



# Texas Department of Public Safety Purchase Order

Blanket Order Number

405-16-P004683

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

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Vendor Number: 00004518  
1366055558501 | GRANT THORNTON, LLP

333 JOHN CARLYLE ST  
USA  
ALEXANDRIA, VA 22314-5767

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Texas Department of Public Safety  
Texas Division of Emergency Management  
5805 North Lamar Blvd  
Austin, TX 78752-4431  
US  
Email: [eprocurementshipping@dps.texas.gov](mailto:eprocurementshipping@dps.texas.gov)  
Phone: (512) 424-2000

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.

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

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

Item # 1  
Class-Item 946-20

To perform compliance audits for disaster relief grant funding that TDEM is required to monitor per the State Administrative Plan submitted to FEMA. In case of conflicting provisions, the documents shall control in the following order of precedence: 1. Negotiated changes in the Contract; 2. Best And Final Offer response. 3. Points of Clarification in the Contract Award; 4. RFQ as posted; 5. The Contractor's response; 6. Statement of Qualifications; 7. The executed Contract and any subsequent modifications and amendments.

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

TAX:	\$ 0.00
FREIGHT:	\$ 0.00
TOTAL:	\$ 0.00

APPROVED

By: Bruce Calder

Phone#: (512) 424-2917

BUYER

## SOLICITATION, QUALIFICATION AND AWARD

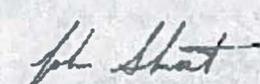
1. CONTRACT NO. 405-EMD-13-14-C32508	2. SOLICITATION NO. 405-TDEM-13-Q30678	3. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFQ) <input type="checkbox"/> NEGOTIATED (RFP)	4. DATE ISSUED October 26, 2012
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### SOLICITATION

#### DISASTER COMPLIANCE PROFESSIONAL SERVICE

5. Sealed Qualifications will be received by the Department until <b>3:00 p.m. local time on November 30, 2012</b> , and submitted to issuing office:  Procurement and Contract Services Bureau 5805 North Lamar, Bldg A. Austin, Texas 78773 <b>Attention: 405-TDEM-13-Q30678</b>	6. FOR INFORMATION CONTACT:  Monica B. Presson, CTPM Contract Administrator  PHONE: (512) 424-7139 FAX: (512) 424-5419 E-MAIL: Monica.Presson@dps.texas.gov
---	--

#### QUALIFICATION (Shall be fully completed by the Contractor)

7. DISCOUNT FOR PROMPT PAYMENT:→	10 CALENDAR DAYS	20 CALENDAR DAYS	30 CALENDAR DAYS	CALENDAR DAYS
	0 %	0 %	0 %	0 %
8. ACKNOWLEDGMENT OF AMENDMENTS: <i>(The Contractor acknowledges receipt of amendments to the SOLICITATION for Contractors and related documents numbered and dated:</i>	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
	A-001	11/28/2012		
	A-002	12/7/2012		
9. NAME AND ADDRESS OF THE CONTRACTOR:→	Grant Thornton, LLP 100 Congress Avenue, Suite 2000 Austin, TX 78701		10. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN QUALIFICATION (Type or Print) John Short, Partner	
11. TELEPHONE NO. (Include area code)	12. SIGNATURE 		13. QUALIFICATION DATE December 19, 2012	
(410) 961-0494				

#### TO BE COMPLETED AT TIME OF AWARD

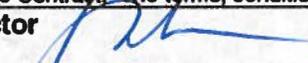
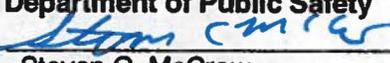
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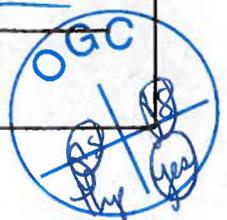
**Statutory Cite: Texas Government Code, Section 2254**

**NOTE TO CONTRACTOR:** Department reserves the right in its sole discretion to modify this award language prior to award. This award document consummates this 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 Response, Statement of Qualifications, 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; RFQ as posted; the Contractor's Response, Statement of Qualifications; and this Offer and Award Document.

This Contract shall consist of a Base Period from Effective Date of this Contract, that is the date this Contract is fully executed, 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). This Contract may be extended for an additional six (6) month period (September 1, 2017 through February 28, 2018) 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>Contractor</b> By:  Name: <u>Scott King</u> Title: <u>Managing Principal</u> Date: <u>6/9/13</u>	<b>Texas Department of Public Safety</b> By:  Name: <u>Steven C. McCraw</u> Title: <u>Director</u> Date: <u>5/14/13</u>
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The following items are mutually agreed to by the Contractor and the Department and are hereby incorporated into this Contract.

1. The Solicitation, Offer and Award form has been revised to update the Contract Number, Contract Administrator and add the Contractor's name and authorized signatory title in the Contractor signature block.
2. Section A, Definitions, has been revised as follows:
  - Add definition of "Administrative Contract Monitor";
  - Add definition of "Assignment Manager";
  - Revise definition of "Contractor" to include awarded firm;
  - Revise definition of "Date of Award";
  - Delete definition of "Respondent";
  - Add definition of "Qualification Response";
  - Revise "contractor" to "Contractor" in definition of "Monthly invoice";
  - Revise "subrecipient" to "sub-recipient" in definition of "Subgrantee"/"Sub-recipient".
3. Section B.1.1, Professional Services Being Acquired, has been revised to include contract rather than solicitation language generally describing the professional services to be provided and clarifying the contract term and renewal options.
4. Section B.1.2, Pricing Instructions, has been renamed "Pricing Schedules" revised to include contract rather than solicitation language and clarify that the Department approved hourly rates are firm fixed price.
5. Section B.1.3, Allowable Costs, has been renumbered and revised to clarify and to include full name of the Division that is the Contract Monitor for this Contract.
6. Section B.1.4, Cost Instructions, has been deleted.
7. Section B.1.5, Audited Financial Statements, has been renumbered as Section B.1.5 and has been revised to "Financial Statements and Peer Review" to include post contracting financial disclosure requirements.
8. Section B.2, Pricing Schedule, has been revised to include the authorized professionals, alternate authorized professionals and hourly rates under this Contract.
9. Section B.2.1, Labor Categories, has been revised to include additional authorized professionals under this Contract.
10. Section C, Description/Specifications/Work Statement, has been revised throughout to include contract rather than solicitation language and reflect negotiations of the Department and the Contractor.
11. Section D, Reports and Deliverables, has been revised to correspond with revisions to Section C and reflect negotiations of the Department and the Contractor.
12. Section E.1.A, Inspection of Services, has been deleted and the following sections renumbered.
13. Section E.2.B, Inspection by State Employees, has been revised to refer to "Services" rather than "deliverables."

14. Section F.2, Period of Performance, has been revised to correspond to effective date of this Contract as reflected on page 1 of this Contract to include SAO delegation permitted for each renewal Optional Period.
15. Section G.1.2, Contract Administrator, has been revised to include names of the appropriate person(s) for the Department.
16. Section G.1.3, Program Manager, has been added and includes the name of the appropriate person for the Department.
17. Section G.1.4, Project Manager, has been renamed to Assignment Manager and revised to include the Contractor's information.
18. Section G.2, Invoice Requirements, has been revised to include updated information for the Department and submission of invoices.
19. Section, G.3, Payments, has been revised to include updated invoicing and payment language.
20. Section H, Standard Terms and Conditions, has been revised to delete solicitation language under the header title for Section H.
21. Section H.17.C, Option to Extend Services, has been revised to add clarifying language.
22. Section H.28, Marked "Intentionally left Blank", has been deleted and the following sections renumbered.
23. Section H.35, Most Favored Customer has been revised to refer to this Contract rather than the solicitation.
24. Section H.43, Attachments, has been deleted and the following sections renumbered.
25. Section H.44, Unacceptable Contractor Terms, has been deleted and the following sections renumbered.
26. Section H.50.1.D, has been revised to refer to the Contractor's Qualifications Response, the revised defined term.
27. Section H.55, Information Technology Standards, has been revised to refer to the Texas Department of Information Technology Resources website.
28. Section H.62, Confidentiality and Security Requirements, has been added.
29. Section I.1.E, Insurance Requirements, has been revised to include appropriate AM Best Rating.
30. Section I.3, HUB Participation, has been revised to include contract rather than solicitation language.
31. Section I.6, Audits, has been added (with prior Section I.6, Criminal History Records Check, being revised and renumbered as Section I.8).
32. Section I.7, Records Retention, has been added.

33. Section J, Exhibit J.1, Contractors Qualification Questionnaire, has been deleted and following Exhibits J renumbered.
34. Section J, Exhibit J.2, HUB Subcontracting Plan, has been revised to include the Contractor's completed forms and replace Attachment A to add the Contract number; date of award; Contract Administrator; Contractor name; State of Texas VID#; point of contact; and the phone number.
35. Section J, Exhibit J.5, Compliance Review Budget, has been added.
36. Section J, Exhibit J.6, Grant Monitoring Budget, has been added.
37. Section K, Representations, Certifications, and Other Statements of Contractor, has been revised to include the Contractor's responses to subsections K.1.2, K.1.6, K.2, K.4, K.7, K.8, K.9 and K.10.
38. Sections L and M of the solicitation as issued by the Department have been deleted for purposes of this list of revisions; however, these Sections are part of the solicitation incorporated by reference into this Contract as described on page 1 of this Contract.
39. Changes have been made throughout the document to correct references to the solicitation and respondent and replace them as appropriate.
40. Minor clarifications changes have been made throughout the document.

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**SECTION - A - DEFINITIONS**

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

"ADA" means Americans with Disabilities Act.

"Additional Services" means additional services required to be furnished by the Contractor pursuant to changes in Department and Public Safety Commission (PSC) policies from those in effect as of the effective date of this Contract.

"Administrative Contract Monitor" means the responsible person for general administration of this Contract, negotiation of any changes and issuance of written changes/modifications to this Contract.

"Assignment Manager" means appointee, designee, or alternate designee if assigned by the Contractor, as referenced in Section G.1.4, Assignment Manager.

"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.1.1.

"Compliance Standards" means Contract requirements that have specific and clearly defined recoupment strategies to ensure that the Department does not pay for services that are not of substandard quality or have not been received.

"Contract Administrator" means the representative of the Procurement & Contract Services Bureau of Texas Department of Public Safety (TXDPS) who is responsible for general administration of the contract as referenced in G.1.2., Contract Administrator.

"Contract Monitor" means the Division within the Texas Department of Public Safety (TXDPS) in charge of the project as referenced in Section G.1.3., Contract Monitor.

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

"Contractor" means Grant Thornton, LLP, as listed on page 1 of this Contract.

"CPA" means Certified Public Accountant.

"Date of Award" means the date on which the Contractor is eligible to begin providing services pursuant to this Contract. For the purpose of this Contract, that date shall be based upon final signature obtained by both parties.

"Days" means calendar days unless otherwise specified.

"Department" means the Texas Department of Public Safety (TXDPS).

"Department Policies" means all written policies, procedures, standards, guidelines, directives, and manuals of the PSC and the TXDPS, applicable to providing the services specified under this Contract.

"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.

"FEMA" means the Federal Emergency Management Agency.

"GAAP" means Generally Accepted Accounting Principles.

"GAAS" means Generally Accepted Auditing Standards.

"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.

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

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

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

"Qualifications Response" means the Contractor's response to this RFQ that clearly defines the Contractor's qualifications related to the level of services described in Section C.

"RFQ" means Request for Qualifications.

"Subgrantee" / "Sub-recipient" means the entity receiving the grant funding from Texas Division of Emergency Management (TDEM).

"TDEM" means the Texas Division of Emergency Management.

"TXDPS" means the Texas Department of Public Safety.

"VPN" Virtual Private Network used for remote access to a network.

