



# Texas Department of Public Safety Purchase Order

Purchase Order Number

405-16-P004331

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

V  
E  
N  
D  
O  
R

Vendor Number: 00026117  
OPUS INSPECTION INC  
  
7 KRIPES RD  
EAST GRANBY , CT 06026-9720

S  
H  
I  
P  
T  
O

Texas Department of Public Safety  
Procurement & Contract Services - MSC 0266  
PO Box 4087  
Austin, TX 78773-0266  
US  
Email: procurement@dps.texas.gov  
Phone: (512) 424-5255

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.

B  
I  
L  
L  
T  
O

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

Account Code: 16-47061-6280-1001- - -1400- - -  Solicitation (Bid) No.:	Payment Terms:  Shipping Terms:  Delivery Calendar Day(s) A.R.O.: 0
---	---

Item # 1  
Class-Item 928-92

Validated and Desired Emission Tests per Agreed to Counties for Term of 09/01/15 to 08/31/16  
- \$3.23 each

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
150000.00	\$ 3.23	EA	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 484,500.00

LN/FY/Account Code 1/16/16-47061-6280-1001- - -1400- - -	Dollar Amount \$ 484,500.00
---	--------------------------------

Item # 2  
 Class-Item 915-28

Approved mailing of notice letter based on evaluated test  
 - \$0.41 each

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
31707.00	\$ 0.41	EA	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 12,999.87

LN/FY/Account Code	Dollar Amount
2/16/16-47061-6280-1001- - -1400- - -	\$ 12,999.87

TAX: \$ 0.00  
 FREIGHT: \$ 0.00  
 TOTAL: \$ 497,499.87

APPROVED

By: Luis Blanco, CTCM , CTPM  
 Phone#: (512) 424-7626  
 BUYER

MODIFICATION OF CONTRACT			Page of	Pages
			1	1
1A. Contract No. 405-RSD-13-14-30630	1B. Order No. (PO,JO,SA)	2. Modification No. M-001	3. Effective Date September 1, 2014	
4. Issued By: Texas Department of Public Safety Procurement and Contract Services Bureau Client and Construction Services Branch P.O. Box 4087 Austin, Texas 78773-0130		5. Name and Address of Contractor (No., street, city, state & ZIP code) Envirotest Systems Holding Corp. 200 Day Hill Road, Suite 210 Windsor, Connecticut 06095-1778		
6. <b>BILATERAL MODIFICATION ISSUED PURSUANT TO AUTHORITY UNDER:</b> Section H.15, Contract Changes; Section H.16, Option to Extend the Term of the Contract.				
7. <b>CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 2 ORIGINALS TO THE ISSUING OFFICE.</b>				
8. <b>PURPOSE OF MODIFICATION:</b> To Extend the Term of the Contract for Fiscal Year 2015 and Provide Funding; to Reduce the Number of Tests to 150,000.				
9. <b>DESCRIPTION OF MODIFICATION:</b>				
<p>A. As per Section H.16, this Contract is extended for fiscal year 2015 (September 1, 2014 through August 31, 2015). The total approved amount for Fiscal Year 2015 shall not exceed \$497,500.00 unless modified via contract amendment.</p> <p>B. Revise Section B.2.1, Pricing for Base and Option Periods, Option Period One, for Fiscal year 2015 as follows:</p> <p style="text-align: center;">To:</p> <p>Valid and Desired Records, Affected Counties: 150,000 records @ \$3.18 per record. The Department shall not compensate the Contractor for more than 150,000 tests in Fiscal Year 2015, distributed as follows: 75,000 tests in the Dallas/Fort Worth non-attainment area and 75,000 tests in the Houston/Galveston non-attainment area. The Contractor shall conduct such tests in such designated areas in Fiscal Year 2015 and deliver them to the Department in Fiscal Year 2015.</p> <p>C. Except as provided herein, all other Terms and Conditions of this Contract, remain unchanged and in full force and effect.</p>				
9A. Name and Title of Authorized Representative (Type or Print)  James E. Sands, Jr. President		9B. Envirotest Systems Holding Corp.   (Signature of Authorized Representative)		9C. Date Signed  7/14/14
10A. Authorized Representative  Steven C. McCraw Director		10B. Texas Department of Public Safety   (Signature of Authorized Representative)		10C. Date Signed  7/28/14





# Texas Department of Public Safety Purchase Order

Purchase Order Number

405-15-P000845

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

V E N D O R	Vendor Number: 00020352 ENVIROTEST SYSTEMS PRODUCTS HOLDINGS CORP 200 DAY HILL RD, STE 210 WINDSOR, CT 06095-1778
----------------------------	---

S H I P T O	Texas Department of Public Safety Procurement & Contract Services - MSC 0266 PO Box 4087 Austin, TX 78773-0266 US Email: <a href="mailto:procurement@dps.texas.gov">procurement@dps.texas.gov</a> Phone: (512) 424-5255
----------------------------	---

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.

B I L L T O	Texas Department of Public Safety Finance - Accounts Payable - MSC 0130 PO Box 4087 Austin, TX 78773-0130 US Email: <a href="mailto:apinvoices@dps.texas.gov">apinvoices@dps.texas.gov</a> Phone: (512) 424-2060
----------------------------	--

Solicitation (Bid) No.:	Payment Terms:  Shipping Terms:  Delivery Calendar Day(s) A.R.O.: 0
-------------------------	---

Item # 1

TXDPS has implemented a new ELECTRONIC PROCUREMENT SYSTEM (e-Procurement). The contract number for this service remains the same however for payment purposes you are required to note this purchase order number 405-15-P000845 on all invoices and correspondence regarding this service. All other terms and conditions remain unchanged.

Item # 2  
 Class-Item 928-92

Renewal of Contract 405-RSD-13-14-30630 for the first renewal option period (09/01/2014 through 08/31/2015).

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
1.00	\$ 497,500.00	YR	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 497,500.00

<u>LN/FY/Account Code</u>	<u>Dollar Amount</u>
2/15/15-47061-6280-1001- - -1400- - -	\$ 497,500.00

TAX: \$ 0.00  
 FREIGHT: \$ 0.00  
 TOTAL: \$ 497,500.00

APPROVED

By: Joseph Woolverton, CTPM, CTCM  
 Phone#: (512) 424-2065  
 BUYER

## SOLICITATION OFFER AND AWARD

1. CONTRACT NO. <b>405-RSD-13-14-30630</b>	2. SOLICITATION NO. <b>405-RSD-13-P30630</b>	3. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFO) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	4. DATE ISSUED <b>March 25, 2013</b>
---	---	---	---

### SOLICITATION

### TEXAS ON-ROAD VEHICLE EMISSIONS TESTING PROGRAM

5. Sealed proposal's will be received by the Department until <b>3:00 p.m. local time on May 1, 2013</b> , and submitted to:  Texas Department of Public Safety Procurement and Contract Services Bureau 5805 North Lamar Blvd., Bldg A. (MSC0266) Austin, Texas 78752 <b>Attention: 405-RSD-13-P30630</b>	6. FOR INFORMATION CONTACT:  Joe Woolverton, CTPM, CTCM Contract Specialist  PHONE: (512) 424-2065 FAX: (512) 424-5419 E-MAIL: joseph.woolverton@dps.texas.gov
--	---

### PROPOSAL (Completed by Respondent)

7. DISCOUNT FOR PROMPT PAYMENT:→	10 CALENDAR DAYS 0 %	20 CALENDAR DAYS 0 %	30 CALENDAR DAYS 0 %	CALENDAR DAYS 0 %
8. ACKNOWLEDGMENT OF AMENDMENTS: <i>(The Respondent acknowledges receipt of amendments to the SOLICITATION for Respondents and related documents numbered and dated:</i>	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
	A-001	April 9, 2013	A-002	April 23, 2013
9. NAME AND ADDRESS OF RESPONDENT:→	Envirotest System Holdings Corp., 200 Day Hill Road, Suite 210 Windsor, Connecticut 06095-1778		10. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN PROPOSAL (Type or Print)  Laurence D. Hurwitz, Senior Vice President	
11. TELEPHONE NO. (Include area code)	12. SIGNATURE		13. PROPOSAL DATE	
860-607-2117	ON FILE		April 29, 2013	

### TO BE COMPLETED AT TIME OF AWARD

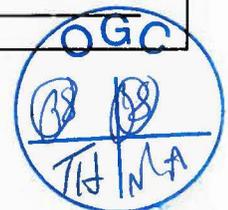
**Document Type: S**  
**Statutory Cite: Texas Government Code, Section 2156.121**  
**NOTE TO CONTRACTOR: The Department reserves the right in its sole discretion to modify this award language prior to award.**

This award document consummates the Contract which consists of the following documents: (a) the State's solicitation, and solicitation amendments, such provisions, representations, certifications, specifications, and negotiated changes as hereby incorporated and attached to this award (b) the Contractor's Proposal, 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 and (c) this Offer and Award document.

Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order: negotiated changes; BAFO; points of clarification; RFP as posted; vendor's proposal; and this Offer and Award Document.

This Contract shall consist of a Base Period from June 30, 2013 through August 31, 2014 and three (3) one (1) year extension Option Periods (September 1, 2014 through August 31, 2015 and September 1, 2015 through August 31, 2016 and September 1, 2016 through August 31, 2017). The Contract may be extended for an additional six (6) month period at the Department's option, per Section H.16, Option to Extend the Term of the Contract. The terms, conditions, and rates for all extensions shall remain as stated in this Contract.

<b>Envirotest Systems Holdings Corporation</b>  By: <u>Laurence D Hurwitz</u> Name: <u>LAURENCE D HURWITZ</u> Title: <u>SR VP</u> Date: <u>JUNE 5, 2013</u>	<b>Texas Department of Public Safety</b>  By: <u>Steven C. McCraw</u> Name: <u>Steven C. McCraw</u> Title: <u>Director</u> Date: <u>6/27/13</u>
--	--



The following items are mutually agreed to by 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 proposal preparation instructions, and to add Contractor's name in Contractor signature block.
2. Section A, Definitions, has been revised as follows:
  - Revise definition of "Contract" to include awarded firm;
  - Revise definition of "Contractor" to include awarded firm; and
  - Delete definition of "Respondent".
3. Section B.1.1, Services Being Acquired, has been revised to include contract rather than solicitation language generally describing the services to be provided.
4. Section B.1.2, Pricing Instructions, has been revised to reflect contract language rather than solicitation language.
5. Section B.1.3, Audited Financial Statements, has been removed.
6. Section B.2, Price Schedule, has been revised to include contract rather than solicitation language and to incorporate the Contractor's name and address and rates under this Contract.
7. Section C, Description/Specifications/Work Statement, has been revised throughout to include contract rather than solicitation language and reflect negotiations of Department and Contractor.
8. Section C.1, Background, has been revised to reflect Contract language rather than solicitation language.
9. Section C.2, Qualifications of Contractor, has been deleted and subsequent Sections renumbered.
10. Section C.4, (formerly C.3), Additional Requirements, has been revised to reflect contract language rather than solicitation language.
11. Section C.8, Department Records, has been re-numbered as Section C.10.
12. Section D, Reports and Deliverables, has been revised to correspond with revisions to Section C and reflect negotiations of the Department and Contractor.
13. Section E.4, Statement of Work, has been deleted.
14. Section E.5, Inspection and Tests, has been re-numbered as Section E.4.
15. Section E.6, Project Status Updates, has been moved to Section C and is now Section C.9.
16. Section E.7, Final Operating Capability, has been re-numbered as Section E.5.
17. Section G.1.3, Program Manager, has been revised to include the name of the appropriate person for the Department.

18. Section G.1.4, Project Manager, has been revised to include Contractor's information.
19. Section G.2, Invoice Requirements, has been revised to include updated information for the Department and submission of invoices.
20. Section, G.3, Payments, has been revised to include updated invoicing and payment language and to incorporate Contractor's information.
21. Section H, Standard Terms and Conditions, has been revised to delete solicitation language under the header title for Section H.
22. Section H.36, Most Favored Customer has been revised to refer to this Contract rather than the solicitation.
23. Section I.3, Historically Underutilized Business (HUB) Participation, has been revised to refer to this Contract rather than the solicitation.
24. Exhibit J.2, Historically Underutilized Business Subcontracting Plan, is hereby incorporated into this Contract as completed by Contractor.
25. Exhibits J.3 is hereby deleted.
26. Section K, Representations, Certifications, and Other Statements of Contractor, as issued by Department has been deleted for purposes of this list of revisions; however, this Section, as completed by Contractor, is part of the solicitation incorporated by reference into this Contract as described on page 1 of this Contract.
27. Sections L and M of the solicitation as issued by 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.
28. Changes have been made throughout the document to correct references to the solicitation and Respondent and replace them as appropriate (e.g., "Respondent" has been replaced with "Contractor").
29. Minor clarifications changes have been made throughout the document.

## TABLE OF CONTENTS

<b>SOLICITATION OFFER AND AWARD DOCUMENT .....</b>	<b>1</b>
<b>TABLE OF CONTENTS .....</b>	<b>2</b>
<b>SECTION - A - DEFINITIONS .....</b>	<b>8</b>
<b>SECTION B - SERVICES AND PRICES/COSTS .....</b>	<b>10</b>
B.1 SERVICES AND PRICES/COSTS .....	10
B.1.1 Services Being Acquired .....	10
B.1.2 Pricing Schedule .....	10
B.2 PRICE SCHEDULE: .....	11
B.2.1 Pricing for Base Period and Option Periods.....	11
<b>SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT .....</b>	<b>13</b>
C.1 BACKGROUND.....	13
C.2 FEDERAL/STATE STATUTES/REGULATIONS.....	13
C.3 PROJECT DELIVERABLE SCHEDULE .....	13
C.4 ADDITIONAL REQUIREMENTS .....	13
C.4.1 Prime Vendor and Subcontractors .....	13
C.4.2 Reserved for Future Use.....	13
C.4.3 Reserved for Future Use.....	13
C.4.4 Adjunct Analysis.....	13
C.5 PROJECT SPECIFICATIONS.....	14
C.5.1 Site Selection .....	14
C.5.2 Data Collection.....	16
C.5.2.1 Record Definition for Raw Data Files .....	17
C.5.2.2 Record Definition for Post-Processed Data Files.....	17
C.5.2.3 Record Classification .....	18
C.5.2.4 Field Definition .....	19
C.5.2.5 Data Processing & Reporting.....	25
C.5.2.6 Ancillary Reports and Schedules .....	25
C.5.3 Vehicle Owner Notification.....	27
C.5.3.1 Probable High Emitting Vehicles.....	27
C.5.3.2 Citation Issuance.....	28
C.5.3.3 Verification Test Fee Refunds.....	28
C.5.3.4 Random Sampling for Program Evaluation.....	28
C.5.4 Evaluation Sessions.....	29
C.6 TECHNICAL REQUIREMENTS .....	29
C.6.1 On-Road Testing Equipment.....	29
C.6.2 Sensor Modules .....	29
C.6.3 Speed Measurement Device.....	30
C.6.4 Acceleration Measurement Device .....	30
C.6.5 License Plate Imaging.....	30
C.6.6 Chronographs and Synchronization.....	30
C.7 CONTRACT PERFORMANCE EVALUATION.....	30
C.7.1 Benchmark Testing .....	30
C.7.2 Acceptance Testing.....	30
C.7.3 Performance Audits.....	30
C.8 ADMINISTRATIVE RESPONSIBILITIES .....	31
C.8.1 Compliance with Laws .....	31
C.8.2 Business Records .....	31
C.8.3 Data.....	31

C.8.4	Confidential Information .....	33
C.8.5	Factual and Expert Witnesses and Court Demonstrations .....	33
C.8.6	Technical Support Documentation .....	33
C.8.7	Uniformity .....	33
C.8.8	Certification of Equipment .....	34
C.9	PROJECT STATUS UPDATES .....	34
C.10	DEPARTMENT RECORDS.....	34
<b>SECTION D – REPORTS AND DELIVERABLES .....</b>		<b>35</b>
D.1	REPORTS AND DELIVERABLES REQUIRED FROM CONTRACTOR.....	35
<b>SECTION E - INSPECTION AND ACCEPTANCE .....</b>		<b>36</b>
E.1	INSPECTION OF SERVICES .....	36
E.2	INSPECTION BY STATE EMPLOYEES.....	36
E.3	MONITORING CRITERIA .....	37
E.4	INSPECTIONS AND TESTS.....	37
E.5	FINAL OPERATING CAPABILITY .....	38
<b>SECTION F - DELIVERIES OR PERFORMANCE .....</b>		<b>39</b>
F.1	CONTRACT TERM .....	39
<b>SECTION G - CONTRACT ADMINISTRATION DATA .....</b>		<b>40</b>
G.1	AUTHORITY – AUTHORIZED REPRESENTATIVE, CONTRACT ADMINISTRATOR, CONTRACT MONITOR.....	40
G.1.1	Authorized Representative.....	40
G.1.2	Contract Administrator .....	40
G.1.3	RSD Operations Program Manager .....	41
G.1.4	Contractor’s Project Manager .....	41
G.2	INVOICE REQUIREMENTS.....	41
G.3	PAYMENTS.....	42
G.3.1	Reserved for Future Use.....	43
G.3.2	Compensation for Additional Services .....	43
G.3.3	Payment Adjustment.....	43
G.3.4	Late Payment.....	43
G.3.5	Deductions for Unacceptable Compliance .....	43
G.3.6	Withholding of Payment .....	43
G.3.7	Payment of Debt Owed to the State of Texas.....	44
G.3.8	Right to Offset.....	44
G.3.9	Annual Financial Disclosure Reports .....	44
<b>SECTION H - STANDARD TERMS AND CONDITIONS.....</b>		<b>46</b>
H.1	AVAILABILITY OF FUNDS FOR NEXT FISCAL YEAR AND LEGISLATIVE ACTIONS .....	46
H.2	NEWS RELEASES, ADVERTISEMENTS, AND PUBLICITY.....	46
H.3	FURTHER OPPORTUNITY TO CURE .....	47
H.4	TERMINATION.....	47
H.4.1	Termination by Default .....	47
H.4.2	Termination for Unavailability of Funds.....	47
H.4.3	Termination for Convenience .....	48
H.4.4	Termination by Mutual Agreement.....	48
H.4.5	Termination for Cause.....	48
H.4.6	Termination for Listing on Federal Excluded Party List, the Terrorism List (Executive Order 13224) or on the State of Texas Debarred Vendor List .....	48
H.4.7	General Termination Provisions.....	48
H.5	DISPUTE RESOLUTION .....	49

H.6	NO WAIVER OF RIGHTS .....	50
H.7	INDEMNIFICATION .....	51
H.8	NO WAIVER OF DEFENSES .....	52
H.9	INDEPENDENT CONTRACTOR .....	52
H.10	LAWS OF TEXAS .....	53
H.11	ASSIGNMENT.....	53
H.12	MAINTENANCE OF CORPORATE EXISTENCE AND BUSINESS .....	53
H.13	APPROVAL OF CONTRACT .....	53
H.14	NON-DISCRIMINATION .....	53
H.15	CONTRACT CHANGES.....	54
H.16	OPTION TO EXTEND THE TERM OF THE CONTRACT.....	54
H.17	OPTION TO EXTEND SERVICES.....	54
H.18	SEVERABILITY.....	55
H.19	IMMIGRATION .....	55
H.20	LIMITATION ON AUTHORITY .....	55
H.21	PUBLIC SAFETY COMMISSION CONTRACT REVIEW.....	55
H.22	TIME IS OF THE ESSENCE .....	56
H.23	COMPLIANCE WITH PERMITTING AND PURCHASING LAWS.....	56
H.24	COMPLIANCE WITH STATE, FEDERAL, AND LOCAL LAWS, RULES, AND REGULATIONS 56	
H.25	FORCE MAJEURE.....	56
H.26	FORESEEABLE DELAY .....	57
H.27	NO SUBSTITUTIONS AND DELIVERY TIMES.....	57
H.28	PATENTS AND COPYRIGHTS .....	57
H.29	SURVIVAL.....	57
H.30	SUCCESSORS .....	58
H.31	EMPLOYEE NON SOLITICATION .....	58
H.32	COMMENCEMENT OF WORK.....	58
H.33	ROLLING ESTOPPEL.....	58
H.34	SALES AND USE TAX.....	59
H.35	NOTICES .....	59
H.36	MOST FAVORED CUSTOMER .....	59
H.37	STATE EXCULPATION .....	59
H.38	TITLE AND RISK OF LOSS .....	60
H.39	AVAILABILITY OF THE DEPARTMENT'S MANPOWER .....	60
H.40	INTERPRETATION AGAINST DRAFTER .....	60
H.41	NON-INCORPORATION CLAUSE .....	60
H.42	HEADINGS.....	60
H.43	ATTACHMENTS .....	60
H.44	UNACCEPTABLE CONTRACTOR TERMS .....	60
H.45	RECALL NOTICE.....	61
H.46	COMPETENCE AND LACK OF RELIANCE OF DEPARTMENT REPRESENTATIONS.....	61
H.47	MULTIPLE CONTRACTS .....	61
H.48	LITIGATION OR FELONY CRIMINAL CONVINCTIONS.....	61
H.49	PROHIBITED USE OF APPROPRIATED OR OTHER FUNDS UNDER CONTROL OF STATE AGENCY LOBBYING .....	62
H.50	FALSE STATEMENTS.....	62
H.51	PUBLIC INFORMATION ACT .....	62
H.52	APPROVAL OF EMPLOYEES.....	62
H.53	PERSONNEL .....	63
H.53.1	Qualifications of Personnel .....	63
H.53.2	Replacement of Personnel at Department's Request.....	63
H.53.3	Unauthorized Removal of Personnel .....	64
H.54	UTILIZATION OF PRODUCTS AND MATERIALS PRODUCED IN TEXAS .....	64

H.55 BOOKS AND RECORDS ..... 64  
H.56 ORGANIZATIONAL AND NAME CHANGE ..... 64  
H.57 DEPARTMENT POLICIES AND PROCEDURES ..... 64  
H.58 INFORMATION TECHNOLOGY STANDARDS ..... 65  
H.59 WARRANTIES ..... 65  
    H.59.1 Third Party Warranties ..... 65  
    H.59.2 Contractor Warranties ..... 65  
H.60 DRUG-FREE WORKPLACE ..... 66  
H.61 AUTHORITY TO AUDIT ..... 66  
H.62 FRAUD, WASTE OR ABUSE ..... 67  
H.63 REDACTED DOCUMENTATION ..... 67  
H.64 RIGHTS TO DATA, DOCUMENTS AND COMPUTER SOFTWARE (STATE OWNERSHIP) . 67  
**SECTION I – SUPPLEMENTAL TERMS AND CONDITIONS ..... 68**  
I.1 INSURANCE REQUIREMENTS ..... 68  
    I.1.1 Additional Provisions ..... 69  
    I.1.2 Subcontractor’s Insurance ..... 70  
I.2 SUBCONTRACTS ..... 71  
I.3 HISTORICALLY UNDERUTILIZED BUSINESSES (HUB) PARTICIPATION ..... 71  
I.4 LIQUIDATED DAMAGES ..... 72  
I.5 OTHER CONTRACTS ..... 74  
I.6 CRIMINAL HISTORY BACKGROUND CHECKS ..... 74  
I.7 CONFIDENTIALITY AND SECURITY REQUIREMENTS ..... 75  
    I.7.1 General Confidentiality Requirements ..... 75  
    I.7.2 Sensitive Personal Information ..... 76  
I.8 NOTE TO CONTRACTOR ..... 78  
**SECTION J - LIST OF EXHIBITS ..... 79**

**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.

“Contract” means the formal agreement executed between the Department and Envirotest Systems Holding Corporation. The instrument used to bind the Contractor and the Department to the obligations conferred by the execution of this agreement.

