR ABUSE

A. In accordance with the Texas Government Code, Chapter 321, the State Auditor's Office (SAO) is authorized to investigate specific acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt or use of state funds.

B. If there is a reasonable cause to believe that fraud, waste or abuse has occurred at the Department, it can be reported to the SAO by calling 1-800-892-8348 or on the SAO's website at www.sao.state.tx.us. It can also be reported to the Department's Office of the Inspector General at (512) 424-2015, the Department Chief Auditor's Office at 512-424-4403, or Crime Stoppers at 1-800-832-8477.

H.62 REDACTED DOCUMENTATION

The Contractor shall provide an electronic copy of the Contractor's Offer with specified private information removed, plus an overview of the nature of the information removed per Section L.11.

H.63 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS, AS REQUIRED BY 1 TAC CHAPTER 213

Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC, Chapter 213 and 1 TAC, Chapter 206 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

H.64 RIGHTS TO DATA, DOCUMENTS AND COMPUTER SOFTWARE (STATE OWNERSHIP)

A. Any biographic data, demographic data, image data inclusive of fingerprints, photograph and signatures or any other data or metadata in any form acquired or accessed by the Contractor in the performance of its obligations under this Contract will be the exclusive property of the State of Texas and all such data will be delivered to the Department by the Contractor upon completion, termination, or cancellation of this Contract.

B. The Contractor will not use, willingly allow, or cause to have such data used for any purpose other than the performance of the Contractor's obligations under this Contract without the prior written consent of the Department.

C. The ownership rights described herein will include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

D. The Contractor shall provide, at no additional charge, appropriate licenses for the Department to use and access the System and the Contractor's pre-existing software or other intellectual or proprietary property that the Contractor determines is necessary to facilitate the performance of the Contractor's obligations under this Contract.

H.65 NOTE TO CONTRACTOR

Any terms and conditions attached to the Contractor's Offer will not be considered unless specifically referred to in the Contractor's Offer and may result in disqualification.

H.67 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 Department including the Executive Director, the General Counsel or the Procurement Director or their covered family members have a financial interest in the Contractor. Any contract found to violate Government Code 2261.252 is void.

H.68 NOTICE UNDER GOVERNMENT CODE 2252.908

Pursuant to Government Code 2252.908 the Department may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the Department at the time the business entity submits the signed contract to the Department. The Texas Ethics Commission has adopted rules and procedures under these provisions:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

Any contract found to violate Government Code 2252.908 is void.

H.69 NOTICE UNDER GOVERNMENT CODE 572.069

Pursuant to Government Code 572.069 the Contractor certifies that it has not employed and will not employ a former Department or state officer who participated in a procurement or contract negotiation for the Department involving the Contractor within two (2) 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.

SECTION I – SUPPLEMENTAL TERMS AND CONDITIONS

Subcontractors shall also comply with these provisions.

I.1 INSURANCE REQUIREMENTS

A. Prior to the execution of this Contract, the Contractor shall provide the Department with proof of insurance coverage(s) and shall maintain the insurance coverage(s) listed herein throughout the term of this Contract.

B. The insurance coverage(s) will be evidenced by immediate delivery to the Department upon its request of certificates of insurance executed by the insurer, or its authorized agent, stating the coverage, limits, expiration dates and compliance with all applicable required provisions.

C. Copies and changes to insurance coverage(s), including extensions, renewals, cancellations and revisions will be submitted to the Contract Administrator within thirty (30) calendar days of the effective date.

D. The Contract represents and warrants all required policies contain endorsements prohibiting cancellation except upon at least thirty (30) calendar day's prior written notice to the Department. The Certificate(s) will be addressed to the Texas Department of Public Safety as the Certificate holder.

E. The Contractor represents and warrants that, within five (5) business days of receipt of notice of tentative contract award, it shall provide the Department with proof of coverage and represents and warrants that it shall maintain the following coverage throughout the term of this Contract, at the Contractor's sole expense:

1. **Workers' Compensation and Employers' Liability:** The Contractor shall maintain Workers' Compensation insurance coverage in accordance with statutory limits and maintain such coverage throughout the life of this Contract.

   Coverage A – Workers' Compensation (WC) Statutory limits for the State of Texas or for any state the Contractor's employee resides in.

   Coverage B – Employer's Liability (EL) $1,000,000 each accident limit / $1,000,000 Disease Policy / $1,000,000 Disease each employee limit.

   The Contractor shall waive all rights against the Department, its board, trustees, officers, employees, agents, and volunteers for recovery of damages to the extent they are covered by WC and EL.

2. **Business Automobile Liability Insurance:** The Contractor shall maintain Business Automobile insurance coverage for all owned, hired, and non-owned vehicles, with a minimum **combined single limit of $1,000,000** for each accident for bodily injury and property damage. Such insurance will include coverage for loading and unloading hazards.

   If Contractor will carry pollutants or hazardous materials, endorsements for Pollution Liability Coverage for Automobile and Motor Carrier Act will be included.

The Contractor shall waive all rights against the Department, its board, trustees, officers, employees, agents, and volunteers for recovery of damages to the extent they are covered by the business auto liability insurance (or any other applicable auto physical damage coverage.)

3. **Commercial General Liability Insurance:** The Contractor shall maintain Commercial General Liability coverage that will include, but not be limited to, premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability.

    1. $1,000,000 each occurrence
    2. $2,000,000 General Aggregate limit
    3. $2,000,000 Products and Completed Products
    4. $1,000,000 Personal/Advertising injury
    5. $50,000 Damage to Premises
    6. $5,000 Medical Payments

a. If this insurance is written on a claims-made form, coverage will be continuous (by renewal or extended reporting period) for not less than sixty (60) months following completion of this Contract and acceptance by the Department.

b. Coverage, including any renewals, will have the same retroactive date as the original policy applicable to this Contract. Civil Rights Liability will be provided with the same liability limits. It may be included within the General Liability policy or written on a separate policy.

c. Liability coverage will include coverage for damage to property and injury to persons caused by boiler and/or other equipment malfunction. The policy will contain an endorsement to include coverage for the property of third parties.

d. The Department will be named as an additional insured by using endorsement CG2026 or broader.

e. The Contractor's coverage will include an endorsement for waiver of subrogation and a 30 Day Notice of Cancellation to the Department. The Contractor shall waive all rights against the Department, its board, trustees, officers, employees, agents, and volunteers.

4. **Professional Liability:** The Contractor shall maintain Professional Liability insurance coverage (including Errors and Omissions [required only for contracts for Professional Services] including coverage for the rendering of, or failure to render, professional services with minimum limits:

    1. $1,000,000 per occurrence,
    2. $2,000,000 annual aggregate.

a. If this insurance is written on a claims-made form, coverage will be continuous (by renewal or extended reporting period) for not less than twenty-four (24) months following completion of this Contract and acceptance by the Department.

b. Coverage, including any renewals, will have the same retroactive date as the original policy applicable to this Contract.

5. **Commercial Crime Insurance:** The Contractor shall maintain Commercial Crime insurance coverage to cover losses from Employee Dishonesty with a minimum limit of: **$50,000 each occurrence.**
   Coverage will be endorsed to cover third party property and the Department will be a joint loss payee.

6. **Cyber Insurance:** The Contractor shall maintain Cyber insurance to cover any and all losses, security breaches, privacy breaches, unauthorized distributions, or releases or uses of any data transferred to or accessed by Contractor under or as a result of this Contract. This insurance shall provide sufficient coverage(s) for the Contractor, the Department, and affected third parties for the review, repair, notification, remediation and other response to such events, including but not limited to, breaches or similar incidents under Chapter 521, Texas Business and Commerce Code. The Department may, in its sole discretion, confer with the Texas Department of Insurance to review such coverage(s) prior to approving them as acceptable under this Contract. The Contractor shall obtain modified coverage(s) as reasonably requested by the Department within ten (10) calendar days of the Contractor's receipt of such request from the Department.

7. **Umbrella / Excess Liability:** The Contractor may combine its primary and Excess / Umbrella Liability limits to meet the minimum required coverage for any line of coverage; however, if it chooses this option, the coverage will be written at least as broad as those requirements defined above. **$1,000,000 Minimum Limit**.

I.1.1 ADDITIONAL PROVISIONS

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

A. Name the Department and its board, trustees, officers, employees, agents, representatives and volunteers as additional insured to all applicable policies.

B. Waiver of subrogation against the Department and its board, trustees, officers, employees, agents, and volunteers, for bodily injury (Including death), property damage or any other loss to all policies.

C. The Contractor's insurance will be the primary insurance in regards to the Department and its board, trustees, officers, employees, agents, and volunteers.

D. All provisions of this Contract concerning liability, duty and standard of care, together with the indemnification provision, will be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

E. All Certificates of Insurance will identify the service or product being provided and the name of the responsible party.

F. No "self-insurance" coverage will be acceptable.

G. The Contractor's insurance coverage will continue in full force and effect during the term of this Contract. No Contract will be entered into between the Contractor and the Department unless acceptable insurance certificates are received by the Department by the date scheduled for the execution of this Contract. Proof of insurance policies in a form acceptable to the Department will be delivered prior to the effective date of this Contract.

H. All insurance coverage will be provided by insurance carrier(s) duly licensed, admitted and authorized to do business in Texas. All insurance carriers will be, at a minimum, rated "A" or better by A.M. Best or equivalent rating by a similar insurance rating service.

I. The Contractor may choose the amount of deductible for any other insurance coverage required (above) to be obtained by the Contractor; however except as it relates to professional liability insurance, in no event will such deductible for each occurrence exceed five (5) percent of the required yearly aggregate limit of coverage.

J. The Contractor shall be responsible for the first dollar defense coverage. All general liability and professional liability policies will provide defense in addition to the policy limits.

K. The limits required herein are the minimum acceptable limits. These limits will not to be construed as being the maximum the Contractor may wish to purchase for its own benefit.

L. As respect to the total limits of liability required, any combination of primary and/or umbrella / excess liability coverage may satisfy those totals. However, if an umbrella / excess liability policy is used, coverage will be at least as broad as the primary coverage.

I.1.2 SUBCONTRACTOR'S INSURANCE

The Contractor's insurance policies will provide coverage for the Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under this Contract.

I.2 SUBCONTRACTS

A. The Contractor shall assume full responsibility for all deliverables under this Contract. The Department shall consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges under this Contract. If any part of the deliverables is planned to be subcontracted, the Contractor shall include a list of all subcontractors, including the firm name, address, and contact person of each subcontractor, a complete description of the deliverables to be subcontracted, financial statements for each subcontractor, and descriptive information concerning each subcontractor's qualifications.

B. The Contractor will not delegate any duties under this Contract to a subcontractor unless the Department has given written consent to the delegation. The Department shall approve all subcontractors and to require the Contractor to replace any subcontractor found, in the opinion of the Department, either initially or based on performance, to be unacceptable.

C. The management of any subcontractor shall be the sole responsibility of the Contractor, and failure by a subcontractor to perform will be deemed to be failure of the Contractor. The Contractor shall make all payments to subcontractors and suppliers. The Department will not direct payments for deliverables acquired in connection with this Contract other than to the Contractor, nor shall the Department release the Contractor from having to perform any obligations under this Contract, notwithstanding the fact that a subcontractor may have been engaged by the Contractor to perform those obligations.

D. The Contractor will furnish to the Department copies of all subcontracts. All subcontracts will include all applicable provisions contained in this Contract and any provisions required by law.

I.3 HISTORICALLY UNDERUTILIZED BUSINESSES (HUB) PARTICIPATION

A. The Contractor shall make a good faith effort to comply with all state Historically Underutilized Business (HUB) requirements pursuant to Texas Government Code, Chapter 2261 and administrative rules, if applicable. The Contractor shall also comply with the attached HUB Subcontracting Plan.

B. The Contractor shall comply with its HUB Subcontracting Plan (HSP). The Contractor shall seek written approval from the Department prior to making any modifications to its HSP.

C. The Contractor shall provide notice to all subcontractors of their selection as a subcontractor for this Contract. The notice will specify, at a minimum, the Department's name, the name of the Contract Administrator, this Contract's assigned contract number, the subcontracting opportunity the subcontractor will perform, the approximate dollar value of the subcontract and the expected percentage of this Contract's total value that the subcontract represents. A copy of the notice will be provided to the Contract Administrator no later than ten (10) business days after the effective date of this Contract.

D. The Contractor shall submit to the Contract Administrator on a monthly basis (by the 5th day of the following month) the Prime Vendor Progress Assessment Report, which is included as Exhibit J.1, HUB Subcontracting Plan.

E. The Contractor shall include the non-discrimination clauses in Section H.13 in all subcontracts.

I.4 LIQUIDATED DAMAGES

A. The Department reserves the right to assess liquidated damages at an amount up to five hundred dollars ($500.00) per day for each business day the Contractor fails to

meet the standards set out in this Agreement by providing the services as described in Section C. The parties acknowledge that the harm that will be caused to the Department by such a delay is difficult to estimate; however, the amount of liquidated damages listed herein is a reasonable estimate and is enforceable.

B. The Contractor will not be responsible and liquidated damages may not be assessed due to any delay caused by schedule amendments requested by the Department, delays as the result of activity that is the responsibility of the Department's Project Team, as long as the Contractor timely files its deficiency report as required by the Section H.33 herein entitled "Rolling Estoppel" or delays that the Department deems were outside the control of the Contractor. The burden of proof that the delay is attributable to the Department rests with the Contractor.