**SECTION B - SERVICES AND PRICES/COSTS****B.1 SERVICES AND PRICES/COSTS****B.1.1 Professional Services Being Acquired; Contract Term and Renewal Options**

The Contractor, an independent Certified Public Accounting (CPA) Firm, shall in accordance with the terms of this Contract, provide professional services to the Texas Department of Public Safety (Department) for administration of federally funded disaster grants and provide monitoring compliance services, as identified by the Department

The Contract Term shall begin on the date this Contract is fully executed and, unless terminated sooner in accordance with this Contract or applicable law, shall terminate on the Base Period (August 31, 2014), with the Department having the option, in its sole discretion, to renew this Contract for up to three (3) additional one (1) year periods. The continuation of this Contract for any period of time is subject to the availability of federal and any other applicable funding.

**B.1.2 Pricing Schedules**

This Contract is a no minimum, non-exclusive, as needed, as requested Contract for administration of federally funded disaster grants and providing monitoring compliance Services. The Pricing Schedule at Section B.2 incorporates the established hourly rates. These hourly rates are firm fixed pricing applicable to the services requested by the Department and received by the Department in compliance with this Contract. With the exception of travel approved by the Department in writing in advance in compliance with this Contract, these hourly rates are inclusive of all costs, fees and expenses and represent Contractor's sole compensation under this Contract. The Department shall pay no other amounts for any purpose.

**B.1.3 Allowable Costs**

The proposed budget for each proposed assignment requested by the Department shall only include costs that are reasonable, necessary, and allowable under State Statutes, Department Policies and Procedures, and Federal Cost Standards (OMB Circulars A-122 for Nonprofit Entities, A-21 for Educational Institutes, A-87 for State, Local and Indian Tribal Governments, A-102 Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments, and 48CFR, Part 31, Contracts with Commercial Organizations) and this Contract. The Department shall make the final decision if a cost is allowable or not. All charges outside the hourly rates listed in Section B.2 Labor Categories and agreed upon travel costs in accordance with C.5.A.7, C.5.B.7 and C.5.C.6 shall only be reimbursable if approved in writing submitted in advance to the Texas Division of Emergency Management (TDEM) Contract Monitor.

**B.1.4 Financial Statements and Peer Reviews**

Immediately prior to execution of this Contract and again no later than one hundred and twenty (120) calendar days prior to any renewal period under this Contract, the Contractor shall provide the Department with the following:

- A. Copies of the Contractor's most recent peer review report to determine whether the Contractor's work meets appropriate standards;
- B. At least one rating from organizations such as Dun & Bradstreet and Fitch Ratings;
- C. The following information:
  - 1. Gross Revenues
  - 2. Current Ratio
  - 3. Contingent liabilities to the extent that they would materially affect gross revenues or reduce the current ratio below 1.0; and
- D. Information required by Section G.3.9 and any other financial information reasonably requested by the Department consistent with the services provided by the Contractor or otherwise required by the then applicable Department's policies for similar contracts.

## SECTION B – PRICING SCHEDULE

## B.2 PRICING SCHEDULE

Contractor:	<u>Grant Thornton, LLP</u>
Task Area:	<u>One – Grant Monitoring</u>

**Contract Line Item Numbers (CLIN) 001-008 Base Period (Effective Date – 08/31/14)**

001	Partner Certified Public Accountant	\$ <u>200.00</u> per hour	See C.5
002	Senior Manager Certified Public Accountant /Senior Emergency Management Specialist	\$ <u>160.00</u> per hour	See C.5
003	Manager Certified Public Accountant	\$ <u>135.00</u> per hour	See C.5
004	Supervisor/Emergency Management Specialist	\$ <u>100.00</u> per hour	See C.5
005	Senior Accountant/Auditor	\$ <u>90.00</u> per hour	See C.5
006	Junior Accountant/Auditor	\$ <u>80.00</u> per hour	See C.5
007	Accounting Technician	\$ <u>65.00</u> per hour	See C.5
008	Administrative Technician	\$ <u>45.00</u> per hour	See C.5

**Contract Line Item Numbers (CLIN) 009-016 Option Period One (09/01/14 – 8/31/15)**

009	Partner Certified Public Accountant	\$ <u>208.00</u> per hour	See C.5
010	Senior Manager Certified Public Accountant /Senior Emergency Management Specialist	\$ <u>166.40</u> per hour	See C.5
011	Manager Certified Public Accountant	\$ <u>140.40</u> per hour	See C.5
012	Supervisor/Emergency Management Specialist	\$ <u>104.00</u> per hour	See C.5
013	Senior Accountant/Auditor	\$ <u>93.60</u> per hour	See C.5
014	Junior Accountant/Auditor	\$ <u>83.20</u> per hour	See C.5
015	Accounting Technician	\$ <u>67.60</u> per hour	See C.5
016	Administrative Technician	\$ <u>46.80</u> per hour	See C.5

**Contract Line Item Numbers (CLIN) 017-024 Option Period Two (09/01/15 – 08/31/16)**

017	Partner Certified Public Accountant	\$ <u>216.32</u> per hour	See C.5
018	Senior Manager Certified Public Accountant /Senior Emergency Management Specialist	\$ <u>173.06</u> per hour	See C.5
019	Manager Certified Public Accountant	\$ <u>146.02</u> per hour	See C.5
020	Supervisor/Emergency Management Specialist	\$ <u>108.16</u> per hour	See C.5
021	Senior Accountant/Auditor	\$ <u>97.34</u> per hour	See C.5
022	Junior Accountant/Auditor	\$ <u>86.53</u> per hour	See C.5
023	Accounting Technician	\$ <u>70.30</u> per hour	See C.5
024	Administrative Technician	\$ <u>48.67</u> per hour	See C.5

**Contract Line Item Numbers (CLIN) 025-032 Option Period Three (09/01/16 – 08/31/17)**

025	Partner Certified Public Accountant	\$ <u>224.97</u> per hour	See C.5
026	Senior Manager Certified Public Accountant /Senior Emergency Management Specialist	\$ <u>179.98</u> per hour	See C.5
027	Manager Certified Public Accountant	\$ <u>151.86</u> per hour	See C.5
028	Supervisor/Emergency Management Specialist	\$ <u>112.49</u> per hour	See C.5
029	Senior Accountant/Auditor	\$ <u>101.24</u> per hour	See C.5
030	Junior Accountant/Auditor	\$ <u>89.99</u> per hour	See C.5
031	Accounting Technician	\$ <u>73.12</u> per hour	See C.5
032	Administrative Technician	\$ <u>50.62</u> per hour	See C.5

Contractor:  
Task Area:

Grant Thornton, LLP  
Two – Compliance Review Tasks

**Contract Line Item Numbers (CLIN) 001-008 Base Period (Effective Date – 08/31/14)**

001	Partner Certified Public Accountant	\$ <u>250.00</u> per hour	See C.5
002	Senior Manager Certified Public Accountant /Senior Emergency Management Specialist	\$ <u>190.00</u> per hour	See C.5
003	Manager Certified Public Accountant	\$ <u>150.00</u> per hour	See C.5
004	Supervisor/Emergency Management Specialist	\$ <u>110.00</u> per hour	See C.5
005	Senior Accountant/Auditor	\$ <u>100.00</u> per hour	See C.5
006	Junior Accountant/Auditor	\$ <u>90.00</u> per hour	See C.5
007	Accounting Technician	\$ <u>65.00</u> per hour	See C.5
008	Administrative Technician	\$ <u>45.00</u> per hour	See C.5

**Contract Line Item Numbers (CLIN) 009-016 Option Period One (09/01/14 – 8/31/15)**

009	Partner Certified Public Accountant	\$ <u>260.00</u> per hour	See C.5
010	Senior Manager Certified Public Accountant /Senior Emergency Management Specialist	\$ <u>197.60</u> per hour	See C.5
011	Manager Certified Public Accountant	\$ <u>156.00</u> per hour	See C.5
012	Supervisor/Emergency Management Specialist	\$ <u>114.40</u> per hour	See C.5
013	Senior Accountant/Auditor	\$ <u>104.00</u> per hour	See C.5
014	Junior Accountant/Auditor	\$ <u>93.60</u> per hour	See C.5
015	Accounting Technician	\$ <u>67.60</u> per hour	See C.5
016	Administrative Technician	\$ <u>46.80</u> per hour	See C.5

**Contract Line Item Numbers (CLIN) 017-024 Option Period Two (09/01/15 – 08/31/16)**

017	Partner Certified Public Accountant	\$ <u>270.40</u> per hour	See C.5
018	Senior Manager Certified Public Accountant /Senior Emergency Management Specialist	\$ <u>205.50</u> per hour	See C.5
019	Manager Certified Public Accountant	\$ <u>162.24</u> per hour	See C.5
020	Supervisor/Emergency Management Specialist	\$ <u>118.98</u> per hour	See C.5
021	Senior Accountant/Auditor	\$ <u>108.16</u> per hour	See C.5
022	Junior Accountant/Auditor	\$ <u>97.34</u> per hour	See C.5
023	Accounting Technician	\$ <u>70.30</u> per hour	See C.5
024	Administrative Technician	\$ <u>48.67</u> per hour	See C.5

**Contract Line Item Numbers (CLIN) 025-032 Option Period Three (09/01/16 – 08/31/17)**

025	Partner Certified Public Accountant	\$ <u>281.22</u> per hour	See C.5
026	Senior Manager Certified Public Accountant /Senior Emergency Management Specialist	\$ <u>213.72</u> per hour	See C.5
027	Manager Certified Public Accountant	\$ <u>168.73</u> per hour	See C.5
028	Supervisor/Emergency Management Specialist	\$ <u>123.74</u> per hour	See C.5
029	Senior Accountant/Auditor	\$ <u>112.49</u> per hour	See C.5
030	Junior Accountant/Auditor	\$ <u>101.24</u> per hour	See C.5
031	Accounting Technician	\$ <u>73.12</u> per hour	See C.5
032	Administrative Technician	\$ <u>50.62</u> per hour	See C.5

Contractor:  
Task Area:

Grant Thornton, LLP  
Three – A-133 Audits and Other Tasks

**Contract Line Item Numbers (CLIN) 001-008 Base Period (Effective Date – 08/31/14)**

001	Partner Certified Public Accountant	\$ <u>250.00</u> per hour	See C.5
002	Senior Manager Certified Public Accountant /Senior Emergency Management Specialist	\$ <u>190.00</u> per hour	See C.5
003	Manager Certified Public Accountant	\$ <u>150.00</u> per hour	See C.5
004	Supervisor/Emergency Management Specialist	\$ <u>110.00</u> per hour	See C.5
005	Senior Accountant/Auditor	\$ <u>100.00</u> per hour	See C.5
006	Junior Accountant/Auditor	\$ <u>90.00</u> per hour	See C.5
007	Accounting Technician	\$ <u>65.00</u> per hour	See C.5
008	Administrative Technician	\$ <u>45.00</u> per hour	See C.5

**Contract Line Item Numbers (CLIN) 009-016 Option Period One (09/01/14 – 8/31/15)**

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012	Supervisor/Emergency Management Specialist	\$ <u>114.40</u> per hour	See C.5
013	Senior Accountant/Auditor	\$ <u>104.40</u> per hour	See C.5
014	Junior Accountant/Auditor	\$ <u>93.60</u> per hour	See C.5
015	Accounting Technician	\$ <u>67.60</u> per hour	See C.5
016	Administrative Technician	\$ <u>46.80</u> per hour	See C.5

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030	Junior Accountant/Auditor	\$ <u>101.24</u> per hour	See C.5
031	Accounting Technician	\$ <u>73.12</u> per hour	See C.5
032	Administrative Technician	\$ <u>50.62</u> per hour	See C.5