“Contract Term” means the duration of this Contract as specified in Section F.1.

“Contract Year” means the initial 14 month Base Period, or any of the following 1 year option periods.

“Contractor” means Envirotest Systems Holding Corporation.

“CPA” means the Texas Comptroller of Public Accounts.

“Department” means the Texas Department of Public Safety (Department).

“Director” means the Director of the Texas Department of Public Safety.

“Error of Commission” — means an error that occurs when a vehicle owner, within 30 days of being notified, presents his vehicle for verification testing after having been identified as a probable high emitting vehicle and the vehicle passes the verification test when there is no discernible reason for the vehicle to have an improved emissions status.

“Error of Commission Rate” means the rate, based on the number of vehicles due for a verification emissions test during a particular monthly billing cycle and expressed in percentage of possible tests, at which vehicles pass initial verification emissions tests after being subjected to the test pursuant to a High Emitter Notice and where there is no discernible reason for the vehicle to have an improved emissions status.

“Error of Omission” means an error that occurs when a vehicle owner, after notification, presents his vehicle for verification testing after having been identified as a probable low emitting vehicle and the vehicle fails the verification test when there is no discernible reason for the vehicle to have a degraded emission status.

“FBI” means the Federal Bureau of Investigation.

“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.

“Greenwich Mean Time (GMT)” means the mean solar time of the meridian of Greenwich. Commonly used as the prime basis of standard time throughout the world.

“Monthly Invoice” means the Contractor’s invoice based on an approved delivery schedule and yielding the monthly Contractor payment to be made by the Department, reference Sections G.2 through G.3.6.

“Non-Appropriation” means the failure by the Legislature of the State, as part of its budgetary process, to appropriate money to be used for the payments due hereunder.

“On-Road Testing Session” means a scheduled event comprised of the equipment assembly, setup, operation, and disassembly of on-road testing equipment for the purpose of collecting records related to the execution of the Contract.

“Payment(s)” means the amount(s) agreed to be paid by the Department to 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.

“Program” means the Texas Inspection and Maintenance Program.

“Project Manager” means appointee, designee, or alternate designee if assigned by the Contractor, as referenced in Section G.1.4, Project Manager.

“Registration Database” means the Texas Department of Motor Vehicles automated registration files.

“RSD” means the Regulatory Services Division, a Division of the Texas Department of Public Safety.

“Texas Department of Public Safety (the Department)” is the State of Texas law enforcement agency.

“TXDPS” means Texas Department of Public Safety.

“Unique Vehicle” means a vehicle that is, because of its registered identity, different than all other vehicles.

“Vehicle Exhaust Plume” means the portion of a vehicle’s exhaust that emits from the rear of the vehicle.

“Vehicle Information Database (VID)” means the database structure containing information related to the station-based emissions testing component of the Texas Inspection and Maintenance Program. The database is currently maintained through contract by the Texas Commission on Environmental Quality (TCEQ). The State of Texas owns the resident vehicle inspection data.

**SECTION B - SERVICES AND PRICES/COSTS****B.1 SERVICES AND PRICES/COSTS****B.1.1 Services Being Acquired**

The Contractor shall, in accordance with the terms of this Contract, provide all necessary personnel, equipment, materials, supplies, and services and otherwise do all things necessary for, or incidental to, On-Road Vehicle Emissions Testing Program operating in the non-attainment areas of Dallas/Fort Worth, Houston/Galveston, and El Paso, and two counties in the Austin Area Early Action Compact (EAC).

**B.1.2 Pricing Schedule**

This Contract provides pricing schedules in Section B.2.

**B.2 PRICE SCHEDULE:**

Contractor: Envirotest Systems Holdings Corp.  
200 Day Hill Road, Suite 210  
Windsor, Connecticut 06095  
 (Street address, city and zip code)

**B.2.1 Pricing for Base Period and Option Periods**

**Base Period (06/30/2013 – 08/31/14)**

**Valid and Desired Records**  
 Affected Counties (per record) \$ 200,000 @ \$4.71 over 300,000 @ \$3.14

Evaluation Sessions (per record) \$ 0.40

**Option Period One (09/01/14 – 08/31/15)**

**Valid and Desired Records**  
 Affected Counties (per record) \$ 200,000 @ \$4.78 over 300,000 @ \$3.18

Evaluation Sessions (per record) \$ 0.41

**Option Period Two (09/01/15 – 08/31/16)**

**Valid and Desired Records**  
 Affected Counties (per record) \$ 200,000 @ \$4.85 over 300,000 @ \$3.23

Evaluation Sessions (per record) \$ 0.41



## **SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT**

### **C.1 BACKGROUND**

The objective of this Contract is the continuation of the Texas On-Road Vehicle Emissions Testing Program operating in the non-attainment areas of Dallas/Fort Worth, Houston/Galveston, and El Paso, and two counties in the Austin Area Early Action Compact (EAC).

### **C.2 FEDERAL/STATE STATUTES/REGULATIONS**

Contractor shall comply with the Federal Clean Air Act Amendments of 1990 and the State Implementation Plan. Contractor shall perform on-road emission testing of vehicles in the 17 non-attainment counties of Texas: Dallas/Ft. Worth, Houston/Galveston, El Paso and two counties in the Austin Area Early Action Compact (EAC).

### **C.3 PROJECT DELIVERABLE SCHEDULE**

Contractor shall comply with all required timeframes as discussed in Section C of this Contract.

### **C.4 ADDITIONAL REQUIREMENTS**

#### **C.4.1 Prime Vendor and Subcontractors**

Contractor shall operate as a prime contractor with total accountability for any and all subcontractors. Contractor will be the sole point of contact for all services and deliverables. Contractor must clearly identify all subcontractors performing work on this project and their roles and assignments for this Contract. All terms and conditions of this Contract that apply to Contractor shall also apply to subcontractors with the exception of single source responsibility.

#### **C.4.2 Reserved for Future Use**

Reserved for future use.

#### **C.4.3 Reserved for Future Use**

Reserved for future use.

#### **C.4.4 Adjunct Analysis**

Department explores uses of data collected in the State's on-road emissions testing program that will add value to the Inspection and Maintenance program. During the term of this Contract, Contractor may be asked to provide routine evaluative or comparative analysis on collected data. The data analysis will be collected for the purpose of further supporting the State of Texas air quality initiatives in the following general areas:

- A. Conducting a comparative analysis of the on-road emissions data and the decentralized I/M data to demonstrate the ability to detect anomalous data and artifacts that may indicate fraud, error, or other trends;

- B. Identifying and quantifying on-road vehicle emissions from sources other than the tailpipe;
- C. Analyzing the impact of identifying vehicles that may be exempted from station based emissions testing, using remote-sensing technology as an alternative validation tool for the motorist; and
- D. Providing evaluative fleet characterization based on remote sensing data on any variation of vehicle types sampled.

## **C.5 PROJECT SPECIFICATIONS**

### **C.5.1 Site Selection**

Department believes the successful performance of this Contract will be largely dependent upon the selection of on-road testing sites which are safe and convenient and that are effective in producing valid records of the types and in the amounts required for the achievement of Department's objectives and the disposition of Department's statutory obligations. Contractor is free to utilize any lawful methodology or mechanism Contractor chooses for selecting sites Contractor proposes to use in the performance of this Contract. Sites to be utilized in the performance of this Contract will be presented to Department on an individual basis with the accompanying documentation:

- A. An on-road testing site designation that will identify the unique on-road testing site. The designation shall be standardized, consistent with the existing naming convention developed by the incumbent Contractor, and in a format that will allow its entry into a data field in a database file.
- B. A written description of the physical location of the site including, but not limited to, road name or number, block number (if applicable), roadway description (i.e., on ramp, off ramp, traffic lane, interchange lane, etc.), direction of traffic flow, and political jurisdiction in which it is located.
- C. A written agreement between Contractor and the political subdivision having jurisdiction over the on-road testing site indicating the political subdivision's knowledge and consent of the use of the site for on-road testing activities.
- D. A statement describing the methodologies and mechanisms utilized in selecting the proposed site and the expected performance of the site in producing the records described in the Data Collection section of this Contract.
- E. A written assessment of any significant safety, convenience, or effectiveness concerns held by Contractor and an explanation of why, in spite of these concerns, the site is being proposed.
- F. A statement describing the proposed strategy for utilizing the site including the expected frequency the site will be used and the types of records expected to be collected.
- G. A map of the County in which the site is located which depicts the general location (as near as can be determined) of the proposed on-road testing site. The purpose of this map is to locate the general location of the site within the County.

- H. A site map which graphically and accurately depicts an area of at least 0.25 square miles and no more than 0.33 square miles, at the center of which is represented the exact location(s) of the source or source/sensor module(s). All roadways and any significant landmarks shall be identified on the map. The purpose of this map is to show all roadways and methods of egress to, or regress from, the site so that authorized personnel can easily access it.
- I. A site map which graphically and accurately depicts the roadway fifty (50) feet either side of the proposed site(s) of the source and sensor or source/sensor module(s). On this site map Contractor will represent the proposed placement of each device, cable, or vehicle to be used in the operation of the site. The roadway, significant landmarks and all significant natural or manmade structures and objects shall be identified on the map. The purpose of this diagram is to demonstrate how Contractor intends to incorporate the on-road testing equipment into the site, accommodate obstacles, and address safety concerns.
- J. Three color photographs. One taken from one hundred (100) to one hundred fifty (150) feet away from the sensor module site, off the improved portion of the roadway, and from the perspective of an approaching vehicle. One taken from one hundred (100) to one hundred fifty (150) feet away from the sensor module site, off the improved portion of the roadway, and from the perspective of a regressing vehicle. One taken from behind the sensor module site looking across the roadway. In all three photographs the sensor module site should be clearly marked with a fluorescent orange traffic cone.

This provision does not require photographer to capture the images while standing in the traffic lanes. In fact, it is recommended photographer stay off the main traveled portion of the roadway while taking these pictures.

- K. Any other information Contractor feels is pertinent to the reporting of this particular on-road testing site. The site reports shall be submitted on standard letter-sized (8-1/2" X 11") white paper or, for the maps, on paper that is folded to this size. Optionally, the site reports may be submitted on electronic media. However, the entire proposal, including digitized map and photographic images shall be contained in one file and in the order prescribed herein.

Contractor shall receive, and be able to present, documented proof from the political subdivision having jurisdiction over the roadway, that has permission to conduct on-road testing activities at that location. Said documented proof shall be at the site, available for production, during all on-road testing sessions in progress. Contractor will produce documented proof of Contractor's permission to utilize the site when such proof is requested by a representative of the political subdivision having jurisdiction over the site, a peace officer, or a representative of Department. The on-road testing sites utilized in the performance of this Contract shall conform with the safety and warning standards established and in use by the political authorities having jurisdiction over the proposed site. In the absence of such standards, shall conform to the safety and warning standards established by the Texas Department of Transportation. On-road testing sites utilized in the performance of this Contract shall not require or cause Contractor to funnel traffic lanes, reduce the number of traffic lanes, stop vehicles, or detour traffic. All on-road testing sites utilized in the performance of this Contract shall be located within the political boundaries of one of seventeen (17) affected Counties or, within any other County where a State-operated Inspection and Maintenance program that includes emissions testing is being operated, or in any other County

as directed by Department. All site reports, related documents, and their contents, presented to Department, or produced as a result of this Contract, become the property of the Texas Department of Public Safety. All on-road testing sites utilized in the performance of this Contract will be clearly and permanently marked by Contractor, on the roadway, using a method approved by the political body having jurisdiction over the roadway. The permanent mark shall be placed at the spot upon which the sensor module will be placed during on-road testing sessions. Each time the site is used for on-road testing data collection, the source or source/sensor module will be located upon the mark. In addition to site-specific documentation, Contractor shall provide to the Department a detailed safety plan that specifies the safety measures required of on-road crews, by Contractor, during on-road testing sessions. Contractor shall use appropriate safety precautions at all times. Pursuant to the terms of the agreement between Contractor and political subdivision having jurisdiction over the on-road testing site, Contractor will cease using an on-road testing site if ordered to do so. In any such agreement, Department shall not be prohibited from communicating with political subdivision for the purpose of seeking such an order in the best interests of the motoring public and the citizens of the State of Texas. Department assumes, and shall accept, no liability for the use of any of the on-road testing sites reported by Contractor.

### **C.5.2 Data Collection**

Contractor will make record of every on-road testing sample, attempted sample, or inadvertent sample in the manner prescribed herein. Unless posted to a secure File Transfer Protocol (FTP) or web site, one copy of a compact disc containing only the data collected during a single on-road testing session shall be produced and delivered to Department before the end of the fourteenth State business day after the on-road testing session was conducted. The delivery address for the compact disc is:

Program Specialist  
On-Road Vehicle Emissions Testing Program  
Operations and Shared Services  
Texas Department of Public Safety  
5806 Guadalupe Street, MSC  
Austin, Texas 78752-0240

If posted to a secure FTP or web site, the data shall be available for access, by Department, before the end of the fourteenth (14th) State business day after the on-road testing was conducted and by compact disc at the end of the testing cycle. The compact disc or posted file will contain the raw data collected during the on-road testing session and no other data, except the accompanying documentation file, shall be stored on the compact disc or posted on the secure FTP or web site. As soon as is practical but not later than the end of the twenty-first State business day, after the conclusion of the on-road testing session, Contractor will produce a second data file (post-processed data file) in which are transcribed, into the appropriate fields, the "License Plate Image Identification," the "Vehicle Image Identification," the "License Plate Number," the "License Plate State or Country of Origin," and the "License Plate Condition."

These records, with all appropriate associated images, shall be grouped onto a single compact disc or data file directory (if posted to a secure FTP or web site) that contains all of the records collected during a single on-road testing session. The compact disc shall be delivered to Department no later than the end of the twenty-eighth (28th) State business day after the on-road testing was conducted.

The data processing required in this Contract shall be conducted on the records collected during the individual on-road testing sessions. Based on the content of the records and post-collection or post-processing characterization, they shall be classified as valid, invalid, or valid but unacceptable. Contractor shall conduct data collection activities with the intent of producing only valid records. In order to collect data in the performance of the Contract, Contractor shall utilize on-road testing and adjunct equipment capable of producing valid records.

#### **C.5.2.1 Record Definition for Raw Data Files**

The raw data records collected from an on-road testing session and transmitted to Department, upon which data processing is conducted, shall be constructed to include, at a minimum, the following information:

- A. on-road testing session designation;
- B. on-road testing site designation;
- C. on-road testing equipment set identification;
- D. on-road testing crew identification;
- E. sequential record number;
- F. record collection date;
- G. record collection time;
- H. sensor calibration date;
- I. sensor calibration time;
- J. vehicle image identification;
- K. vehicle modal information;
- L. raw measurements of exhaust plume gases;
- M. record validity indicator; and
- N. any other data Contractor chooses to collect or record that is, or becomes, part of the raw data record.

#### **C.5.2.2 Record Definition for Post-Processed Data Files**

The data records generated from the processing of the raw data file shall be constructed to include, at a minimum, the following information:

- A. on-road testing session designation;
- B. sequential record number;
- C. vehicle image identification;

- D. county of registration;
- E. data indicating probable pass/fail correlation with the relevant station-based testing protocol;
- F. calculated exhaust plume concentrations of target gases;
- G. record billing indicator; and
- H. any other data or information Contractor chooses to make part of the final data record and/or which is used in the analysis of the data record.

### **C.5.2.3 Record Classification**

Department is primarily interested in the collection of valid and desired records. For the purpose of characterizing all records, the following classification system is established.

#### **A. Valid Records**

A valid record is described as one in which all fields are populated with accurate values and within acceptable tolerances. Valid Records will further be classified into the following categories:

##### **1. Desired**

Fiscal Years 2013, 2014, and (optionally) 2015, 2016 and 2017;

Records, collected in accordance with the specific numeric targets of two hundred thousand (200,000) or three hundred thousand (300,000) unique, two (2) to twenty-four (24) year-old, gasoline powered vehicles registered in the counties of Brazoria, Collin, Dallas, Denton, Ellis, El Paso, Fort Bend, Galveston, Harris, Johnson, Kaufman, Montgomery, Parker, Rockwall, Tarrant, Travis, or Williamson.

In addition, records, collected in accordance with the specific numeric targets established by the Department, on no fewer than fifty thousand (50,000) unique subject vehicles, two (2) to twenty-four (24) year-old, gasoline powered vehicles registered in non-affected counties in which an Evaluation Session is conducted. Annual Total Projected Valid and Desired Records: two hundred fifty thousand (250,000).

The specific vehicle targets for each of the listed counties will be calculated by Department in July or August of the fiscal year prior to the beginning of the fiscal year in which the targets are valid. These targets may change as vehicle populations, program requirements, or EPA standards change. Department will only adjust numeric targets once annually. Any adjustments shall be reported to Contractor who will adjust data collection methods to accommodate the new specific numeric targets. Contractor shall not invoice Department for any number of valid on-road testing records that exceeds one hundred percent (100%) of the number of valid on-road testing records ordered as a whole or from a specific geographic area as defined above or in annual adjustments done in accordance with the preceding two paragraphs. Contractor shall conduct an on-road testing

session in each of the counties in which on-road testing is performed at least once annually at a time mutually agreed upon by Contractor and Department.

2. Unacceptable

All valid records collected in excess of the specific numeric targets for valid and desired records.

3. Invalid Records

An invalid record is defined as any record in which any field is populated with inaccurate values, values which are outside acceptable tolerances, or which is not populated as described in the Field Definition subsection of this section.

If an on-road testing session is audited and the audited equipment fails to meet standards described in the Technical Requirements section of this Contract, all records collected during the audited session shall be invalid.