C. Any liquidated damages assessed under this Contract may, at the Department's option, be deducted from any payments due to the Contractor. The Department has the right to offset any liquidated damages payable to the Department, as specified above, against any payments due to the Contractor. If insufficient payments are available to offset such liquidated damages, then Contractor shall pay to the Department any remaining liquidated damages within fifteen (15) calendar days following receipt of written notice of the amount due.

I.6 OTHER CONTRACTS

During the course of this Contract, the Department may award additional contracts to other contractors for similar services. The Department shall provide notification to the Contractor regarding the additional contractor and the scope of work that the additional contractor will be performing. The Contractor shall work cooperatively with the additional contractor in order to ensure that the performance of the services and/or capital improvements is not unnecessarily delayed. The Contractor will not commit or permit any act that would unduly interfere with the performance of work by any other contractor(s).

I.7 SUSPENSION OF WORK

A. The Department may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of this Contract for the period of time that the Contract Monitor determines appropriate for the convenience of the Department.

B. If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed, or interrupted:

1. By an act of the Contract Monitor in the administration of this Contract, or

2. By the Contract Monitor's failure to act within the time specified in this Contact (or within a reasonable time if not specified), an adjustment will be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly.

C. A claim under this clause will not be allowed:

1. For any costs incurred more than twenty (20) calendar days before the Contractor will have notified the Contract Administrator in writing of the act or

failure to act involved (but this requirement will not apply as to a claim resulting from a suspension order; and

2. Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under this Contract.

I.8 STOP-WORK ORDER

A. The Contract Administrator may at the request of the Department, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, or the work called for by this Contract for a period of up to ninety (90) calendar days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order will be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall, at the Department's expense, immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost allocable to the work covered by the order during the period of work stoppage. Within a period of up to ninety (90) calendar days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contract Administrator may either:

1. Cancel the stop-work order; or

2. Terminate the Work covered by the order as provided in the stop-work order of this Contact.

B. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume Work. The Department will make an equitable adjustment in the delivery completion schedule, the estimated cost, or both, and this Contract will be modified, in writing accordingly, if:

1. The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and

2. The Contractor asserts its right to the adjustment within thirty (30) calendar days after the end of the period of work stoppage; provided that the Contract Administrator decides the facts justify the action, the Contract Administrator may receive and approve the claim submitted at any time before final payment under this Contract.

C. If a stop-work order is not canceled and the Work covered by the order is terminated, the Contract Administrator may allow reasonable cost resulting from the stop-work order in arriving at the termination settlement.

D. An appropriate equitable adjustment may be made in any related contract of the Contractor that provides for adjustment and is affected by any stop-work order under this clause. The Department will not be liable to the Contractor for damages or loss of profits because of a stop-work order issued under this clause.

I.9 WORK MADE FOR HIRE

For the purposes of this Contract, the term "Work" is defined as all reports, statistical analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research, materials, intellectual property or other property developed, produced, or generated in connection with this Contract. All work performed pursuant to this Contract is made the exclusive property of the Department. All rights, title and interest in and to said property will vest in the Department upon creation and will be deemed to be a work 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 Department, or such Work may not be considered a Work made for hire, all rights, title and interest therein are hereby irrevocably assigned to the Department. The Department 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. The Contractor shall give the Department and/or the State of Texas, as well as any person designated by the Department and/or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to the Contractor for services rendered under this Contract.

I.21 CRIMINAL HISTORY BACKGROUND CHECKS

A. The Contractor shall have its project personnel submit to the Department a fingerprint-based Criminal History Background Investigation, if required by the Department, at the Contractor's expense. To facilitate this Criminal History Background Investigation, each person shall complete the Department's Vendor Background Information form (HR-22), which will be provided by the Department.

B. If the Department requires a fingerprint-based Criminal History Background Investigation, the Contractor will not allow personnel to work on the project who have not successfully completed the Departments fingerprint-based Criminal History Background Investigation and who do not otherwise maintain the Department's security clearance. The Department has the right to prevent the Contractor's personnel from gaining access to the Departments building(s) and computer systems if the Department determines that such personnel do not pass the background check or fail to otherwise maintain the Department security clearance.

A. When required, the Contractor's Project Manager shall provide the following to the Departments Project Manager within 10 calendar days of executing this Contract:

1) the completed Vendor Background Information form (HR-22) for all proposed personnel; and
2) acceptable fingerprints for all proposed personnel.

B. Throughout the term of this Contract, the Department may require the Contractor personnel to submit an annual Department fingerprinted-based Criminal History Background Investigation to the Department.

C. Throughout the term of this Contract, the Contractor shall promptly notify the Department of any activity or action by the Contractor's personnel that may affect that individual's ability to continue to work under this Contract.

SECTION J - LIST OF EXHIBITS

EXHIBIT NO.	TITLE NUMBER OF	PAGES
J.1	HUB Subcontracting Plan (HSP)	9
J.2	Intentionally Left Blank	
J.3	Intentionally Left Blank	
J.4	Intentionally Left Blank	
J.5	Intentionally Left Blank	
J.6	Intentionally Left Blank	

SOLICITATION, OFFER, AND AWARD

1. CONTRACT NO.	2. SOLICITATION NO.	3. TYPE OF SOLICITATION	4. DATE ISSUED
405-16-P006585	405-16-B001409	☐ SEALED BID (IFB) ☒ NEGOTIATED (RFO) ☐ NEGOTIATED (RFP)	April 15, 2016

EMERGENCY PREPAREDNESS STAFF AUGMENTATION

5. Sealed offers will be received by the Department until 3:00 P.M. local time on 01/18/2015 and submitted to the issuing office:	6. FOR INFORMATION CONTACT:
Texas Department of Public Safety Procurement and Contract Services Bureau 5805 North Lamar, Bldg. A, MC-0266 Austin, Texas 78752 Attention: 405-16-R032316	Darren K. Roberson, Sr., CTPM Contract Administrator PHONE: (512) 424-5239 E-MAIL: darren.roberson@dps.texas.gov

7. DISCOUNT FOR PROMPT PAYMENT:➔	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %
8. ACKNOWLEDGMENT OF AMENDMENTS: (The Respondent acknowledges receipt of amendments to this Request for Proposal and related documents numbered and dated:	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
	01	1/6/2016		
	02	1/6/2016		
9. NAME AND ADDRESS OF CONTRACTOR:➔ CTS Consolidated Telecom Services, LLC 204 Texas Avenue, Ste. A Round Rock, TX 78664	PO Box 210 Round Rock, TX 78680		10. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (*Type or Print*) Pamela Faver, President	
11. TELEPHONE NO. (Include area code) PH:512-279-5950 FAX:512-852-7886	12. SIGNATURE On File		13. OFFER DATE January 11, 2016	

TO BE COMPLETED AT TIME OF AWARD

Document Type: D
Statutory Cite: Texas Government Code, Section 2157.068
NOTE TO CONTRACTOR: The Department reserves the right, in its sole discretion, to modify this language prior to award.
This award document consummates the Contract which consists of the following documents: (a) this Offer and Award document; (b) the Department's solicitation, and solicitation amendments, such provisions, representations, certifications, specifications, and negotiated changes as hereby incorporated and attached to this award; and (c) the Contractor's Offer, points of clarification, responses to clarification request and/or best and final offer (BAFO), and negotiated changes as hereby incorporated and attached to this award.

Any inconsistency or conflict in the Contract documents will be resolved by giving precedence in the following order: this Offer and Award document; negotiated changes; BAFO; points of clarification; RFO as posted; and the Contractor's Offer.

This Contract shall consist of a Base Period from Date of Award through 08/31/16 with THREE (3) ONE (1) year optional renewal periods.

CTS Consolidated Telecom Services, LLC	Texas Department of Public Safety
By: Pam Faver	By: [signature]
Name: Pamela Faver	Name: Steven C. McCraw
Title: President	Title: Director
Date: 03/29/2016	Date: 4/15/16

OGC

The following items are mutually agreed to by the Contractor and the Department and are hereby incorporated into this Contract.

1. The Solicitation, Offer and Award form has been revised to update the Contract Number, remove the offer preparation instructions, and to add the Contractor's name in the Contractor signature block.

2. Section A, Definitions, has been revised as follows:

   - Delete definition of "Best and Final Offer (BAFO)";
   - Revise definition of "Contract" to include the awarded firm.
   - Revise definition of "Contractor" to include the awarded firm;
   - Add definition of "Long Distance Travel";
   - Delete definition of "May";
   - Delete definition of "Responsive Offer";
   - Delete definition of "Respondent";
   - Delete definition of "RFO"; and

3. Section B.1.2, Pricing Instructions, has been renumbered to read B.1.1 and has been revised to include contract language rather than solicitation language.

4. Section B.1.3, Financial Rating, has been renumbered to read B.1.2 and has been revised to include contract language rather than solicitation language.

5. Section B.2, Pricing Schedule, has been revised to include contract language rather than solicitation language and to incorporate the negotiated rates under this Contract.

6. Section B.2.1, Cost to the Department for Positions Itemized Below, has been revised to include contract language rather than solicitation language and to document negotiated pricing.

   - Table A, has been renamed, Base Year Pricing; and
   - Table B, has been renamed, Optional Renewal Period Pricing.

7. Section C, Statement of Work, has been revised throughout to include contract rather than solicitation language and to reflect negotiations of the Department and the Contractor.

8. Section C.2.5, References, has been deleted.

9. Section C.3, Criteria, has been deleted.

10. Section G.1.5, Contractor Project Manager, has been revised to include contact information for the Contractor's Project Manager.

11. Section H, Terms and Conditions, has been revised to delete solicitation language under the header title for Section H.

12. Section H.67, Notice Under Government Code 2261.252 has been added.

13. Section H.68, Notice Under Government Code 2252.908 has been added.

14. Section H 69, Notice Under Government Code 572.069 has been added.

15. Section I, Supplemental Terms and Conditions, has been revised to delete solicitation language under header title for Section I.

16. Section I.3, Historically Underutilized Business (HUB) Participated, has been revised to reflect contract language rather than solicitation language.

17. Exhibit J.1, Historically Underutilized Business Subcontracting Plan, is hereby incorporated into this Contract as completed by the Contractor.

18. Exhibit J.2, Application for Texas Identification Number, has been deleted as this document is on file with the Department.

19. Exhibit J.3. Direct Deposit Form, has been deleted as this document is on file with the Department.

20. Exhibit J.4, W-9 Form, has been deleted as this document is on file with the Department.

21. Exhibit J.5 References, has been deleted as this document is on file with the Department

22. Exhibit J.6 Experience, has been deleted as this document is on file with the Department.

23. Section K, Representations, Certifications, and Other Statements of Contractor, as issued by the Department has been deleted for purposes of this list of revisions; however, this Section, as completed by the Contractor, is part of the solicitation incorporated by reference into this Contract as described on page 1 of this Contract.

24. Section L and M of the solicitation as issued by the Department have been deleted for purposes of this list of revisions; however, these Sections are part of the solicitation incorporated by reference into this Contract as described on page 1 of this Contract.

25. Minor conforming and clarifications changes have been made throughout the document.

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SECTION A – DEFINITIONS

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

"Authorized Representative" means the person designated in writing to act for and on behalf of a party of this Contract; whose designation has been furnished to the other party as described in Section G.1.

"Base Period" means the Date of Award through August 31, 2016.

"Business Days" means Monday through Friday except for federal, state and legal holidays observed by the State of Texas. The terms "business days" and "working days" may be used interchangeably.

"Business Hours" means 8:00 a.m. to 5:00 p.m., Central Time

"Contract" means this Contract entered into by the Department and the Contractor, as noted on page 1 of this Contract. .

"Contract Administrator" means the representative of the Department's Procurement & Contract Services Bureau who is responsible for general administration of this Contract, negotiation of any changes and issuance of written changes/modifications of this Contract as referenced in Section G.2.

"Contract Monitor" means the employee within the Department who is responsible for the monitoring of this Contract as referenced in Section G.1.3.

"Contract Term" means the duration of this Contract as specified in Section F.2.

"Contractor" means CTS Consolidated Telecom Services, LLC.

"CPA" means the Texas Comptroller of Public Accounts.

"Date of Award" means the date this Contract is fully executed.

"Days" means calendar days unless otherwise specified.

"Department" means the Texas Department of Public Safety.

"Department Policies" means all written policies, procedures, standards, guidelines, directives, and manuals of the Public Safety Commission and the Department, applicable to providing the deliverables/services specified under this Contract.

"Event of Default" means any of the events or circumstances described in Section E.1.F.

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

"Historically Underutilized Business (HUB) means a business that is certified by the State of Texas that (1) is at least 51% owned by an Asian Pacific American, a Black American, a Hispanic American, a Native American, an American woman, or a Service Related Disabled Veteran, (2) is a for-profit entity that has not exceeded the size standards

prescribed by 34 TAC § 20.23, and has its principal place of business in Texas, and (3) has an owner residing in Texas who has a proportionate interest in the business and who actively participates in the control, operations and management of the entity's affairs. For further explanation, see the Texas Comptroller of Public Accounts HUB rule definitions at 34 TAC § 20.11.

"Hourly Rate" means hourly rates that are all inclusive of all amounts of all types except for Long Distance Travel.

"HUB Subcontracting Plan (HSP)" means the plan required by the Texas Government Code, Chapter 2161.

"IECGP" means Interoperable Emergency Communications Grant Program.

"Invoice" means Contractor's monthly billing for services rendered.

"Legislative Budget Board (LBB)" means a permanent joint committee of the Texas Legislature that develops budget and policy recommendations for legislative appropriations, completes fiscal analyses for proposed legislation, and conducts evaluations and reviews to improve the efficiency and performance of state and local operations.