**B.2.1 Labor Categories**

<b>Labor Category</b>	<b>Functional Responsibility</b>
Partner Certified Public Accountant	<ul style="list-style-type: none"> <li>• Directs all contract-related activities.</li> <li>• Responsible for primary client communication.</li> <li>• Provides overall team direction and procedural guidance.</li> <li>• Subject matter expert as relates to Stafford Act/OMB Circular compliance.</li> </ul>
Senior Manager Certified Public Accountant	<ul style="list-style-type: none"> <li>• Reports directly to a Partner.</li> <li>• Responsible for some program level client and sub-grantee communication.</li> <li>• Provides direction and procedural guidance for managers and supervisors in the execution of day-to-day project operations.</li> <li>• Capable of independently resolving highly complex Stafford Act/OMB Circular compliance issues.</li> </ul>
Senior Emergency Management Specialist	<ul style="list-style-type: none"> <li>• Reports directly to a Partner.</li> <li>• Knowledge of and ability to communicate complex issues regarding FEMA, HM, FMAG and PA programs.</li> <li>• Responsible for program level client and sub-grantee communication.</li> <li>• Provides direction and procedural guidance for managers and supervisors in the execution of the day-to-day project operations.</li> <li>• Responsible for managing and allocating resources among teams and directly relating high technical issues to Subject Matter Experts.</li> <li>• Capable of independently resolving highly complex Stafford Act and other FEMA regulatory compliance issues.</li> <li>• Ensure successful completion of Contract deliverables and execution of complex projects.</li> </ul>
Manager Certified Public Accountant	<ul style="list-style-type: none"> <li>• Responsible for some client and sub-grantee communication.</li> <li>• Manages day-to-day project operations.</li> <li>• Works with a team of supervisors to manage daily project work flow and resolve highly complex Stafford Act/OMB Circular compliance issues.</li> <li>• Reports to a Partner or Senior Manager.</li> </ul>
Supervisor	<ul style="list-style-type: none"> <li>• Responsible for some client or sub-grantee communication.</li> <li>• Supervises a team of auditors/accountants and senior auditors/accountants in conducting daily procedures.</li> <li>• Capable of independently resolving complex Stafford Act/OMB Circular compliance issues.</li> <li>• Reports to a Manager.</li> </ul>
Emergency Management Specialist	<ul style="list-style-type: none"> <li>• Works with the team conducting day-to-day Stafford Act/OMB Circular compliance procedures to serve as a subject matter expert on program eligibility or technical issues regarding FEMA HM, FMAG and PA programs.</li> <li>• Capable of resolving complex Stafford Act and other FEMA regulatory compliance issues.</li> <li>• Reports to a Manager or a Senior Emergency Management Specialist.</li> </ul>
Senior Accountant/Auditor	<ul style="list-style-type: none"> <li>• Works within a team of auditors/accountants and accounting technicians to conduct day-to-day Stafford Act/OMB Circular compliance procedures.</li> <li>• Capable of independently resolving some Stafford Act/OMB Circular compliance issues.</li> <li>• May lead a team of accounting technicians performing routine monitoring and reporting activities.</li> <li>• Reports to a supervisor.</li> </ul>

<b>Junior Accountant/Auditor</b>	<ul style="list-style-type: none"><li>• Works within a team of auditors/accountants and accounting technicians to conduct day-to-day Stafford Act/OMB Circular compliance procedures.</li><li>• Reports to a supervisor.</li></ul>
<b>Accounting Technician</b>	<ul style="list-style-type: none"><li>• Performs general accounting functions using established systems and procedures.</li><li>• Works within a team of auditors/accountants and accounting technicians to conduct day-to-day Stafford Act/OMB Circular compliance procedures.</li><li>• Responsibilities include coding and data entry.</li></ul>
<b>Administrative Assistant</b>	<ul style="list-style-type: none"><li>• Performs day-to-day support functions for a project using established systems and procedures.</li><li>• May provide direction to other administrative staff.</li><li>• Detail-oriented with excellent organizational and communication skills.</li></ul>

**SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT****C.1 BACKGROUND**

- A. The Department is an executive agency of the State of Texas with a large variety of public functions including law enforcement, traffic and driver regulation, and recordkeeping. The Department is also the state agency responsible for coordinating Emergency Management activities in Texas. This effort is led within the Department by the Texas Division of Emergency Management (TDEM). One of the TDEM's roles is to coordinate federal disaster-related funding coming into Texas. The TDEM receives disaster-related grants from the Federal Emergency Management Agency (FEMA) to help Texas pay for response, recovery, and mitigation efforts related to federally-declared events. The TDEM then passes much of that grant funding through to local jurisdictions, other state agencies, and private volunteer agencies.
- B. Disaster grant funding fluctuates significantly depending on the size and number of disasters experienced by the state. The TDEM employs a core team of staff to handle these activities but augments the monitoring and administrative functions of these grants through contracting services due to the large number of disasters that have affected Texas in the past few years.

**C.2 GENERAL DUTIES AND OBLIGATIONS**

The Contractor's personnel and representatives working under this Contract shall pass and maintain the qualifications for the standard Department Contractor Background Check.

**C.3 DEPARTMENT POLICIES AND PROCEDURES**

- A. The Contractor shall not deviate from the Department Policies and Procedures provided by the Department in writing.
- B. The Department shall notify the Contractor of all changes in, or additions to, such Policies and Procedures, after which time the Contractor shall comply with the Policies/Procedures contained therein, unless the Department approves in writing a deviation from such Policies/Procedures.
- C. The Contractor's written request for deviations from said Policies/Procedures shall originate from the Authorized Representative of the Contractor and shall be forwarded to the Contract Administrator. The Contractor's written requests for deviation shall contain language that details the specific deviation with reference to the policy number/procedure, section, paragraph, etc., as well as the justification for such deviation.
- D. Unless a deviation from the Contractor is specifically requested and approved in writing by the Department, the Contractor shall comply with the Department's Policies and Procedures. This Contract award or any other contract award shall not imply approval of a Policy/Procedure deviation. Any deviations previously granted by the Department under a separate or previous Contract do not apply to this Contract.

**C.4 GENERAL REQUIREMENTS**

- A. The Contractor's and subcontractor's proposed personnel shall be required to maintain the qualifications and the standard Department Contractor Background Check during the term of this Contract as well as any approved and executed renewals/extensions.
- B. The Department's management reserves the right to interview the Contractor as well as any subcontractors assigned to provide services under this Contract.
- C. Disclosures: Conflict of Interest

The Contractor represents and warrants that it and its proposed personnel have no actual or potential conflicts of interest in providing the Services to the TDEM or the Department under this Contract. The Contractor also represents and warrants that its provision of the Services under this Contract would not create the appearance of impropriety. The Contractor shall disclose any existing or potential conflict of interest that this Contractor might have in providing Services to the TDEM or the Department under this Contract.

For the purpose of this disclosure requirement, "Department" is defined as the appointed Public Safety Commission (PSC) that heads the agency, as well as the Department's employees or recent former employees. For purposes of this disclosure requirement, "recent former employees" are defined as those Department and the TDEM employees who have terminated agency employment within the two (2) calendar years prior to the beginning work on this Contract. The Contractor shall provide a detailed explanation of why the Contractor does or does not believe such item poses a conflict of interest, potential conflict of interest, or appearance of impropriety issue relative to performance of this Contract.

For the purpose of this Contract, "personal relationship" is defined as a current or past connection other than a clearly contractual, business, financial or similar relationship and includes family relationships or other connections outside simply providing a response to this Contract. For this purpose, "family relationship" means a relationship within the third degree of consanguinity or second degree of affinity; see the Texas Government Code, Chapter 573 which defines these degrees of consanguinity and affinity. Connections other than such family relationships fall within this definition and shall be disclosed if a reasonable person could expect the connection to diminish the Contractor's independence of judgment or effectiveness in the performance of the Contractor's responsibilities to the TDEM, the Department or the State under this Contract. Connections also fall within this definition if a reasonable person could expect connection, within the overall context the Contractor of this Contract, to create an issue for the agency's consideration relative to a potential appearance of impropriety or conflict with interest. Connections also fall within this definition if the relationship is with the TDEM, the Department or other State of Texas employees with authority to make decisions or recommendations on state contracting or procurement or this Contract. For purposes of this provision, those persons with authority to make decisions or recommendations are those persons who fall within the definition of "purchasing personnel" in the Texas Government Code, Section 2262.004(a)(2).

The Contractor affirms that it has not given, nor intends to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant or any employee or representative of same, in connection with this procurement.

The Contractor shall disclose any proposed personnel under this Contract who are current or recent former employees of the TDEM, the Department or the State of Texas. Recent former employees are defined above.

Disclosures under these provisions are information that shall be evaluated by the TDEM and the Department; however all information provided shall not necessarily lead to a restriction or disqualification. Issues shall be considered on a case by case basis in the best interest of the State of Texas.

Failure to disclose any required information under these provisions may be cause for disqualification or termination of this Contract. The TDEM and the Department reserve the right, in their sole discretion, to determine if any issue should result in disqualification or termination of this Contract.

During the term of this Contract, the Contractor shall have the continuing responsibility to promptly provide the TDEM and the Department with information about any actual or potential conflicts of interest or appearance of impropriety issues between the Contractor, including any subcontractors, and any entities or persons the Contractor is assigned or may be assigned to monitor or review.

If circumstances change or additional information is obtained subsequent to award of this Contract, the Contractor's duty to promptly disclose information to the TDEM and the Department continues under the term of this Contract.

## **C.5 SCOPE OF WORK & REQUIREMENTS**

### **C.5.A Area One, Grant Monitoring Tasks**

#### **C.5.A.1 Services to be Performed**

The Contractor shall monitor assigned TDEM Sub-recipient(s) Grant Project(s). Monitoring shall involve various methods that ensure completion of work within established timelines and in accordance with prescribed standards. Monitoring provides reasonable assurance that adequate progress is being made toward achieving the grant's goals and that federal funds are being expended in accordance with their intended purpose and in accordance with federal grant, procurement, allowability and program guidelines.

#### **C.5.A.2 Job Assignments**

This Contract is awarded on a no minimum, non-exclusive, as needed, as requested basis. The Department shall make and approve budgets for each assignment; however, the Department may, in its sole discretion, terminate assignments at any time for any reason and in the event of such termination for other than cause or non compliance by the Contractor, shall pay the Contractor for amounts otherwise due the Contractor (that is approved hourly rates and travel) as having been performed in compliance with this Contract up to and including the date of

termination.

The Department shall make assignments by applicant and project. Not all projects from an applicant may be awarded to the same team (Contractor or internal); coordination may be required with other teams.

Budgets are for current term or a shorter period as designated; budget modifications shall be required if the project is carried over through a period of the Department's renewal of this Contract. Otherwise budget modifications shall be required when there is a change or issue with a project that would require additional costs to complete the assignment.

Supplemental labor categories, if any, shall be negotiated and set as part of individual budgets.

### **C.5.A.3 Contractor Responsibilities**

**The Contractor shall perform all of the following responsibilities under this Contract:**

- A. Provide the services and deliverables described within this Contract, using labor categories listed in this Contract, unless the Department has agreed otherwise in writing.
- B. Name an Assignment Manager to act as the primary point of contact with the Department. The Contractor's Assignment Manager shall work closely with the Department Program Manager or designee to ensure completion of the Contract requirements.
- C. Assignment Manager shall:
  - (1) Manage the assignment(s) assigned by the Department,
  - (2) Monitor the assignment schedule and revise as needed,
  - (3) Coordinate closely with the Department Program Manager or designee,
  - (4) Provide status reports, Section D, to the Department Program Manager or designee:
    - i. The Contractor shall provide a proposed status report format that incorporates these requirements for the Department approval at the initial Contract meeting. The report format shall include both a summary page (that includes all open assignments) and the status of each. After initial approval of the status report by the Department, any revisions to this report format shall be approved in advance in writing by the Department Program Manager or designee.
    - ii. Each week, the Contractor shall provide the Department Program Manager or designee updates on the status of all assignments to include

any requests from sub-recipients for scope changes, scheduled meetings, significant issues, problems or non-compliance.

- iii. Each month, the Contractor shall provide the Department Program Manager or designee updates on the status of all assignments to include general status, meetings, and communications with sub-recipients, whether project is on budget, on time, in scope, any significant issues, and problems on non-compliance.

(5) Provide to the Department Program Manager, within five (5) working days of executing this Contract for the initial staff and at the time of assignment for staff added after the initiation of this Contract;

- i. The completed Department Vendor Background Investigation Forms (HQ-22, Section J) for all the Contractor personnel working on this Contract; and

- ii. Acceptable fingerprints of all the Contractor personnel working on the Contract.