#### **C.5.2.4 Field Definition**

Each of the fields of a unique record shall be populated as follows:

- A. Session number - Must be an alphanumeric series of characters identifying the on-road testing session in which the data record was collected. This field may be pre-defined and populated prior to the time the actual record is collected but shall not be populated after the collection of the record. The format of the session number will be consistent with the format and definition developed by Contractor.

Once populated, this field shall be protected and unalterable in post-collection data processing activities.

Contractor is responsible for maintaining the system, developed by Contractor, for numbering each unique on-road testing session that will be used to populate this field. Any record that contains a session number inconsistent with this system shall be invalid.

- B. Site designation - Must be an alphanumeric series of characters identifying the specific on-road testing site at which the data record was collected. This field may be pre-defined and populated prior to the time the actual record is collected but shall not be populated after the collection of the record. The format of the site number will be consistent with the format and definition developed by Contractor.

Once populated, this field shall be protected and unalterable in post-collection data processing activities.

- C. Equipment designation - Must be an alphanumeric series of characters identifying the unique set of on-road testing devices used to collect the record including the source and sensor or source/sensor module(s), the data storage device, the speed and acceleration measurement device, the cold start detector (if equipped), the license plate imaging device, and the license plate reader device. This field may be pre-defined and populated prior to the time the actual record is collected but shall not be populated

after the collection of the record. The format of the equipment designation number will be consistent with the format and definition developed by Contractor.

Once populated, this field shall be protected and unalterable in post-collection data processing activities.

Any records containing an invalid or unreported equipment designation shall be invalid.

- D. Crew designation - Must be an alphanumeric series of characters identifying the primary personnel responsible for the setup and operation of the equipment used in the on-road testing session. This field may be pre-defined and populated prior to the time the actual record is collected but shall not be populated after the collection of the record. The format of the session number will be consistent with the format and definition developed by Contractor.

Once populated, this field shall be protected and unalterable in post-collection data processing activities.

Any record containing an invalid or unreported crew designation shall be invalid.

- E. Record number - Must be a numeric character identifying the sequential collection order of the sample, attempted sample, or inadvertent sample relative to all of the other samples, attempted samples, or inadvertent samples collected in the same on-road testing session.

Once populated, this field shall be protected and unalterable in post-collection data processing activities.

All on-road testing sessions must begin with record number one (1) and the sequential series of record numbers must be unbroken for the entire on-road testing session. Any records collected after a break in the sequential numbering shall be invalid.

- F. Record Date - Must be the date, expressed in month, day, century, and year, of the day on which this record was collected. This field must be populated automatically by whatever chronograph device is employed by the equipment being used in the on-road testing session. The record date must be the same for all records collected in a particular on-road testing session.

Once populated, this field shall be protected and unalterable in post-collection data processing activities.

The entire set of records for any particular on-road testing session that do not reflect the same date, in the manner prescribed, shall be invalid.

- G. Record Time - Must be the time, expressed (using a twenty-four [24] hour clock) in hour, minute, second, and hundredths of a second, at which this record was collected. This field must be populated automatically by

whatever chronograph device is employed by the equipment being used in the on-road testing session.

Once populated, this field shall be protected and unalterable in post-collection data processing activities.

Except for the instance of the first record of the on-road testing session, the record time must be at least 0.75 seconds later than the record time of the previous record. Any record that has a record time less than 0.75 seconds later than the record time of the previous record shall be invalid.

The entire set of records for any particular on-road testing session shall be invalid if the time for any of the records is reflected as being earlier than the time for a record with a lower sequential record number.

- H. Calibration Date - Must be the date, expressed in month, day, century, and year, of the day on which the sensor module was last calibrated. This field must be populated automatically by data that was automatically recorded, by whatever chronograph device is employed by the equipment being used in the on-road testing session, the last time the sensor module was automatically or manually calibrated. The calibration date must be the same for all records collected in a particular on-road testing session. The record date and the calibration date must be identical.

Once populated, this field shall be protected and unalterable in post-collection data processing activities.

The entire set of records for any particular on-road testing session that does not reflect the same date, in the manner prescribed, shall be invalid.

- I. Calibration Time - Must be the time, expressed (using a twenty-four [24] hour clock) in hour, minute, second, and hundredths of a second, at which the sensor module was last calibrated. This field must be populated automatically by whatever chronograph device is employed by the equipment being used in the on-road testing session.

Once populated, this field shall be protected and unalterable in post-collection data processing activities.

- J. License Plate Image Identification - Must be an alphanumeric series of characters relating the record to a separately captured and stored image of the vehicle license plate. The format of the Vehicle License Plate Image will be consistent with the format and definition developed by Contractor.

Once populated, this field shall be protected and unalterable in post-collection data processing activities.

Any record with an invalid or missing image reference shall be invalid.

Any file which is not able to accurately relate a license plate image with the data record because of equipment synchronization problems, or any other equipment related cause, shall invalidate that record and all subsequent records in a particular on-road testing session.

- K. Vehicle Image Identification - Must be an alphanumeric series of characters relating the record to a separately captured and stored image of the rear of the vehicle. The format of the Vehicle Image Identification will be consistent with the format and definition developed by incumbent Contractor.

Once populated, this field shall be protected and unalterable in post-collection data processing activities.

Any record with an invalid image reference shall be invalid. All records subsequent to a record with an invalid or missing image reference shall be invalid.

Any file which is not able to accurately relate a vehicle image with the data record because of equipment synchronization problems, or any other equipment related cause, shall invalidate that record and all subsequent records in a particular on-road testing session.

- L. Vehicle License Plate Number - Must be an accurate transcription, manual or automated, of the number displayed on the vehicle's license plate as represented in the vehicle license plate image captured and identified in the Vehicle License Plate Image field. This field may be populated in post-collection processing but must be done prior to delivery to Department.
- M. Vehicle License Plate State or Country - Must be a two-character abbreviation identifying the geopolitical origin of the vehicle's license plate. Country for foreign vehicles and state for vehicles originating within the United States. Acceptable abbreviations are:
- 1) Originating in the United States of America;
  - 2) "US" for United States government license plates;
  - 3) "TX" for Texas License Plates;
  - 4) "NM" for New Mexico License Plates;
  - 5) "LA" for Louisiana;
  - 6) "OK" for Oklahoma;
  - 7) "OT" for all other States.
  - 8) Originating outside the United States of America;
  - 9) "MX" for Mexico;
  - 10) "CN" for Canada;
  - 11) "CT" for all other foreign countries;
  - 12) "CT" for all other identifiable geopolitical origins; and

- 13) "UN" for the vehicle license plate numbers not transcribed or unidentifiable.

This field may be populated in post-collection processing but must be done prior to transmission to Department.

- N. Vehicle License Plate Condition - Must be an alpha or numeric character identifier that accurately characterizes the transcription of the vehicle license plate number as follows:

- 1) license plate image captured;
- 2) license plate image not captured;
- 3) license plate out of camera view;
- 4) no license plate displayed by vehicle;
- 5) license plate obscured;
- 6) license plate unreadable; or
- 7) calibration record.

This field may be populated in post-collection processing but must be done prior to transmission to Department.

If the Vehicle License Plate Condition field indicates that the license plate image was not captured, outside the view of the camera, or a calibration record, the record shall be invalid.

- O. Vehicle Speed — Must be the speed of the vehicle, expressed in miles and tenths of a mile per hour, as measured during the collection of the record.

This field must be populated automatically by whatever speed measurement device is employed by the equipment being used in the on-road testing session.

Once populated, this field shall be protected and unalterable in post collection data processing activities.

Any speed recorded outside the calibration range of the device shall invalidate the record.

- P. Vehicle Rate of Acceleration — If measured, must be the vehicle's rate of acceleration, or deceleration, expressed in miles and tenths of a mile per hour per second, as measured during the collection of the record. This field must be populated automatically by whatever acceleration measurement device is employed by the equipment being used in the on-road testing session.

Once populated, this field shall be protected and unalterable in post-collection data processing activities.

Any rate of acceleration, or deceleration, recorded outside the calibration range of the device shall invalidate the record.

- Q. Vehicle Cold Start Status - If detected, this field must contain an alpha or numeric character set characterizing the probable cold start status of the vehicle. This field must be populated automatically by whatever cold start measurement device is employed by the equipment being used in the on-road testing session.

Once populated, this field shall be protected and unalterable in post-collection data processing activities.

If a standard unit of measurement for cold starts (i.e. thermal units) is established for this technology prior to the execution of this Contract, this value should be displayed instead of the character set indicator. This value should be expressed in the smallest unit of measurement available (similar to thousandths of a second or mile per hour, etc.).

- R. Vehicle Exhaust Plume Concentration of Carbon Monoxide (CC) — Must be the actual vehicle exhaust plume concentration of carbon monoxide (CC), expressed to tenths of a percent, as measured at the time this record is collected. This field must be populated automatically.

Once populated, this field shall be protected and unalterable in post-collection data processing activities.

Any value recorded outside the calibration range of the device shall invalidate the record.

- S. Vehicle Exhaust Plume Concentration of Carbon Dioxide (CO<sub>2</sub>) — Must be the actual vehicle exhaust plume concentration of carbon dioxide (CO<sub>2</sub>), expressed to tenths of a percent, as measured at the time this record is collected. This field must be populated automatically.

Once populated, this field shall be protected and unalterable in post collection data processing activities.

Any value recorded outside the calibration range of the device shall invalidate the record.

- T. Vehicle Exhaust Plume Concentration of Hydrocarbons (HC) — Must be the actual vehicle exhaust plume concentration of hydrocarbons (HC), expressed in parts per million, as measured at the time this record is collected. Regardless of the surrogate used, this field will represent total hydrocarbons. This field must be populated automatically.

Once populated, this field shall be protected and unalterable in post-collection data processing activities.

Any value recorded outside the calibration range of the device shall invalidate the record.

- U. Vehicle Exhaust Plume Concentration of Nitrogen Oxides (NO<sub>x</sub>) — If collected, must be the actual vehicle exhaust plume concentration of Nitrogen Oxide (NO), expressed in parts per million, as measured at the time this record is collected. This field must be populated automatically.

Once populated, this field shall be protected and unalterable in post-collection data processing activities.

Any value recorded outside the calibration range of the device shall invalidate the record.

#### **C.5.2.5 Data Processing & Reporting**

Data processing and reporting is the chief output anticipated by Department in the performance of this Contract. In the processing and reporting of the collected data, Contractor shall perform or produce the following:

- A. Queries and reports that characterize the raw and processed data collected during on-road testing sessions including, but not limited to, statistical reports reflecting collected record information, site performance, equipment performance, and personnel performance;
- B. Queries and reports that characterize the data collected after it is matched against the Texas Department of Motor Vehicles' vehicle registration database including, but not limited to, summaries of desired records collected; and
- C. Queries and reports that characterize the data after it has been compared to data contained in the Vehicle Information Database including, but not limited to, identified high emitters and program compliance.

Department will facilitate Contractor's access to the pertinent records contained in the Texas Department of Motor Vehicles' vehicle registration database and the Vehicle Information Database.

Generally, all data processed and reports generated will be for the purposes of determining the satisfactory achievement of stated objectives and to evaluate Contractor's performance under the terms and conditions of this Contract.

Contractor will also produce, at no charge or expense to Department, ancillary reports and schedules necessary for the successful monitoring of the performance under the Contract.

#### **C.5.2.6 Ancillary Reports and Schedules**

Ancillary reports and schedules will be those determined by Department to be necessary for the successful and effective monitoring of Contractor's performance under this Contract.

Initially, the following ancillary reports and schedules will be required from Contractor:

- A. On-Road Testing Session Schedule - A schedule which accurately reports the on-road testing site designation, crew designation, equipment designation, session date, crew arrival time, defined as the time the crew plans to arrive and begin setup, not the time when record collection begins, and the time the on-road testing session is scheduled to end.

The schedule shall be presented to Department annually and confirmed five working days prior to the scheduled on-road testing session.

Department shall be notified, in writing, of any canceled, additional, or rescheduled on-road testing sessions as soon as Contractor is aware of the cancellation, addition, or rescheduling, at least twenty-four (24) hours prior to the cancellation, addition, or rescheduling.

Any record collected at an unscheduled on-road testing session, or during an on-road testing session not properly reported to Department, shall be invalid.

- B. On-Road Testing Site Designation Roster - A list of the on-road testing sites to be utilized in the performance of this Contract. Site designations shall be unique to the individual site and shall not be re-used by Contractor to identify any subsequent site.

The On-Road Testing Site Designation shall be supplied to Department as soon as Contractor selects the first on-road testing site.

Any modifications, changes, additions, deletions, or corrections shall be reported to Department as soon as Contractor is aware of such modifications, changes, additions, deletions, or corrections.

Any record reflecting a site designation that is invalid or that has not been properly reported to Department shall invalidate all the records in that particular on-road testing session.

- C. Crew Designation Roster - A list of Contractor personnel that will be identified by the crew designation number. Employee identifiers or crew designation identifiers shall be unique to the individual or crew and shall not be re-used by Contractor to identify any subsequent employee or crew.

The crew designation roster shall be supplied to Department at the execution of this Contract. Any modifications, changes, additions, deletions, or corrections shall be reported to Department as soon as Contractor is aware of such modifications, changes, additions, deletions, or corrections.

Any record reflecting a crew designation that is invalid or that has not been properly reported to Department shall be invalid.

- D. Equipment Designation Roster - A list of the equipment that will be identified by the equipment designation number in the sample record including the source and/or source-sensor module(s), data storage unit, speed and acceleration measurement devices, camera, and license plate reader (if used).

Equipment identifiers or equipment set designation identifiers shall be unique to the individual piece of equipment or equipment set and shall not be re-used by Contractor to identify any other piece of equipment or equipment set.

The equipment designation roster shall be supplied to Department at the execution of this Contract. Any modifications, changes, additions, deletions, or corrections shall be reported to Department as soon as Contractor is aware of such modifications, changes, additions, deletions, or corrections.

Any record reflecting an equipment designation that is invalid or that has not been properly reported to Department shall be invalid.

- E. High Emitter criteria - Contractor shall report its method for identifying high emitting vehicles at the execution of this Contract.

### **C.5.3 Vehicle Owner Notification**

Certain identified vehicle owners may be notified of the existence of certain conditions that may be discovered through on-road testing activities, such as identification of their vehicle as a probable high-emitter. Contractor will be responsible for notifying Department of probable high emitters. Contractor will also make notification to identified motorists.

#### **C.5.3.1 Probable High Emitting Vehicles**

Contractor shall establish criteria and methods for identifying probable high emitting vehicles with the following stipulations:

- A. The cut point for determining high emitter status with respect to the emission of carbon monoxide (CO) shall not be more than twice the failure cut point set at emission testing stations for the emission component on the same type of vehicle;
- B. The cut point for determining high emitter status with respect to the emission of total hydrocarbons (THC) shall not be more than 2.5 times the failure cut point set at emission testing stations for the same emission component on the same type of vehicle;
- C. The cut point for determining high emitter status with respect to the emission of total nitrogen oxide (NOx) shall not be more than 4,000 ppm more than the failure cut point set at emission testing stations for the emission component of the same type of vehicle;
- D. If an alleged high emitting vehicle is detected twice during on-road testing sessions, the high emissions levels should be on the same exhaust gas;
- E. For all vehicles identified as high emitters, whose owners are eventually notified and submit to verification testing, the monthly error of commission rate shall be 4.99% or lower;

- F. Identified vehicles, whose owners are notified, shall meet the high emitting vehicle criteria set by Contractor and approved by Department, and must have been selected according to Department-approved methods determined by Contractor for identifying high emitting vehicles;
- G. Contractor shall be prepared to notify Department of every vehicle that meets the high emitting vehicle criteria set by Contractor and approved by Department;
- H. The criteria of, or methods for identifying and selecting, high emitting vehicles shall not be changed or modified without the prior knowledge and consent of Department;
- I. The criteria of, or methods for identifying and selecting, high emitting vehicles will not be discriminatory and shall not, by design, result in the disproportionate representation of one geopolitical or socioeconomic group over another;
- J. On-road testing activities, intended to identify high emitting vehicles, are restricted to within the county boundaries of affected counties listed elsewhere in this Contract. However, high emitting vehicles may be identified from any of the following counties, when being operated in an affected county, using the above criteria:

Austin, Bastrop, Bell, Blanco, Bosque, Burnet, Caldwell, Chambers, Cooke, Grayson, Fannin, Grimes, Hays, Henderson, Hill, Hood, Hudspeth, Hunt, Jack, Lee, Liberty, Matagorda, Milam, Navarro, Palo Pinto, San Jacinto, Somervell, Van Zandt, Walker, Waller, Wharton, and Wise.

#### **C.5.3.2 Citation Issuance**

Vehicle owners who were notified of a high emitting or non-compliance condition and who did not respond to the notification in the manner prescribed or within the time frame allotted may be cited by Department.

#### **C.5.3.3 Verification Test Fee Refunds**

Vehicle owners who submit their vehicle for verification testing as a result of notification and whose vehicle passes the verification test may petition Department for a refund of the verification test fee. Upon notification from Department, Contractor shall remit and is responsible for said refund directly to the vehicle owner.

#### **C.5.3.4 Random Sampling for Program Evaluation**

Department may develop a method for identifying a random sample of vehicles to be solicited for program evaluation emissions testing or validation purposes. It is anticipated these evaluative sessions will be conducted in geographic areas of the state not having a station-based emissions testing program.

#### **C.5.4 Evaluation Sessions**

Contractor will, at the request of Department, deploy necessary on-road test suites, personnel, and support, to a specified area of the State, in order to perform collection activities intended to allow a comprehensive evaluation of the station-based emissions testing program.

These sessions will be scheduled annually. Contractor is required to perform site selections, secure site use agreements, and have enough fully operational on-road testing equipment to accomplish the vehicle coverage requirements to be determined at the time of scheduling.

Contractor shall be responsible for transporting the equipment to the area, setting up the equipment, operating the equipment, disassembling the equipment, and removing the equipment from the site.

The evaluation sessions, at Department's discretion, shall be conducted in any geographic location within the State of Texas. These events will last less than ten (10) State business days and will be designed to collect valid and desired records on no fewer than fifty thousand (50,000) unique subject vehicles.

### **C.6 TECHNICAL REQUIREMENTS**

#### **C.6.1 On-Road Testing Equipment**

When and where used, all on-road testing equipment shall be capable of accurately recording the data necessary for the successful performance under this Contract and within claimed and acceptable tolerances.

#### **C.6.2 Sensor Modules**

When compared with samples taken from an instrumented vehicle in on-road gas audits the sensor module must be able to detect and measure the following emissions at the stated specifications:

A. Carbon Monoxide (CO)

If sampled, must be accurate to within fifteen percent (15%) of the known carbon monoxide (CO) concentration emitting from the instrumented audit vehicle in ninety percent (90%) of the audit samples taken during an audit session.

B. Hydrocarbons (HC)

If sampled, must be accurate to within fifteen percent (15%) of the known hydrocarbons (HC) concentration emitting from the instrumented audit vehicle in ninety percent (90%) of the audit samples taken during an audit session.

C. Nitrogen Oxides (NO<sub>x</sub>)

If sampled, must be accurate to within fifteen percent (15%) of the known nitrogen oxide concentration emitting from the instrumented audit vehicle in ninety percent (90%) of the audit samples taken during an audit session.

D. Carbon Dioxide (CO<sub>2</sub>)

If sampled, must be accurate to within fifteen percent (15%) of the known carbon dioxide (CO<sub>2</sub>) concentration emitting from the instrumented vehicle in ninety percent (90%) of the audit samples taken during an audit session. When compared with the two-speed idle, OBD, or ASM test results of a non-simulated exhaust plume from a known vehicle, set to fail or set to pass, the on-road testing equipment must be able to accurately predict the pass/fail status of the tested vehicle, when the relevant test is conducted within fifteen (15) minutes of the on-road sample, no less than ninety percent (90%) of the time.

**C.6.3 Speed Measurement Device**

Must be accurate to within one (1) mile per hour of the known speed of the instrumented vehicle in ninety percent (90%) of the audit samples taken during an audit session.

**C.6.4 Acceleration Measurement Device**

Must be accurate to within five-tenths (0.5) mile per hour per second of the known rate of acceleration of the instrumented vehicle in ninety percent (90%) of the audit samples taken during an audit session.

**C.6.5 License Plate Imaging**

The instrumented vehicle's image must be recorded in ninety-five percent (95%) of the audit samples taken during an audit session.

**C.6.6 Chronographs and Synchronization**

All chronographs, clocks, calendars, and time-keeping systems used in the performance under the Contract shall be synchronized to within five (5) seconds of Greenwich Mean Time (GMT) and when interdependent instruments, containing time-keeping devices, are used, the clocks shall be synchronized to within one one-hundredth (1/100) of a second of each other as well as to within five (5) seconds of GMT.