"Local Non Travel Hourly Rate" means hourly rates that are all inclusive and do not involve travel, lodging or any other similar expenses of any kind.

"Long Distance Travel means travel with lodging, that is travel outside the assigned duty station territory, approved by the Department in writing in advance as falling within the "Long Distance Travel" provisions of this Contract.

"Mandatory" means required, compulsory or obligatory.

"Must" means required, compulsory or obligatory.

"Payment(s)" means the amount(s) agreed to be paid by the Department to the Contractor for services rendered under this Contract.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, court or other tribunal, or government or any agency or political subdivision thereof.

"Project Manager (PM)" means appointee, designee, or alternate designee as assigned by the Contractor and the Department as referenced in Section G.1.4 and G.1.5.

"PSBN LTE" means Public Safety Broadband Network Long Term Evolution.

"PSC" means the Public Safety Commission, the Department's governing body.

"PSCS" means Public Safety Communications Service.

"RCGP" means Regional Catastrophic Grant Program.

"Services" means the furnishing of labor, time, or effort by contractor, which may or may not involve the delivery of a specific end product other than reports.

"Shall" denotes the imperative, required, compulsory or obligatory.

"SHSP' means State Homeland Security Program.

"SLIGP" means State and Local Implementation Grant Program.

"SWIC" means Statewide Interoperability Coordinator.

'TxPSBP" means Texas Public Safety Broadband Program.

SECTION B - SERVICES AND PRICES/COSTS

B.1 SERVICE AND PRICING REQUIREMENTS

B.1.1 Pricing Instructions

The Contractor shall provide services on a no minimum, as needed, as requested by the Department basis. All hourly fees, travel and lodging expenses for the provision of services under this Contract are identified in Section B.2, Pricing Schedules. No other amounts shall be paid for any purpose. This Contract is non-exclusive and the Department may contract for these or similar services at any time in its sole discretion. No payments may be approved or made prior to the Department's written acceptance as provided by Section G.3.1 of this Contract.

A. The Pricing Schedules, Section B.2, are individually identified as firm fixed pricing throughout the term of this Contract and will be applicable to the services requested by the Department and received by the Department in compliance with this Contract. The Contractor shall adhere to the Pricing Schedules for each position

   The Department shall approve in writing in advance all Long Distance Travel and no other travel is paid other than as encompassed within the Local Non Travel Hourly Rates.

   All Long Distance Travel is subject to the then current State of Texas Travel Guidelines found at https://fmx.cpa.state.tx.us/fm/travel/travelrates.php.

B. The Contractor's sole compensation is reflected in the Pricing Schedules at time of execution of this Contract and these amounts shall remain firm throughout the term of this Contract, including any optional renewal periods.

B.1.2 Financial Rating

A. The Contractor shall provide information required by Section G.3.8 and any other financial information reasonably requested by the Department consistent with the services provided by the Contractor or otherwise required by the then applicable Department policies for similar contracts.

B.2 PRICING SCHEDULE

B.2.1 Cost to the Department for positions itemized below:

- A. The Contractor's sole compensation under this Contract is as provided in this Table A, Base Period Pricing, reflecting the negotiated hourly rates for Project Managers and Project Supervisors (date of award to 8/31/16).

Table A, Base Period Pricing

Position Title	Description of Duties	Hourly Rate
Project Manager	Includes, but not limited to, identifying, designing, and implementing the Texas statewide broadband strategy as part of the (TxPSBP), as well as assisting with the coordination and oversight of activities and assignments as it relates to interoperable communications. The Project Manager may also support the (SWIC) and when directed, will serve as a representative of the Department in meetings relating to (PSBN LTE) and interoperable communications.	$150.00
Project Manager	Includes, but not limited to, identifying, designing, and implementing the Texas statewide broadband strategy as part of the (TxPSBP), as well as assisting with the coordination and oversight of activities and assignments as it relates to interoperable communications. The Project Manager may also support the (SWIC) and when directed, will serve as a representative of the Department in meetings relating to (PSBN LTE) and interoperable communications.	$75.00

B. The Contractor's sole compensation under this Contract is as provided in this Table B, Optional Renewal Periods, reflecting the negotiated hourly rates for the optional renewal periods as shown below:

Table B, Optional Renewal Periods

Position Title	Hourly Rates			
	Base Year: Date of Award – 8/31/16	**1st Optional Renewal Period: 9/01/16 – 8/31/17**	**2nd Optional Renewal Period: 9/01/17 – 8/31/18**	**3rd Optional Renewal Period: 9/01/18 – 8/31/19**
Project Manager	Included	$150.00	$150.00	$150.00
Project Manager	Included	$75.00	$75.50	$75.00

SECTION C - STATEMENT OF WORK

C.1 INTRODUCTION

The Department and the Contractor enter into this Contract under which the Contractor provides contracted services on an as needed, as requested by the Department basis, for interoperable communications and public safety broadband plans and projects.

C.2 SCOPE

This Statement of Work includes identifying, designing, and implementing the Texas statewide broadband strategy as part of the Texas Public Safety Broadband Program (TxPSBP), as well as assisting with the coordination and oversight of activities and assignments as it relates to interoperable communications. The Project Manager(s) may also support the Texas Statewide Interoperability Coordinator (SWIC) and when directed, will serve as a representative of the Department in meetings relating to Public Safety Broadband Network Long Term Evolution (PSBN LTE) and interoperable communications. The scope of work for the Project Supervisor(s) will include duties as assigned, with focus on, but not to be limited to, planning and leading Strategic Advisory Groups, FirstNet data collection, as well as outreach and education in specific disciplinary areas including but not limited to fire, health care, and emergency management. The Project Supervisor(s) will assist with planning, development, outreach and education and implementation of communication focused annual meetings, conferences, workshops, and focus groups as part of (SLIGP). In addition, they may also support the SWIC with the coordination of events, meetings, and conferences as it pertains to the Department, as well as the PSBN LTE and interoperable communications.

C.2.1 Project Manager Requirements:

Throughout the project, the Contractor's Project Manager shall perform tasks during various stages of Contract and shall possess extensive knowledge, skills, ability, and practical experience in the following:

The Project Manager shall:

A. Have a minimum of five (5) years of project management experience related to strategic planning and enhancing interoperable communications, of which at least one (1) year must be specifically related to PSBN LTE project management;
B. Have a minimum of five (5) years of business process development and optimization experience;
C. Develop and implement major components of the Texas PSBN LTE strategic plan to include governance, planning, support, and outreach and education to stakeholder groups;
D. Support the Texas Statewide Interoperability Coordinator (SWIC) by planning and executing advisory committee conference calls and preparing conference call agendas;
E. Coordinate with key stakeholders and federal partners to track and document meeting action items;
F. Work with major federal communications offices and programs to conduct public safety communications and broadband research and outreach;

G. Possess the ability to develop and implement meeting agendas and be familiar with the common terminology used relating to PSBN LTE;
H. Have proven experience working on state and local land mobile radio communications projects;
I. Be experienced in outreach and education to first responders;
J. Be experienced leading groups to achieve objectives and produce deliverables;
K. Be experienced working with contact management software;
L. Travel as needed to perform required duties; and
M. Be able to pass a Department background investigation

C.2.2 Project Supervisor:

The Contractor's Project Supervisor shall provide services during various stages of this Contract and shall possess knowledge, skills, ability, and practical experience in the following, :

A. Demonstrate knowledge and experience of federal grants by maintaining familiarity with federal and state grant regulations, terms, and conditions; including but not limited to the State Homeland Security Program (SHSP), Interoperable Emergency Communications Grant Program (IECGP), and Regional Catastrophic Grant Program (RCGP);
B. Assist with maintaining backup documentation of grant expenditures in electronic formats;
C. Assist in tracking and identifying match requirements as required by specific grants;
D. Travel as needed to perform required duties;
E. Submit required paperwork for purchase approvals and service contracts within the specified time frame of the project;
F. Communicate and work with a wide range of personnel from the Department workforce, other agencies, and vendors;
G. Have a minimum of two (2) years demonstrated grant experience specifically related to communications interoperability and PSBN LTE;
H. Be experienced working with contact management software;
I. Be experienced leading groups to achieve objectives and produce deliverables;
J. Be experienced in outreach and education to first responders;
K. Have knowledge of public safety communications and of the Department, Law Enforcement Support Division, Public Safety Communications Service program and functions;
L. Be able to pass a Department employment background investigation

C.2.3. Time Tracking System

The Contractor shall maintain an automated, web-based timesheet management system to manage and track time worked and to allow the Department to electronically receive timesheets for review and approval. The Contractor's system shall allow the Department to log in with a password to review and approve timesheets.

C.2.4. Resumes

The Contractor has provided for key personnel that will be assigned to this Contract, and shall provide for future key personnel, detailed resumes the Contractor plans to assign to this Contract. Resumes will include but not be limited to: project management experience, supervisory experience, business process experience, application languages, hardware installation abilities, software upgrade experience, programming skills/abilities, and data formats for each qualifying project.

1) Name;
2) Title (current);
3) Education;
4) Experience related to projects the staff member was directly involved in;
a) Project(s) Scope;
b) Role;
c) Related specific technical qualification experience;
d) Start and completion dates (shall include MM/DD/YYYY); and
e) Specific work to be performed and/or deliverables to be provided under this Contract.

SECTION D –REPORTS AND DATA

D.1 CONTRACT COMPLIANCE REPORTS REQUIRED FROM CONTRACTOR

The Contractor shall submit the following reports and documents in the table below during the course of this Contract. These reports and documents may be revised or additional reports may be required at the Department's sole discretion.

FREQUENCY	DUE DATE	REPORT ITEM	AUTHORITY
Monthly	5th business day to Contract Administrator	HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report	Contract, Section I.3, Exhibit J.1
Monthly	1st business day of each month to apinvoices@dps.texas.gov; lisa.salathia@dps.texas.gov; jasmine.robinson@dps.texas.gov and a copy mailed to the TXDPS – Accounts Payable	Invoices	Contract, Section G.2
Annual	Prior to Execution of Contract and again within one-hundred twenty (120) calendar days after the end of Contractor's fiscal year	Financial Ratings Reports	Contract, Section G.3.8.A
Other	Prior to Execution of Contract and upon renewal or replacement	Insurance Requirements	Contract, Section I.1

SECTION E - INSPECTION AND ACCEPTANCE

E.1 INSPECTION OF SERVICES

A. Acceptance criteria for all deliverables under this Contract may be found in Section C.

B. The Department has the right to inspect and validate all products, services and deliverables called for by this Contract, to the extent practicable at all times and places during this Contract. The Department shall perform inspections in a manner that will not unduly interfere with the Contractor's performances of this Contract. The Contractor shall furnish, and shall require subcontractors to furnish, at no increase in this Contract's price, all reasonable assistance for the safe and convenient performance of these duties.

C. If any deliverables do not conform to this Contract's requirements, the Department shall require the Contractor to perform the deliverables or services again in conformity with this Contract's requirements, at no increase in this Contract's amount, in addition to all other legal and equitable remedies.

D. The Department shall, subject to limitations provided by law with respect to rights of privacy, have the right to reasonably prompt access and to examine all records of the Contractor, including financial records, maintenance records, employee records including time, and attendance records generated by the Contractor and its subcontractors in connection with performance of this Contract.

E. If subject to the outcome of an audit, it is determined that the Contractor is in non-compliance with any provisions of this Contract and/or that money is owed to the Department by the Contractor, then the Department shall exercise its rights of recovery of money owed as authorized in Section G.3 of this Contract.

F. If any services are non-compliant with this Contract's requirements, the Contractor will be notified describing specific areas of non-compliance. The Contractor shall have a ten (10) calendar day period to file a written response detailing corrective action taken to all such items of non-compliance. The response will include supporting documentation. Unless otherwise specified, or previously agreed to by the Department, the submission of a corrective action plan will not be accepted as corrective action. For all items of non-compliance satisfactorily resolved by agreement between the Contractor and the Department, no further action regarding such items will be taken. If an item of non-compliance cannot be resolved between the Contractor and the Department, and such item remains uncorrected for a period of ten (10) calendar days or longer after written notification to the Contractor, then such item will be declared to be an Event of Default.

E.2 INSPECTION BY STATE EMPLOYEES

A. The Contractor shall provide and maintain all documentation pertaining to quality of the services, acceptance of deliverables, and all reports necessary as per the terms of this Contract, in a manner acceptable to the Department for the deliverables provided under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Department during this Contract's performance and for a period of four (4) years after the termination of this Contract.

B. The Contractor shall provide entry at all times to the Department, the Public Safety Commission any authorized employee/agent for inspections and other official purposes. The Governor, members of the Legislature and all other members of the Executive and Judicial Departments of the State, as well as any other persons designated by the Department including Office of the Inspector General, will be admitted to monitor the delivery of deliverables.

E.3 MONITORING CRITERIA

A. The Department shall devise its own procedures for monitoring the quality of the Contractor's performance under this Contract, and the Department's Policies.

B. The Contractor shall cooperate fully with the Department in obtaining the requisite information needed to complete such audits and to assess the quality of the Contractor's performance.

C. Monitoring may include, but is not limited to, document reviews and on-site audits conducted by the Department. Such monitoring by the Department will not relieve the Contractor of any of its obligations under this Contract.

D. The Contract Monitor and other Department staff shall provide written findings regarding non-compliant conditions, processes, procedures and observations that could, if not addressed by the Contractor, become an item of non-compliance as described in Section E.1, Inspection of Services.