- iii. Notification to the Department Program Manager or designee and sub-recipient's agent every time staff is removed from a monitoring project or when the Contractor's staff members shall no longer be expected to be working on this Contract. All issued security badges shall be turned in to the Department Project Manager immediately in the case of the Contractor staff leaving this Contract work or the Contractor's employ.

(6) Work with the Department Program Manager or designee to resolve any issues regarding monitoring objectives or the content of any report (one day or less). Where resolution shall take more than one day, the situation shall be discussed upon discovery, and the timing for resolution shall be approved by the Department Program Manager or designee in writing.

D. Monitor Sub-recipient compliance based on applicable Office of Management and Budget (OMB) Circulars including A-21, A-87, A-102, A-110, A-122, A-133 and A-133 Compliance supplement and applicable CFR titles including 44 CFR Parts 13, 17, 18, 201, 204 and 206, as well as applicable Federal Emergency Management Agency (FEMA) policies and guidelines located at:

<http://www.fema.gov/government/grant/pa/policy.shtm>

<http://www.fema.gov/government/grant/hmpg/policy.shtm>

<http://www.fema.gov/government/grant/fmagp/policy.shtm>

Conduct any financial reviews of Sub-recipients in compliance with the Generally Accepted Government Auditing Standards (GAGAS) general and fieldwork standards relative to independence, professional judgment, the supervision of compliance review assignments, technical knowledge and competence of staff assigned to conduct these reviews, and documentation.

**C.5.A.4 Services and Deliverables**

The Contractor shall, upon request by Department Program Manager or designee, provide grant monitoring services by: assessing sub-recipient's needs/status; assigning sub-recipient monitoring teams; developing an accessible case management file; completing data entry and document uploads of sub-recipient files to a grant monitoring system; developing a Compliance and Monitoring Plan for each sub-recipient; correcting deficiencies in sub-recipient project files; assessing sub-recipient compliance policies and procedures as requested; evaluating sub-recipients' internal controls as requested, providing technical assistance and training to sub-recipients as needed; conducting sub-recipient monitoring visits and contacts; attending TDEM section and program meetings to discuss issues, problems or changes; providing regular status reports on assigned projects; collecting data from sub-recipients for Quarterly FEMA Reports, management reports, or other ad hoc reporting as needed; processing sub-recipient funding requests with local match documentation; coordinating sub-recipient grant change requests and appeals; referring Project Worksheets (PW) for closeout; and any other monitoring or grant related activities as assigned, including preparing project file for transfer to another project officer if requested.

In providing these services, the Contractor shall:

- A. Conduct services in accordance with applicable provisions of the Code of Federal Regulations, Title 44, (CFR) Parts 13, 17, 18, 201, 204 and 206, applicable OMB circulars, applicable FEMA guidance including the 9500 Series Policy Publications, and applicable GAGAS general and fieldwork standards.
- B. Provide a grant monitoring budget to the Department Program Manager or designee for approval prior to beginning grant monitoring work for each assignment (See Exhibit J.6).
- C. Coordinate with the Department Program Manager or designee to facilitate effective coordination and cooperation among the Contractor and internal staff to avoid duplication of efforts.
- D. Immediately report any identified fraud, waste, and/or abuse or any other significant issues relative to the assigned grant projects or sub-recipient's management of TDEM pass through grants to the Department Program Manager via e-mail, letter, or memorandum.

**C.5.A.5 Department Responsibilities**

- A. Within ten (10) calendar days after Contract execution, or on another date approved by the Department Program Manager or designee in advance in writing the Department shall schedule an initial operational and planning meeting with the Contractor. At the initial meeting, the Department shall provide the Contractor with a deadline for providing a time and cost budget related to Section 4, Services and Deliverables.
- B. The Department shall assign grant projects to the Contractor, approve monitoring budget, establish program reporting, meeting and procedural requirements,

establish grant management IT requirements and transfer grant files from the TDEM Project Officers to the Contractor teams.

- C. The Department shall review and, where necessary, provide additional guidance on any work product of the Contractor including but not limited to:
1. Accessible case management file;
  2. Sub-recipients Compliance and Monitoring Plan;
  3. Assessing sub-recipient compliance policies and procedures as requested;
  4. Technical assistance and training to sub-recipients as requested;
  5. Records of sub-recipient monitoring visits and contacts;
  6. Status reports on assigned projects;
  7. Data from sub-recipients for Quarterly FEMA Reports
  8. Management reports, or other ad hoc reporting as needed;
  9. Sub-recipient funding requests with local match documentation;
  10. Sub-recipient grant change requests, appeals and PW closeout;
  11. Evaluations of sub-recipients' internal controls.
- D. The Department shall provide the Contractor access to all information under the control of the Department necessary to complete the Contract and shall provide assistance to the Contractor's team to navigate through the Department and to access key individuals.
- E. The Department shall facilitate the provision of an on-site work area at sub-recipient offices, if needed.

#### **C.5.A.6 Approval/Acceptance**

The Department Program Manager or designee shall approve each assignment's budget and the deliverables in writing prior to final acceptance of assignment. The Contractor shall allow for routine review of sub-recipient case management files by TDEM. Peer and management reviews shall be conducted. All deliverables shall be submitted timely and any corrections requested shall be submitted promptly (within two business days or sooner if required).

The Department reserves the right to suspend the agreed upon assigned projects. Suspension of work under this Contract shall be solely at the discretion of the Department.

#### **C.5.A.7 Payment of Services**

The Contractor shall present to the Department Program Manager or designee a proposed "Grant Monitoring Budget" for each assignment (See Exhibit J.6). Upon approval by the Department Program Manager or designee, the Budget shall be considered "not to exceed" and the Contractor shall bill the Department for actual hours spent on a given assignment. The Contractor may not invoice for more than the agreed upon budgeted hours or expenses, regardless of the actual time or expenses needed to complete an assignment unless authorized by the Department Program Manager or designee in advance. All billings shall be based upon the B.2 Pricing Schedule.

The Contractor shall submit monthly invoices on labor and travel expenses not later than the end of the month following the month of service.

The Contractor shall submit weekly reports on staff time and expenses and monthly reports activities as outlined in Section 4, Services and Deliverables. Monthly invoices shall match previously submitted reports and shall be formatted to be easily reconciled with those reports.

The Contractor shall keep the Department Program Manager or designee apprised of the budget spent and progress toward grant closeout and shall notify same as soon as practicable if it becomes apparent that the budget deviates from projections. No invoices in excess of the approved budget shall be paid without an approved modification.

Invoice submissions and payment shall be made in accordance with this Contract and in a format that includes hourly rates per labor category and expenses. Labor hours and expenses shall be split between fiscal years (beginning September 1<sup>st</sup> of each year) where assignments are performed during two fiscal years.

Eligible travel expenses shall comply with the State of Texas travel requirements as found at the following link: <https://fmx.cpa.state.tx.us/fmx/travel/index.php>. **In accordance with Government Code 660.007(b), the Department further restricts travel costs for lodging to \$77/night and meals to \$46/day. The Contractor shall not charge the Department for rates in excess of \$77/night or \$46/day unless a waiver has been issued in writing in advance by the Department Program Manager for this Contract.**

All invoices shall be submitted via e-mail to APinvoices@dps.texas.gov with a copy to Bradley.Jacobs@dps.texas.gov and the Department Program Manager and shall follow the Invoice Requirements and reference the Purchase Order (PO) ultimately associated with this Contract. Incorrect submission of an invoice may result in delayed payment with no fault to the Department.

## **C.5.B Area Two, Compliance Review Tasks**

### **C.5.B.1 Services to be Performed**

The Contractor shall conduct compliance reviews of assigned TDEM sub-recipient Grant Project(s). The Contractor shall examine supporting documentation for project expenditures, evaluating compliance with relevant statutes, regulations and grant agreements and report the review results.

### **C.5.B.2 Job Assignments**

This Contract is awarded on a no minimum, non-exclusive, as needed basis. The Department shall assign projects and approve budgets for each; however, the Department may end assignments at any time and pay the vendor for labor and materials already expended.

**C.5.B.3 Contractor Responsibilities**

- A. Provide deliverables described within this Contract, using labor categories listed in this Contract, unless the Department has agreed otherwise in writing.
- B. Name an Assignment Manager to act as the primary point of contact with the Department. The Contractor's Assignment Manager shall work closely with the Department Program Manager or designee to ensure completion of the Contract requirements.
- C. Assignment Manager shall:
1. Monitor the assignment schedule and revise as needed,
  2. Manage the assignment(s) assigned by the Department,
  3. Coordinate closely with the Department Program Manager or designee,
  4. Provide weekly status reports to the Department Program Manager or designee:
    - a. Shall provide a proposed status report format that incorporates these requirements for the Department approval at the initial contract meeting. The report format shall include both a summary page (that includes all open assignments) and the status of each assignment. The update shall include:
      - 1) The budget status and assignment schedule;
      - 2) A compliance review assignment aging report that includes:
        - i. the number of compliance reviews assigned for review and the average number of days between the date assigned and the date fieldwork starts,
        - ii. if authorized by the Department, the number of days review assistance was provided to a sub-recipient to help prepare project records for review.
        - iii. reviews that are in the fieldwork phase,
        - iv. reviews that are in the results resolution phase (Specifically, the number of reviews and number of days the Contractor has been requested by TDEM to allow sub-recipient additional time to gather documentation, after the review report draft has been delivered to the Department).
        - v. reviews that are in post fieldwork review,
        - vi. the date the Department approved the issuance of a final report and the date copies of the final report are delivered to TDEM.
      - 3) Significant non-compliance or accounting issues identified, and
      - 4) Anticipated modifications to the review scope, objectives, budget, or review procedures.
    - b. On Thursday of each week, shall provide the Department Program Manager or designee updates on the status of all review assignments;
    - c. Provide to the Department Program Manager, within five (5) working days of executing this Contract for the initial staff and at the time of assignment for staff added after the initiation of this Contract;

- d. Complete Department Vendor Background Investigation Forms (HQ-22, Exhibit J.4) for all the Contractor personnel working on this Contract; and
  - e. Acceptable fingerprints of all the Contractor personnel working on this Contract.
5. Work with the Department Program Manager or designee to promptly resolve any issues raised by the Department Program Manager or designee regarding review objectives or draft review content (one day or less). Where resolution shall take more than one day, the situation shall be discussed upon discovery, and the timing for resolution shall be approved by the Department Program Manager or designee in writing.
  6. Immediately notify Department Program Manager or designee of the setting of any key meetings as defined in Section 6, Subsection E.
- D. Conduct compliance review assignments in compliance with the GAGAS general and fieldwork standards relative to independence, professional judgment, the supervision of compliance review assignments, technical knowledge and competence of staff assigned to conduct these reviews, and documentation. Sub-recipient compliance shall be evaluated based on applicable Office of Management and Budget (OMB) Circulars including A-21, A-87, A-102, A-110, A-122, A-133 and A-133 Compliance Supplement and applicable CFR titles including 44 CFR Parts 13, 17, 18, 201, 204 and 206, as well as applicable Federal Emergency Management Agency (FEMA) policies and guidelines located at:
- <http://www.fema.gov/government/grant/pa/policy.shtm>  
<http://www.fema.gov/government/grant/hmpg/policy.shtm>  
<http://www.fema.gov/government/grant/fmagp/policy.shtm>
- and accordance with the report template and guidelines provided by the Department.
- E. Verify TDEM sub-recipient(s) FEMA project obligations and related expenditures and that the sub-recipient(s) has/have documented the same in compliance with 44 CFR, FEMA program guidelines, and OMB Circulars detailed in Section 3, Contractor Responsibilities, Paragraph D of this Contract.
  - F. Submit an assignment time budget delineated by staff position and extended billing totals for each review project for the Department approval. The Department reserves the right to include multiple individual but related projects as a single task.
  - G. Coordinate assigned review work with TDEM's sub-recipient(s). The Contractor shall also provide the sub-recipient by e-mail, or otherwise in writing, a list of the names and staff positions of personnel initially staffed to a review and shall notify the sub-recipient of personnel changes. A copy of that notice shall be provided to the Department Program Manager or designee. The Department Program Manager or designee shall also be notified in like manner when a Contractor's staff members will no longer be expected to be working on this Contract. All issued security badges shall be turned in to the Department Project Manager

immediately in the case of the Contractor staff leaving the Contract work or Contractor's employ.