**C.7 CONTRACT PERFORMANCE EVALUATION**

**C.7.1 Benchmark Testing**

Contractor shall ensure all equipment developed, maintained, and used by Contractor in the performance under this Contract is capable of performing to technical specifications outlined within this Contract and further, is capable of producing the desired output.

**C.7.2 Acceptance Testing**

Contractor shall ensure the equipment developed, maintained, and used by Contractor in the performance under this Contract has been properly installed and conforms to the approved specification within this Contract.

**C.7.3 Performance Audits**

In order to facilitate Department's ability to monitor Contractor's performance of those tasks which are required, Contractor shall be required to submit prescribed reports, which characterize Contractor, on-road testing site, equipment, or personnel performance, to

Department. The reports shall be delivered to Department by the close of business on the tenth (10th) business day after the end of the previous calendar month or with the invoice submitted for the previous calendar month, whichever is sooner, and shall cover the activities of Contractor during the previous calendar month.

In addition to the reports, Department may perform periodic covert, and scheduled overt, audits utilizing instrumented vehicles capable of emitting known amounts of the pollutants the on-road test equipment is supposed to be measuring.

## **C.8 ADMINISTRATIVE RESPONSIBILITIES**

### **C.8.1 Compliance with Laws**

In performing obligations under this Contract, Contractor shall comply with all applicable federal, state, and local statutes, ordinances, regulations, and rules, including, without limitation, to laws regulating the terms of conditions of employment, building and fire codes, zoning laws, public building requirements for use by the handicapped, and occupational safety and health rules.

### **C.8.2 Business Records**

Contractor shall be required to maintain and be able to provide complete and accurate records on all business transactions with Department, or any other entity, related to the performance of this Contract.

### **C.8.3 Data**

#### **A. Collection**

Unless expressly stated elsewhere in this Contract, Contractor is responsible for collecting all data used in the performance of this Contract.

#### **B. Storage**

Contractor is responsible for providing adequate electronic and physical storage space to hold and allow ready access to Department of all the data collected or generated in the performance of this Contract and in accordance with the retention provisions stated below.

#### **C. Retention**

Contractor must retain, in a transmittable electronic format, available to and in use by Department, all data collected or generated in the performance of this Contract, for a period of two years after the termination date of this Contract or until instructed by Department to destroy the data, whichever is sooner.

#### **D. Security**

##### **1. Accuracy**

Contractor will collect, store, maintain, and transmit all data related to the performance of this Contract in a manner that will ensure data accuracy is not violated.

2. Integrity

Contractor will collect, store, maintain, and transmit all data related to the performance of this Contract in a manner that will ensure data integrity is not violated.

3. Confidentiality

Contractor will collect, store, maintain, and transmit all data related to the performance of this Contract in a manner that will ensure data confidentiality. Contractor will only collect, store, maintain, and transmit data necessary for the performance of this Contract. Data collected, stored, maintained, or transmitted in the performance of this Contract will only be viewed, processed, reported, disclosed, or known of by Contractor and Department personnel who require access for the performance of this Contract. Data collected, stored, maintained, or transmitted in the performance of this Contract shall be, and is, confidential. Such data shall be used for the express purposes and intents established in this Contract. Contractor shall be responsible for all employees engaging in any activity requiring contact with confidential State information and shall be required to exercise security precautions for such activities. Contractor is responsible for identifying all state and federal laws, rules, and regulations governing the confidentiality of such State information and shall be bound by those laws, rules, and regulations.

4. Protection

Contractor is responsible for providing adequate protection for the data collected and generated in the performance of this Contract against theft, corruption, loss, unauthorized access, unauthorized use, and sabotage.

5. Breaches

Breaches of data accuracy, integrity, confidentiality, or protection will be reported to Department by Contractor within two (2) hours of detection, or if outside normal business hours of 8:00 am — 5:00 pm, Monday thru Friday in Texas, within two (2) hours of the start of business on the first business day after detection. Each breach of data accuracy, integrity, confidentiality, or protection will be documented and reported, in writing, within five (5) business days of detection. The report will contain, at a minimum, the date and time of occurrence; the date and time of detection; occurrence description; impact on the program; action taken; recovery steps; and, preventative measures implemented. Department, at its discretion, may demand, and if so demanded, shall receive, an investigation and detailed report containing the information described in the preceding paragraph and the cause of the breach.

E. Transmission

1. Format

Contractor will transmit all data collected or generated and all reports required in the performance of this Contract in an industry standard electronic format, available to and in use by Department.

2. Medium

Contractor will record all transmitted data and reports on a compact disc ("CD") formatted for use or importation into an IBM compatible PC-based application as determined by Department. As an alternative, Contractor may post the prescribed data on a secure ftp or web site accessible by Department at all times. If used, each compact disc may contain data from more than one required report or data set so long as the files are clearly separated and identified on the medium as well as in the accompanying documentation.

3. Documentation

Each compact disc, or posted data file, will be accompanied by documentation summarizing the content, containing file format, file structure, field definitions, record delimiters, and field delimiters.

#### **C.8.4 Confidential Information**

Contractor shall comply with the section in this contract (Section I.7) entitled "Confidentiality and Security Requirements."

#### **C.8.5 Factual and Expert Witnesses and Court Demonstrations**

In the event of civil litigation or criminal prosecution resulting from the performance under this Contract, Contractor, at no additional cost, on behalf of the State of Texas, shall provide factual or expert witnesses to testify on matters related to the performance under this Contract or the operation of the equipment used by Contractor in the performance under this Contract. Any demonstrations of on-road testing equipment performed relative to court appearances as a factual or expert witness, or upon the request of the court, may not be billed by Contractor.

#### **C.8.6 Technical Support Documentation**

Contractor shall provide Department with schematics of all computer hardware, software, record layouts, procedural instructions, system flow documents, all security codes, and all other documents related to systems, equipment, processes, or data involved in the performance under this Contract. Contractor shall notify Department within three (3) business days of significant material changes to any of the systems, equipment, processes, or data involved in the performance under this Contract. Such notification shall be accompanied by updated schematics, software, layouts, instructions, security codes, or other documents supplied as a result of the preceding paragraph.

#### **C.8.7 Uniformity**

Contractor will ensure that all equipment, methods, and products used or generated in the performance under this Contract are compatible with all other equipment, methods, and products so as to allow for the efficient and effective collection, comparison, processing, transmission, and reporting of the associated data.

### **C.8.8 Certification of Equipment**

Any equipment developed, manufactured, or used in the performance under this Contract must be installed by Contractor and certified ready for use in accordance with the acceptance test procedure on or before the effective date of this Contract. Such certification, separate from successful benchmark testing, must be in writing and presented to the person specified in this Contract.

### **C.9 PROJECT STATUS UPDATES**

Department will require Contractor provide, on a weekly basis or other mutually agreed upon schedule, a project status update. It will be at the sole discretion of Department to approve the method of weekly status updates. Contractor must keep Department advised at all times of the status of the project. All delays, whether foreseen or unforeseen, in delivery or implementation must be provided to the RSD Operations Program Manager in writing within five (5) business days of determination of delay. Contractor must include the following in its delay documentation: a) a date, b) the reason for delay, c) the Party who is at fault regarding the delay and d) a reasonable expectation for resolution. Default in promised delivery (without accepted reasons) or failure to meet specifications, authorizes Department to purchase deliverables elsewhere and charge full increase in costs, if any, to Contractor, in addition to any other legal or equitable remedy.

### **C.10 DEPARTMENT RECORDS**

- A. Upon conclusion of this Contract, Department will own the complete files, notes, charts, and drawings related to the execution of the services under this Contract. Contractor will keep any copies that are needed for its records and future planning for renewal/extension terms.
- B. Records shall be labeled in a manner satisfactory to Department as well as organized and retained in the original folder. Contractor shall comply with additional instructions pertaining to Department records as detailed in Section H.55, Books and Records of this Contract.
- C. All documents written to fulfill this Contract shall be the property of Department; Department may use, update, and distribute the documents as Department deems appropriate.
- D. Plans developed for this Contract are considered confidential and proprietary and are not to be distributed to unauthorized parties.
- E. In the event Contractor requires copies of any non-confidential records after conclusion of this Contract or Contract expiration and management transition, Department shall furnish copies to Contractor at Contractor's expense.
- F. Records shall be maintained in accordance with Department's Records Retention Schedule.
- G. Department will own the copyright for all materials created as part of this Contract, unless otherwise mutually agreed upon in writing.

## SECTION D – REPORTS AND DELIVERABLES

## D.1 REPORTS and DELIVERABLES REQUIRED FROM CONTRACTOR

The reports and deliverables listed in this Section are required to be submitted by Contractor during the course of the Contract. These reports may be revised or additional reports shall be submitted at Department's sole discretion.

FREQUENCY	DUE DATE	REPORT ITEM/ DELIVERABLE	AUTHORITY
Per Schedule TBD	Per Schedule TBD	Reports	Contract, Section C.5.2.5
Per Schedule TBD	Per Schedule TBD	Ancillary Reports	Contract, Section C.5.2.6
Per Schedule TBD	Per Schedule TBD	Probable High Emitting Vehicles	Contract, Section C.5.3
Annually	Per Schedule TBD	Evaluation Session	Contract, Section C.5.4
Monthly	5 <sup>th</sup> working day	Invoice	Contract, Section G.2
Monthly	5 <sup>th</sup> working day to Contract Administrator	HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report	Contract, Section I.3.E and Exhibit J.2
Other	Each instance	Copy of each subcontract	Contract, Section I.2.D
Other	Within 20 days of receipt of audit report	Corrective Action for Items of Non-Compliance identified	Contract, Section E.1.D
Other	Prior to Service Commencement Date and upon renewal or replacement	Insurance certificates	Contract, Section I.1
Monthly	By the 10 day of the month, for the previous month	Performance Audits	Contract, Section C.7.3
Weekly or agreed upon interval	Within 3 days of due date.	Project Status Updates	Contract, Section C.9

**SECTION E - INSPECTION AND ACCEPTANCE****E.1 INSPECTION OF SERVICES**

- A. 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. Department shall perform inspections in a manner that shall not unduly interfere with Contractor's performances of this Contract. 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.
- B. If any of the deliverables do not conform to this Contract's requirements, Department may require 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.
- C. 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 Contractor, including financial records, maintenance records, employee records including time, and attendance records generated by Contractor and its subcontractors in connection with performance of this Contract.
- D. If subject to the outcome of an audit, it is determined that Contractor is in non-compliance with any provisions of this Contract and/or that money is owed to Department by Contractor, then Department may exercise its rights of recovery of money owed as authorized in Section G.3.6 of this Contract.
- E. If any of the services are non-compliant with the Contract requirements, Contractor shall be notified describing specific areas of non-compliance. Contractor shall have a twenty (20) day period to file a written response detailing corrective action taken to all such items of non-compliance. The response must include supporting documentation. Unless otherwise specified, or previously agreed to by Department, the submission of a corrective action plan shall not be accepted as corrective action. For all items of non-compliance satisfactorily resolved by agreement between Contractor and Department, no further action regarding such items shall be taken. If an item of non-compliance cannot be resolved between Contractor and Department, and such item remains uncorrected for a period of twenty (20) days or longer after written notification to Contractor, then such item may be declared to be an Event of Default.

**E.2 INSPECTION BY STATE EMPLOYEES**

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

- B. Contractor shall provide entry at all times to 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 Department including Office of the Inspector General, shall be admitted to monitor the delivery of deliverables.

### **E.3 MONITORING CRITERIA**

- A. Department shall devise its own procedures for monitoring the quality of Contractor's performance under this Contract, and the Department's Policies.
- B. Contractor shall cooperate fully with the Department in obtaining the requisite information needed to complete such audits and to assess the quality of Contractor's performance.
- C. Monitoring may include, but is not limited to, document reviews and on-site audits conducted by Authorized Representatives of Department. Such monitoring by Department shall not relieve Contractor of any of its obligations under this Contract.
- D. The Contract Monitor and other Department's staff shall provide written findings regarding non-compliant conditions, processes, procedures and observations that could, if not addressed by Contractor, become an item of non-compliance as described in Section E.1.

### **E.4 INSPECTIONS AND TESTS**

All aspects of this Contract will be subject to inspection and test by Department. Tests will be performed on each documented deliverable if applicable and will require joint signoff by Contractor and Department personnel. The testing will verify successful implementation of each deliverable. The test schedule and test plan will be developed jointly by Department and Contractor. All costs shall be borne by Contractor in the event any deliverable tested fails to meet or exceed all conditions and requirements of the specifications. Latent defects may result in revocation of acceptance. A written acceptance form that describes the deliverable, the previously agreed-to acceptance criteria, with space for sign-off by both the RSD Operations Program Manager and Contractor will be provided. If a deliverable provided is rejected, the reasons for rejection must be documented. Department may only be able to tell Contractor that the deliverable provided does not work. Department is relying on the expertise of Contractor to develop a compliant deliverable and to fix noncompliant deliverables. The lack of a signature on the acceptance form does not constitute rejection and cannot be used by Contractor as a default acceptance. The RSD Operations Program Manager will maintain all signed acceptance forms.

**E.5 FINAL OPERATING CAPABILITY**

Final Operating Capability is defined as the successful completion and final acceptance by Department of any deliverable. Department expects that every deliverable will meet Texas expectations outlined in Section C of this Contract and the agreed upon SOW for this Contract. After each deliverable provided complies with the requirements of Final Operating Capability, Contractor may submit an invoice for such deliverable. Contractor will be responsible for providing the RSD Operations Program Manager with a deliverable approval document for acceptance by signature. Once the final deliverable provided complies with the requirements of this Contract, Contractor may submit an invoice for such deliverable.

**SECTION F - DELIVERIES OR PERFORMANCE****F.1 CONTRACT TERM**

This Contract shall consist of a Base Period from June 30, 2013 through August 31, 2014 and three (3) one (1) year extension Option Periods (September 1, 2014 through August 31, 2015 and September 1, 2015 through August 31, 2016 and September 1, 2016 through August 31, 2017). The Contract may be extended for an additional six (6) months period at Department's option, per section H.16, Option to Extend the Term of the Contract. The terms, conditions, and rates for all extensions shall remain as stated in this Contract.

## SECTION G - CONTRACT ADMINISTRATION DATA

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

#### G.1.1 Authorized Representative

- A. In the case of Contractor, its President or any Vice President shall designate the Authorized Representative in writing. The designation of Contractor's initial Authorized Representative shall be delivered to Department no later than the effective date of this Contract. Contractor's Authorized Representative may designate other persons to assist such Authorized Representative in the performance of certain obligations required by this Contract.
- B. In the case of Department, the Director is hereby designated as its Authorized Representative. The Director has established designee authority on his/her behalf for matters requiring signature approval of the Authorized Representative. Department's Authorized Representatives may designate other persons to assist such Authorized Representatives in the performance of certain obligations of this Contract.
- C. At any time, any party may designate any person as its Authorized Representative 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 Department by the Director. Such designations shall 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. Department's Authorized Representative (the Director) or his/her designated representative is the only person authorized to make or approve changes in any of the requirements of this Contract, and notwithstanding any clauses contained elsewhere in this Contract, the said authority remains solely with the Director or his/her designated representative. In the event Contractor makes any change at the direction of any person other than the Director or his/her designated representative, the change shall be considered to have been made without authority and no adjustment shall be made in the Contract price to cover any increase in cost incurred as a result thereof.

#### G.1.2 Contract Administrator

- A. The Contract Administrator for administration of this Contract is Joe Woolverton .
- B. The telephone number for the Contract Administrator is (512) 424-2065 .
- C. The facsimile number of the Contract Administrator is (512) 424-5419 .
- D. The e-mail address is [joseph.woolverton@dps.texas.gov](mailto:joseph.woolverton@dps.texas.gov) .
- E. 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 RSD Operations Program Manager**

- A. The RSD Operations Program Manager of this Contract is Brenda Musgrove.
- B. The telephone number for the Program Manager is (512) 424-2970.
- C. The facsimile number of the Program Manager is (512) 424-7221.
- D. The e-mail address is brenda.musgrove@dps.texas.gov.
- E. The RSD Operations Program Manager is not authorized to make any representations or commitments of any kind on behalf of the Director of Department or the State of Texas.
- F. The RSD Operations Program Manager does not have the authority to alter the Contractor's obligations or to change the Contract specifications, price, terms or conditions.
- G. If, as a result of technical discussions, it is desirable to modify this Contract obligations or the Statement of Work, changes will be issued in writing and signed by the Director of Department or his/her designee.

**G.1.4 Contractor's Project Manager**

- A. The Project Manager for this Contract is Jimmy Guckian.
- B. The telephone number for the Project Manager is (512) 250-1026.
- C. The cell-telephone number for Project Manager is (512) 657-9193.
- D. The facsimile number of the Project Manager is (512) 250-5169.
- E. The e-mail address for the Project Manager is jimmyguckian@etest.com.
- F. Contractor has above provided 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 Department.
- G. The Project Manager shall have full authority to act for Contractor in the performance of the required services. The Project Manager or a designated representative shall meet with Department's Program Manager to discuss problems as they occur. The Project Manager or designated representative shall respond within three (3) working days after notification of the existence of a problem.

**G.2 INVOICE REQUIREMENTS**

Department will pay Contractor on the basis of itemized invoices submitted to and approved by Department, showing the actual deliverables provided. Itemized invoices must clearly identify the deliverables completed and accepted, the date range of worked performance of this associated charge.

- A. Contractor's Invoice shall include the following:
1. this Contract number;
  2. remittance Address;
  3. test County;
  4. number of tests performed; and
  5. the date range of work performed for the associated charge.

Prompt payment Discount.

- B. The invoice is to be sent electronically to: [apinvoices@dps.texas.gov](mailto:apinvoices@dps.texas.gov) and to any other address as requested by the RSD Operations Program Manager.

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

### **G.3 PAYMENTS**

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

- B. Regardless as to whether Direct Deposit is chosen, Contractor shall submit a completed Contractor Maintenance Direct Deposit 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

- C. If Contractor has previously submitted a completed Contractor Maintenance Direct Deposit and Substitute W-9 Form to Department for another separate contract, another form is not required to be submitted.

- D. In the event Contractor elects to decline direct deposit on the Contractor Maintenance Direct Deposit and Substitute W-9 Form, the payment shall be mailed to the following remittance address:

Envirotest Systems Holdings Corp.

200 Day Hill Road, Suite 210

Windsor, Connecticut 06095-1778

**G.3.1 Reserved for Future Use**

Reserved for Future Use.

**G.3.2 Compensation for Additional Services**

Should Department create a need for additional deliverables which fall within the scope of this Contract, Contractor may be eligible for additional compensation. Department may, in its sole discretion, determine a reasonable and appropriate payment for such additional deliverables.

**G.3.3 Payment Adjustment**

- A. Department may elect to deduct from its Contractor Payment as specified in Section G.3.7 any amount determined to be due as specified under Section E.1.D.
- 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 Department, then all remaining Contractor Payment shall be withheld and an invoice issued to Contractor for the remaining amount due.
- C. Contractor shall be responsible to pay the invoiced amount within thirty (30) days of receipt unless Contractor and Department mutually agree on an alternative payment method.

**G.3.4 Late Payment**

Any amount owed to Contractor more than one (1) day beyond the date such amount is due as described in Section G.3 hereof shall accrue interest each day that such amount is not paid at the rate specified by the Prompt Payment Act.

**G.3.5 Deductions for Unacceptable Compliance**

- A. Contractor's failure to meet the listed specifications under Section C, Statement of Work and the agreed upon project final work order detailing the requirements for the up-coming event shall result in a deduction to the Contractor Payment.
- B. Non-Compliance could result in Department purchasing or replacing an item of the facilities services or deliverables and deducting the cost from the invoice payment.

**G.3.6 Withholding of Payment**

- A. Department shall have the right to withhold the invoice payment until the failures described below have been corrected.
  - 1. Failure to submit reports required for Section D as agreed upon at the time of award;
  - 2. Failure to respond to audit reports as set forth in Section E.1.D; and
  - 3. Failure to correct identified areas of non-compliance to the satisfaction of the Department within twenty five (25) days upon receipt of written notification.

- B. Contractor agrees that Department shall not pay interest to Contractor for monies so withheld.
- C. Contractor payment withheld shall be released upon Department's satisfaction that compliance has been achieved.
- D. Department shall withhold the final Payment to Contractor pending Department's acceptance by and transfer of State-Owned property to Department.
- E. In the event that money is due to Department for Contractor's failure to provide adequate maintenance or replacement of the property as required in this Contract, the amount required for Department to correct deficiencies and replace property will be withheld from the final payment.
- F. With the exception of disputed issues, such withholding of final payment by Department shall not exceed one hundred twenty (120) days from date of Contract termination.