SECTION F - DELIVERIES OR PERFORMANCE PERIOD

F.1 CONTRACT TERM

This Contract will consist of a Base Period from Date of Award through 08/31/16.

This Contract may also be extended as per Section H.16, Option to Extend Service

The terms, conditions, and rates for all extensions will remain as stated in this Contract. The continuation of this Contract for any period of time is subject to the availability of federal and any other applicable funding.

This Contract may be renewed for three (3) one (1) year optional renewal periods.

SECTION G - CONTRACT ADMINISTRATION DATA

G.1 AUTHORITY – AUTHORIZED REPRESENTATIVE, CONTRACT ADMINISTRATOR, CONTRACT MONITOR

G.1.1 Authorized Representative

A. In reference to the Contractor, it's President or any Vice President shall designate the Authorized Representative in writing. The designation of the Contractor's initial Authorized Representative will be delivered to the Department no later than the effective date of this Contract. The Contractor's Authorized Representative may designate other persons to assist such Authorized Representative in the performance of certain obligations required by this Contract.

B. The Director is hereby designated as the Department's Authorized Representative.

The Director has established designee authority on his behalf for matters requiring signature approval of the Authorized Representative. The Department's Authorized Representatives may designate other persons to assist such Authorized Representatives in the performance of certain obligations of this Contract.

C. Any party may designate any person as its Authorized Representative, at any time, by delivering to the other party a written designation signed, if on behalf of Contractor by its President or any Vice President, or if on behalf of the Department by the Director. Such designations will remain effective until new written instruments are filed with or such notice is given to the other party that such designations have been revoked.

D. The Department's Authorized Representative or his designated Representative is

The only person authorized to make or approve changes in any Contract requirements, and notwithstanding any clauses contained elsewhere in this Contract, the said authority remains solely with the Director or his designated Representative. In the event Contractor makes any change at the direction of any person other than the Director or his designated Representative, the change will be considered to have been made without authority and no adjustment will be made in this Contract price to cover any increase in cost incurred as a result thereof.

G.1.2 Department Contract Administrator

A. The Contract Administrator for administration of this Contract is Darren K. Roberson, Sr.

B. The telephone number for the Contract Monitor is 512-424-5239

C. The e-mail address is darren.roberson@dps.texas.gov

The Contract Administrator is responsible for general administration of this Contract, negotiation of any changes and issuance of written changes/modifications to this Contract.

G.1.3 Department Contract Monitor

A. The Contract Monitor for this Contract is Benjamin "Eddie" Wilson

B. The telephone number for the Contract Monitor is 512-424-2689

C. The e-mail address is benjamin.wilson@dps.texas.gov

The Contract Monitor is not authorized to make any representations or commitments of any kind on behalf of the Director of the Department or the State of Texas.

The Contract Monitor does not have the authority to alter the Contractor's obligations or to change this Contract's specifications, price, terms or conditions.

If, as a result of technical discussions, it is desirable to modify this Contract, changes will be issued in writing in a contract modification and signed by the Department's Authorized Representative or his designee.

G.1.4 Department Project Manager

A. The Project Manager for this Contract is Karla Jurrens

B. The telephone number for the Project Manager is 512-424-2104

C. The e-mail address is karla.jurrens@dps.texas.gov

The Department Project Manager for this Contract who shall be responsible for the overall management and coordination of this Contract and shall act as the central point of contact for the Department. The Project Manager shall have full authority to act for the Department in the performance of this Contract. The Project Manager or a designated representative shall meet with the Contractor Project Manager to discuss problems as they occur.

G.1.5 Contractor Project Manager

A. The Contractor Project Manager for this Contract is: Pamela Faver

B. Contractor Project Manager Telephone number is: 512-279-5950

C. The e-mail address is: pfaver411@ccc.com

The Contractor shall provide a Project Manager for this Contract who shall be responsible for the overall management and coordination of this Contract and shall act as the central point of contact with the State. The Contractor Project Manager shall report to the Department Project Manager or their designee. The Contractor Project Manager shall have full authority to act for the Contractor in the performance of this Contract. The Contractor Project Manager or a designated representative shall meet with the Contract Monitor and Department Project Manager to discuss problems as they occur. The Contractor Project Manager or designated representative shall respond within three (3) working days after notification of the existence of a problem.

G.2 INVOICE REQUIREMENTS

The Department shall pay the Contractor on the basis of itemized invoices submitted to and approved by the Department, showing the actual deliverables provided and the attendant charge. Itemized invoices will clearly identify the project phase or title, deliverables delivered, the number of hours that each allocated employee worked, and the date range of work performance for this associated charge.

A. The Contractor's Invoice will include the following:

1. This Contract number;
2. Remittance Address; and
3. Prompt Payment Discount (the Contractor may offer a prompt payment discount, i.e., 1%, fifteen (15) days (refer to page 1, block 7 of this Contract) if the Contractor desires expedited Payment).

B. An invoice copy will be sent electronically to apinvoices@dps.texas.gov; lisa.salathia@dps.texas.gov and jasmine.robinson@dps.texas.gov. An original, hard-copy invoice, if required by the Contractor, shall be submitted to the office designated below:

TXDPS - Accounts Payable
P.O. Box 4087
Austin, Texas 78773

The State will not incur any penalty for late payment if the invoice was not delivered to the appropriate address identified herein.

G.3 PAYMENTS

A. It is recommended that the Contractor receive Payments via Electronic Funds Transfer (EFT), also known as Direct Deposit. If the Contractor elects to be set up for Direct Deposit Payment, the Contractor Direct Deposit authorization form may be obtained from the Department Contract Administrator. Upon the effective date of this Contract award, the Contractor shall submit a completed authorization form.

B. Regardless as to whether Direct Deposit is chosen, the Contractor will submit a completed Contractor Direct Deposit/Advance Payment Notification Authorization (Exhibit J.3) and Substitute W-9 Form (Exhibit J.4) to the following address:

TXDPS - Accounts Payable
P.O. Box 4087
Austin, Texas 78773
Attention: Mary Hamilton

Reference: Contractor Set-up for RFO 405-15-R032316

C. Notes: Contact (Darren Roberson when completed at 512-424-5239 or darren.roberson@dps.texas.gov.) If the Contractor has previously submitted a

completed Contractor Direct Deposit/Advance Payment Notification Authorization and Substitute W-9 Form to the Department for another separate contract, another form is not required to be submitted. However, the Contractor is required to provide their eleven (11) digit Texas Identification Number (TINS) previously provided to Contractor by the Texas Comptroller of Public Accounts.

TINS: _____

D. In the event the Contractor elects to decline Direct Deposit on the Contractor Direct Deposit/Advance Payment Notification Authorization and Substitute W-9 Form, the payment will be mailed to the following remittance address:

_____

_____

G.3.1 Billing and Payment

A. The Texas Government Code, Chapter 2251 (the "Prompt Payment Act") will govern payment and accrual of interest on any overdue payments.

B. Timesheets: Notwithstanding anything else to the contrary in this Contract, the Department will not make any payments of any amount to the Contractor or any other entity or person, and the Contractor will not submit any invoices, until the Contractor has received from the Department a confirmation by the Department's Contract Monitor specifically stating the Department accepts the work and has reviewed all elements of the current project, referred to on the monthly reports. Once confirmed, the Contractor is authorized to submit an invoice.

C. If the Department, for any reason, including lack of supporting documentation, disputes any items in any invoices submitted by the Contractor, the Department shall place a hold on the disputed items and pay the remaining amount of the invoice. The Department shall timely notify the Contractor of the dispute and request clarification and/or remedial action.

D. If the dispute is resolved in the Contractor's favor, the Department shall pay the remaining portion of the original invoice in accordance with the Prompt Payment Act. If the dispute is resolved in the Department's favor, the Contractor shall resubmit an invoice reflecting all corrections.

G.3.2 Payment Adjustment

A. The Department may elect to deduct from the Contractor Payment as specified in Section G.3.4, Deductions for Unacceptable Compliance and Section G.3.5, Withholding of Payment, any amount specified in or any money determined to be due as specified in Section E.1.E.

B. If it is determined that the remaining amount of the Contractor Payment is not adequate to cover the money determined to be due to the Department, then all remaining Contractor Payment will be withheld and an invoice issued to the Contractor for the remaining amount due.

C. The Contractor shall pay the invoiced amount within thirty (30) calendar days of receipt unless the Contractor and the Department mutually agree on an alternative payment method.

G.3.3 Late Payment

Any amount owed to the Contractor more than one (1) day beyond the date such amount is due as described in Section G.3 hereof will accrue interest each day that such amount is not paid at the rate specified by Texas Government Code, §2251.025, provided, however, that this provision will not excuse failure by the Department to make payment in strict accordance with this Contract.

G.3.4 Deductions for Unacceptable Compliance

A. The Contractor's failure to meet Compliance Standards will result in a deduction to the invoice Contractor payment.
B. Non-compliance could result in the Department Purchasing Program services for another entity and deducting the cost from the invoice payment.

G.3.5 Withholding of Payment

A. The Department shall have the right to withhold the Contractor Payment until the failures described below have been corrected.

1. Failure to submit reports required in Section D.1 Contract Compliance Reports required from Contractor;
2. Failure to respond to audit reports; and
3. Failure to correct identified areas of non-compliance to the satisfaction of the Department within ten (10) days upon receipt of written notification.

B. The Department will not pay interest to the Contractor for monies so withheld.

C. The Contractor Payment withheld will be released upon the Department's satisfaction that compliance has been achieved for thirty (30) consecutive days.

D. In the event that money is due to the Department for the Contractor's failure to provide adequate maintenance or replacement of the property as required in this Contract, the amount required for the Department to correct deficiencies and replace property will be withheld from the final Payment.

E. With the exception of disputed issues, such withholding of final Payment by the Department will not exceed one-hundred twenty (120) calendar days from date of this Contract's termination.

G.3.6 Payment of Debt Owed to the State of Texas

As required by Texas Government Code, Section 2252.903, payments due under this Contract will be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support, until the debt is paid in full. The Contractor shall comply with rules adopted by the Department under Texas Government Code, Sections 403.055, 403.0551, 2252.903, and

other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

G.3.7 Right to Offset

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

G.3.8 Annual Financial Rating Reports

A. The Contractor shall submit to the Contract Administrator financial rating information acceptable to the Department as described in Section B.1.2 within one hundred twenty (120) calendar days after the end of the Contractor's fiscal year.

B. In the disclosure of its financial affairs, the Contractor shall allow the Department or its representative's access to all its corporate books relative to the services provided hereunder, to cooperate in any audits thereof.

C. Notwithstanding anything else in this Section G.3.8 or any other provision of this Contract to the contrary, the Contractor shall fully cooperate with state and federal representatives in audits of the Contractor's performance and receipt of funds under this Contract or applicable law, including, but not limited to, the audits described in Section H of this Contract.

SECTION H – TERMS AND CONDITIONS

Subcontractors shall also comply with these provisions.

H.1 AVAILABILITY OF FUNDS FOR NEXT FISCAL YEAR AND LEGISLATIVE ACTIONS

A. The Department is a state agency whose authority is subject to the actions of the Texas Legislature and the United States Congress. All obligations of the Department are subject to the availability of legislative appropriations or, if applicable, the availability of federal funds applicable to this Contract. The Contractor acknowledges that the ability of the Department to make payments under this Contract is contingent upon the availability of funds. The Contractor further acknowledges that funds may not be specifically appropriated for this Contract and the Departments continual ability to make payments under this Contract is contingent upon the funding levels appropriated to the Department.

B. The Department may immediately terminate this Contract, in whole or in part, without penalty to, or any liability whatsoever on the part of the Department, the State of Texas, and the United States if the Department and/or the subject matter of this Contract become subject to a legislative or regulatory change or the revocation of statutory or regulatory authority that would render the deliverables to be provided under this Contract impossible, unnecessary, void, or substantially amended or that would terminate the appropriations for this Contract. The Department is not required to provide thirty (30) calendar days written notice as termination under this section is immediate.

C. The Department is a state agency receiving grant funding from State or Federal Grantor sources. The Department may immediately terminate this Contract, in whole or in part, without penalty to, or any liability whatsoever on the part of the Department, the State of Texas, and the United States if the State or Federal Grantor terminates or reduces the funding necessary for performance of this Contract The Department is not required to provide thirty (30) calendar days written notice as termination under this section is immediate.

D. The Department may, upon thirty (30) calendar days written notice to Contractor, reduce the deliverables in such manner and for such periods of time as the Department may elect if funding or appropriations for this Contract are reduced by law, the statutory amount of compensation authorized for the Contractor is reduced by law, or the Legislative Budget Board requests the Department to reduce the Department budget by a certain percentage.

H.2 NEWS RELEASES, ADVERTISEMENTS, AND PUBLICITY

A. The Contractor will not make any news releases, public announcements or public disclosures, nor will it have any conversations with representatives of the news media, pertaining to this Contract, without the express, prior written approval of the Department, and then only in accordance with explicit written instructions from the Department.

B. The Contractor will not use the name of the State of Texas or the Department in any advertisement, promotion or otherwise for any purpose regarding this Contract without

the express prior written consent of the Department. The Department is not authorized to provide endorsements.

1. Notwithstanding the foregoing, the Contractor may make any disclosure required by law or regulation without the approval of the Department.

H.3 FURTHER OPPORTUNITY TO CURE

A. If an Event of Default of the type specified in Section H.4.1 occurs and if the Contractor reasonably believes that such Event of Default cannot be cured within the ten (10) business days allowed in Section E.1.F but that such Event of Default can be cured through a diligent, on-going, and conscientious effort on the part of the Contractor, within a reasonable period not to exceed three (3) months, then the Contractor may, within the ten (10) calendar day cure period, submit a detailed plan for curing the Event of Default to the Department.