- H. Immediately report any identified fraud, waste, and/or abuse or any other significant issues relative to the project review or sub-recipient's management of TDEM's pass through grants to the Department Program Manager via e-mail, letter, or memorandum.
- I. The Department reserve the right to extend any deadline listed herein, based on the Contractor's preliminary review findings. Any deadline extension requires prior written approval from the Department Program Manager or designee.
- J. Provide Department with an electronic copy of the draft review report and all reviews related supporting documentation (working papers and related memoranda, test data, etc), indexed, and cross-referenced.
- K. Coordinate with the Department Program Manager designee to facilitate coordination among the State Auditor's Office, legislative oversight committees, and other governmental bodies to avoid duplication.

#### **C.5.B.4 Assignment Deliverable**

- A. The Contractor shall, provide compliance review services by reporting, using the template and guidelines provided by the Department. The Contractor shall provide same based upon sub-recipient's compliance with laws, regulations, grant agreements, and other pertinent compliance requirements relevant to the assigned project expenditures being reviewed including 44 Code of Federal Regulations, OMB circulars A-133 and the A-133 Compliance Supplement, A-21, A-87, A-102, A-110 and A-122 and FEMA's 9500 Series Policy. The Contractor shall provide the following:
  - 1. A completed compliance report.
  - 2. Work papers and supporting documentation as referenced in Section J.4 of this Contract and as detailed in the report template and guidelines referenced above.
- B. In providing these services, the Contractor shall:
  - 1. Conduct reviews in accordance with the relevant provisions of the Code of Federal Regulations, Title 44, (CFR) Parts 13 and 206, applicable OMB circulars, pertinent FEMA guidance including the 9500 Series Policy Publications, and appropriate GAGAS general and fieldwork standards.
  - 2. Review sub-recipient's internal controls pertinent to the grant project to be reviewed, if requested and not already reviewed on a prior grant project review.
  - 3. Provide a compliance review budget to the Department Program Manager or designee for review and approval prior to beginning compliance review work for each assignment, Section J.5.

4. Immediately report any identified fraud, waste, and/or abuse or any other significant issues relative to the assigned grant project review or sub-recipient's management of TDEM pass through grants to the Department Program Manager via e-mail, letter or memorandum.

#### **C.5.B.5 Department Responsibilities**

- A. Within ten (10) calendar days after Contract execution, or on another date approved by the Department Program Manager or designee in advance in writing, the Department shall schedule an initial operational and planning meeting with the Contractor. At the initial meeting, the Department shall provide the Contractor with a deadline for providing a time and cost budget related to Section 4, Assignment Deliverables.
- B. The Department shall review and, where necessary, provide guidance on any work product of the Contractor including but not limited to:
  1. Compliance Review objective(s)
  2. Scope of reviews
  3. Risk assessment(s)
  4. Compliance Review assignment plans
  5. Compliance Review methodologies
  6. Sampling plans
  7. Working papers
  8. Evaluations of sub-recipients' internal controls
- C. The Department shall provide the Contractor access to all information under the control of the Department necessary to complete this Contract and shall provide assistance to the Contractor's team to navigation throughout the Department in order to obtain timely and relevant data, access to individuals.
- D. The Department shall facilitate the provision of an on-site work area at sub-recipient offices.
- E. As required by the State of Texas, the Department shall provide a copy of this Contract to the State Auditor's Office (SAO) within two (2) weeks of execution. Additionally, unless directed otherwise, the SAO shall be provided with copies of all final reports and other deliverables issued by the Contractor as part of this Contract within two (2) weeks of completion. For risk assessment purposes, the State Auditor's Office shall have access to any draft Compliance Review reports and shall be provided a copy of such reports upon request.
- F. The Department shall provide the State Auditor's Office with advance notice of key meetings in a timely manner. Examples of key meetings include entrance and exit conferences, meetings regarding internal control assessments, and status meetings. State Auditor's Office representatives may attend key meetings related to any Compliance Review engagement the Department enters into under this delegation of authority.
- G. The Department shall notify the State Auditor's Office in writing if a modification

to the Contract significantly alters any Contract terms, including, but not limited to the scope of work to be performed and the term of this Contract.

#### **C.5.B.6 Approval/Acceptance**

The Department Program Manager or designee shall examine and approve each Compliance Review assignment's budget and both the draft and final reports to final acceptance. The Contractor shall not submit invoices for work completed until final acceptance in writing. The Department Program Manager may approve partial payment based on a draft report where the Contractor has acceptably completed normal work as set forth in the provided template and guidelines, but the Department has decided that additional work related to the sub-recipient is necessary prior to final approval of assignment completion.

The Department reserves the right to suspend the agreed upon projects assigned to the Contractor. Suspension of work under this Contract shall be solely at the discretion of the Department.

#### **C.5.B.7 Payment of Services**

The Contractor shall present to the Department Program Manager or designee a proposed "Compliance Review Budget" for each assignment, Exhibit J.5. Upon approval by the Department Program Manager or designee, the budget shall be considered "not to exceed" and the Contractor shall bill the Department for actual hours spent on a given assignment. The Contractor may not invoice for more than the agreed upon budgeted hours and expenses regardless of the actual time or expenses needed to complete an assignment unless authorized by the Department Program Manager in advance. All billings shall be based upon the "Pricing Schedule", Section B.2.

The Contractor shall not submit an invoice for services until the Department has notified the Contractor of acceptance of the final compliance review report and other deliverables required by the review assignment plan, except that the Department Program Manager may approve partial payment based on a draft report where the Contractor has acceptably completed normal work as set forth in the provided template and guidelines, but the Department has decided that additional work related to the sub-recipient is necessary prior to final approval of assignment completion or that through no fault of the Contractor, TDEM suspends further work on an assignment and approves submission of a draft report.

Invoice submission and payment shall be made in accordance with this Contract and submitted in an itemized format that includes hourly rates per labor category and travel costs.

The Contractor shall keep the Department Program Manager or designee apprised of the budget spent and progress toward grant closeout and shall notify same as soon as practicable if it becomes apparent that the budget deviates from projections. No invoices in excess of the approved budget shall be paid without an approved budget modification.

Eligible travel expenses shall comply with the State of Texas travel requirements as found at the following link: <https://fmx.cpa.state.tx.us/fmx/travel/index.php>. **In accordance with the Texas Government Code 660.007(b), the Department further restricts travel costs for lodging to \$77/night and meals to \$46/day. The Contractor shall not charge the Department for rates in excess of \$77/night or \$46/day unless a waiver has been issued in writing in advance by the Department Program Manager for this Contract.**

The Contractor shall submit invoices for services as soon as possible after acceptance of deliverables by the Department. However, invoices shall be submitted no later than thirty (30) days after the final compliance review report or other deliverable is accepted by the Department. Labor hours shall be split between fiscal years with fiscal year commencing September 1<sup>st</sup> and expiring August 31<sup>st</sup> in situations where assignments have performance in two fiscal years.

All invoices shall be submitted via e-mail to APInvoices@dps.texas.gov with a copy to Bradley.Jacob@dps.gov and the Department Program Manager and shall follow the Invoice Requirements and reference the Purchase Order (PO) ultimately associated with this Contract. Incorrect submission of an invoice may result in delayed payment with no fault to the Department.

### **C.5.C Area Three, A-133 Audits and Other Administrative Tasks**

#### **C.5.C.1 Services to be Performed**

This Task Area is for specialized assignments related to Grant Management. Services in this Task Area shall be assigned through sub-Statements of Work and accompanying budgets that shall be negotiated at the time of assignment. This will be a Contract Change in accordance with Section H.15.

#### **C.5.C.2 Job Assignments**

The Contract is awarded on a no minimum, non-exclusive, as-needed basis. The Department shall make assignments and approve budgets for each; however, the Department may choose to end assignments at any time and pay the Contractor for labor and materials already expended.

The Department shall make assignments as needed through negotiated sub-Statements of Work with attached budgets. Coordination may be required with other teams, as related projects may be awarded to different Contractor or the Department teams.

Budgets are for current term or a shorter period as designated; budget modifications shall be required if the project is carried over through a Contract renewal Option Period. Otherwise budget modifications shall be required when there is a change or issue with a project that would require additional costs to complete the job assignment.

Supplemental labor categories, if any, shall be negotiated and set as part of individual budgets.

**C.5.C.3 Contractor Responsibilities**

Provide the services and deliverables described within the negotiated sub-Statement Of Work, using labor categories listed in this Contract, unless the Department has agreed otherwise in writing.

**C.5.C.4 Services and Deliverables**

The Contractor shall, upon request by the Department Program Manager or designee, provide services by described within the negotiated sub-Statements Of Work.

**C.5.C.5 Department Responsibilities**

- A. Within ten (10) calendar days after Contract execution, or on another date approved by the Department Program Manager or designee in advance in writing, the Department shall schedule an initial operational and planning meeting with the Contractor. At the initial meeting, the Department shall provide the Contractor with a deadline for providing a time and proposed cost budget related to Section 4, Services and Deliverables.
- B. The Department shall assign the project to the Contractor, approve budget, establish program reporting, meeting and procedural requirements, establish grant management IT requirements and transfer necessary files from the TDEM project officers to the Contractor teams.
- C. The Department shall review and, where necessary, provide additional guidance on any work product of the Contractor and perform other responsibilities as described in the described within the negotiated sub-Statement Of Work.
- D. The Department reserves the right to suspend the agreed upon projects to the Contractor. Suspension of work under the Contract shall be solely at the discretion of the Department.

**C.5.C.6 Payment of Services**

The approved budget shall be considered "not to exceed" and the Contractor shall bill the Department for the actual hours and travel expenses. The Contractor shall not invoice for more than the agreed upon budgeted hours or expenses, regardless of the actual time or expenses needed to complete an assignment unless authorized by the Department Program Manager in advance. All billings shall be based upon "Pricing Schedule", Section B.2.

The timing of invoices shall be covered by the negotiated sub-Statements of Work.

The Contractor shall keep the Department Program Manager or designee apprised of the budget spent and progress toward completion and shall notify same as soon as practicable if it becomes apparent that the budget deviates from projection. No invoices over the approved budget shall be paid without an approved modification.

Invoice submission and payment shall be made in accordance with the Contract and in an itemized format that includes hourly rates per labor category and expenses. Labor hours and expenses shall be split between fiscal years [beginning on September 1<sup>st</sup> of each year] where assignments are performed in two fiscal years. Also Labor hours shall be split between fiscal years with fiscal year commencing September 1<sup>st</sup> and expiring August 31<sup>st</sup> every year in situations where assignments have performance in two fiscal years.

Eligible travel expenses shall comply with the State of Texas travel requirements as found at the following link: <https://fmx.cpa.state.tx.us/fmx/travel/index.php>. **In accordance with Government Code 660.007(b), The Department further restricts travel costs for lodging to \$77/night and meals to \$46/day. The Contractor shall not charge the Department for rates in excess of \$77/night or \$46/day unless a waiver has been issued in writing in advance by the Department Program Manager for this CONTRACT.**

All invoices shall be submitted via e-mail to the [APinvoices@dps.texas.gov](mailto:APinvoices@dps.texas.gov) with a copy to [Bradley.Jacobs@dps.texas.gov](mailto:Bradley.Jacobs@dps.texas.gov) and the Department Program Manager or designee listed above and shall follow the Invoice Requirements and reference the Purchase Order (PO) ultimately associated with this Contract. Incorrect submission of an invoice may result in delayed payment with no fault to the Department.