### **G.3.7 Payment of Debt Owed to the State of Texas**

As required by Texas Government Code, Section 2252.903, Contractor agrees that any payments due under this Contract shall be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support, until the debt is paid in full. Contractor shall comply with rules adopted by 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.3.8 Right to Offset**

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

### **G.3.9 Annual Financial Disclosure Reports**

- A. Contractor shall have an annual audit performed by an independent CPA and submit to the Contract Administrator the financial reports prepared according to GAAP and GAAS within one hundred twenty (120) calendar days after the end of Contractor's fiscal year.
- B. In the disclosure of its financial affairs, Contractor agrees to allow Department or its representatives access to all its corporate books, to cooperate in any audits thereof and to provide Department's Contract Administrator with 1 and 2 below:
  - 1. Consolidated financial statements required by GAAP of Contractor and its affiliates for such year, setting forth in each case in comparative form the corresponding figures for the preceding fiscal year, all in reasonable detail and certified by independent CPAs of recognized standing to the effect that said financial statements fairly present, except as specifically stated, the

consolidated financial position and result of operations of Contractor and its affiliates as of the end of the year for the year involved, and a statement signed by a senior accounting or financial officer of Contractor that such officer has no knowledge, except as specifically stated, of the occurrence and continuance of any Event of Default or event that, with the time or the giving of notice, or both, would constitute an Event of Default (as defined in Section E.1.E) or, if such circumstance does exist, specifying the nature and extent thereof and the actions proposed to cure same; or

2. Copies of any “management letters” (as that term is understood pursuant to GAAP and GAAS) received by Contractor following any such audits.

## SECTION H - STANDARD TERMS AND CONDITIONS

This Contract includes the following Standard Terms and Conditions.

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

- A. Department is a State agency whose authority is subject to the actions of the Texas Legislature and the United State Congress. All obligations of Department are subject to the availability of legislative appropriations or, if applicable, the availability of federal funds applicable to this Contract. Contractor acknowledges that the ability of Department to make payments under this Contract is contingent upon the availability of funds. Contractor further acknowledges that funds may not be specifically appropriated for this Contract and Department's continual ability to make payments under this Contract is contingent upon the funding levels appropriated to Department.
- B. If 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, Department may immediately terminate this Contract, in whole or in part, without penalty to, or any liability whatsoever on the part of Department, the State of Texas, and the United States. Termination under this section is immediate, so Department is not required to provide thirty (30) calendar days written notice.
- C. Department is a State agency receiving grant funding from State or Federal Grantor sources. If the State or Federal Grantor terminates or reduces the funding necessary for performance of this Contract, Department may immediately terminate this Contract, in whole or in part, without penalty to, or any liability whatsoever on the part of Department, the State of Texas, and the United States. Termination under this section is immediate, so Department is not required to provide thirty (30) calendar days written notice.
- D. If funding or appropriations for this Contract is reduced by law, the statutory amount of compensation authorized for Contractor is reduced by law, or the Legislative Budget Board requests Department to reduce Department budget by a certain percentage, Department may, upon thirty (30) calendar days written notice to Contractor, reduce the deliverables in such manner and for such periods of time as Department may elect.

### H.2 NEWS RELEASES, ADVERTISEMENTS, AND PUBLICITY

- A. Contractor shall 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 Department, and then only in accordance with explicit written instructions from Department.
- B. Contractor shall not use the name of the State of Texas or Department in any advertisement, promotion or otherwise for any purpose regarding this Contract

without the express prior written consent of Department. Department is not authorized to provide endorsements.

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

### **H.3 FURTHER OPPORTUNITY TO CURE**

- A. If an Event of Default of the type specified in Section E.1.E occurs and Contractor reasonably believes that such Event of Default cannot be cured within the twenty (20) days allowed in Section E.1.E but that such Event of Default can be cured through a diligent, on-going, and conscientious effort on the part of Contractor, within a reasonable period not to exceed three (3) months, then Contractor may, within the twenty (20) day cure period, submit a detailed plan for curing the Event of Default to Department.
- B. Upon receipt of any such plan for curing an Event of Default, Department shall promptly review such plan and at its discretion, which must be reasonable in the circumstances, may allow, or not allow, Contractor to pursue such plan of cure.
- C. The decision of Department will be communicated in writing to Contractor.
- D. Department agrees that it will not exercise its remedies there under with respect to such Event of Default for so long as Contractor diligently, conscientiously, and timely undertakes to cure the Event of Default in accordance with the approved plan.
- E. If Department does not allow Contractor an extension of the cure period, the twenty (20) day time period shall be tolled during the period of time the request is pending before Department.

### **H.4 TERMINATION**

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

#### **H.4.1 Termination by Default**

In the event that Contractor fails to carry out or comply with any of the 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) with Department, Department may notify Contractor of such failure or default in writing and demand that the failure or default be remedied within ten (10) calendar days. In the event that Contractor fails to remedy such failure or default within the ten (10) calendars day period, Department will have the right to cancel this Contract upon ten (10) days written notice.

#### **H.4.2 Termination for Unavailability of Funds**

This Contract may be terminated as provided in the section 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 Department's liabilities hereunder. If these funds become unavailable to Department, Department may immediately terminate this Contract without

penalty to or any liability whatsoever on the part of Department, the State of Texas, and the United States.

#### **H.4.3 Termination for Convenience**

This Contract may be terminated, without penalty, by Department, without cause by giving thirty (30) calendar days written notice of such termination to 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 Department if Contractor fails to perform as agreed or is otherwise in default, without the necessity of complying with the requirements in the section herein entitled "Termination by Default." Department will provide Contractor with written notice to terminate this Contract, which termination will become effective immediately upon 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 Vendor List**

Department shall have the absolute right to terminate this Contract without recourse as follows: a) if Contractor becomes listed on the prohibited Vendors 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 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 ) if Contractor becomes listed on the State of Texas Debarred Vendor List. Department will provide Contractor with written notice to terminate this Contract, which termination will become effective immediately upon 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 Contractor from any obligation or liability that may have been incurred pursuant to this Contract, and such cancellation by Department will not limit any other right or remedy available to Department at law or in equity.
- B. This Contract does not grant Contractor a franchise or any other vested property right.
- C. In the event of termination hereunder, Department shall not be considered in default or breach of this Contract, nor shall it give rise to any liability whatsoever on the part of Department whether such claims of Contractor are for compensation of anticipated profits, unabsorbed overhead, interest on borrowing, or for any other reason.
- D. Contractor shall, unless mutually agreed upon in writing, cease all work immediately upon the effective date of termination. Department shall be liable for payments

limited only to the portion of the work Department authorized in writing and which Contractor has completed, delivered to Department, and which has been accepted by Department. All such work shall have been completed, per this Contract's requirements, prior to the effective date of termination.

- E. Department reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to Department under this Contract or under applicable law, including, but not limited to, attorneys' fees and court costs, if termination is at Contractor's request or if termination is for cause. This right is in addition to any other remedies available to Department under this Contract or applicable law. Department reserves the right to pursue any and all applicable rights and remedies if this Contract is terminated for any reason and Department expressly waives no such rights or remedies.
- F. If this Contract is terminated for cause or default, Department reserves the right to re-solicit or re-award this Contract to the next best responsive and responsible Respondent. Department will not consider the defaulting Contractor in the re-solicitation and 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.
- G. If this Contract is terminated for any reason, Department and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Contractor may be entitled to the remedies provided in Texas Government Code, Chapter 2260.
- H. Department reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to Department under the contract or under applicable law, including, but not limited to, attorney's fees and court costs, if termination or cancellation is at Contractor's request or if termination or cancellation is for cause. This right is in addition to any other remedies available to Department under this Contract or under applicable law. Department reserves the right to pursue any and all applicable rights and remedies if this Contract is terminated for any reason and Department expressly waives no such rights or remedies.

## H.5 DISPUTE RESOLUTION

- A. Any dispute arising under this Contract, which is not disposed of by mutual agreement between Department and Contractor shall be resolved as follows:
  - 1. The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by Contractor to attempt to resolve all disputes or contract claims arising under this Contract.
  - 2. Contractor's claim for breach of this Contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, Subchapter B, of the Government Code.
  - 3. To initiate the process, Contractor shall submit 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 shall specifically state that the provisions of Chapter 2260, Subchapter B, are being invoked, and shall also be given to all other representatives of Department and Contractor otherwise entitled to notice under this Contract.
  5. Compliance by Contractor with 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 Chapter 2260, Subchapter C, of the Government Code is Contractor's sole and exclusive process for seeking a remedy for an alleged breach of this Contract by Department if the parties are unable to resolve a dispute under this subparagraph (A).
  7. Compliance with the contested case process provided in 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 Department nor any other conduct of any representative of Department related to this Contract shall be considered a waiver of sovereign immunity to suit.
- B. In addition to complying with Chapter 2260 of the Texas Government Code, Contractor shall comply with 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. At all times during the course of the dispute resolution process, Contractor shall continue providing the deliverables as directed, in a diligent manner and without delay, shall conform to Department directives, decisions, or orders, and shall be governed by all applicable provisions of this Contract, unless directed otherwise in writing by Department.
- D. Records of the deliverables provided shall be kept in sufficient detail to enable payment in accordance with applicable provisions of this Contract, if this should become necessary.

#### **H.6 NO WAIVER OF RIGHTS**

- A. No failure on the part of Department to exercise, and no delay in exercising, and no course of dealing with respect to any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or in the exercise of any other right.
- B. The remedies provided in this Contract are cumulative and non-exclusive of any remedies provided by law or in equity, except as expressly set forth herein.
- C. Any failure of Department, at any time, to enforce or require the strict keeping and performance of any provision of this Contract will not constitute a waiver of such provision, and will not affect or impair same or the right of Department at any time to

avail itself of same. Any acceptance, payment, or use by Department regarding any deliverable shall not constitute a waiver or otherwise impair or prejudice any right, power, privilege, or remedy available to Department to enforce its rights, as such rights, powers, privileges, and remedies are specifically preserved.

## **H.7 INDEMNIFICATION**

**CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD DEPARTMENT AND STATE OF TEXAS (INCLUDING ITS DIRECTORS, EMPLOYEES, AGENTS, AND THEIR SUCCESSORS) HARMLESS FROM AND AGAINST ANY OF THE FOLLOWING THAT ARISE OUT OF OR RESULT FROM CONTRACTOR'S NEGLIGENCE, FAULT, ACT, FAILURE TO ACT, OMISSION, BREACH OF THIS CONTRACT, OR VIOLATION OF ANY STATE OR FEDERAL LAW AND/OR REGULATION, AS WELL AS ANY VIOLATION OF ANY MATTER MADE THE BASIS OF ANY TREATY AND/OR CONVENTION AND/OR AGREEMENT BETWEEN THE UNITED STATES AND ANOTHER NATION: CLAIMS; LAWSUITS; LOSSES; DAMAGES; LIABILITIES; PENALTIES; TAXES; FINES; INTEREST; EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, INVESTIGATION COSTS, AND ALL DIRECT OR INDIRECT COSTS OR EXPENSES INCURRED IN DEFENDING AGAINST ANY CLAIM, LAWSUIT, OR OTHER PROCEEDING, INCLUDING THOSE EXPENSES INCURRED IN ANY NEGOTIATION, SETTLEMENT, OR ALTERNATIVE DISPUTE RESOLUTION); ANY AND ALL DAMAGES, HOWEVER CHARACTERIZED, SUCH AS DIRECT, GENERAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES OF ANY KIND (INCLUDING LOST REVENUES OR PROFITS, LOSS OF BUSINESS, LOSS OF USE, OR LOSS OF DATA) ARISING OUT OF OR IN CONNECTION WITH OR RELATED TO THIS CONTRACT OR THE RIGHTS PROVIDED THEREIN.**

**IN ANY AND ALL CLAIMS AGAINST DEPARTMENT, STATE OF TEXAS (INCLUDING ITS DIRECTORS, EMPLOYEES, AGENTS, AND THEIR SUCCESSORS) BY ANY EMPLOYEE OF CONTRACTOR OR ANY OF ITS SUBCONTRACTORS, THE INDEMNIFICATION OBLIGATION UNDER THIS CONTRACT SHALL NOT BE LIMITED IN ANY WAY BY THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR CONTRACTOR OR ANY OF ITS SUBCONTRACTORS UNDER WORKERS' DISABILITY COMPENSATION ACTS, DISABILITY BENEFITS ACTS, OR OTHER EMPLOYEE BENEFITS ACTS.**

**CONTRACTOR'S OBLIGATIONS IN THIS SECTION INCLUDE, BUT ARE NOT LIMITED TO, CLAIMS, LAWSUITS, DAMAGES, LOSSES, ETC., BASED ON A CLAIM THAT ANY PIECE OF EQUIPMENT, GOODS, SOFTWARE, DOCUMENTATION, SERVICES, OR OTHER DELIVERABLE SUPPLIED BY CONTRACTOR OR ITS SUBCONTRACTORS, OR THE USE, DISPLAY, OPERATION, MODIFICATION, OR REPRODUCTION THEREOF, INFRINGES ANY UNITED STATES OR FOREIGN PATENT, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL OR PROPRIETARY RIGHT OF ANY PERSON OR ENTITY. SHOULD THE PIECE OF EQUIPMENT, GOODS, SOFTWARE, ETC., BECOME, OR IN CONTRACTOR'S OPINION BE LIKELY TO BECOME, THE SUBJECT OF A CLAIM OF INFRINGEMENT, CONTRACTOR, AT ITS OWN EXPENSE, SHALL: (1) PROCURE FOR DEPARTMENT THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, GOODS, ETC.; OR (2) IF SUCH OPTION IS NOT REASONABLY AVAILABLE TO CONTRACTOR, CONTRACTOR SHALL REPLACE OR MODIFY THE SAME WITH EQUIPMENT, SOFTWARE, GOODS, ETC., OF EQUIVALENT FUNCTIONS AND PERFORMANCE SO THAT IT BECOMES NON-INFRINGEMENT.**

**CONTRACTOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY DEPARTMENT. THIS CLAUSE IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD**

**HARMLESS THE STATE OR DEPARTMENT FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF DEPARTMENT OR ITS EMPLOYEES.**

**THIS SECTION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS CONTRACT.**

**H.8 NO WAIVER OF DEFENSES**

- A. Department does not waive, release or otherwise forfeit any possible defense Department may have regarding claims arising from or made in connection with this Contract.
- B. Department shall reserve all such available defenses and the Parties shall cooperate with each other to make such defenses available for each other's benefit to the maximum extent allowed by law, including any defenses Department may have regarding litigation, losses and costs resulting from claims or litigation pending at the time the Contract becomes effective, or arising thereafter from occurrences prior to the effective date hereof.

**H.9 INDEPENDENT CONTRACTOR**

- A. Department is associated with Contractor only for the purposes and to the extent set forth herein, and with respect to the deliverables hereunder, Contractor is and shall be an independent contractor and shall have the sole right to supervise, manage, operate, control, and direct the performance of the details incident to its duties hereunder.
- B. Nothing contained herein shall be deemed or construed to create a partnership or joint venture, to create the relationships of an employer-employee or principal-agent, or to otherwise create any liability for Department whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party.
- C. Each party to this Contract shall have no liability whatsoever for the actions or omissions of an individual employed by another party, regardless of where the individual's actions or omissions occurred. Each party is solely responsible for the actions and/or omission of its employees and officers; however, such responsibility is only to the extent required by Texas law. Where injury or property damage result from the joint or concurring negligence of the Parties, liability, if any, shall be shared by each party in accordance with the applicable laws of the State of Texas, subject to all defenses, including governmental immunity. These provisions are solely for the benefit of the Parties hereto and not for the benefit of any person or entity not a party hereto; nor shall any provision hereof be deemed a waiver of any defenses available by law.

**H.10 LAWS OF TEXAS**

- A. This Contract shall be governed by and construed in accordance with the substantive and procedural laws of the State of Texas. The following shall not apply to this Contract: (1) the conflicts of law principles and rules of any other jurisdiction; and (2) the United Nations Convention on contracts for the International Sale of Goods.
- B. Except as provided by Chapter 2260 of the Texas Government Code and the State Office of Administrative Hearings' administrative rules, venue for any litigation or contract claims shall be in the State Office of Administrative Hearings or a court of competent jurisdiction in Travis County, Texas.

**H.11 ASSIGNMENT**

Contractor shall not assign or transfer any interest in this Contract without the express, prior written consent of 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.12 MAINTENANCE OF CORPORATE EXISTENCE AND BUSINESS**

- A. 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. 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 Contractor's ability to perform its obligations under this Contract.

**H.13 APPROVAL OF CONTRACT**

- A. This Contract is subject to written approval of Department's Director or the Director's designated representative and shall not be binding until so approved.
- B. As referenced in Section H.21, for any Contract or commitment in which the total amount of agency funds involved, including potential renewal options, valued at one million dollars or more, the Director's approval shall be given after review by the Public Safety Commission.

**H.14 NON-DISCRIMINATION**

In the performance of this Contract, Contractor warrants that it shall 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, genetic information, or age, and in accordance with the following:

- A. Contractor shall 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. Contractor shall post notices setting forth the provisions of this non-

discrimination clause in conspicuous places, available to employees and applicants for employment.

- B. In all solicitations or advertisements for employees and/or the purchase of services, Contractor shall state that it is an equal opportunity employer; provided, however, that notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting this requirement.
- C. Contractor shall include the provisions of the foregoing paragraphs in every subcontract so that such provisions shall be binding upon each subcontractor or Contractor.
- D. Contractor represents and warrants that it will comply with the requirements of the Americans With Disabilities Act (ADA).

#### **H.15 CONTRACT CHANGES**

Changes/modifications to this Contract (except Contract extensions in accordance with Sections H.16 and H.17, administrative changes such as changing the Contract Administrator designation or correcting typographical errors or other unilateral changes discussed elsewhere in this Contract) shall be mutually agreed to by the parties and executed in writing with the authorized signatures. Department reserves the right to increase or decrease funding for this Contract via unilateral Contract modification.

#### **H.16 OPTION TO EXTEND THE TERM OF THE CONTRACT**

- A. Department may, at its sole discretion, extend the term of this Contract by written Contract modification to Contractor within ten (10) calendar days of Contract expiration, provided that Department shall give Contractor a preliminary written notice of its intent to extend at least sixty (60) calendar days before the Contract expires.
- B. The preliminary notice does not commit Department to an extension.
- C. If Department exercises this option, the extended Contract shall be considered to include this option provision.

#### **H.17 OPTION TO EXTEND SERVICES**

- A. Department may require continued performance of any services within the limits and at the rates specified in this Contract.
- B. Department reserves the right to extend this Contract for a ninety (90) day period at the end of each 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 shall not exceed six (6) months.
- D. Department may exercise the option by written notice to Contractor within the period specified in Section H.16.

**H.18 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 shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

**H.19 IMMIGRATION**

Contractor shall comply with the requirements of the Immigration Reform and Control Act of 1986, the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, regarding employment verification and retention of verification forms of any individuals who will perform any labor or services under this Contract.

**H.20 LIMITATION ON AUTHORITY**

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

**H.21 PUBLIC SAFETY COMMISSION CONTRACT REVIEW**

The following Texas Department of Public Safety ("Department") contracts and commitments shall be submitted to the Texas Public Safety Commission or the Commission's designee ("Commission") for review prior to execution, pursuant to Sections 411.003 and 411.004 of the Texas Government Code:

- A. Any contract or commitment in which the total amount of agency funds involved including potential renewal options is one million and no/100 dollars (\$1,000,000.00) or more.
- B. Any change order, individually or in combination with other change orders, that increases the original contract or commitment by fifty percent or more, as long as the dollar amount of the change order(s) is one hundred thousand and no/100 dollars (\$100,000.00) or more. For purposes of this section, exercise of a renewal option is not considered a change order.
- C. Any change order, individually or in combination with other change orders, that increases the original contract or commitment by five hundred thousand and no/100 dollars (\$500,000.00) or more. For purposes of this section, exercise of a renewal option is not considered a change order.

Any work performed prior to the following is performed at Contractor's sole risk if the contract or commitment is required to be submitted to the Commission according to the policy listed in the sentence immediately above: 1) Department's submission of such contract or commitment to the Commission; and 2) Department's compliance with any Commission directive regarding such contract or commitment, prior to Department's execution of the contract or commitment.

**H.22 TIME IS OF THE ESSENCE**

Time is of the essence in the delivery of deliverables as set forth in this Contract.

**H.23 COMPLIANCE WITH PERMITTING AND PURCHASING LAWS**

Contractor shall be in compliance with any and all applicable permitting and purchasing laws those Texas state agencies shall address before conducting business with Contractor.