B. The Department shall promptly review Contractor's plan for curing an Event of Default and at its discretion, may allow, or not allow, the Contractor to pursue such plan of cure.

C. The Department's decision will be communicated in writing to the Contractor.

D. The Department will not exercise its remedies thereunder with respect to such Event of Default while the Contractor diligently, conscientiously, and timely undertakes to cure the Event of Default in accordance with the approved plan.

E. The ten (10) calendar day time period will be tolled during the time the request was pending, if the Department does not allow the Contractor an extension of the cure period.

H.4 TERMINATION

This Contract may be terminated or cancelled in any of the following circumstances:

H.4.1 Termination by Default

The Department shall notify the Contractor in writing of any failure or default if the Contractor fails to carry out or comply with any requirements of this Contract (including but not limited to any statement, representation or warranty in this Contract that is false, misleading, or erroneous in any material respect). The Department's notification will demand that the failure or default be remedied within ten (10) calendar days. The Department shall have the right to cancel this Contract upon ten (10) calendar days from written notice if the Contractor fails to remedy such failure or default within the ten (10) calendar day period.

H.4.2 Termination for Unavailability of Funds

This Contract may be terminated as provided in Section H.1 herein entitled "Availability of Funds for Next Fiscal Year and Legislative Actions." The Parties understand and agree that the obligations of the Department under this Contract are contingent upon the availability of funds to meet the Department's liabilities hereunder. The Department may immediately terminate this Contract without penalty to or any liability whatsoever on the part of the Department, the State of Texas, and the United States, if these funds become unavailable to the Department.

H.4.3 Termination for Convenience

This Contract may be terminated, without penalty, by the Department, without cause by giving thirty (30) calendar days written notice of such termination to the Contractor.

H.4.4 Termination by Mutual Agreement

This Contract may be terminated upon mutual written agreement.

H.4.5 Termination for Cause

This Contract may be terminated by the Department if the Contractor fails to perform as agreed or is otherwise in default, without the necessity of complying with the requirements in Section H.4.1 herein entitled "Termination by Default." The Department shall provide the Contractor with written notice to terminate this Contract, which termination will become effective immediately upon the Contractor's receipt of the notice.

H.4.6 Termination for Listing on Federal Excluded Party List, the Terrorism List (Executive Order 13224) or on the State of Texas Debarred Contractor List

The Department shall have the absolute right to terminate this Contract without recourse as follows: a) if the Contractor becomes listed on the prohibited Contractor list authorized by Executive Order #13224 "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of Treasury, Office of Foreign Assets Control; or b) if the Contractor becomes suspended or debarred from doing business with the federal government as listed in the System for Award Management ("SAM") maintained by the General Services Administration; or c) if the Contractor becomes listed on the State of Texas Debarred Vendor List. The Department shall provide the Contractor with written notice to terminate this Contract, which termination shall become effective immediately upon the Contractor's receipt of the notice.

H.4.7 General Termination Provisions

A. The termination of this Contract, under any circumstances whatsoever, will not affect or relieve the Contractor from any obligation or liability that may have been incurred pursuant to this Contract, and such cancellation by the Department will not limit any other right or remedy available to the Department at law or in equity.

B. This Contract does not grant the Contractor a franchise or any other vested property right. The Department reserves the right, in its sole discretion, to solicit or contract with other contractors for similar services and deliverables under this Contract at any time. Except as expressly authorized by the Department under this Contract during the term of this Contract, the Contractor's provision of self-service or other services deliverables under this Contract is not exclusive. In all events, no minimum number of applications is guaranteed. In all events, no minimum amount of compensation is guaranteed.

C. The Department will not be considered in default or breach of this Contract, nor will it give rise to any liability whatsoever on the part of the Department whether such claims of the Contractor are for compensation of anticipated profits, unabsorbed overhead, interest on borrowing, or for any other reason in the event of termination hereunder.

D. The Contractor shall, unless mutually agreed upon in writing, cease all work immediately upon the effective date of termination. The Department shall be liable for payments limited only to the portion of the work the Department authorized in writing and which the Contractor has completed, delivered to the Department, and which been accepted by the Department. All such work will have been completed, per this Contract's requirements, prior to the effective date of termination.

E. The Contractor shall deliver to the Department all completed, or partially completed work and any and all documentation or other products and results of these services no later than the first calendar day after the termination of this Contract, or at the Department's request. Failure to timely deliver such work or any and all documentation or other products and results of the services will be considered a material breach of this Contract. The Contractor will not make or retain any copies of the work or any and all documentation or other products and results of the services without the prior written consent of the Department.

F. The Department reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to the Department under this Contract or under applicable law, including, but not limited to, attorneys' fees and court costs, if termination is at the Contractor's request or if termination is for cause. This right is in addition to any other remedies available to the Department under this Contract or applicable law. The Department reserves the right to pursue any and all applicable rights and remedies if this Contract is terminated for any reason and the Department expressly waives no such rights or remedies.

G. The Department 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 Contractor if the Contractor defaults on this Contract. The Department will not consider the defaulting Contractor in the re-solicitation and the Department may not consider the defaulting Contractor in future solicitations for the same type of work, unless the specification or scope of work significantly changes. The Department will determine the period of suspension based on the seriousness of the default.

H. The Department and the State of Texas will not be liable to the Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination if this Contract is terminated for any reason. However, the Contractor may be entitled to the remedies provided in Texas Government Code, Chapter 2260.

H.5 DISPUTE RESOLUTION

A. Any dispute arising under this Contract, which is not disposed of by mutual agreement between the Department and the Contractor will be resolved as follows:

1. The dispute resolution process provided for in Texas Government Code, Chapter 2260, shall be used, as further described herein, by the Contractor to attempt to resolve all disputes or contract claims arising under this Contract.

2. The Contractor's claim for breach of this Contract that the parties cannot resolve in the ordinary course of business will be submitted to the negotiation process provided in Texas Government Code, Chapter 2260, Subchapter B.

3. The Contractor shall initiate the process by submitting written notice, as required by Subchapter B, to the Procurement and Contract Services Director or designee, at 5805 North Lamar Blvd, Bldg. A, Austin, Texas 78752.

4. Said notice will specifically state that the provisions of the Texas Government Code, Chapter 2260, Subchapter B, are being invoked, and will also be given to all other representatives of the Department and the Contractor otherwise entitled to notice under this Contract.

5. Compliance by the Contractor with the Texas Government Code, Chapter 2260, Subchapter B, is a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C.

6. The contested case process provided in Texas Government Code, Chapter 2260, Subchapter C, is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of this Contract by the Department if the parties are unable to resolve a dispute under this subparagraph (A).

7. Compliance with the contested case process provided in the Texas Government Code, Chapter 2260, Subchapter C, is a condition precedent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code.

8. Neither the execution of this Contract by the Department nor any other conduct of any representative of the Department related to this Contract will be considered a waiver of sovereign immunity to suit.

B. In addition to complying with Texas Government Code, Chapter 2260, the Contractor shall comply with the Department administrative rules published in the Texas Administrative Code, Title 37, Public Safety and Corrections, Part I, Texas Department of Public Safety, Chapter 34, Negotiation and Mediation of Certain Contract Disputes.

C. The Contractor shall continue providing the deliverables as directed, in a diligent manner and without delay, and shall conform to Department directives, decisions, or orders, be governed by all applicable provisions of this Contract, unless directed otherwise in writing by the Department at all times during the course of the dispute resolution process. The Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

H.6 INDEMNIFICATION

H.6.1 Acts or Omissions

CONTRACTOR SHALL DEFEND INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE DEPARTMENT, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THIS

CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THIS CONTRACT. THE DEFENSE WILL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND THE CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. THE CONTRACTOR AND THE DEPARTMENT SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

H.6.2 Infringements

A. CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE DEPARTMENT, 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 THE CONTRACTOR PURSUANT TO THIS CONTRACT. THE CONTRACTOR AND THE DEPARTMENT SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. THE CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE WILL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

B. THE CONTRACTOR 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 MODIFICATIONS MADE TO THE PRODUCT WITHOUT CONTRACTOR'S WRITTEN APPROVAL, (III) ANY MODIFICATIONS MADE TO THE PRODUCT BY THE CONTRACTOR PURSUANT TO THE DEPARTMENT'S SPECIFIC INSTRUCTIONS, (IV) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO THE DEPARTMENT, OR (V) ANY USE OF THE PRODUCT OR SERVICE BY THE DEPARTMENT THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT.

C. IF THE CONTRACTOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR THE DEPARTMENT PROVIDES THE CONTRACTOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, THE CONTRACTOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST THE DEPARTMENT, SHALL), AT THE CONTRACTOR'S SOLE OPTION AND EXPENSE; (I) PROCURE FOR THE DEPARTMENT 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 THE DEPARTMENT'S USE IS NON-INFRINGING.

H.6.3 Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

A. **THE CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF THE CONTRACTOR'S AND THE CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES UNDER THIS CONTRACT. THE CONTRACTOR SHALL COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE DEPARTMENT AND/OR THE STATE WILL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY.**

B. **THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE DEPARTMENT, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE WILL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND THE CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. THE CONTRACTOR AND THE DEPARTMENT SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

H.7 NO WAIVER OF DEFENSES

Nothing in this Contract will be construed as a waiver of the state's sovereign immunity. This Contract will not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this Contract or under applicable law will not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or to be considered as a basis for estoppel. The Department does not waiver any privileges, rights, defenses, or immunities available to the Department by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

H.8 INDEPENDENT CONTRACTOR

The Contractor and its employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under this Contract. The Contractor and its employees, representatives, agents and any subcontractors will not be employees of the Department. Should the Contractor subcontract any of the services provided under this Contract, the Contractor expressly understands and acknowledges that in entering into such subcontracts, the Department is in no manner liable to any subcontractor(s) of the Contractor. In no event will this provision relieve the Contractor of

the responsibility for ensuring the services rendered under all subcontracts are rendered in compliance with this Contract.

H.9 APPLICABLE LAW; VENUE

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

H.10 ASSIGNMENT

The Contractor will not assign or transfer any interest in or duty under this Contract without the express, prior written consent of the Department at its sole discretion. An attempted assignment in violation of this clause is null and void. Any approved assignment will not relieve the assignor of any liability or obligation under this Contract.

H.11 MAINTENANCE OF CORPORATE EXISTENCE AND BUSINESS

A. The Contractor, if incorporated, shall at all times maintain its corporate existence and authority to transact business and be in good standing in its jurisdiction of incorporation and the State of Texas.

B. The Contractor shall maintain all licenses, permits and franchises necessary for its businesses where the failure to so maintain may have a material adverse effect on the Contractor's ability to perform its obligations under this Contract.

H.12 APPROVAL OF CONTRACT

This Contract is subject to written approval of the Department Director or the Director's designated representative and will not be binding until so approved.

H.13 NON-DISCRIMINATION

A. In the performance of this Contract, the Contractor warrants that it will not discriminate against any person, employee, subcontractor, participant or provider on the basis of race, color, disability or perceived disability, religion, sex, sexual orientation, national origin, creed, political belief, genetic information, or age, and in accordance with the following:

B. The Contractor will not discriminate against employees, subcontractors, participants or providers who have or are perceived to have a disability because of AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. The Contractor shall post notices setting forth the provisions of this non-discrimination clause in conspicuous places, available to employees and applicants for employment.

C. The Contractor shall state that it is an equal opportunity employer in all solicitations or advertisements for employees and/or the purchase of services, provided however, that notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for the purpose of meeting this requirement.

D. The Contractor shall include the provisions of the foregoing paragraphs in every subcontract so that such provisions will be binding upon each subcontractor or the Contractor.

E. Contractor represents and warrants that it shall comply with the requirements of the Americans with Disabilities Act (ADA).

H.14 AMENDMENTS

Except as provided in Sections H.15 and H.16 of this Contract, this Contract may be amended only upon written agreement between the Department and Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas will be void ab initio.

H.15 OPTION TO EXTEND THE TERM OF THE CONTRACT

A. The Department may, at its sole discretion, extend the term of this Contract by written Contract modification to the Contractor prior to this Contract's expiration.

B. The preliminary notice does not commit the Department to an extension.

C. If the Department exercises this option, the extended Contract will be considered to include this option provision.

H.16 OPTION TO EXTEND SERVICES

A. The Department may require continued performance of any services within the limits and at the rates specified in this Contract.

B. The Department reserves the right to extend this Contract for a ninety (90) calendar day period at the end of this Contract and/or extension period for the purpose of re-advertising the service, awarding a new Contract, and transitioning into a new Contract.

C. This option provision may be exercised more than once, but the total extension of performance hereunder will not exceed six (6) months.

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

H.17 SEVERABILITY

In the event that any provision of this Contract is held invalid, void, unenforceable or illegal in any respect by a final order/judgment of the State Office of Administrative Hearings or a court of competent jurisdiction, then the remaining terms, provisions, covenants, and conditions of this Contract will remain in full force and effect, and will in no way be affected, impaired, or invalidated.

H.18 U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM

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 Contractor to perform work pursuant to the Contract, within the United States of America.

The Contractor shall provide, upon request of the Department an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three 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 Department and at no fault to the Department, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the Department must undertake to replace the terminated Contract.