#### **C.6 QUALIFICATIONS OF PROPOSED STAFF (INCLUDING ANY SUBCONTRACTORS)**

- A. The Contractor shall provide current resumes for all partners/managers/supervisors proposed to work on this Contract, along with a list stating the proposed job responsibilities, areas of expertise, percentage of time the person shall dedicate to this Contract, and the title and role of the partner/manager/supervisor. The resumes shall contain at a minimum the following information:
1. A full name (including full middle name).
  2. A five-year employment history.
  3. A specific description of relevant experience, education, certifications, areas of specialization, and qualifications the person has with the Scope of Work.
  4. Any additional helpful information to indicate the individual's ability to aid the Contractor in successfully completing the required deliverables.
- B. The Contractor shall designate a person as the Contractor Assignment Manager with whom the Department Contract Monitor or designee may communicate to arrange and coordinate the creation and delivery of deliverables throughout this Contract.
- C. Staff resumes shall be identical in format and presentation. The key personnel, are considered to be essential and no substitutions shall be made without prior written consent of the TDEM. The TDEM reserves the right, in its sole discretion, to approve each member of the team and to request substitutions.

**C.7 FEDERAL FUNDING REQUIREMENTS**

This Contract is funded with federal grant funds, and as such, the Contractor agrees to comply with all applicable rules, regulations, and guidelines. In particular, the following laws, regulations, and OMB circulars are incorporated by reference:

- (1) Title 42 U.S.C. §§ 5121-5206 (Stafford Act)  
([http://www.fema.gov/pdf/about/stafford\\_act.pdf](http://www.fema.gov/pdf/about/stafford_act.pdf))
- (2) Title 44 of the CFR  
(<http://www.access.gpo.gov/cgi-bin/cfrassemble.cgi?title=200944>)
- (3) OMB Circular A-87 (Cost Principles for State and Local Governments)
- (4) OMB Circular A-102 (Uniform Administrative Requirement)
- (5) OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Orgs.)  
(<http://www.whitehouse.gov/omb/circulars/>)

**C.8 DEPARTMENT RECORDS**

- A. Upon conclusion of this Contract, the Department shall own the complete files, notes, charts, and drawings related to the execution of the services under this Contract. The Contractor shall 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 the Department as well as organized and retained in the original folder. The Contractor shall comply with additional instructions pertaining to Department records as detailed in Section H.52, Books and Records of this Contract.
- C. All documents written to fulfill this Contract shall be the property of the Department; the Department may use, update, and distribute the documents as the 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 the Contractor requires copies of any non-confidential records after conclusion of the Contract or Contract expiration and management transition, the Department shall furnish copies to the Contractor at the Contractor's expense.
- F. Records shall be maintained in accordance with the Department Records Retention Schedule.
- G. The Department shall 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 THE CONTRACTOR**

The Contractor shall submit to the Department and other entities as specified the following reports in this Section during the term of this Contract. These reports may be revised or additional reports may be required at the Department's sole discretion

<b>FREQUENCY</b>	<b>DUE DATE</b>	<b>REPORT - DELIVERABLE</b>	<b>AUTHORITY</b>
C.5.A.1 – Grant Monitoring	Monthly billing based on agreed upon hourly rates and approved time sheets and travel vouchers.	Invoice with billing forms	Contract, Section G
C.5.A.2 – Compliance Review	Completion of project. Billing based on agreed upon hourly rates and approved budget, including travel expenses.	Invoice with billing forms	Contract, Section G
C.5.A.3 – Other Activities	Completion of project. Billing based on agreed upon hourly rates and approved budget, including travel expenses.	Invoice with billing forms	Contract, Section G
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
After Award	Five (5) working days after award.	Agreed upon date to schedule kick-off meeting.	Contract
After Award	Five (5) working days after the schedule meeting.	Information needed for Background Investigation and Fingerprint Criminal History Check.	Contract
Other	Prior to service commencement date and upon renewal or replacement.	Professional Licenses	Contract
Other	Prior to service commencement date and upon renewal or replacement.	Insurance certificates	Contract, Section I.1
Quarterly/or as new information arises	September 1 <sup>st</sup> , December 1 <sup>st</sup> , March 1 <sup>st</sup> , June 1 <sup>st</sup> and within five (5) working days of new litigation	Listings of litigation	Contract, Section K.6.6.D.4

FREQUENCY/DUE DATE	DESCRIPTION	REPORT - DELIVERABLE	AUTHORITY
<b>Section C.5.A – Grant Monitoring</b>			
Two business days before reports are due to FEMA/Quarterly	Collect information from sub-recipients on each assigned project	Quarterly FEMA Reports	Contract, Section C.5.A
Second business day of the following month/Monthly	Includes general status, meetings and communications with sub-recipients, whether project is on budget, on time, in scope, any significant issues, problems on non-compliance matters	Monthly Project Progress Reports	Contract, Section C.5.A
Wednesday/Weekly	Includes any requests from applicants for scope changes, scheduled meetings, any significant issues, problems or non-compliance matters.	Weekly Issue Reports	Contract, Section C.5.A
Within five (5) business days/As needed	Includes project over-runs or under-runs, scope changes, request for reimbursement, time extensions, appeals, closeouts	Requests for grant amendments	Contract, Section C.5.A
On-going /Immediate	Documentation of contact with sub-recipients including: compliance and monitoring plan; electronic mail; phone conversation, meeting and site visit records; correspondence; records of reviews showing that federal funds are being expended in accordance with their intended purpose and in accordance with federal grant, procurement, allow ability and program guidelines; and Other associated project management documentation	Accessible case management file	Contract, Section C.5.A
As needed	As Assigned	Ad hoc reporting	Contract, Section C.5.A
Tuesday following end of week/Weekly	Time sheets shall note labor category, type of activity and be broken out by disaster and by project	Weekly time sheets of all staff on each project	Contract, Section C.5.A
Tuesday following end of week/Weekly	Expense Reports shall note reason for expense (i.e. site visit) broken out by disaster and by project	Weekly Expense Reports	Contract, Section C.5.A

FREQUENCY/DUE DATE	DESCRIPTION	REPORT - DELIVERABLE	AUTHORITY
<b>Section C.5.B – Compliance Review</b>			
	Project Completion	Approved completed compliance report.	Contract, Section C.5.B
	Project Completion	Work papers and supporting documentation	Contract, Section C.5.B
Weekly	Wednesday	Weekly Status Reports Includes budget status and assignment schedule, a compliance review assignment aging report, significant noncompliance or accounting issues identified and anticipated modifications to the review scope, objectives, budget, or review procedures.	Contract, Section C.5.B
As needed	Immediate	Notification of Key Meetings Immediate notification of Department Program Manager or designee of the setting of any key meetings	Contract, Section C.5.B
Weekly	Wednesday	Assignment Project Schedule delineated by staff position and extended billing totals for each review project for Department approval	Contract, Section C.5.B
As needed	As Assigned	Ad hoc reporting	Contract, Section C.5.B
<b>Section C.5.C – Other Activities</b>			
As negotiated in the Sub-Statement of Work initiating the assignment.			

## SECTION E - INSPECTION AND ACCEPTANCE

### E.1 INSPECTION OF SERVICES

- A. The Department has the right to inspect and validate all products, services and deliverables called for by this Contract, to the extent practicable at all times and places during the Contract. The Department shall perform inspections in a manner that shall not unduly interfere with the Contractor's performances of this Contract. The Contractor shall furnish, and shall require subcontractors to furnish, at no increase in this Contract's price, all reasonable assistance for the safe and convenient performance of these duties.
- B. If any of the deliverables do not conform to this Contract's requirements, the Department may require the Contractor to perform the deliverables or services again in conformity with this Contract's requirements, at no increase in this Contract's amount, in addition to all other legal and equitable remedies.
- C. The Department shall, subject to limitations provided by law with respect to rights of privacy, have the right to reasonably prompt access and to examine all records of the Contractor, including financial records, maintenance records, employee records including time, and attendance records generated by the Contractor and its subcontractors in connection with performance of this Contract.
- D. If subject to the outcome of an audit, it is determined that the Contractor is in non-compliance with any provisions of this Contract and/or that money is owed to the Department by the Contractor, then the Department may exercise its rights of recovery of money owed as authorized in Section G.3.3 of this Contract.
- E. If any of the services are non-compliant with the Contract requirements, the Contractor shall be notified describing specific areas of non-compliance. The Contractor shall have a five (5) day period to file a written response detailing corrective action taken to all such items of non-compliance. The response shall include supporting documentation. Unless otherwise specified, or previously agreed to by the 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 the Contractor and the Department, no further action regarding such items shall be taken. If an item of non-compliance cannot be resolved between the Contractor and the Department, and such item remains uncorrected for a period of ten (10) days or longer after written notification to the Contractor, then such item may be declared to be an Event of Default.

### E.2 INSPECTION BY STATE EMPLOYEES

- A. The Contractor shall provide and maintain all documentation pertaining to quality 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 the Department for the deliverables provided under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Department during this Contract's performance and for a period of four (4) years after the termination of this Contract.
- B. The Contractor shall provide entry at all times to the Department, the Public Safety Commission any authorized employee/agent for inspections and other official purposes.

The Governor, members of the Legislature and all other members of the Executive and Judicial Departments of the State, as well as any other persons designated by the Department including Office of the Inspector General, shall be admitted to monitor the delivery of Services.

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

- A. The Department shall devise its own procedures for monitoring the quality of the Contractor's performance under this Contract, and the Department's Policies.
- B. The Contractor shall cooperate fully with the Department in obtaining the requisite information needed to complete such audits and to assess the quality of the Contractor's performance.
- C. Monitoring may include, but is not limited to, document reviews and on-site audits conducted by Authorized Representatives of the Department. Such monitoring by the Department shall not relieve the 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 the Contractor, become an item of non-compliance as described in Section E.1.

## SECTION F - DELIVERIES OR PERFORMANCE

### F.1 PLACE OF PERFORMANCE

The Contractor shall be required to perform services at offices provided by the Contractor. Most staff is expected to be located near Houston or Austin.

### F.2 CONTRACT TERM

The Contract shall consist of a Base Period from Date of Award 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 (September 1, 2017 through February 28, 2018) 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. **The Contractor understands that the Department's exercise of a renewal Option Period under this Contract is subject to renewal by the State Auditor's office of its delegation of authority to the Department under Texas Government Code, Section 321.020.**

**SECTION G - CONTRACT ADMINISTRATION DATA****G.1 AUTHORITY – AUTHORIZED REPRESENTATIVE, CONTRACT ADMINISTRATOR, CONTRACT MONITOR****G.1.1 Authorized Representative**

- A. In the case of the Contractor, Managing Partner, its President or any Vice President shall designate the Authorized Representative in writing. The designation of the Contractor's initial Authorized Representative shall be delivered to the Department no later than the effective date of this Contract. The Contractor's Authorized Representative may designate other persons to assist such Authorized Representative in the performance of certain obligations required by this Contract.
- B. In the case of the Department, the Director is hereby designated as its Authorized Representative. The Director has established designee authority on his behalf for matters requiring signature approval of the Authorized Representative. The Department's Authorized Representatives may designate other persons to assist such Authorized Representatives in the performance of certain obligations of this Contract.
- C. 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 the Contractor by its President or any Vice President, or if on behalf of the 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. The Department's Authorized Representative (the Director) or his 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 designated representative. In the event the Contractor makes any change at the direction of any person other than the Director or his 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 Lisa C. Hidrogo.
- B. The telephone number for the Contract Administrator is (512) 424-5124.
- C. The facsimile number of the Contract Administrator is (512) 424-5419.
- D. The e-mail address is Lisa.Hidrogo@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 Contract Monitors**

- A. The Contract Monitor of this Contract is Paula Logan.
- B. The telephone number for the Contract Monitor is (512) 486-2642.
- C. The facsimile number of the Contract Monitor is (512) 424-2444.
- D. The e-mail address is Paula.Logan@dps.texas.gov.
- E. The Alternate Contract Monitor of this Contract is Karen Shaffer.
- F. The telephone number for the Alternate Contract Monitor is (512) 424-7048.
- G. The facsimile number of the Alternate Contract Monitor is (512) 424-2444.
- H. The e-mail address is Karen.Shaffer@dps.texas.gov.
- I. Contract Monitors are not authorized to make any representations or commitments of any kind on behalf of the Director of the Department or the State of Texas.
- J. The Contract Monitor does not have the authority to alter the Contractor's obligations or to change the Contract specifications, price, terms or conditions.
- K. If, as a result of technical discussions, it is desirable to modify this Contract obligations or the Statement of Work, changes shall be issued in writing and signed by the Director of the Department or his/her designee.