**H.24 COMPLIANCE WITH STATE, FEDERAL, AND LOCAL LAWS, RULES, AND REGULATIONS**

- A. Contractor shall comply with all applicable state, federal and local laws and ordinances in providing deliverables to Department under this Contract. Without limiting the generality of the foregoing, 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. Contractor is responsible for both federal and state unemployment insurance coverage and standard workers' compensation insurance coverage. Contractor shall comply with all federal and state tax laws and withholding requirements. Department will not be liable to any Contractor/subcontractor(s) or its employees for any unemployment insurance or workers' compensation coverage or federal or state tax withholding requirements. Contractor may be required to demonstrate compliance with such laws at the written request of Department.
- B. Except as stated otherwise in this Contract, Contractor shall provide all labor and equipment necessary to furnish the deliverables under this Contract. All employees of Contractor shall be a minimum of seventeen (17) years of age and experienced in the type of work to be performed. Absent prior, written permission from Department, no visitors or relatives of Contractor's employees and subcontractors will be allowed on State property unless they are bona fide employees or subcontractors of Contractor performing work under this Contract.
- C. Contractor agrees 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, Contractor and Contractor's personnel shall agree to and 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. In the event that any of Contractor's personnel have failed to comply with such laws, regulations or rules, Department will have the right to require Contractor to remove such person from any involvement in this Contract.

**H.25 FORCE MAJEURE**

- A. Neither Contractor nor Department shall be liable to the other for any delay in performance of, or failure to perform, any obligation contained herein caused by force majeure, provided the party seeking to be excused has prudently and promptly acted to take any and all reasonable corrective measures that are within such

party's control; provided, further, that any action or inaction by a subcontractor of a party shall not be considered to be outside the control of such party except to the extent the Parties may expressly agree otherwise in this Contract. 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 corrected.

- B. Force majeure is defined as those causes beyond the control of the party required to perform that are generally recognized under Texas law as a force majeure event, such as acts of God, acts of war, epidemic and court orders. Contractor shall immediately upon discovery notify Department Project Manager in writing of any delays in the implementation schedule or the delivery of deliverables without regard to responsibility, fault or negligence.

#### **H.26 FORESEEABLE DELAY**

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

#### **H.27 NO SUBSTITUTIONS AND DELIVERY TIMES**

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

#### **H.28 PATENTS AND COPYRIGHTS**

Contractor shall 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 Contractor's use of or acquisition of any services or other items provided to the State of Texas by Contractor or otherwise to which the State of Texas has access as a result of Contractor's performance under this Contract, provided that the State shall notify Contractor of any such claim within a reasonable time of the State's receiving notice of any such claim. If Contractor is notified of any claim subject to this section, Contractor shall notify Department of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Contractor without Department's prior written approval. 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. 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. 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.29 SURVIVAL**

Any provisions of this Contract that impose continuing obligations on the Parties including, but not limited to the following, will survive the expiration or termination of this Contract for any reason:

- A. The indemnity obligations;

- B. The Contractor's news release, advertisement and publicity restrictions;
- C. Ownership rights;
- D. Recordkeeping requirements and audit rights;
- E. Warranty;
- F. Confidentiality and security obligations; and
- G. 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.30 SUCCESSORS**

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

### **H.31 EMPLOYEE NON SOLICITATION**

Contractor shall 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 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.32 COMMENCEMENT OF WORK**

Any work performed before final execution of this Contract shall be at Contractor's risk and if it is a cost reimbursement contract, that work will not be reimbursed without prior written authorization from Department for Contractor to start work at Contractor's own risk.

### **H.33 ROLLING ESTOPPEL**

- A. Department will be conclusively deemed to have fulfilled its obligations under this Contract, unless Department receives a deficiency report from Contractor within five (5) business days of the occurrence of the alleged deficiencies and Contractor identifies specific deficiencies in Department's fulfillment of its obligations in that report. Deficiencies shall be described in terms of how they have impacted the specific performance requirement of Contractor. 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 Contractor knew of that problem and failed to include it in the applicable report. The deficiency report shall be sent to Department Program Monitor.
- B. In the event Contractor identifies a situation wherein Department is impairing Contractor's ability to perform for any reason, Contractor's deficiency report shall contain Contractor's suggested solutions to the situation(s). These suggestions should be in sufficient detail so that Department Program Monitors can make a

prompt decision as to the best method of dealing with the problem and continuing the project in an unimpeded fashion.

### **H.34 SALES AND USE TAX**

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. 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.35 NOTICES**

Any notice required or permitted under this Contract shall be directed to the respective Parties' Contract Administrator as specified in Section G.1.2 and shall 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:

- A. The information of Department's Contract Administrator for administration of this Contract is in Section G.1.2, Contract Administrator.
- B. The information of Contractor's Contract Monitor for this Contract is Section G.1.4, Contract Monitor.

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 shall become effective.

### **H.36 MOST FAVORED CUSTOMER**

Contractor represents and warrants that all prices, charges, benefits, warranties and terms granted to Department pursuant this Contract are comparable to, or more favorable to, Department than the price, charges, benefits, warranties, and terms that 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, Contractor shall contract with any other person or entity for prices, charges, benefits, warranties and terms more favorable to such person or entity, Contractor shall notify Department of such more favorable terms and Department, in its sole discretion, may require that such more favorable prices, charges, benefits, warranties or other terms be available to Department under this Contract, and be retroactive to the date of such Contract or other agreement.

### **H.37 STATE EXCULPATION**

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

**H.38 TITLE AND RISK OF LOSS**

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

**H.39 AVAILABILITY OF THE DEPARTMENT'S MANPOWER**

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

**H.40 INTERPRETATION AGAINST DRAFTER**

Regardless of which party drafted this Contract or the language at issue, any ambiguities in this Contract or the language at issue shall not be interpreted against the drafting party.

**H.41 NON-INCORPORATION CLAUSE**

This Contract embodies the entire agreement between the Parties regarding the deliverables described in this contract, 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.42 HEADINGS**

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

**H.43 ATTACHMENTS**

Department reserves the right, in its sole discretion, to reject any Contractor terms and conditions or other documents or attachments.

**H.44 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 the formal signed agreement of this Contract. Such negotiated terms and conditions shall take precedence over the other documents that collectively constitute this Contract as specifically provided in the formal signed agreement.

Contractor terms and conditions that may violate Texas law applicable to the specific procurement or may be unacceptable to Department for inclusion this formal signed Contract resulting from the RFP include:

- A. Proposals that incorporate the laws of a State other than Texas;

- B. Requirements for prepayment;
- C. Limitations on Department's remedies;
- D. Requirements that Department indemnify Contractor;
- E. Requirements that Contractor's documents control in case of conflict;
- F. Requirements that Contractor's documents control even if Contractor accepts or acknowledges the Contract; and
- G. Disclaimer of warranties.

#### **H.45 RECALL NOTICE**

Contractor shall, immediately upon discovery of same, advise Department of any or all required replacements or modifications to any products or equipment provided under this Contract or the withdrawal of any such equipment or products by reason of safety hazard or recall regardless of the nature of the same. Any verbal notification shall be confirmed in writing within twenty-four (24) hours of such verbal notification. All such formal notices shall be submitted to the RSD Operations Program Manager.

#### **H.46 COMPETENCE AND LACK OF RELIANCE OF DEPARTMENT REPRESENTATIONS**

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

#### **H.47 MULTIPLE CONTRACTS**

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

#### **H.48 LITIGATION OR FELONY CRIMINAL CONVICTIONS**

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 Contractor that would or could impair Contractor's performance under this Contract or would otherwise be relevant to Department entering into this Contract. Contractor represents and warrants that Contractor has not and Contractor's employees and subcontractors have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised Department as to the facts and circumstances surrounding the conviction.

**H.49 PROHIBITED USE OF APPROPRIATED OR OTHER FUNDS UNDER CONTROL OF STATE AGENCY LOBBYING**

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

**H.50 FALSE STATEMENTS**

Contractor makes all the representations, warranties, guarantees, certifications, and affirmations included in this Contract. If Contractor signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications, or affirmations included in this Contract, Contractor shall be in default under this Contract and Department may terminate or void this Contract for cause and pursue other remedies available to Department under this Contract and applicable law.

**H.51 PUBLIC INFORMATION ACT**

- A. Notwithstanding any provisions of this Contract to the contrary, Contractor understands that Department is subject to and will 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. This Contract and all data and other information generated or otherwise obtained in its performance, including the offer and other information submitted to Department by Contractor, are subject to release as public information, unless a specific exception to disclosure under the Texas Public Information Act applies.
- B. Department agrees to notify Contractor in writing within a reasonable time from receipt of a request for information related to Contractor's work under this Contract. Contractor will cooperate with Department in the production of documents responsive to the request. Department will make a determination whether to submit a Public Information Act request to the Attorney General. Contractor shall notify 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.

**H.52 APPROVAL OF EMPLOYEES**

- A. Contractor shall retain no Upper Level Management Personnel for administration of the Services without prior approval of each selection by Department's Authorized Representative which approval shall not be unreasonably withheld.
- B. Upon request by Department, Contractor shall provide the name of the employee, all pending investigations and disciplinary actions, and previous disciplinary actions.

**H.53 PERSONNEL****H.53.1 Qualifications of Personnel**

- A. Contractor warrants that all persons assigned to this Contract are employees or subcontractors of Contractor, and are fully qualified to perform the work required herein.
- B. Replacement of personnel, if approved by Department, shall be with personnel of equal or greater ability and qualifications. Department will be the arbiter of whether the replacement personnel have equal or greater ability and qualifications than the personnel being replaced.
- C. Contractor shall assign all personnel identified in its offer to complete all of their planned and assigned responsibilities in connection with performance of the obligations of Contractor under this Contract. Department will have the right to approve the assignment and replacement by Contractor of all personnel assigned to provide deliverables or to provide on-site representation of Contractor.
- D. Before assigning a replacement individual for any of the personnel commitments identified in Contractor's Proposal, Contractor shall notify Department of the proposed assignment, shall introduce the individual to the appropriate representatives of Department, shall provide a transfer of knowledge validation and shall provide to Department a resume and any other information about the individual reasonably requested by Department. Department reserves the right to interview the individual before granting approval.
- E. Contractor shall retain no Upper Level Management Personnel for administration of the Services without prior approval of each selection by Department.
- F. Upon request by Department, Contractor shall provide the name of the employee, all pending investigations and disciplinary actions, and previous disciplinary actions.

**H.53.2 Replacement of Personnel at Department's Request**

- A. Department reserves the right to require Contractor to replace Contractor personnel whom Department judges to be incompetent, careless, unsuitable or otherwise objectionable, or whose continued use is deemed contrary to the best interests of Department or the State of Texas. Before a written request is issued, authorized representatives of Department and Contractor will discuss the circumstances. Upon receipt of a written request from an authorized representative of Department, Contractor shall be required to proceed with the replacement. The replacement request shall include the desired replacement date and the reason for the request. Contractor shall use its best efforts to effect the replacement in a manner that does not degrade deliverable quality. Contractor shall also provide Department with evidence of a sufficient transfer of knowledge to the proposed replacement.
- B. This provision will not be deemed to give Department the right to require Contractor to terminate any Contractor employee's employment. Rather, this provision is intended to give Department only the right to require that Contractor 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 Contractor not remove or reassign, without Department's 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 Contractor's obligations under this Contract. Without prior written approval from Department, personnel will only be changed in the event of death, personal injury, debilitating illness, or termination of employment with Contractor. The unauthorized removal of personnel by Contractor will be considered by Department as a material breach of this Contract and grounds for termination.

**H.54 UTILIZATION OF PRODUCTS AND MATERIALS PRODUCED IN TEXAS**

Contractor shall comply with Texas Government Code, Section 2155.4441, in the performance of a service contract. In performing services under this Contract, 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 shall 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, 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 Contractor and Department.

**H.56 ORGANIZATIONAL AND NAME CHANGE**

Contractor shall submit written notification to Department of any changes in Contractor's name, address, telephone number, facsimile number and/or email address with an effective date of such change. Contractor shall submit to 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. Contractor's Authorized Representative shall provide the following to Department's Program Manager within ten (10) calendar days of executing the contract:
  - 1. The completed Department Contractor Background Information form (HR-22) for all proposed personnel; and
  - 2. Acceptable fingerprints for all proposed personnel.
- B. Contractor shall 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. Department has the right to prevent Contractor's personnel from gaining access to Department building(s) and computer systems if Department determines that such personnel did not pass the background check or

failed to otherwise maintain a security clearance. Reference Section I.6 entitled "Criminal History Background Checks" for details on this requirement.

## **H.58 INFORMATION TECHNOLOGY STANDARDS**

Contractor represents and warrants that it shall comply with all technology, security, accessibility, warranty, maintenance, confidentiality, testing and other standards, policies and procedures of the Texas Department of Information Resources (DIR) and the State of Texas that are applicable to Contractor in its performance of this Contract as such standards, policies, and procedures are amended by DIR or the State throughout the term of this Contract, including any renewal or optional periods. The Information Resource Manager designed by Department shall assist Contractor in reviewing these standards, policies and procedures and identifying those that are applicable to Contractor in its performance of this Contract.

## **H.59 WARRANTIES**

### **H.59.1 Third Party Warranties**

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

### **H.59.2 Contractor Warranties**

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

- A. Contractor/subcontractor(s) shall create and deliver all deliverables in accordance with the highest professional standards in the industry.
- B. Contractor/subcontractor(s) shall use adequate numbers of qualified individuals with suitable training, education, experience, and skill to create and deliver the deliverables.
- C. Contractor/subcontractor(s) shall use its best efforts to use efficiently all resources or services necessary to provide the deliverables that are required under this Contract.
- D. 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. Contractor/subcontractor(s) shall create and deliver the deliverables in a manner that does not infringe the proprietary rights of any third party.
- F. Contractor/subcontractor(s) shall create and deliver the deliverables in a manner that complies with all applicable laws and regulations.
- G. Contractor has duly authorized the execution, delivery, and performance of this Contract.

- H. Contractor/subcontractor(s) has not provided any gifts, payments, or other inducements to any officer, employee, or agent of Department.
- I. Contractor/subcontractor(s) will not infringe any intellectual property right of any third party. In the course of performing work under this Contract, 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.60 DRUG-FREE WORKPLACE**

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 Contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

#### **H.61 AUTHORITY TO AUDIT**

- A. 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. Contractor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. 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 Contractor relating to this Contract.
- B. 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. Contractor shall reimburse the State of Texas for all costs associated with enforcing this provision.
- D. Department reserves the right to audit Contractor's records and documents regarding compliance with this Contract. Contractor is also subject to audit by any other department or agency, including federal agencies, responsible for determining that Department and Contractor have complied with the applicable laws.
- E. Except as stated otherwise in the section herein entitled "Confidentiality and Security Requirements," Contractor shall keep all records and documents regarding this Contract for the term of this Contract and for four (4) years after the termination of this Contract.
- F. In the event such an audit reveals any errors by Department or Contractor, Contractor shall refund Department the full amount of such overpayments within thirty (30) days of such audit findings, or Department at its option, reserves the right to deduct such amount owing to Department from any payments due Contractor.

**H.62 FRAUD, WASTE OR ABUSE**

- A. In accordance with Texas Government Code, Chapter 321, the State Auditor's Office (SAO) is authorized to investigate specific acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt or use of state funds.
- 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 at the SAO's website at [www.sao.state.tx.us](http://www.sao.state.tx.us). It can also be reported to Department's Office of The Inspector General at (512) 424-2015, Department's Chief Auditor's Office at 512-424-4403, or Crime Stoppers at 1-800-832-8477.

**H.63 REDACTED DOCUMENTATION**

The Contractor is required to include electronically, a copy of the Contractor's offer with specified private information removed, plus an overview of the nature of the information removed.

**H.64 RIGHTS TO DATA, DOCUMENTS AND COMPUTER SOFTWARE (State Ownership)**

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

**SECTION I – SUPPLEMENTAL TERMS AND CONDITIONS****I.1 INSURANCE REQUIREMENTS**

- A. Prior to the execution of this Contract, Contractor shall provide Department with proof of insurance coverage(s) and shall maintain the insurance coverage(s) listed herein throughout the term of this Contract. Department shall be named as an additional insured on all required insurance coverage(s).
- B. The insurance coverage(s) shall be evidenced by immediate delivery to 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 shall be submitted to the Contract Administrator within thirty (30) days of the effective date.
- D. All required insurance coverage(s) shall contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to Department.
- E. Contractor represents and warrants that all coverages are with companies duly licensed, admitted and authorized to do business in Texas, and authorized to provide the required coverages. Contractor also represents and warrants that all of the below policies contain endorsements prohibiting cancellation exception upon at least thirty (30) days prior written notice to Department. Contractor must, within the time provided above, furnish proof to Department of such coverage in the form of a Certificate of Insurance from Contractor's insurance carrier or carriers indicating the above coverages. The Certificate shall be addressed to the Texas Department of Public Safety as the Certificate holder.
- F. Contractor represents and warrants that, within five (5) business days of receipt of notice of tentative contract award, it shall provide Department with proof of coverage and represents and warrants that it shall maintain the following coverages throughout the term of this Contract, at Contractor's sole expense:
  - 1. **Workers' Compensation and Employers' Liability** coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401.001 et seq. of the Texas Labor Code) and minimum policy limits for Employers' Liability of: a) by accident, five hundred thousand and no/100 dollars (\$500,000.00) per each accident; and b) by disease, five hundred thousand and no/100 dollars (\$500,000.00) per employee with a per policy aggregate of \$1,000,000.
  - 2. **Business Automobile Liability Insurance** for all owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage limit of two million and no/100 dollars (\$2,000,000.00) per occurrence. Such insurance shall include coverage for loading and unloading hazards.

3. **Commercial General Liability Insurance** including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of two million and no/100 dollars (\$2,000,000.00) per occurrence, two million and no/100 dollars (\$2,000,000.00) products/completed operations aggregate and five million and no/100 dollars (\$5,000,000.00) general aggregate.
  - a. If this insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than sixty (60) months following completion of this Contract and acceptance by Department.
  - b. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to this Contract. Civil Rights Liability shall 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 shall include coverage for damage to property and injury to persons caused by boiler and other equipment malfunction. The policy shall contain an endorsement to include coverage for the property of third parties.
  - d. Department shall be named as an additional insured by using endorsement CG2026 or broader.
  
- G. **Commercial Crime Insurance** to cover losses from Employee Dishonesty with a minimum limit of fifty thousand and no/100 dollars (\$50,000.00) each occurrence endorsed to cover third party property. Department shall be a joint loss payee.
  
- H. **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 Contractor, 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. 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. Contractor shall obtain modified coverage(s) as reasonably requested by Department within ten (10) calendar days of Contractor's receipt of such request from Department.

### I.1.1 Additional Provisions

Contractor agrees 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 Department and its officers, employees and elected representatives as additional insured to all applicable policies except Workers' Compensation.

- B. Waiver of subrogation against Department, its officers and employees, for bodily injury (Including death), property damage or any other loss.
- C. Provide that Contractor's insurance is the primary insurance in regards to Department, its officers, employees and elected representatives.
- D. Provide that all provisions of this Contract concerning liability, duty and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.
- E. Ensure that all certificates of insurance identify the service or product being provided and the name of responsible party.
- F. Contractor through an insurance agent licensed by the State of Texas shall obtain all insurance coverage and an insurance company licensed to issue such coverage in this state shall provide such coverage. No "self-insurance" coverage shall be acceptable.
- G. All insurance coverage obtained by Contractor shall continue in full force and effect during the term of the Contract. No Contract shall be entered into between Contractor and Department unless insurance coverage binders are received by the date scheduled for the execution of the Contract. Proof of insurance policies must be delivered prior to the date on which the services of Contractor shall commence.
- H. All insurance coverage is to be provided by insurance carriers permitted to conduct business in Texas. All insurance carriers shall be, at a minimum, rated "A VII" by A.M. Best or equivalent rating by a similar insurance rating service.
- I. Contractor may choose the amount of deductible for any other insurance coverage required (above) to be obtained by Contractor, but in no event shall such deductible for each occurrence exceed five (5) percent of the required yearly aggregate limit of coverage.
- J. Contractor is responsible for the first dollar defense coverage. All general liability and professional liability policies shall provide defense in addition to the policy limits.
- K. The limits required herein are minimum acceptable. However, these limits are not to be construed as being the maximum any prospective Contractor may wish to purchase for their own benefit.
- L. As respect to the total limits of liability required, any combination of primary and/or umbrella coverage may satisfy those totals. However, if an umbrella is used, coverage must be at least as broad as the primary coverage.