H.19 LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS

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

H.20 PUBLIC SAFETY COMMISSION CONTRACT REVIEW

The Texas Public Safety Commission or the Commission's designee (Commission) will receive notification of the following contracts awarded by the Texas Department of Public Safety (Department) since the last Commission meeting:

A. Contracts valued at one-million and no/100 dollars ($1,000,000.00) or more, including available renewal options;

B. Contract amendments (other than exercise of available renewal options) valued at one-hundred thousand and no/100 dollars ($100,000.00) or more that increase the value of the original contracts by 50% or more; and

C. Contract amendments (other than exercise of available renewal options) valued at five hundred thousand and no/100 dollars ($500,000.00) or more.

The Assistant Director, Administration, shall submit these reports to the Commission. The Commission shall review contracts prior to or after award by the Department if required by applicable law.

H.21 STRICT COMPLIANCE

Time is of the essence in the delivery of deliverables as set forth in this Contract. Contractor shall strictly comply with all of the deadlines, requirements, and Standards of Performance for this Contract.

H.22 APPLICABLE LAW AND CONFORMING AMENDMENTS

The Contractor shall comply with all laws, regulations, requirements and guidelines applicable to a Contractor providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. The Department reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for the Department or the Contractor's compliance with all applicable State and federal laws, and regulations.

H. 23 COMPLIANCE WITH STATE, FEDERAL, AND LOCAL LAWS, RULES, AND REGULATIONS

A. The Contractor shall comply with all applicable state, federal and local laws and ordinances in providing deliverables to the Department under this Contract. Without limiting the generality of the foregoing, the Contractor shall be able to demonstrate compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of W-2s to common law employees. The Contractor shall provide both federal and state unemployment insurance coverage and standard workers' compensation insurance coverage. The Contractor shall comply with all federal and state tax laws and withholding requirements. The Department will not be liable to the Contractor/subcontractor(s) or its employees for any unemployment insurance or workers' compensation coverage or federal or state tax withholding requirements. The Contractor may be required to demonstrate compliance with such laws at the written request of the Department.

B. Except as stated otherwise in this Contract, the Contractor shall provide all labor and equipment necessary to furnish the deliverables under this Contract. All employees of the Contractor will be a minimum of seventeen (17) years of age and experienced in the type of work to be performed. Absent prior, written permission from the Department, no visitors or relatives of the Contractor's employees and subcontractors will be allowed on State property unless they are bona fide employees or subcontractors of the Contractor performing work under this Contract.

C. The Contractor shall ensure that at all times its personnel shall observe and comply with all laws, regulations and rules pertaining to state facilities, including but not limited to parking and security regulations and non-smoking policies. Additionally, the Contractor and the Contractor personnel shall comply with all relevant Department policies and requirements that relate to the security of data and confidentiality of information, which requirements may include the Federal Bureau of Investigation Criminal Justice Information Services ("CJIS) Security Policy and Security Addendum, as they now exist and as they may thereafter be amended.

D. The Department shall have the right to require the Contractor to remove any of the Contractor's personnel from involvement in this Contract who have failed to comply with such laws, regulations or rules.

H.24 FORCE MAJEURE

Neither the Contractor nor the Department shall be liable to the other for any delay in, or failure of performance, any requirement contained herein 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 shall 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.

H.25 FORESEEABLE DELAY

If a delivery delay is foreseeable and the delay is not caused by a force majeure event, the Contractor shall give written notice to the Department. The Department has the right to extend the delivery date if reasons appear valid. The Contractor shall keep the Department advised at all times of status of the deliverable. Default in promised (without accepted reasons) or failure to meet specifications authorizes the Department to purchase deliverables elsewhere and charge full increase in costs, if any, to the Contractor, in addition to all other legal and equitable remedies.

H.26 NO SUBSTITUTIONS AND DELIVERY TIMES

No substitutes or cancellations are permitted without written approval of the Department. Delivery will be made during normal business hours only, unless approval for late delivery has been obtained from the Department in writing.

H.27 PATENT, TRADEMARK, COPYRIGHT AND OTHER INFRINGEMENT CLAIMS

THE CONTRACTOR SHALL DEFEND, INDEMNIFY, SAVE AND HOLD HARMLESS THE STATE OF TEXAS FROM AND AGAINST CLAIMS OF PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHTS, VIOLATIONS OR INFRINGEMENTS ARISING FROM THE STATE'S OR THE CONTRACTOR'S USE OF OR ACQUISITION OF ANY SERVICES OR OTHER ITEMS PROVIDED TO THE STATE OF TEXAS BY THE CONTRACTOR OR OTHERWISE TO WHICH THE STATE OF TEXAS HAS ACCESS AS A RESULT OF THE CONTRACTOR'S PERFORMANCE UNDER THIS CONTRACT, PROVIDED THAT THE STATE SHALL NOTIFY THE CONTRACTOR OF ANY SUCH CLAIM WITHIN A REASONABLE TIME OF THE STATE'S RECEIVING NOTICE OF ANY SUCH CLAIM. IF THE CONTRACTOR IS NOTIFIED OF ANY CLAIM SUBJECT TO THIS SECTION, THE CONTRACTOR SHALL NOTIFY THE DEPARTMENT OF SUCH CLAIM WITHIN FIVE (5) BUSINESS DAYS OF SUCH NOTICE. NO SETTLEMENT OF ANY SUCH CLAIM WILL BE MADE BY THE CONTRACTOR WITHOUT THE DEPARTMENTS PRIOR WRITTEN APPROVAL. THE CONTRACTOR SHALL REIMBURSE THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, LOSSES, COSTS, EXPENSES, JUDGMENTS OR ANY OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. THE CONTRACTOR SHALL PAY ALL REASONABLE COSTS OF THE STATE'S COUNSEL AND SHALL ALSO PAY COSTS OF MULTIPLE COUNSEL, IF REQUIRED TO AVOID CONFLICTS OF INTEREST. THE CONTRACTOR REPRESENTS THAT IT HAS DETERMINED WHAT LICENSES, PATENTS AND PERMITS ARE REQUIRED UNDER THIS CONTRACT AND HAS ACQUIRED ALL SUCH LICENSES, PATENTS AND PERMITS.

H.28 SURVIVAL

Termination of this Contract for any reason will not release the Contractor from any liability or obligation set forth in this Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice and fees verification, and any other provisions of this Contract that impose continuing obligations on either of the parties or that govern the rights and limitations of either of the parties after the expiration or termination of this Contract.

H.29 SUCCESSORS

This Contract will be binding upon and will inure to the benefit of the parties hereto and their respective successors, heirs, administrators, personal representatives, legal representatives, and permitted assigns.

H.30 EMPLOYEE NON-SOLICITATION

The Contractor will not, during the term of this Contract and for a period of twelve (12) months thereafter, solicit for employment any person who is a Department employee nor was a Department employee during the previous twelve (12) months with whom the Contractor had substantial contact in the course of performing its obligations under this Contract. Indirect solicitations, such as newspaper and internet announcements, are not prohibited by this section.

H.31 COMMENCEMENT OF WORK

Work performed before final execution of this Contract will be at the Contractor's risk and if a cost reimbursement contract, that work will not be reimbursed without prior written authorization from the Department for the Contractor to begin work.

H.32 ROLLING ESTOPPEL

A. The Department will be conclusively deemed to have fulfilled its obligations under this Contract, unless the Department receives a deficiency report from the Contractor within five (5) business days of the occurrence of the alleged deficiencies and the Contractor identifies specific deficiencies in the Department's fulfillment of its obligations in that report. Deficiencies will be described in terms of how they have impacted the specific performance requirements of the Contractor. The Contractor is estopped from claiming that a situation has arisen that might otherwise justify changes in the project timetable, the standards of performance under this Contract, or the project cost, if the Contractor knew of that problem and failed to include it in the applicable report. The deficiency report will be sent to the Department's Contract Monitor.

B. In the event the Contractor identifies a situation wherein the Department is impairing the Contractor's ability to perform for any reason, the Contractor's deficiency report will contain the Contractor's suggested solutions to the situation(s). These suggestions should be in sufficient detail so that the Department Contract Monitor can make a prompt decision as to the best method of dealing with the problem and continuing the project in an unimpeded fashion.

H.33 SALES AND USE TAX

The Department, as an agency of the State of Texas, qualifies for exemption from state and local sales and use taxes pursuant to the provisions of the Texas Limited Sales, Excise, and Use Tax Act. The Contractor may claim exemption from payment of applicable state taxes by complying with such procedures as may be prescribed by the Texas Comptroller of Public Accounts.

H.34 NOTICES

Any notice required or permitted under this Contract will be directed to the Contractor's Project Manager as specified in Section G.1.6 and the Department's Contract Administrator as specified in Section G.1.2 and will be deemed received:

1. When delivered in hand and a receipt granted;

2. Three days after it is deposited in the United States mail by certified mail, return receipt requested; or

3. When received if sent by confirmed facsimile or confirmed electronic mail.

Either of the parties may change its address or designated individual(s) to receive notices by giving the other party written notice as provided above, specifying the new address and/or individual and the date upon which it will become effective.

H.35 MOST FAVORED CUSTOMER

The Contractor represents and warrants that all prices, charges, benefits, warranties and terms granted to the Department pursuant to this Contract are comparable to, or more favorable to, the Department than the price, charges, benefits, warranties, and terms that the Contractor has heretofore offered to any person or entity for the products and/or services covered under any other agreement. If at any time during the term of this Contract, the Contractor shall contract with any other person or entity for prices, charges, benefits, warranties and terms more favorable to such person or entity, the Contractor shall notify the Department of such more favorable terms and the Department, in its sole discretion, may require that such more favorable prices, charges, benefits, warranties or other terms be available to the Department under this Contract, and be retroactive to the effective date of this Contract.

H.36 STATE EXCULPATION

The Department will not be liable to the Contractor for any increased costs or expenses that may be incurred by the Contractor, or for any other damages that may be suffered by the Contractor as a result of any act or omission of any other Contractor to the State of Texas or the Department.

H.37 TITLE AND RISK OF LOSS

Title and risk of loss for deliverables will not pass to the Department until the Department actually receives, takes possession, and accepts the deliverables at the point or points of delivery (F.O.B. Destination).

H.38 AVAILABILITY OF DEPARTMENT MANPOWER

All of the Department's obligations and requirements in this Contract are subject to the availability of the Department manpower and are subject to the practicability of the Department to perform such obligations and requirements. The determination regarding availability of the Department manpower and the practicability of the Department to perform such obligations and requirements is within the sole discretion of the Department's management.

H.39 INTERPRETATION AGAINST DRAFTER

Ambiguities in this Contract or the language at issue will not be interpreted against the drafting party regardless of which party drafted this Contract or the language at issue.

H.40 NON-INCORPORATION CLAUSE

This Contract embodies the entire agreement between the Parties regarding the deliverables described herein, and there have been and are no oral or written covenants, agreements, understandings, representations, warranties or restrictions between the parties regarding the deliverables described in this Contract other than those specifically set forth herein.

H.41 HEADINGS

The headings, captions, and arrangements used in this Contract are, unless specified otherwise, for convenience only and will not be deemed to limit, amplify, or modify the terms of this Contract, nor to affect the meaning thereof.

H.42 ATTACHMENTS

The Department reserves the right, in its sole discretion, to reject any of the Contractor's terms and conditions or other documents or attachments as part of the Contractor's Offer.

H.43 UNACCEPTABLE CONTRACTOR TERMS

No Department action, including, but not limited to, issuance of a Contract, will constitute an acceptance of conflicting terms and conditions, if any, that are expressly identified as such in this Contract. Such negotiated terms and conditions will take precedence over the other documents that collectively constitute this Contract as specifically provided in this Contract.

Contractor terms and conditions that may violate Texas law or may be unacceptable to the Department for inclusion in this Contract include:

A. Incorporation of laws of a State other than Texas;

B. Requirements for prepayment;

C. Limitations on the Department's remedies;

D. Requirements that the Department indemnify the Contractor;

E. Requirements that the Contractor's documents control in case of conflict;

F. Requirements that the Contractor's documents control even if the Contractor accepts or acknowledges this Contract; and

G. Disclaimer of warranties.

H.44 RECALL NOTICE

The Contractor shall immediately upon discovery of same, advise the Department of any or all required replacements or modifications to any equipment or hardware provided under this Contract or the withdrawal of any such equipment or hardware by reason of safety hazard or recall regardless of the nature of same. Verbal notification will be confirmed in writing within twenty-four (24) hours of such verbal notification. The Contractor shall submit all such formal notices to the Department Contract Monitor.

H.45 COMPETENCY ACKNOWLEDGEMENT

The Contractor has read and fully understands this Contract between the Department and the Contractor. The Contractor is legally competent to execute this Contract and has done so with the Contractor's own free will and accord, without reliance on any representation of any kind or character by the Department which is not expressly set forth herein. The Contractor understands that it has an opportunity to consult with a lawyer prior to signing this Contract.

H.46 MULTIPLE CONTRACTS

This Contract may be executed in a number of identical counterparts, each of which will be deemed an original for all purposes. In making proof of this Contract, it will not be necessary to produce or account for more than one (1) such counterpart.

H.47 LITIGATION OR FELONY CRIMINAL CONVICTIONS

The Contractor represents and warrants that it is not aware of and has received no notices of any court or governmental actions, proceedings, or investigations, etc., pending or threatened against the Contractor that would or could impair the Contractor's performance under this Contract or would otherwise be relevant to the Department entering into this Contract. The Contractor represents and warrants that the Contractor has not and the Contractor's employees and subcontractors have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, the Contractor has fully advised the Department as to the facts and circumstances surrounding the conviction.