**G.1.3 Program Manager**

- A. The Program Manager of this Contract is Eric Kuntz.
- B. The telephone number for the Program Manager is (512) 486-6446.
- C. The facsimile number of the Program Manager is (512) 424-7819.
- D. The e-mail address is Eric.Kuntz@dps.texas.gov.
- E. The Program Manager is not authorized to make any representations or commitments of any kind on behalf of the Director of the Department or the State of Texas.
- F. The 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 shall be issued in writing and signed by the Director of the Department or his/her designee.

**G.1.4 Assignment Manager**

- A. The Assignment Manager for this Contract is Tennyle L. Walker.

- B. The telephone number for the Assignment Manager is (512) 469-3719.
- C. The cell-telephone number for Assignment Manager is (202) 550-3766.
- D. The facsimile number of the Assignment Manager is (210) 881-1805.
- E. The e-mail address for the Assignment Manager is Tennyle.Walker@us.gt.com.
- F. The Contractor shall provide an Assignment Manager for this Contract who shall be responsible for the overall management and coordination of this Contract and shall act as the central point of contact with the Department.
- G. The Assignment Manager shall have full authority to act for the Contractor in the performance of the required services. The Assignment Manager or a designated representative shall meet with the Program Manager to discuss problems as they occur. The Assignment Manager or designated representative shall respond within three (3) working days after notification of the existence of a problem.

## G.2 INVOICE REQUIREMENTS

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

The Contractor's Invoice shall include the following:

- 1. This Contract number;
  - 2. Remittance Address; and
  - 3. Prompt Payment Discount (the Contractor may offer a prompt payment discount, e.g., 1%, fifteen (15) days (refer to page 1, block 7 of this Contract) if the Contractor desires an expedited payment).
- A. An invoice copy shall be sent electronically to the three (3) e-mail addresses designated below:
- 1. TXDPS - Accounts Payable  
P.O. Box 4087  
Austin, Texas 78773  
[apinvoices@dps.texas.gov](mailto:apinvoices@dps.texas.gov)
  - 2. TXDPS – Division of Emergency Management  
Office of Management and Budget  
Attn: Section Administrator  
P.O. Box 4087, Austin, Texas 78773  
[Bradley.Jacobs@dps.texas.gov](mailto:Bradley.Jacobs@dps.texas.gov).
  - 3. TXDPS – Division of Emergency Management  
Recovery, Mitigation and Standards  
Attention: Contract Grant Administrator  
P.O. Box 4087, Austin, Texas 78773  
[TDEM.RMS@dps.texas.gov](mailto:TDEM.RMS@dps.texas.gov).

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

**G.3 PAYMENTS**

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

B. Regardless as to whether Direct Deposit is chosen, the Contractor shall submit a completed Contractor Maintenance Direct Deposit and Substitute W-9 Form (Exhibit J.6) to the following address:

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

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

D. In the event the 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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**G.3.1 Billing and Payment**

The Contractor shall bill the Department for Projects completed and accepted according to Section G.2, Invoice Requirements. The Contractor invoices shall be subject to the Department's usual auditing and accounting procedures, which shall be paid within thirty (30) days after receipt of an accurate Contractor's invoice.

**G.3.2 Compensation for Additional Services**

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

**G.3.3 Payment Adjustment**

A. The Department may elect to deduct from its Contractor Payment as specified in Section G.3.7 any amount or any money determined to be due as specified under Section E.1.E.

- B. If it is determined that the remaining amount of the Contractor Payment is not adequate to cover the money determined to be due to the Department, then all remaining Contractor Payment shall be withheld and an invoice issued to the Contractor for the remaining amount due.
- C. The Contractor shall be responsible to pay the invoiced amount within thirty (30) days of receipt unless the Contractor and the Department mutually agree on an alternative payment method.

#### **G.3.4 Late Payment**

Any amount owed to the Contractor more than one (1) day beyond the date such amount is due as described in Section G.3 hereof 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. The 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 upcoming event shall result in a deduction to the Contractor Payment.
- B. Non-Compliance could result in the 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. The 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.E; and
  - 3. Failure to correct identified areas of non-compliance to the satisfaction of the Department within twenty (20) days upon receipt of written notification.
- B. The Contractor agrees that the Department shall not pay interest to the Contractor for monies so withheld.
- C. The Contractor payment withheld shall be released upon the Department's satisfaction that compliance has been achieved.
- D. The Department shall withhold the final payment to the Contractor pending the Department's acceptance by and transfer of State-Owned property to the Department.
- E. In the event that money is due to the Department for the Contractor's failure to provide adequate maintenance or replacement of the property as required in this Contract, the amount required for the Department to correct deficiencies and replace property shall be withheld from the final payment.

- F. With the exception of disputed issues, such withholding of final payment by the 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 the Texas Government Code, Section 2252.903, the Contractor agrees that any payments due under a 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. The Contractor shall comply with rules adopted by the Department under the 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 the Contractor owes money to the Department under any contract or purchase order, the Department, upon providing the Contractor with written notice of its intent to offset, shall have the right to withhold monies due to the Contractor with respect to this Contract or purchase order or with respect to any contract or purchase order with the Department and apply such monies to the money due to the Department.

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

- A. The Contractor shall submit to the Contract Administrator the Contractor's proprietary financial reports and financial information acceptable to the Department within one hundred twenty (120) calendar days after the end of the Contractor's fiscal year.
- B. In the disclosure of its financial affairs, the Contractor agrees to allow the Department or its representatives access to its books related to the performance of and payments received within the terms of this Contract and with a mutually agreed upon third party paid for by the Contractor to verify unaudited financial statements the Contractor provides, and to provide the Department's Contract Administrator with the information below:

Consolidated financial statements of the 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 the consolidated financial position and result of operations of the 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 the 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.D) or, if such circumstance does exist, specifying the nature and extent thereof and the actions proposed to cure same.

- C. Notwithstanding anything else in this Section G.3.9 or any other provision of this Contract to the contrary, the Contractor shall fully cooperate with state and federal representatives in audits of the Contractor's performance and receipt of funds under this Contract or applicable law, including but not limited to, the audits described in Section H of this Contract.

## SECTION H - STANDARD TERMS AND CONDITIONS

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

- A. The Department is a state agency whose authority is subject to the actions of the Texas Legislature and the United State Congress. All obligations of the Department are subject to the availability of legislative appropriations or, if applicable, the availability of federal funds applicable to this Contract. The Contractor acknowledges that the ability of the Department to make payments under this Contract is contingent upon the availability of funds. The Contractor further acknowledges that funds may not be specifically appropriated for this Contract and the Department's continual ability to make payments under this Contract is contingent upon the funding levels appropriated to the Department.
- B. If the Department and/or the subject matter of this Contract become subject to a legislative or regulatory change or the revocation of statutory or regulatory authority that would render the deliverables to be provided under this Contract impossible, unnecessary, void, or substantially amended or that would terminate the appropriations for this Contract, the Department may immediately terminate this Contract, in whole or in part, without penalty to, or any liability whatsoever on the part of the Department, the State of Texas, and the United States. Termination under this section is immediate, so the Department is not required to provide thirty (30) calendar days written notice.
- C. The 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, the Department may immediately terminate this Contract, in whole or in part, without penalty to, or any liability whatsoever on the part of the Department, the State of Texas, and the United States. Termination under this section is immediate, so the 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 the Contractor is reduced by law, or the Legislative Budget Board requests the Department to reduce the Department budget by a certain percentage, the Department may, upon thirty (30) calendar days written notice to the Contractor, reduce the deliverables in such manner and for such periods of time as the Department may elect.

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

- A. The Contractor shall not make any news releases, public announcements or public disclosures, nor shall it have any conversations with representatives of the news media, pertaining to this Contract, without the express, prior written approval of the Department, and then only in accordance with explicit written instructions from the Department.
- B. The Contractor shall not use the name of the State of Texas or the Department in any advertisement, promotion or otherwise for any purpose regarding this Contract without the express prior written consent of the Department. The Department is not authorized to provide endorsements.

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

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

- A. If an Event of Default of the type specified in Section E.1.E occurs and the Contractor reasonably believes that such Event of Default cannot be cured within the ten (10) 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 the Contractor, within a reasonable period not to exceed three (3) months, then the Contractor may, within the ten (10) day cure period, submit a detailed plan for curing the Event of Default to the Department.
- B. Upon receipt of any such plan for curing an Event of Default, the Department shall promptly review such plan and at its discretion, which shall be reasonable in the circumstances, may allow, or not allow, the Contractor to pursue such plan of cure.
- C. The decision of the Department shall be communicated in writing to the Contractor.
- D. The Department agrees that it shall not exercise its remedies there under with respect to such Event of Default for so long as the Contractor diligently, conscientiously, and timely undertakes to cure the Event of Default in accordance with the approved plan.
- E. If the Department does not allow the Contractor an extension of the cure period, the ten (10) day time period shall be tolled during the period of time the request is pending before the 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 the 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 the Department, the Department may notify the 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 the Contractor fails to remedy such failure or default within the ten (10) calendar day period, the Department shall 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 the Department's liabilities hereunder. If these funds become unavailable to the Department, it may immediately terminate this Contract without penalty to or any liability whatsoever on the part of the Department, the State of Texas, and the United States.

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

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

#### **H.4.4 Termination by Mutual Agreement**

This Contract may be terminated upon mutual written agreement.

#### **H.4.5 Termination for Cause**

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

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

The Department shall have the absolute right to terminate this Contract without recourse as follows: a) if the Contractor becomes listed on the prohibited 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 the Contractor becomes suspended or debarred from doing business with the federal government as listed in the Excluded Parties List (EPLS) maintained by the General Services Administration; or ) if the Contractor becomes listed on the State of Texas Debarred Vendor List. The Department shall provide the Contractor with written notice to terminate this Contract, which termination shall become effective immediately upon the Contractor's receipt of the notice.

#### **H.4.7 General Termination Provisions**

- A. The termination of this Contract, under any circumstances whatsoever, shall not affect or relieve the Contractor from any obligation or liability that may have been incurred pursuant to this Contract, and such cancellation by the Department shall not limit any other right or remedy available to the Department at law or in equity.
- B. This Contract does not grant the Contractor a franchise or any other vested property right.
- C. In the event of termination hereunder, the 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 the Department whether such claims of the Contractor are for compensation of anticipated profits, unabsorbed overhead, interest on borrowing, or for any other reason.
- D. The Contractor shall, unless mutually agreed upon in writing, cease all work immediately upon the effective date of termination. The Department shall be liable for payments limited only to the portion of the work the Department authorized in writing and which the Contractor has completed, delivered to the Department, and which has

been accepted by the Department. All such work shall have been completed, per this Contract's requirements, prior to the effective date of termination.

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

## **H.5 DISPUTE RESOLUTION**

- A. Any dispute arising under this Contract, which is not disposed of by mutual agreement between the Department and the Contractor shall be resolved as follows:
  - 1. The dispute resolution process provided for in the Texas Government Code, Chapter 2260 shall be used, as further described herein, by the Contractor to attempt to resolve all disputes or contract claims arising under this Contract.
  - 2. The Contractor's claim for breach of this Contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in the Texas Government Code, Chapter 2260, Subchapter B.
  - 3. To initiate the process, the 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 78773.

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 the Department and the Contractor otherwise entitled to notice under this Contract.
  5. Compliance by the 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 the Texas Government Code, Chapter 2260, Subchapter C, is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of this Contract by the Department if the parties are unable to resolve a dispute under this Subparagraph (A).
  7. Compliance with the contested case process provided in Chapter 2260, Subchapter C, is a condition precedent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code.
  8. Neither the execution of this Contract by the Department nor any other conduct of any representative of the Department related to this Contract shall be considered a waiver of sovereign immunity to suit.
- B. In addition to complying with the Texas Government Code, Chapter 2260, the Contractor shall comply with the Department's 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, the Contractor shall continue providing the deliverables as directed, in a diligent manner and without delay, shall conform to the Department's directives, decisions, or orders, and shall be governed by all applicable provisions of this Contract, unless directed otherwise in writing by the 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 the 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 nonexclusive of any remedies provided by law or in equity, except as expressly set forth herein.
- C. Any failure of the Department, at any time, to enforce or require the strict keeping and performance of any provision of this Contract shall not constitute a waiver of such provision, and shall not affect or impair same or the right of the Department at any time to avail itself of same. Any acceptance, payment, or use by the Department regarding any deliverable shall not constitute a waiver or otherwise impair or prejudice any right,

power, privilege, or remedy available to the Department to enforce its rights, as such rights, powers, privileges, and remedies are specifically preserved.