### **I.1.2 Subcontractor's Insurance**

Contractor's insurance policies shall provide coverage for 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. Contractor shall assume full responsibility for all deliverables under this Contract. Department will consider 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, 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. Contractor shall not delegate any duties under this Contract to a subcontractor unless Department has given written consent to the delegation. Department will have the right to approve all subcontractors and to require Contractor to replace any subcontractor found, in the opinion of Department, either initially or based on performance, to be unacceptable.
- C. The management of any subcontractor will be the sole responsibility of Contractor, and failure by a subcontractor to perform will be deemed to be failure of Contractor. Contractor shall make all payments to subcontractors and suppliers. Department will not direct payments for deliverables acquired in connection with this Contract other than to Contractor, nor will Department release Contractor from having to perform any obligations under this Contract, notwithstanding the fact that a subcontractor may have been engaged by Contractor to perform those obligations.
- D. Contractor shall furnish to the Department copies of all subcontracts. All subcontracts shall include all applicable provisions contained in this Contract and any provisions required by law.

**I.3 HISTORICALLY UNDERUTILIZED BUSINESSES (HUB) PARTICIPATION**

The HUB Sub-Contracting Plan (HSP) submitted with the Proposal is accepted, and becomes part the Contract and is attached as Exhibit J.2.

After contract award, Department shall coordinate a post-award meeting with the successful Contractor to discuss HSP reporting requirements. Contractor shall maintain business records documenting compliance with the HSP, and shall submit monthly subcontract reports to the Department by completing the HUB "Prime Contractor Progress Assessment Report." This monthly report is required as a condition for payment to report to the agency the identity and the amount paid to all subcontractors.

At award, Contractor is required to send notification to all selected subcontractors as identified in the accepted/approved HSP. In addition, a copy of the notification shall be provided to Department's Contract Manager and/or HUB Program Office within ten (10) days of the Contract award.

During the term of this Contract, if the parties in the Contract amend the Contract to include a change to the scope of work or add additional funding, Department shall evaluate to determine the probability of additional subcontracting opportunities. Contractor shall submit any HSP change request for Department's review. The requirements for an HSP change request shall be covered in the post-award meeting.

Proposed changes shall comply with the HUB Program good faith effort requirements relating to the development and submission of a HSP.

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

Failure to meet the HSP and post-award requirements shall constitute a breach of Contract, and shall be subject to remedial actions. Department may also report noncompliance to the CPA in accordance with the provisions of the Vendor Performance and Debarment Program (see 34 T.A.C. §20.108 relating to Debarment) and (see 34 T.A.C. §20.105 relating to Procedures for Investigations and Debarment).

#### **I.4 LIQUIDATED DAMAGES**

The successful performance of this Contract is necessary for the State of Texas to avoid sanctions that would be imposed for its failure to adequately address air quality issues in certain areas of the State. These sanctions take the form of withheld federal funds, limiting of economic expansion, and severe restrictions on the operation of certain industries in the affected areas. The potential harm that would occur due to a failure of Contractor to successfully execute its obligations under this Agreement is difficult or incapable of estimation. It is a fair and reasonable statement, however, that should such harm occur it would exceed the total value of this Contract. Therefore, Contractor shall be responsible for all actions of its employees and Subcontractors and for adhering to the requirements of this Contract. Should Contractor fail to adhere to the requirements of this Contract, Department shall be entitled to damages in the amounts detailed in the following paragraphs of this section. Payment of such liquidated damages shall not relieve Contractor of its obligations to remedy any breach of the requirements of this Contract. The amount of liquidated damages, as determined by Department, shall not be assessed as a penalty for said failure; it being agreed between Department and Contractor that the amount specified is a fair estimate of the amount of damages that the State will sustain under such circumstances. Failing to demonstrate the ability to collect, process, validate, produce, and deliver, and then to commence regular delivery of valid records, in the manner prescribed, on or before the date 60 calendar days after the date this Contract was executed, will result in liquidated damages in the amount of one thousand and no/100 dollars (\$1,000.00) for each state business day, on which data is or could have been collected, that Contractor fails to deliver valid records. Said liquidated damages will begin accruing on the 61st calendar day following the date this Contract was executed and will continue to accrue until Contractor begins delivering valid records, in the manner prescribed, or this Contract is terminated, whichever is earliest. Failing to meet the specific numeric targets set out for valid, desired records for each contract year, will result in liquidated damages in the amount to one percent (1%) of the total amount paid by Department for valid, desired records for that specific numeric target in the relevant contract year for every one percent (1%) Contractor falls below each specific numeric target. Contractor shall not avoid these damages by compensating for deficits in one specific numeric target with surplus records collected on another specific numeric target. Failing to maintain an error of commission rate below ten percent (10%) will result in liquidated damages in the amount of five hundred and no/100 dollars (\$500.00) for each individual error of commission committed after the rate has reached or exceeded ten percent (10%) for each monthly billing cycle. For the purpose of determining the amount, if any, of liquidated damages to be assessed under the preceding paragraph, the error of commission rate shall be calculated on the first State business day of each month, proceeding on January 1, 2013, on the vehicles whose owners had a testing deadline between the first and last (inclusive) day of the previous month, regardless of the actual month in which the initial verification test was conducted. The deadline for

testing being midnight on the forty-first (41st) day (inclusive) following the date of the High Emitter Notice, all vehicles presented or scheduled for an initial verification test within forty-one (41) days (inclusive) of the date recorded on the High Emitter Notice mailed to the vehicle owner will be considered, when calculating the rate, and will be counted as an error of commission, or not, based on the following criteria:

- A. Vehicles that are not presented for the initial verification test and for which the mailed notice IS returned by the Post Office, within the forty-one (41) day compliance period will not be errors of commission and will not be considered in the calculation of the error of commission rate. The vehicle owner was not properly notified.
- B. Vehicles that are not presented for the initial verification test and for which the mailed notice IS NOT returned by the Post Office, within the forty-one (41) day compliance period will not be errors of commission but will be considered in the calculation of the error of commission rate. It will be presumed the vehicle owner was notified and that the failure to present the vehicle is a validation of the on-road test results.
- C. Vehicles that pass the initial verification test and upon which the owner makes no claim (either of repairs or no repairs) within thirty (30) days (inclusive) of the date of the passing emissions test, will not be an error commission but will be considered in the calculation of the error of commission rate. It will be presumed the vehicle owner DID affect a repair or modification that caused the vehicle to pass the initial verification test.
- D. Vehicles that pass the initial verification test and upon which the owner claims pre-test repairs or modifications that may have improved the emissions status of the vehicle between the qualifying remote sensing sample and the date of the passing emissions test, will not be an error of commission, but will be considered in the calculation of the error of commission rate. It will be presumed the claimed repair or modification was the cause of the passing initial verification test.
- E. Vehicles that pass the initial verification test and upon which the owner claims, under oath or by affirmation, that no pre-test emissions-related modifications or repairs were effected between the qualifying remote sensing sample and the passing emissions test, shall be errors of commission and will be considered in the calculation of the error of commission rate.
- F. Vehicles that fail the initial verification test will not be errors of commission, but will be considered in the calculation of the error of commission rate. Failure to transmit data and reports in the time frame negotiated and agreed upon by both Department and Contractor will result in liquidated damages in the amount of one hundred and no/100 dollars (\$100.00) per data file or report for each day, after the second day, that the data file or report is late.
- G. Failure to adhere to the on-road testing session schedule shall result in liquidated damages of one thousand and no/100 dollars (\$1,000.00) for each on-road testing session that is scheduled but not conducted due to the fault of Contractor, his/her employees, equipment, or actions.

- H. Liquidated damages in the amount of five hundred and no/100 dollars (\$500.00) shall be assessed for on-road testing session conducted that was not announced on the on-road testing session schedule. Contractor shall not be responsible and liquidated damages may not be assessed due to:
1. Any delay caused by schedule amendments requested by Department;
  2. Delays as the result of activity that is the responsibility of Department project team as long as Contractor timely files its deficiency report as required by the Section herein entitled "Rolling Estoppel"; or
  3. Delays that were outside the control of Contractor, as long as Contractor timely complies with the requirements in and as long as the situation falls within the scope of the section herein entitled "Force Majeure."

Assessments incurred under this provision may, at Department's option, be deducted from any payment due Contractor. The burden of proof that the delay is attributable to Department rests with Contractor. Department has the right to offset any liquidated damages payable to Department, as specified above, against any payments due to Contractor. If insufficient payments are available to offset such liquidated damages, then Contractor shall pay to Department any remaining liquidated damages within fifteen (15) calendar days following receipt of written notice of the amount due.

#### **I.5 OTHER CONTRACTS**

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

#### **I.6 CRIMINAL HISTORY BACKGROUND CHECKS**

- A. Contractor must have its project personnel submit to Department a fingerprint-based Criminal History Background Investigation, if required by Department, at Department's expense. To facilitate this Criminal History Background Investigation, each person must complete Department's Vendor Background Information Form (HR-22), which will be provided by Department.
- B. If Department requires a finger print-based Criminal History Background Investigation, Contractor shall not allow personnel to work on the project who have not successfully completed Departments fingerprint-based Criminal History Background Investigation and who do not otherwise maintain a Department security clearance. Department has the right to prevent Contractor's personnel from gaining access to Departments building(s), Contractor's event facility premises, as well as computer systems if Department determines that such personnel do not pass the background check or fail to otherwise maintain Department security clearance.
- C. When required, Contractor's Project Manager must provide the following to Department's Program Manager within ten (10) calendar days of executing this

Contract: a) the completed Vendor Background Information Form (HR-22) for all proposed personnel; and acceptable fingerprints for all proposed personnel.

- D. Throughout the term of this Contract, Department may require Contractor's personnel to submit an annual Departmental finger printed-based Criminal History Background Investigation to Department.
- E. Throughout the term of this Contract, Contractor shall promptly notify Department of any activity or action by Contractor's personnel that may affect that individual's ability to continue to work under this Contract.

## **I.7 CONFIDENTIALITY AND SECURITY REQUIREMENTS**

### **I.7.1 General Confidentiality Requirements**

All information provided by Department to Contractor or created by Contractor in performing the obligations under this contract is confidential and shall not be used by Contractor or disclosed to any person or entity, unless such use or disclosure is required for Contractor to perform work under this contract.

The obligations of this section do not apply to information that Contractor can demonstrate:

- 1) Is publicly available;
- 2) Contractor received from a third party without restriction on disclosure and without breach of contract or other wrongful act;
- 3) Contractor independently developed without regard to Department confidential information; or
- 4) Is required to be disclosed by law or final order of a court of competent jurisdiction or regulatory Contractor must furnish prompt written notice of such required disclosure and shall reasonably cooperate with Department at Department's cost and expense, in any effort made by Department to seek a protection order or other appropriate protection of its confidential information.

Contractor shall notify Department of any unauthorized release of confidential information within two (2) days of when Contractor knows or should have known of such unauthorized release.

Contractor agrees to maintain all confidential information in confidence during the term of this contract and after the expiration or earlier termination of this Contract.

If Contractor has any questions or doubts as to whether particular material or information is confidential information, Contractor shall obtain the prior written approval of Department prior to using, disclosing, or releasing such information.

Contractor acknowledges that Department's confidential information is unique and valuable, and that Department may have no adequate remedy at law if Contractor does not comply with its confidentiality obligations under this Contract. Therefore, Department shall have the right, in addition to any other rights it may have, to seek in any Travis County court of competent jurisdiction temporary, preliminary, and permanent injunctive relief to restrain

any breach, threatened breach, or otherwise to specifically enforce any confidentiality obligations of Contractor if Contractor fails to perform any of its confidentiality obligations under this Contract.

Contractor shall immediately return to Department all confidential information when this Contract terminates, at such earlier time as when the confidential information is no longer required for the performance of this contract or when Department requests that such confidential information be returned.

Information, documentation and other material in connection with this Contract, including Contractor's proposal, may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code.

The Federal Bureau of Investigation (FBI) and Department have computer security requirements. Contractor's and subcontractor's employees working on this project must sign appropriate agreements and abide by these security requirements, upon Department's request.

### **I.7.2 Sensitive Personal Information**

To the extent this subsection does not conflict with the subsection herein entitled "General Confidentiality Requirements," Contractor must comply with both subsections. To the extent this subsection conflicts with the subsection herein entitled "General Confidentiality Requirements," this subsection entitled "Sensitive Personal Information" controls.

"Sensitive personal information" is defined as follows:

- 1) An individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted:
  - a) Social security number;
  - b) Driver's license number or government-issued identification number; or
  - c) Account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or
- 2) Information that identifies an individual and relates to:
  - a) The physical or mental health or condition of the individual;
  - b) The provision of health care to the individual; or
  - c) Payment for the provision of health care to the individual.

Sensitive personal information does not include publicly available information that is lawfully made available to the public from the federal government or a state or local government.

"Breach of system security" is defined as follows: Unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information Contractor maintains under this contract, including data that is encrypted if

Contractor's employee or agent accessing the data has the key required to decrypt the data. Good faith acquisition of sensitive personal information by an employee or agent of Contractor for the purposes of performing under this Contract is not a breach of system security unless the employee or agent of Contractor uses or discloses the sensitive personal information in an unauthorized manner.

Contractor shall implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect from unlawful use or disclosure any sensitive personal information collected or maintained by Contractor under this Contract.

Contractor shall notify Department and the affected people of any breach of system security immediately after discovering the breach or receiving notification of the breach, if sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person. However, Contractor must delay providing notice to the affected people at Department's request, if Department determines that the notification will impede a criminal investigation. The notification to the affected people shall be made as soon as Department determines that it will not compromise any criminal investigation.

Contractor must give notice as follows, at Contractor's expense:

- 1) Written notice;
- 2) Electronic notice, if the notice is provided in accordance with 15 U.S.C. Section 7001;
- 3) Notice as follows:
  - a. If Contractor demonstrates that the cost of providing notice would exceed \$250,000, the number of affected people exceeds 500,000, or Contractor does not have sufficient contact information for the affected people, Contractor may give notice as follows:
    - i. Electronic mail, if Contractor has an electronic mail address for the affected people;
    - ii. Conspicuous posting of the notice on Contractor's website;
    - iii. Notice published in or broadcast on major statewide media; or
  - b. If Contractor maintains its own notification procedures (as part of an information security policy for the treatment of sensitive personal information) that comply with the timing requirements for notice under this subsection entitled "Sensitive Personal Information," Contractor may provide notice in accordance with that policy.

If this subsection requires Contractor to notify at one time more than 10,000 people of a breach of system security, Contractor shall also notify, without unreasonable delay, each consumer reporting agency (as defined by 15 U.S.C. Section 1681a) that maintains files on consumers on a nationwide basis, of the timing, distribution, and content of the notices.

In the event of a breach of system security, if sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person, Department is

authorized to assess liquidated damages in the amount of \$1,000.00 per day against Contractor for the following damages; however, Department reserves the right to claim actual damages for any damages other than the following: assessment and review of lost and compromised data. This amount is a reasonable estimate of the damages Department will suffer as a result of such breach and is enforceable. Contractor shall not be responsible and liquidated damages may not be assessed due to a breach of system security caused entirely by someone other than Contractor, Contractor's subcontractor, or Contractor's agent. Any liquidated damages assessed under this Contract may, at Department's option, be deducted from any payments due Contractor. Department has the right to offset any liquidated damages payable to Department, as specified above, against any payments due to Contractor. If insufficient payments are available to offset such liquidated damages, then Contractor shall pay to Department any remaining liquidated damages within fifteen (15) calendar days following receipt of written notice of the amount due.

#### **I.8 NOTE TO CONTRACTOR**

Any terms and conditions attached to the Contractor's response will not be considered unless specifically referred to on this Contract and may result in disqualification of the response.

**SECTION J - LIST OF EXHIBITS**

<b>EXHIBIT NO.</b>	<b>TITLE</b>	<b>NUMBER OF PAGES</b>
J.1	Texas Transportation Code §548.306 & 548.3065 Compulsory Inspection of Vehicles Excessive Motor Vehicle Emissions	4
J.2	HUB Subcontracting Plan (Section I.3)	11
J.3	Deleted	
J.4	Contractor W-9 Form (Section G.3.C)	5

**EXHIBIT J.1**

**TEXAS TRANSPORTATION CODE §548.306 & 548.3065  
COMPULSORY INSPECTION OF VEHICLES  
EXCESSIVE MOTOR VEHICLE EMISSIONS**

**Sec. 548.306. EXCESSIVE MOTOR VEHICLE EMISSIONS.**

- (a) This section applies to a motor vehicle registered or operated for more than 60 days per calendar year in:
  - (1) a county or a portion of a county designated by department rule in accordance with Section 548.301; or
  - (2) a county adjacent to a county described in Subdivision (1).
- (b) The registered owner of a motor vehicle commits an offense if the vehicle, in an area described by Subsection (a), emits:
  - (1) hydrocarbons, carbon monoxide, or nitrogen oxide in an amount that is excessive under United States Environmental Protection Agency standards or standards provided by department rule; or
  - (2) another vehicle-related pollutant that is listed by a department rule adopted to comply with Part A, National Emission Standards Act (42 U.S.C. Sections 7602-7619), or rules of the United States Environmental Protection Agency in an amount identified as excessive under that rule.
- (c) The department shall provide a notice of violation to the registered owner of a vehicle that is detected violating Subsection (b). The notice of violation must be made by personal delivery to the registered owner or by mailing the notice to the registered owner at the last known address of the owner. The department shall include in the notice the date and location of the violation detected and instructions for the registered owner explaining how the owner must proceed to obtain and pass a verification emissions inspection and to make any repair to the vehicle necessary to pass the inspection and explaining any extension or assistance that may be available to the owner for making any necessary repair. Notice by mail is presumed delivered on the 10th day after the date the notice is deposited in the mail.
- (d) A registered owner of a vehicle commits an offense if:
  - (1) notice is delivered to the owner under Subsection (c); and
  - (2) the owner fails to comply with any provision of the notice before the 31st day after the date the notice is delivered.
- (e) An offense under this section is a misdemeanor punishable by a fine of not less than \$1 and not more than \$350. If a person has previously been convicted of an offense under this section, an offense under this section is a misdemeanor punishable by a fine of not less than \$200 and not more than \$1,000.
- (f) It is an affirmative defense to an offense under this section that the registered owner of the vehicle, before the 31st day after the date the owner receives a notice of violation:

- (1) after a verification emissions inspection indicated that the vehicle did not comply with applicable emissions standards, repaired the vehicle as necessary and passed another verification emissions inspection; and
  - (2) has complied with rules of the department concerning a violation under this section.
- (g) The department may contract with a private person to implement this section. The person must comply with terms, policies, rules, and procedures the department adopts to administer this section.
- (h) The Texas Department of Transportation may deny re-registration of a vehicle if the registered owner of the vehicle has received notification under Subsection (c) and the vehicle has not passed a verification emissions inspection.
- (i) A hearing for a citation issued under this section shall be heard by a justice of the peace of any precinct in the county in which the vehicle is registered.
- (j) Enforcement of the remote sensing component of the vehicle emissions inspection and maintenance program may not involve any method of screening in which the registered owner of a vehicle found to have allowable emissions by remote sensing technology is charged a fee.
- (k) The department by rule may require that a vehicle determined by on-road testing to have excessive emissions be assessed an on-road emissions testing fee not to exceed the emissions testing fee charged by a certified emissions testing facility.
- (l) The department by rule may establish procedures for reimbursing a fee for a verification test required by Subsection (c) if the owner demonstrates to the department's satisfaction that:
- (1) the vehicle passed the verification emissions test not later than the 30th day after the date the vehicle owner received notice that the vehicle was detected as having excessive emissions; and
  - (2) the vehicle did not receive any repair, modification, alteration, or additive to the fuel, fuel tank, fuel delivery system, engine, exhaust system, or any attached emissions control components that would have, or could have, caused the vehicle to experience improved emissions performance between the date of detection and the date of the verification emissions test.

Added by Acts 1997, 75th Leg., ch. 1069, Sec. 10, eff. June 19, 1997. Amended by Acts 1999, 76th Leg., ch. 1189, Sec. 30, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1075, Sec. 10, eff. Sept. 1, 2001.

**Sec. 548.3065. ADMINISTRATIVE PENALTY.**

- (a) In lieu of criminal proceedings for a violation of Section 548.306, the department may impose an administrative penalty against a person who knowingly violates this chapter or a rule adopted by the commission under this chapter.
- (b) The amount of the administrative penalty may not exceed \$1,000 for each violation. The aggregate penalty for multiple violations may not exceed \$10,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.
- (c) For purposes of Subsection (a), the procedures for determining and administering an administrative penalty against a person charged with violating this chapter are the same as those prescribed by Section 643.251 for determining and administering an administrative penalty against a motor carrier under that section.
- (c-1) The conservation commission may impose an administrative penalty on a person in the amount of not more than \$500 for each violation of this subchapter or a rule adopted by the conservation commission under this subchapter.
- (d) An administrative penalty collected under this section shall be deposited in a special account in the general revenue fund and may be used only by the department.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 11, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. [1202](#), Sec. 1, eff. September 1, 2011.