H.48 PROHIBITED USE OF APPROPRIATED OR OTHER FUNDS UNDER CONTROL OF STATE AGENCY; LOBBYING

The Contractor represents and warrants that the Department payments to the Contractor and the Contractor's receipt of appropriated or other funds under this Contract are not prohibited by the Texas Government Code, Sections 556.005 and 556.008.

H.49 FALSE STATEMENTS

The Contractor makes all the representations, warranties, guarantees, certifications, and affirmations included in this Contract. If the Contractor signs this Contract with a false statement or it is subsequently determined that the Contractor has violated any of the representations, warranties, guarantees, certifications, or affirmations included in this

Contract, the Contractor will be in default under this Contract and the Department may terminate or void this Contract for cause and pursue other remedies available to the Department under this Contract and applicable law.

H.50 PUBLIC INFORMATION ACT

A. Notwithstanding any provisions of this Contract to the contrary, the Contractor understands that the Department is subject to and shall comply with the Texas Public Information Act, Texas Government Code, Chapter 552, as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. The Department shall notify the Contractor in writing within a reasonable time from receipt of a request for information related to the Contractor's work under this Contract. The Contractor shall cooperate with the Department in the production of documents responsive to the request. The Department shall make a determination whether to submit a Public Information Act request to the Attorney General. The Contractor shall notify the Department within twenty-four (24) hours of receipt of any third party requests for information that was provided by the State of Texas for use in performing this Contract. This Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Contractor shall maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers.

B. Contractor shall make any information created or exchanged with the state pursuant to this Contract, and not otherwise exempt 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.

H.51 APPROVAL OF EMPLOYEES

A. The Contractor shall retain no upper level management personnel for administration of the Services without prior approval of each selection by the Department's Authorized Representative or his designee which approval will not be unreasonably withheld.

B. The Contractor shall provide the name of the employee, all pending investigations and disciplinary actions and previous disciplinary actions upon request by the Department.

H.52 PERSONNEL

H.53.1 Qualifications of Personnel

A. The Contractor warrants that all persons assigned to this Contract are employees or subcontractors of the Contractor, and meet all qualifications as defined herein and Section C to perform the work required.

B. Replacement of personnel, if approved by the Department, shall be with personnel of equal or greater ability and qualifications. The Department will be the arbiter of whether the replacement personnel have equal or greater ability and qualifications than the personnel being replaced.

C. The Contractor shall assign all personnel identified in this Contract to complete all of its planned and assigned responsibilities in connection with performance of this Contract.

The Department shall have the right to approve the assignment and replacement by the Contractor of all personnel assigned to provide deliverables or to provide on-site representation of the Contractor.

D. The Contractor shall notify the Department before assigning a replacement individual for any of the personnel commitments identified in the Contractor's Offer. The Contractor shall notify the Department of the proposed assignment, shall introduce the individual to the appropriate representatives of the Department, shall provide a transfer of knowledge validation and shall provide to the Department a resume and any other information about the individual reasonably requested by the Department. The Department reserves the right to interview the individual before granting approval. The Contractor shall obtain prior written approval for any replacement personnel before beginning any work assignments.

H.53.2 Replacement of Personnel at the Departments Request

A. The Department reserves the right to require the Contractor to replace the Contractor personnel whom the Department judges to be incompetent, careless, unsuitable or otherwise objectionable, or whose continued use is deemed contrary to the best interests of the Department or the State of Texas. Before a written request is issued, representatives of the Department and the Contractor shall discuss the circumstances. Upon receipt of a written request from the Department's Contract Administrator, the Contractor shall be required to proceed with the replacement. The replacement request will include the desired replacement date and the reason for the request. The Contractor shall use its best efforts to effect the replacement in a manner that does not degrade deliverable quality. The Contractor shall also provide the Department with evidence of a sufficient transfer of knowledge to the proposed replacement.

B. This provision will not give the Department the right to require the Contractor to terminate any Contractor employee's employment. Rather, this provision gives the Department the right to require the Contractor to discontinue using particular personnel in the performance of deliverables for the Department.

H.53.3 Unauthorized Removal of Personnel

It is critical to the overall success of the project that the Contractor not remove or reassign, without the Departments prior written approval, any of the assigned personnel until such time as the personnel have completed all of their planned and assigned responsibilities in connection with performance of the Contractor's obligations under this Contract. Without prior written approval from the Department, personnel shall only be changed in the event of death, personal injury, debilitating illness, or termination of employment with the Contractor. The unauthorized removal of personnel by the Contractor will be considered by the Department as a material breach of this Contract and grounds for termination.

H.54 UTILIZATION OF PRODUCTS AND MATERIALS PRODUCED IN TEXAS

The Contractor shall comply with Texas Government Code, Section 2155.4441, in the performance of this Contract. In performing services under this Contract, the Contractor shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside of Texas.

H.55 BOOKS AND RECORDS

All records and documents pertinent to the services contracted hereunder will be kept for a minimum of four (4) years after termination hereof. If any litigation, claim, or audit involving these records begins before the retention period expires, the Contractor shall continue to retain said records and documents until all litigation, claims or audit findings are resolved, meaning that there is a final court order from which no further appeal may be made, or written agreement is entered in to between the Contractor and the Department.

H.56 ORGANIZATIONAL AND NAME CHANGE

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

H.57 DEPARTMENT POLICIES AND PROCEDURES

A. The Contractor's Authorized Representative shall provide the following to the Department's Program Manager within ten (10) calendar days of executing this Contract:

   1. The completed Department Contractor Background Information form (HR-22) for all proposed personnel; and

   2. Acceptable fingerprints for all proposed personnel.

B. The Contractor will not allow any personnel to work on the project that have not submitted to and successfully completed a Department fingerprint-based Criminal History Background Investigation. The Department has the right to prevent the Contractor's personnel from gaining access to the Department building(s) and computer systems if the Department determines that such personnel did not pass the background check or failed to otherwise maintain a security clearance. Reference Section I.9 entitled "Criminal History Background Checks" for details on this requirement.

C. The Department issued identification cards will be worn at all times and will be worn in a visible location.

H.58 WARRANTIES

H.58.1 Third Party Warranties

If, under this Contract, the Contractor procures any materials or products for the Department, the Contractor shall assign or otherwise transfer to the Department, or afford the Department the benefits of, any manufacturer's warranty for such materials or products.

H.58.2 Contractor Warranties

The Contractor/subcontractor(s) make the following representations and warranties, including without limitation, the following:

A. The Contractor/subcontractor(s) shall create and deliver all services and deliverables in accordance with applicable professional standards of a Contractor providing the services. The Contractor represents and warrants it has the requisite qualifications, experience, personnel and other resources to perform in the manner required by this Contract.

B. The Contractor/subcontractor(s) shall assign only qualified personnel to this Contract.

C. The Contractor/subcontractor(s) shall efficiently supply all resources or services necessary to provide the deliverables that are required under this Contract.

D. The Contractor/subcontractor(s) shall use its best efforts to create and deliver the deliverables in the most cost-effective manner consistent with the required level of quality and performance.

E. The Contractor/subcontractor(s) shall create and deliver the deliverables in a manner that does not infringe the proprietary rights of any third party.

F. The Contractor/subcontractor(s) shall create and deliver the deliverables in a manner that complies with all applicable laws and regulations.

G. The Contractor has duly authorized the execution, delivery, and performance of this Contract.

H. The Contractor/subcontractor(s) has not provided any gifts, payments, or other inducements to any officer, employee, or agent of the Department.

I. The Contractor/subcontractor(s) will not infringe any intellectual property right of any third party. In the course of performing work under this Contract, the Contractor/subcontractor(s) will not use or copy any intellectual property owned by a third party without paying any required license fees or royalties.

H.59 DRUG-FREE WORKPLACE

The Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the Contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

H.60 AUTHORITY TO AUDIT

A. The Contractor understands that acceptance of funds directly under this Contract or indirectly through a subcontract 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 during the term of this Contract and for a period of four (4) years after termination of this Contract. The Contractor shall cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Additionally, the State Auditor's

Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the Contractor relating to this Contract.

B. The Contractor shall ensure that this clause concerning the authority to audit funds, received either directly or indirectly, and the requirement to cooperate fully with the State Auditor's Office is included in any subcontract it awards.

C. The Contractor shall reimburse the State of Texas for all costs associated with enforcing this provision.

D. The Department reserves the right to audit the Contractor's records and documents regarding compliance with this Contract. The Contractor is also subject to audit by any other department or agency, including federal agencies, responsible for determining that the Department and the Contractor have complied with the applicable laws.

E. In the event such an audit reveals any errors by the Department or the Contractor, the Contractor shall refund the Department the full amount of such overpayments within thirty (30) calendar days of such audit findings, or the Department at its option, reserves the right to deduct such amount owing to the Department from any payments to the contractor.

H.61 FRAUD, WASTE OR ABUSE

A. In accordance with the Texas Government Code, Chapter 321, the State Auditor's Office (SAO) is authorized to investigate specific acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt or use of state funds.

B. If there is a reasonable cause to believe that fraud, waste or abuse has occurred at the Department, it can be reported to the SAO by calling 1-800-892-8348 or on the SAO's website at www.sao.state.tx.us. It can also be reported to the Department's Office of the Inspector General at (512) 424-2015, the Department Chief Auditor's Office at 512-424-4403, or Crime Stoppers at 1-800-832-8477.

H.62 REDACTED DOCUMENTATION

The Contractor shall provide an electronic copy of the Contractor's Offer with specified private information removed, plus an overview of the nature of the information removed per Section L.11.

H.63 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS, AS REQUIRED BY 1 TAC CHAPTER 213

Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC, Chapter 213 and 1 TAC, Chapter 206 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

H.64 RIGHTS TO DATA, DOCUMENTS AND COMPUTER SOFTWARE (STATE OWNERSHIP)

A. Any biographic data, demographic data, image data inclusive of fingerprints, photograph and signatures or any other data or metadata in any form acquired or accessed by the Contractor in the performance of its obligations under this Contract will be the exclusive property of the State of Texas and all such data will be delivered to the Department by the Contractor upon completion, termination, or cancellation of this Contract.

B. The Contractor will not use, willingly allow, or cause to have such data used for any purpose other than the performance of the Contractor's obligations under this Contract without the prior written consent of the Department.

C. The ownership rights described herein will include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

D. The Contractor shall provide, at no additional charge, appropriate licenses for the Department to use and access the System and the Contractor's pre-existing software or other intellectual or proprietary property that the Contractor determines is necessary to facilitate the performance of the Contractor's obligations under this Contract.

H.65 NOTE TO CONTRACTOR

Any terms and conditions attached to the Contractor's Offer will not be considered unless specifically referred to in the Contractor's Offer and may result in disqualification.

H.67 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 Department including the Executive Director, the General Counsel or the Procurement Director or their covered family members have a financial interest in the Contractor. Any contract found to violate Government Code 2261.252 is void.

H.68 NOTICE UNDER GOVERNMENT CODE 2252.908

Pursuant to Government Code 2252.908 the Department may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the Department at the time the business entity submits the signed contract to the Department. The Texas Ethics Commission has adopted rules and procedures under these provisions:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

Any contract found to violate Government Code 2252.908 is void.

H.69 NOTICE UNDER GOVERNMENT CODE 572.069

Pursuant to Government Code 572.069 the Contractor certifies that it has not employed and will not employ a former Department or state officer who participated in a procurement or contract negotiation for the Department involving the Contractor within two (2) 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.

SECTION I – SUPPLEMENTAL TERMS AND CONDITIONS

Subcontractors shall also comply with these provisions.

I.1 INSURANCE REQUIREMENTS

A. Prior to the execution of this Contract, the Contractor shall provide the Department with proof of insurance coverage(s) and shall maintain the insurance coverage(s) listed herein throughout the term of this Contract.

B. The insurance coverage(s) will be evidenced by immediate delivery to the Department upon its request of certificates of insurance executed by the insurer, or its authorized agent, stating the coverage, limits, expiration dates and compliance with all applicable required provisions.

C. Copies and changes to insurance coverage(s), including extensions, renewals, cancellations and revisions will be submitted to the Contract Administrator within thirty (30) calendar days of the effective date.

D. The Contract represents and warrants all required policies contain endorsements prohibiting cancellation except upon at least thirty (30) calendar day's prior written notice to the Department. The Certificate(s) will be addressed to the Texas Department of Public Safety as the Certificate holder.

E. The Contractor represents and warrants that, within five (5) business days of receipt of notice of tentative contract award, it shall provide the Department with proof of coverage and represents and warrants that it shall maintain the following coverage throughout the term of this Contract, at the Contractor's sole expense:

1. **Workers' Compensation and Employers' Liability:** The Contractor shall maintain Workers' Compensation insurance coverage in accordance with statutory limits and maintain such coverage throughout the life of this Contract.

   Coverage A – Workers' Compensation (WC) Statutory limits for the State of Texas or for any state the Contractor's employee resides in.

   Coverage B – Employer's Liability (EL) $1,000,000 each accident limit / $1,000,000 Disease Policy / $1,000,000 Disease each employee limit.

   The Contractor shall waive all rights against the Department, its board, trustees, officers, employees, agents, and volunteers for recovery of damages to the extent they are covered by WC and EL.

2. **Business Automobile Liability Insurance:** The Contractor shall maintain Business Automobile insurance coverage for all owned, hired, and non-owned vehicles, with a minimum **combined single limit of $1,000,000** for each accident for bodily injury and property damage. Such insurance will include coverage for loading and unloading hazards.

   If Contractor will carry pollutants or hazardous materials, endorsements for Pollution Liability Coverage for Automobile and Motor Carrier Act will be included.