**EXHIBIT J.2**

**HUB SUBCONTRACTING PLAN**

Solicitation/Contract Name

Exhibit J.1



Rev 02/12

# HUB SUBCONTRACTING PLAN (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

**NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).**

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders contracts,**
- **32.7 percent for all special trade construction contracts,**
- **23.6 percent for professional services contracts,**
- **24.6 percent for all other services contracts, and**
- **21 percent for commodities contracts.**

## -- Agency Special Instructions/Additional Requirements --

In accordance with 34 TAC §20.14(d)(1)(D)(ii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

### SECTION 1 RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: ENMROTEST SYSTEMS HOLDINGS CORP. State of Texas VID #: 1522096698800  
 Point of Contact: BURFORD J. GUCKIAN Phone #: (512) 250-5137  
 E-mail Address: Jimmy.Guckian@etest.com Fax #: (512) 250-5169
- b. Is your company a State of Texas certified HUB?  - Yes  - No
- c. Requisition #: 405-RSD-13-P30630 Bid Open Date: 05 / 01 / 2013  
(mm/dd/yyyy)

Solicitation/Contract Name

Exhibit J.1

Enter your company's name here: ENVIROTEST SYSTEMS HOLDINGS CORP. Requisition #: 405-RSD-13-P30630

**SECTION 2 SUBCONTRACTING INTENTIONS**

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including goods and services, will be subcontracted. Note: In accordance with 34 TAC §20.11., an "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

- a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:
  - Yes, I will be subcontracting portions of the contract. (If Yes, complete Item b, of this SECTION and continue to Item c of this SECTION.)
  - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources. (If No, continue to SECTION 3.)
- b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>five (5) years or less.</u>	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years.</u>	Percentage of the contract expected to be subcontracted to non-HUBs .
1	Automobile Maintenance & Repair	0.90%	0%	0%
2	General Office Supplies	0.21%	0%	0%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
<b>Aggregate percentages of the contract expected to be subcontracted:</b>		<b>0%</b>	<b>%</b>	<b>%</b>

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurementprog/hub/hub-subcontracting-plan/>)

- c. Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities you listed in SECTION 2, Item b.
  - Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
  - No (If No, continue to Item d, of this SECTION.)
- d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract with Texas certified HUBs with which you have a continuous contract\* in place with for five (5) years or less meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements".
  - Yes (If Yes, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
  - No (If No, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

\*Continuous Contract : Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



Solicitation/Contract Name

Exhibit J.1

**SECTION 3 SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.)**

Check the appropriate box (Yes or No) that indicates whether your response/proposal contains an explanation demonstrating how your company will fulfill the entire contract with its own resources.

- Yes (If Yes, in the space provided below list the specific page(s)/section(s) of your proposal which explains how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)
- No (If No, in the space provided below explain how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)

N/A

**SECTION 4 AFFIRMATION**

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.



Larry D. Hurwitz

Sr. Vice President

May 1, 2013

Signature

Printed Name

Title

Date

- REMINDER:**
- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
  - If you responded "No" to SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

Solicitation/Contract Name

Exhibit J.1

### HSP Good Faith Effort - Method B (Attachment B)

Enter your company's name here: ENVIROTEST SYSTEMS HOLDINGS CORP. Requisition #: 405-RSD-13-P30630

**IMPORTANT:** If you responded "No" to SECTION 2, Items c and d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <http://www.window.state.tx.us/procurement/proq/hub/hub-forms/HUBSubcontractingPlanAttachment-B.doc>

**SECTION B-1 SUBCONTRACTING OPPORTUNITY**

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing this attachment.

Item #: 1 Description: Automobile Maintenance & Repair

**SECTION B-2 MENTOR PROTÉGÉ PROGRAM**

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in SECTION B-1, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If Yes, to continue to SECTION B-4.)

- No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

**SECTION B-3 NOTIFICATION OF SUBCONTRACTING OPPORTUNITY**

When completing this section you **MUST** comply with items a, b, c and d, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and minority or women trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <http://www.window.state.tx.us/procurement/proq/hub/hub-subcontracting-plan/>

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and minority or women trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the minority or women trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to your submitting your bid response to the contracting agency. When searching for Texas certified HUBs, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Search directory located at <http://www.window.state.tx.us/procurement/cmb/cmbhub.html>. HUB Status code "A" signifies that the company is a Texas certified HUB.
- b. List the three (3) Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Vendor ID (VID) number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	VID #	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
Foster's Automotive Service, Inc.	1741757150600	04/16/2013	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No
George Cox Automotive, Inc.	1741915672800	04/16/2013	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No
On-Site Fleet Services	1742881780700	04/16/2013	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more minority or women trade organizations or development centers to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to minority or women trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <http://www.window.state.tx.us/procurement/proq/hub/mwb-links-1/>
- d. List two (2) the minority or women trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Minority/Women Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
Houston Minority Supplier Development Council	04/16/2013	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No
Southwest Minority Supplier Development Council	04/16/2013	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No

Solicitation/Contract Name

Exhibit J.1

**HSP Good Faith Effort - Method B (Attachment B) Cont.**

Enter your company's name here: ENVIROTEST SYSTEMS HOLDINGS CORP. Requisition #: 405-RSD-13-P30630

**SECTION B-4 SUBCONTRACTOR SELECTION**

- a. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in SECTION B-1. Also identify whether they are a Texas Certified HUB and their VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB.

Company Name	Texas Certified HUB	VID # (Required if Texas Certified HUB)	Approximate Dollar Amount	Expected Percentage of Contract
George Cox Automotive, Inc.	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No	1741915672800	\$ 4,250.00	0.45%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

- b. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

N/A

**REMINDER:** As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.

Solicitation/Contract Name

Exhibit J.1

## HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more minority/women trade organizations or development centers at least seven (7) working days prior to submitting its bid response to the contracting agency.

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in **Section C, Item 2**, reply no later than the date and time identified in **Section C, Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

<b>Section A</b>	<b>PRIME CONTRACTOR'S INFORMATION</b>	
Company Name:	ENMROTEST SYSTEMS HOLDINGS CORP.	State of Texas VID #: 1522096698800
Point-of-Contact:	BURFORD JAMES GUCKIAN, PROJECT MANAGER	Phone #: (512) 250-5137
E-mail Address:	Jimmy.Guckian@etest.com	Fax #: (512) 250-5169

<b>Section B</b>	<b>CONTRACTING STATE AGENCY AND REQUISITION INFORMATION</b>	
Agency Name:	DEPARTMENT OF PUBLIC SAFETY	
Point-of-Contact:	JOSEPH WOOLVERTON	Phone #: (512) 424-2065
Requisition #:	RFP 405-RSD-13-P30630	Bid Open Date: 05/01/2013

<b>Section C</b>	<b>SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION</b>	
1. <b>Potential Subcontractor's Bid Response Due Date:</b>	<p><b>Our firm must receive your bid response to this subcontracting opportunity no later than 5:00 P.M., Central Daylight Time on:</b> <u>04/26/2013</u></p> <p style="text-align: right; font-size: small;">(Date)</p> <p><small>In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, we must provide the same notice to two (2) or more minority/women trade organizations or development centers at least seven (7) working days prior to submitting our bid response to the contracting agency.</small></p> <p><small>(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the minority or women trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)</small></p>	
2. <b>Subcontracting Opportunity Scope of Work:</b>	AUTOMOBILE AND OTHER PASSENGER VEHICLES MAINTENANCE AND REPAIR, CLASS CODE AND ITEM # 928-15	
3. <b>Required Qualifications:</b>	<input checked="" type="checkbox"/> - Not Applicable	
4. <b>Bonding/Insurance Requirements:</b>	<input checked="" type="checkbox"/> - Not Applicable	
5. <b>Location to review plans/specifications:</b>	<input checked="" type="checkbox"/> - Not Applicable	

Solicitation/Contract Name

Exhibit J.1

### HSP Good Faith Effort - Method B (Attachment B)

Enter your company's name here: ENVIROTEST SYSTEMS HOLDINGS CORP. Requisition #: 405-RSD-13-P30630

**IMPORTANT:** If you responded "No" to SECTION 2, Items c and d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanAttachment-B.doc>

**SECTION B-1 SUBCONTRACTING OPPORTUNITY**

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing this attachment.

Item #: 2 Description: General Office Supplies

**SECTION B-2 MENTOR PROTÉGÉ PROGRAM**

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in SECTION B-1, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If Yes, to continue to SECTION B-4.)

- No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

**SECTION B-3 NOTIFICATION OF SUBCONTRACTING OPPORTUNITY**

When completing this section you **MUST** comply with items a, b, c and d, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and minority or women trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and minority or women trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the minority or women trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to your submitting your bid response to the contracting agency. When searching for Texas certified HUBs, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Search directory located at <http://www.window.state.tx.us/procurement/cmb/cmbhub.html>. HUB Status code "A" signifies that the company is a Texas certified HUB.
- b. List the three (3) Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Vendor ID (VID) number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	VID #	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
Luckyday Office Supplies	1272400643700	04/16/2013	<input type="checkbox"/> - Yes <input type="checkbox"/> - No
R W Gonzalez Office Products, Inc.	1223874665000	04/16/2013	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No
Cosa, Inc.	1742682389800	04/16/2013	<input type="checkbox"/> - Yes <input type="checkbox"/> - No

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more minority or women trade organizations or development centers to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to minority or women trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>
- d. List two (2) the minority or women trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Minority/Women Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
Houston Minority Supplier Development Council	04/16/2013	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No
Southwest Minority Supplier Development Council	04/16/2013	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No

Solicitation/Contract Name

Exhibit J.1

### **HSP Good Faith Effort - Method B (Attachment B) Cont.**

Enter your company's name here: ENVIROTEST SYSTEMS HOLDINGS CORP. Requisition #: 405-RSD-13-P30630

**SECTION B-4 SUBCONTRACTOR SELECTION**

- a. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas Certified HUB and their VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB.

Company Name	Texas Certified HUB	VID # (Required if Texas Certified HUB)	Approximate Dollar Amount	Expected Percentage of Contract
R W Gonzalez Office Products, Inc.	<input checked="" type="checkbox"/> - Yes <input type="checkbox"/> - No	1223874665000	\$2,000.00	0.21%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%
	<input type="checkbox"/> - Yes <input type="checkbox"/> - No		\$	%

- b. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

N/A

**REMINDER:** As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.

Solicitation/Contract Name

Exhibit J.1

## HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more minority/women trade organizations or development centers at least seven (7) working days prior to submitting its bid response to the contracting agency.

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in **Section C, Item 2**, reply no later than the date and time identified in **Section C, Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

Section A	PRIME CONTRACTOR'S INFORMATION
Company Name:	ENMROTEST SYSTEMS HOLDINGS CORP. <span style="float: right;">State of Texas VID #: 1522096698800</span>
Point-of-Contact:	BURFORD JAMES GUCKIAN, PROJECT MANAGER <span style="float: right;">Phone #: (512) 250-5137</span>
E-mail Address:	Jimmy.Guckian@etest.com <span style="float: right;">Fax #: (512) 250-5169</span>

Section B	CONTRACTING STATE AGENCY AND REQUISITION INFORMATION
Agency Name:	DEPARTMENT OF PUBLIC SAFETY
Point-of-Contact:	JOSEPH WOOLVERTON <span style="float: right;">Phone #: (512) 424-2065</span>
Requisition #:	RFP 405-RSD-13-P30630 <span style="float: right;">Bid Open Date: 05/01/2013</span>

Section C	SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION
1. <b>Potential Subcontractor's Bid Response Due Date:</b>	<p><b>Our firm must receive your bid response to this subcontracting opportunity no later than 5:00 P.M., Central Daylight Time on:</b> <span style="float: right;">04/26/2013</span></p> <p style="text-align: right; font-size: small;">(Date)</p> <p><small>In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, we must provide the same notice to two (2) or more minority/women trade organizations or development centers at least seven (7) working days prior to submitting our bid response to the contracting agency.</small></p> <p><small>(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the minority or women trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)</small></p>
2. <b>Subcontracting Opportunity Scope of Work:</b>	OFFICE SUPPLIES, GENERAL (NOT OTHERWISE CLASSIFIED), CLASS CODE AND ITEM # 615-60
3. <b>Required Qualifications:</b>	<input checked="" type="checkbox"/> - Not Applicable
4. <b>Bonding/Insurance Requirements:</b>	<input checked="" type="checkbox"/> - Not Applicable
5. <b>Location to review plans/specifications:</b>	<input checked="" type="checkbox"/> - Not Applicable

**EXHIBIT J.4**

**W-9 FORM**

Form **W-9**  
(Rev. October 2007)  
Department of the Treasury  
Internal Revenue Service

## Request for Taxpayer Identification Number and Certification

**Give form to the requester. Do not send to the IRS.**

<b>Print or type See Specific Instructions on page 2.</b>	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ ..... <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
	List account number(s) here (optional)	

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
or
Employer identification number

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
------------------	----------------------------	--------

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a “saving clause.” Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called “backup withholding.” Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your individual name as shown on your income tax return on the “Name” line. You may enter your business, trade, or “doing business as (DBA)” name on the “Business name” line.

**Limited liability company (LLC).** Check the “Limited liability company” box only and enter the appropriate code for the tax classification (“D” for disregarded entity, “C” for corporation, “P” for partnership) in the space provided.

For a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner’s name on the “Name” line. Enter the LLC’s name on the “Business name” line.

For an LLC classified as a partnership or a corporation, enter the LLC’s name on the “Name” line and any business, trade, or DBA name on the “Business name” line.

**Other entities.** Enter your business name as shown on required federal tax documents on the “Name” line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the “Business name” line.

**Note.** You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

### Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the “Exempt payee” box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
2. The United States or any of its agencies or instrumentalities,
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,
7. A foreign central bank of issue,
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
9. A futures commission merchant registered with the Commodity Futures Trading Commission,
10. A real estate investment trust,
11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
12. A common trust fund operated by a bank under section 584(a),
13. A financial institution,
14. A middleman known in the investment community as a nominee or custodian, or
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 7

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, and payments for services paid by a federal executive agency.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt payees, see *Exempt Payee* on page 2.

**Signature requirements.** Complete the certification as indicated in 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

**Secure Your Tax Records from Identity Theft**

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

Call the IRS at 1-800-829-1040 if you think your identity has been used inappropriately for tax purposes.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

**Protect yourself from suspicious emails or phishing schemes.**

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS personal property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: [spam@uce.gov](mailto:spam@uce.gov) or contact them at [www.consumer.gov/idtheft](http://www.consumer.gov/idtheft) or 1-877-IDTHEFT(438-4338).

Visit the IRS website at [www.irs.gov](http://www.irs.gov) to learn more about identity theft and how to reduce your risk.

**What Name and Number To Give the Requester**

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>1</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
5. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
For this type of account:	Give name and EIN of:
6. Disregarded entity not owned by an individual	The owner
7. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

**Privacy Act Notice**

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.



# Texas Department of Public Safety Purchase Order

Purchase Order Number

405-15-P000845

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

V E N D O R	Vendor Number: 00020352 ENVIROTEST SYSTEMS PRODUCTS HOLDINGS CORP 200 DAY HILL RD, STE 210 WINDSOR, CT 06095-1778
----------------------------	---

S H I P T O	Texas Department of Public Safety Procurement & Contract Services - MSC 0266 PO Box 4087 Austin, TX 78773-0266 US Email: <a href="mailto:procurement@dps.texas.gov">procurement@dps.texas.gov</a> Phone: (512) 424-5255
----------------------------	---

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.

B I L L T O	Texas Department of Public Safety Finance - Accounts Payable - MSC 0130 PO Box 4087 Austin, TX 78773-0130 US Email: <a href="mailto:apinvoices@dps.texas.gov">apinvoices@dps.texas.gov</a> Phone: (512) 424-2060
----------------------------	--

Solicitation (Bid) No.:	Payment Terms:  Shipping Terms:  Delivery Calendar Day(s) A.R.O.: 0
-------------------------	---

Item # 1

TXDPS has implemented a new ELECTRONIC PROCUREMENT SYSTEM (e-Procurement). The contract number for this service remains the same however for payment purposes you are required to note this purchase order number 405-15-P000845 on all invoices and correspondence regarding this service. All other terms and conditions remain unchanged.

Item # 2  
 Class-Item 928-92

Renewal of Contract 405-RSD-13-14-30630 for the first renewal option period (09/01/2014 through 08/31/2015).

Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost
1.00	\$ 497,500.00	YR	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 497,500.00

LN/FY/Account Code	Dollar Amount
2/15/15-47061-6280-1001- - -1400- - -	\$ 497,500.00

TAX: \$ 0.00  
 FREIGHT: \$ 0.00  
 TOTAL: \$ 497,500.00

APPROVED

By: Joseph Woolverton, CTPM, CTCM  
 Phone#: (512) 424-2065  
 BUYER

## Texas Department of Public Safety Purchase Order

All Terms and Conditions set forth in our solicitation  
become a part of this purchase order

<b>Invoice To:</b>	Texas Department of Public Safety Accounting and Budget Control P.O. Box 4087 Austin, Texas 78773-0130  apinvoices@dps.texas.gov	VENDOR GUARANTEES GOODS OR SERVICES DELIVERED ON THIS ORDER WILL MEET OR EXCEED SPECIFICATIONS IN THE BID INVITATION	<b>Purchase Order No.</b> <b>405- 13-30630</b>  <b>Order Date: 7/8/2013</b>
<b>TINS#</b>	15220966988		
<b>V E N D O R</b>	ENVIROTEST SYSTEMS PRODUCTS HOLDINGS CORP 200 DAY HILL RD STE 210 WINDSOR, CT 06095-1778	DPS Use: PCC: S	<b>SHIP TO:</b> Texas Department of Public Safety 5805 N. Lamar Austin, TX 78752  <b>ATTN:</b> Brenda Musgrove

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.

Item	Stock #	Description	Quantity	Unit	Unit Price	Extension
001	928-92	Valid and desired on road vehicle emissions tests - affected counties for 06/30/13 through 08/31/13	1	lot	\$53,380.00	\$53,380.00
002	928-92	Valid and desired on road vehicle emissions tests - affected counties for 09/01/13 through 08/31/14	1	year	\$962,000.00	\$962,000.00
003	928-92	Renew contract 405-RSD-13-14-30630 for FY15.	1	year	\$497,500.00	\$497,500.00
					<b>PO Total Amount:</b>	<b>\$1,512,880.00</b>

Purchase order created to encumber funds for contract 405-RSD-13-14-30630.

I attest that the goods and/or services hereon are required.

**APPROVED:** \_\_\_\_\_

8/28/2014 1:19:25 PM

## Texas Department of Public Safety Purchase Order

All Terms and Conditions set forth in our solicitation  
become a part of this purchase order

<b>Invoice To:</b>	Texas Department of Public Safety Accounting and Budget Control P.O. Box 4087 Austin, Texas 78773-0130  apinvoices@dps.texas.gov	VENDOR GUARANTEES GOODS OR SERVICES DELIVERED ON THIS ORDER WILL MEET OR EXCEED SPECIFICATIONS IN THE BID INVITATION	<b>Purchase Order No.</b> <b>405- 13-30630</b>  <b>Order Date: 7/8/2013</b>
<b>TINS#</b>	15220966988		
<b>V E N D O R</b>	ENVIROTEST SYSTEMS PRODUCTS HOLDINGS CORP 200 DAY HILL RD STE 210 WINDSOR, CT 06095-1778	DPS Use: PCC: S	<b>SHIP TO:</b> Texas Department of Public Safety 5805 N. Lamar Austin, TX 78752  <b>ATTN:</b> Brenda Musgrove

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.

Item	Stock #	Description	Quantity	Unit	Unit Price	Extension
001	928-92	Valid and desired on road vehicle emissions tests - affected counties for 06/30/13 through 08/31/13	1	lot	\$53,380.00	\$53,380.00
002	928-92	Valid and desired on road vehicle emissions tests - affected counties for 09/01/13 through 08/31/14	1	year	\$962,000.00	\$962,000.00
003	928-92	Renew contract 405-RSD-13-14-30630 for FY15.	1	year	\$497,500.00	\$497,500.00
					<b>PO Total Amount:</b>	<b>\$1,512,880.00</b>

Purchase order created to encumber funds for contract 405-RSD-13-14-30630.

I attest that the goods and/or services hereon are required.

**APPROVED:** \_\_\_\_\_

8/28/2014 1:19:25 PM