The Contractor shall waive all rights against the Department, its board, trustees, officers, employees, agents, and volunteers for recovery of damages to the extent they are covered by the business auto liability insurance (or any other applicable auto physical damage coverage.)

3. **Commercial General Liability Insurance:** The Contractor shall maintain Commercial General Liability coverage that will include, but not be limited to, premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability.

    1. $1,000,000 each occurrence
    2. $2,000,000 General Aggregate limit
    3. $2,000,000 Products and Completed Products
    4. $1,000,000 Personal/Advertising injury
    5. $50,000 Damage to Premises
    6. $5,000 Medical Payments

a. If this insurance is written on a claims-made form, coverage will be continuous (by renewal or extended reporting period) for not less than sixty (60) months following completion of this Contract and acceptance by the Department.

b. Coverage, including any renewals, will have the same retroactive date as the original policy applicable to this Contract. Civil Rights Liability will be provided with the same liability limits. It may be included within the General Liability policy or written on a separate policy.

c. Liability coverage will include coverage for damage to property and injury to persons caused by boiler and/or other equipment malfunction. The policy will contain an endorsement to include coverage for the property of third parties.

d. The Department will be named as an additional insured by using endorsement CG2026 or broader.

e. The Contractor's coverage will include an endorsement for waiver of subrogation and a 30 Day Notice of Cancellation to the Department. The Contractor shall waive all rights against the Department, its board, trustees, officers, employees, agents, and volunteers.

4. **Professional Liability:** The Contractor shall maintain Professional Liability insurance coverage (including Errors and Omissions [required only for contracts for Professional Services] including coverage for the rendering of, or failure to render, professional services with minimum limits:

    1. $1,000,000 per occurrence,
    2. $2,000,000 annual aggregate.

a. If this insurance is written on a claims-made form, coverage will be continuous (by renewal or extended reporting period) for not less than twenty-four (24) months following completion of this Contract and acceptance by the Department.

b. Coverage, including any renewals, will have the same retroactive date as the original policy applicable to this Contract.

5. **Commercial Crime Insurance:** The Contractor shall maintain Commercial Crime insurance coverage to cover losses from Employee Dishonesty with a minimum limit of: **$50,000 each occurrence.**
   Coverage will be endorsed to cover third party property and the Department will be a joint loss payee.

6. **Cyber Insurance:** The Contractor shall maintain Cyber insurance to cover any and all losses, security breaches, privacy breaches, unauthorized distributions, or releases or uses of any data transferred to or accessed by Contractor under or as a result of this Contract. This insurance shall provide sufficient coverage(s) for the Contractor, the Department, and affected third parties for the review, repair, notification, remediation and other response to such events, including but not limited to, breaches or similar incidents under Chapter 521, Texas Business and Commerce Code. The Department may, in its sole discretion, confer with the Texas Department of Insurance to review such coverage(s) prior to approving them as acceptable under this Contract. The Contractor shall obtain modified coverage(s) as reasonably requested by the Department within ten (10) calendar days of the Contractor's receipt of such request from the Department.

7. **Umbrella / Excess Liability:** The Contractor may combine its primary and Excess / Umbrella Liability limits to meet the minimum required coverage for any line of coverage; however, if it chooses this option, the coverage will be written at least as broad as those requirements defined above. **$1,000,000 Minimum Limit**.

I.1.1 ADDITIONAL PROVISIONS

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

A. Name the Department and its board, trustees, officers, employees, agents, representatives and volunteers as additional insured to all applicable policies.

B. Waiver of subrogation against the Department and its board, trustees, officers, employees, agents, and volunteers, for bodily injury (Including death), property damage or any other loss to all policies.

C. The Contractor's insurance will be the primary insurance in regards to the Department and its board, trustees, officers, employees, agents, and volunteers.

D. All provisions of this Contract concerning liability, duty and standard of care, together with the indemnification provision, will be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

E. All Certificates of Insurance will identify the service or product being provided and the name of the responsible party.

F. No "self-insurance" coverage will be acceptable.

G. The Contractor's insurance coverage will continue in full force and effect during the term of this Contract. No Contract will be entered into between the Contractor and the Department unless acceptable insurance certificates are received by the Department by the date scheduled for the execution of this Contract. Proof of insurance policies in a form acceptable to the Department will be delivered prior to the effective date of this Contract.

H. All insurance coverage will be provided by insurance carrier(s) duly licensed, admitted and authorized to do business in Texas. All insurance carriers will be, at a minimum, rated "A" or better by A.M. Best or equivalent rating by a similar insurance rating service.

I. The Contractor may choose the amount of deductible for any other insurance coverage required (above) to be obtained by the Contractor; however except as it relates to professional liability insurance, in no event will such deductible for each occurrence exceed five (5) percent of the required yearly aggregate limit of coverage.

J. The Contractor shall be responsible for the first dollar defense coverage. All general liability and professional liability policies will provide defense in addition to the policy limits.

K. The limits required herein are the minimum acceptable limits. These limits will not to be construed as being the maximum the Contractor may wish to purchase for its own benefit.

L. As respect to the total limits of liability required, any combination of primary and/or umbrella / excess liability coverage may satisfy those totals. However, if an umbrella / excess liability policy is used, coverage will be at least as broad as the primary coverage.

I.1.2 SUBCONTRACTOR'S INSURANCE

The Contractor's insurance policies will provide coverage for the Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under this Contract.

I.2 SUBCONTRACTS

A. The Contractor shall assume full responsibility for all deliverables under this Contract. The Department shall consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges under this Contract. If any part of the deliverables is planned to be subcontracted, the Contractor shall include a list of all subcontractors, including the firm name, address, and contact person of each subcontractor, a complete description of the deliverables to be subcontracted, financial statements for each subcontractor, and descriptive information concerning each subcontractor's qualifications.

B. The Contractor will not delegate any duties under this Contract to a subcontractor unless the Department has given written consent to the delegation. The Department shall approve all subcontractors and to require the Contractor to replace any subcontractor found, in the opinion of the Department, either initially or based on performance, to be unacceptable.

C. The management of any subcontractor shall be the sole responsibility of the Contractor, and failure by a subcontractor to perform will be deemed to be failure of the Contractor. The Contractor shall make all payments to subcontractors and suppliers. The Department will not direct payments for deliverables acquired in connection with this Contract other than to the Contractor, nor shall the Department release the Contractor from having to perform any obligations under this Contract, notwithstanding the fact that a subcontractor may have been engaged by the Contractor to perform those obligations.

D. The Contractor will furnish to the Department copies of all subcontracts. All subcontracts will include all applicable provisions contained in this Contract and any provisions required by law.

I.3 HISTORICALLY UNDERUTILIZED BUSINESSES (HUB) PARTICIPATION

A. The Contractor shall make a good faith effort to comply with all state Historically Underutilized Business (HUB) requirements pursuant to Texas Government Code, Chapter 2261 and administrative rules, if applicable. The Contractor shall also comply with the attached HUB Subcontracting Plan.

B. The Contractor shall comply with its HUB Subcontracting Plan (HSP). The Contractor shall seek written approval from the Department prior to making any modifications to its HSP.

C. The Contractor shall provide notice to all subcontractors of their selection as a subcontractor for this Contract. The notice will specify, at a minimum, the Department's name, the name of the Contract Administrator, this Contract's assigned contract number, the subcontracting opportunity the subcontractor will perform, the approximate dollar value of the subcontract and the expected percentage of this Contract's total value that the subcontract represents. A copy of the notice will be provided to the Contract Administrator no later than ten (10) business days after the effective date of this Contract.

D. The Contractor shall submit to the Contract Administrator on a monthly basis (by the 5th day of the following month) the Prime Vendor Progress Assessment Report, which is included as Exhibit J.1, HUB Subcontracting Plan.

E. The Contractor shall include the non-discrimination clauses in Section H.13 in all subcontracts.

I.4 LIQUIDATED DAMAGES

A. The Department reserves the right to assess liquidated damages at an amount up to five hundred dollars ($500.00) per day for each business day the Contractor fails to

meet the standards set out in this Agreement by providing the services as described in Section C. The parties acknowledge that the harm that will be caused to the Department by such a delay is difficult to estimate; however, the amount of liquidated damages listed herein is a reasonable estimate and is enforceable.

B. The Contractor will not be responsible and liquidated damages may not be assessed due to any delay caused by schedule amendments requested by the Department, delays as the result of activity that is the responsibility of the Department's Project Team, as long as the Contractor timely files its deficiency report as required by the Section H.33 herein entitled "Rolling Estoppel" or delays that the Department deems were outside the control of the Contractor. The burden of proof that the delay is attributable to the Department rests with the Contractor.

C. Any liquidated damages assessed under this Contract may, at the Department's option, be deducted from any payments due to the Contractor. The Department has the right to offset any liquidated damages payable to the Department, as specified above, against any payments due to the Contractor. If insufficient payments are available to offset such liquidated damages, then Contractor shall pay to the Department any remaining liquidated damages within fifteen (15) calendar days following receipt of written notice of the amount due.

I.6 OTHER CONTRACTS

During the course of this Contract, the Department may award additional contracts to other contractors for similar services. The Department shall provide notification to the Contractor regarding the additional contractor and the scope of work that the additional contractor will be performing. The Contractor shall work cooperatively with the additional contractor in order to ensure that the performance of the services and/or capital improvements is not unnecessarily delayed. The Contractor will not commit or permit any act that would unduly interfere with the performance of work by any other contractor(s).

I.7 SUSPENSION OF WORK

A. The Department may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of this Contract for the period of time that the Contract Monitor determines appropriate for the convenience of the Department.

B. If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed, or interrupted:

1. By an act of the Contract Monitor in the administration of this Contract, or

2. By the Contract Monitor's failure to act within the time specified in this Contact (or within a reasonable time if not specified), an adjustment will be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly.

C. A claim under this clause will not be allowed:

1. For any costs incurred more than twenty (20) calendar days before the Contractor will have notified the Contract Administrator in writing of the act or

failure to act involved (but this requirement will not apply as to a claim resulting from a suspension order; and

2. Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under this Contract.

I.8 STOP-WORK ORDER

A. The Contract Administrator may at the request of the Department, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, or the work called for by this Contract for a period of up to ninety (90) calendar days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order will be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall, at the Department's expense, immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost allocable to the work covered by the order during the period of work stoppage. Within a period of up to ninety (90) calendar days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contract Administrator may either:

1. Cancel the stop-work order; or

2. Terminate the Work covered by the order as provided in the stop-work order of this Contact.

B. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume Work. The Department will make an equitable adjustment in the delivery completion schedule, the estimated cost, or both, and this Contract will be modified, in writing accordingly, if:

1. The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and

2. The Contractor asserts its right to the adjustment within thirty (30) calendar days after the end of the period of work stoppage; provided that the Contract Administrator decides the facts justify the action, the Contract Administrator may receive and approve the claim submitted at any time before final payment under this Contract.

C. If a stop-work order is not canceled and the Work covered by the order is terminated, the Contract Administrator may allow reasonable cost resulting from the stop-work order in arriving at the termination settlement.

D. An appropriate equitable adjustment may be made in any related contract of the Contractor that provides for adjustment and is affected by any stop-work order under this clause. The Department will not be liable to the Contractor for damages or loss of profits because of a stop-work order issued under this clause.

I.9 WORK MADE FOR HIRE

For the purposes of this Contract, the term "Work" is defined as all reports, statistical analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research, materials, intellectual property or other property developed, produced, or generated in connection with this Contract. All work performed pursuant to this Contract is made the exclusive property of the Department. All rights, title and interest in and to said property will vest in the Department upon creation and will be deemed to be a work 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 Department, or such Work may not be considered a Work made for hire, all rights, title and interest therein are hereby irrevocably assigned to the Department. The Department 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. The Contractor shall give the Department and/or the State of Texas, as well as any person designated by the Department and/or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to the Contractor for services rendered under this Contract.

I.21 CRIMINAL HISTORY BACKGROUND CHECKS

A. The Contractor shall have its project personnel submit to the Department a fingerprint-based Criminal History Background Investigation, if required by the Department, at the Contractor's expense. To facilitate this Criminal History Background Investigation, each person shall complete the Department's Vendor Background Information form (HR-22), which will be provided by the Department.

B. If the Department requires a fingerprint-based Criminal History Background Investigation, the Contractor will not allow personnel to work on the project who have not successfully completed the Departments fingerprint-based Criminal History Background Investigation and who do not otherwise maintain the Department's security clearance. The Department has the right to prevent the Contractor's personnel from gaining access to the Departments building(s) and computer systems if the Department determines that such personnel do not pass the background check or fail to otherwise maintain the Department security clearance.

A. When required, the Contractor's Project Manager shall provide the following to the Departments Project Manager within 10 calendar days of executing this Contract:

1) the completed Vendor Background Information form (HR-22) for all proposed personnel; and
2) acceptable fingerprints for all proposed personnel.

B. Throughout the term of this Contract, the Department may require the Contractor personnel to submit an annual Department fingerprinted-based Criminal History Background Investigation to the Department.

C. Throughout the term of this Contract, the Contractor shall promptly notify the Department of any activity or action by the Contractor's personnel that may affect that individual's ability to continue to work under this Contract.

SECTION J - LIST OF EXHIBITS

EXHIBIT NO.	TITLE	NUMBER OF PAGES
J.1	HUB Subcontracting Plan (HSP)	9
J.2	Intentionally Left Blank	
J.3	Intentionally Left Blank	
J.4	Intentionally Left Blank	
J.5	Intentionally Left Blank	
J.6	Intentionally Left Blank	