#### **H.7 INDEMNIFICATION**

**THE CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD THE DEPARTMENT AND THE 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 THE 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 THE DEPARTMENT, THE STATE OF TEXAS (INCLUDING ITS DIRECTORS, EMPLOYEES, AGENTS, AND THEIR SUCCESSORS) BY ANY EMPLOYEE OF THE 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 THE CONTRACTOR OR ANY OF ITS SUBCONTRACTORS UNDER WORKERS' DISABILITY COMPENSATION ACTS, DISABILITY BENEFITS ACTS, OR OTHER EMPLOYEE BENEFITS ACTS.**

**THE 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 THE 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 THE CONTRACTOR'S OPINION BE LIKELY TO BECOME, THE SUBJECT OF A CLAIM OF INFRINGEMENT, THE CONTRACTOR, AT ITS OWN EXPENSE, SHALL: (1) PROCURE FOR THE DEPARTMENT THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, GOODS, ETC.; OR (2) IF SUCH OPTION IS NOT REASONABLY AVAILABLE TO THE CONTRACTOR, THE CONTRACTOR SHALL REPLACE OR MODIFY THE SAME WITH EQUIPMENT, SOFTWARE, GOODS, ETC., OF EQUIVALENT FUNCTIONS AND PERFORMANCE SO THAT IT BECOMES NON-INFRINGEMENT.**

**THE CONTRACTOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY THE DEPARTMENT. THIS CLAUSE IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE THE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE DEPARTMENT FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE DEPARTMENT OR ITS EMPLOYEES.**

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

#### **H.8 NO WAIVER OF DEFENSES**

- A. The Department does not waive, release or otherwise forfeit any possible defense it may have regarding claims arising from or made in connection with this Contract.
- B. The 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 the 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. The Department is associated with the Contractor only for the purposes and to the extent set forth herein, and with respect to the deliverables hereunder, the 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 the Department whatsoever with respect to the indebtedness, liabilities, and obligations of the 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 the Texas Government Code, Chapter 2260 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**

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

#### **H.12 MAINTENANCE OF CORPORATE EXISTENCE AND BUSINESS**

- A. The Contractor, if incorporated, shall at all times maintain its corporate existence and authority to transact business and be in good standing in its jurisdiction of incorporation and the State of Texas.
- B. The Contractor shall maintain all licenses, permits and franchises necessary for its businesses where the failure to so maintain may have a material adverse effect on the Contractor's ability to perform its obligations under this Contract.

#### **H.13 APPROVAL OF CONTRACT**

- A. This Contract is subject to written approval of the 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 and 00/100 (\$1,000,000.00) 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, the 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. The 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. The 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, the 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. The Contractor shall include the provisions of the foregoing paragraphs in every subcontract so that such provisions shall be binding upon each subcontractor or vendor.
- D. The Contractor represents and warrants that it shall comply with the requirements of the Americans with Disabilities Act (ADA).

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

- A. Except as provided in Section H.15.B, all 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. These changes requiring formal Contract modifications signed by both parties include but are not limited to proposed additional Sub-Statements Of Work under Task Area Three, Section C.5.C.
- B. The following approvals under this Contract shall be provided by the Department's Program Manager or designee and shall not require a written bilateral modification signed by both parties under Section H.15.A:
  - 1. Assignments, Budgets or changes or modifications of Assignments and Budget Approvals under Section C.5.A, Task Area One.
  - 2. Assignments, Budgets or changes or modifications of Assignments and Budget Approvals under Section C.5.B, Task Area Two.

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

- A. The Department may, at its sole discretion, extend the term of this Contract by written Contract modification to the Contractor within ten (10) calendar days of Contract expiration, provided that the Department shall give the 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 the Department to an extension.
- C. If the Department exercises this option, the extended Contract shall be considered to include this option provision.

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

- A. The Department may require continued performance of any services within the limits and at the rates specified in this Contract.
- B. The Department reserves the right to extend this Contract for a ninety (90) 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/or 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. The Department may exercise the option by written notice to the 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**

The 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 shall perform any labor or services under this Contract.

**H.20 LIMITATION ON AUTHORITY**

The Contractor shall have no authority to act for or on behalf of the Department or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. The Contractor shall not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or the 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 the Texas Government Code, Sections 411.003 and 411.004:

- A. Any contract or commitment in which the total amount of agency funds involved including potential renewal options is one million dollars and 00/100 (\$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 (50%) or more, as long as the dollar amount of the change order(s) is one hundred thousand dollars and 00/100 (\$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 dollars and 00/100 (\$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 the 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) the Department's submission of such contract or commitment to the Commission; and 2) the Department's compliance with any Commission directive regarding such contract or commitment, prior to the 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**

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

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

- A. The Contractor shall comply with all applicable state, federal and local laws and ordinances in providing deliverables to the Department under this Contract. Without limiting the generality of the foregoing, the Contractor shall be able to demonstrate compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of W-2s to common law employees. The Contractor is responsible for both federal and state unemployment insurance coverage and standard workers' compensation insurance coverage. The Contractor shall comply with all federal and state tax laws and withholding requirements. The Department shall not be liable to the Contractor/subcontractor(s) or its employees for any unemployment insurance or workers' compensation coverage or federal or state tax withholding requirements. The Contractor may be required to demonstrate compliance with such laws at the written request of the Department.
- B. Except as stated otherwise in this Contract, the Contractor shall provide all labor and equipment necessary to furnish the deliverables under this Contract. All employees of the Contractor 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 the Department, no visitors or relatives of the Contractor's employees and subcontractors shall be allowed on State property unless they are bona fide employees or subcontractors of the Contractor performing work under this Contract.
- C. The 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, the Contractor and the 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 the Contractor's personnel have failed to comply with such laws, regulations or rules, the Department shall have the right to require the Contractor to remove such person from any involvement in this Contract.

**H.25 FORCE MAJEURE**

- A. Neither the Contractor nor the 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. The Contractor shall immediately upon discovery notify the Department's 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, the Contractor shall give written notice to the Department. The Department has the right to extend the delivery date if reasons appear valid. The Contractor shall keep the Department advised at all times of status of the deliverable. Default in promised (without accepted reasons) or failure to meet specifications authorizes the Department to purchase deliverables elsewhere and charge full increase in costs, if any, to the Contractor, in addition to all other legal and equitable remedies.

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

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

#### **H.28 SURVIVAL**

Any provisions of this Contract that impose continuing obligations on the Parties including, but not limited to the following, shall 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
- 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. 29 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.30 EMPLOYEE NON-SOLICITATION**

The 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 the Contractor had substantial contact in the course of performing its obligations under this Contract. Indirect solicitations, such as newspaper and internet announcements, are not prohibited by this section.

**H.31 COMMENCEMENT OF WORK**

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

**H.32 ROLLING ESTOPPEL**

- A. The Department shall be conclusively deemed to have fulfilled its obligations under this Contract, unless the Department receives a deficiency report from the Contractor within twenty (20) business days of the occurrence of the alleged deficiencies and the Contractor identifies specific deficiencies in the Department's fulfillment of its obligations in that report. Deficiencies shall be described in terms of how they have impacted the specific performance requirement of the Contractor. The Contractor is estopped from claiming that a situation has arisen that might otherwise justify changes in the project timetable, the standards of performance under this Contract, or the project cost, if the Contractor knew of that problem and failed to include it in the applicable report. The deficiency report shall be sent to the Department's Program Monitors.
- B. In the event the Contractor identifies a situation wherein the Department is impairing the Contractor's ability to perform for any reason, the Contractor's deficiency report shall contain the Contractor's suggested solutions to the situation(s). These suggestions should be in sufficient detail so that the Department's 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.33 SALES AND USE TAX**

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

**H.34 NOTICES**

Any notice required or permitted under this Contract shall be directed to the Contract Authorized Representative/the Department's Contract Administrator respectively, as specified in Section G.1 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. to the information of the Contract Administrator as referenced in Section G.1.

B. to the information of the Authorized Representative as referenced in Section G.1.

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.35 MOST FAVORED CUSTOMER**

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

### **H.36 STATE EXCULPATION**

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

### **H.37 TITLE AND RISK OF LOSS**

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

### **H.38 AVAILABILITY OF DEPARTMENT MANPOWER**

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

### **H. 39 INTERPRETATION AGAINST DRAFTER**

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.40 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.41 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.42 RECALL NOTICE**

The Contractor shall, immediately upon discovery of same, advise the 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 Department's Program Manager.

**H.43 COMPETENCE AND LACK OF RELIANCE OF DEPARTMENT REPRESENTATIONS**

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

**H.44 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.45 LITIGATION OR FELONY CRIMINAL CONVICTIONS**

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

**H.46 PROHIBITED USE OF APPROPRIATED OR OTHER FUNDS UNDER CONTROL OF STATE AGENCY LOBBYING**

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

**H. 47 FALSE STATEMENTS**

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

**H.48 APPROVAL OF EMPLOYEES**

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

**H.49 PUBLIC INFORMATION ACT**

- A. Notwithstanding any provisions of this Contract to the contrary, the Contractor understands that the Department is subject to and shall comply with the Texas Public Information Act, the 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 the Department by the Contractor, are subject to release as public information, unless a specific exception to disclosure under the Texas Public Information Act applies.
- B. The Department agrees to notify the Contractor in writing within a reasonable time from receipt of a request for information related to the Contractor's work under this Contract. The Contractor shall cooperate with the Department in the production of documents responsive to the request. The Department shall make a determination whether to submit a Public Information Act request to the Attorney General. The Contractor shall notify the Department within twenty-four (24) hours of receipt of any third party requests for information that was provided by the State of Texas for use in performing this Contract.

## H.50 PERSONNEL

### H.50.1 Qualifications of Personnel

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

### H.50.2 Replacement of Personnel at Department Request

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

is intended to give the Department only the right to require that the Contractor discontinue using particular personnel in the performance of deliverables for the Department.

### **H.50.3 Unauthorized Removal of Personnel**

It is critical to the overall success of the project that the Contractor not remove or reassign, without the 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 the Contractor's obligations under this Contract. Without prior written approval from the Department, personnel shall only be changed in the event of death, personal injury, debilitating illness, or termination of employment with the Contractor. The unauthorized removal of personnel by the Contractor shall be considered by the Department as a material breach of this Contract and grounds for termination.

### **H.51 UTILIZATION OF PRODUCTS AND MATERIALS PRODUCED IN TEXAS**

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

### **H.52 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, the Contractor shall continue to retain said records and documents until all litigation, claims or audit findings are resolved, meaning that there is a final court order from which no further appeal may be made, or written agreement is entered in to between the Contractor and the Department.

### **H.53 ORGANIZATIONAL AND NAME CHANGE**

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

### **H.54 DEPARTMENT POLICIES AND PROCEDURES**

- A. The Contractor's Authorized Representative shall provide the following to the Department's Program Manager within ten (10) calendar days of executing the contract:
1. The completed Department Contractor Background Information form (HQ-22) for all proposed personnel; and
  2. Acceptable fingerprints for all proposed personnel.

The 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. The Department has the right to prevent the Contractor's personnel from gaining access to the Department's building(s) and computer systems if the Department determines that such personnel did not pass the background check or failed to otherwise maintain a security clearance. Reference Section I.6 entitled "Criminal History Background Checks" for details on this requirement.

#### **H.55 INFORMATION TECHNOLOGY STANDARDS**

The 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 the Contractor in its performance of this Contract as such standards, policies, and procedures are amended by the DIR or the State throughout the term of this Contract, including any renewal or optional periods. The Information Resource Manager designed by the Department shall assist the Contractor in reviewing these standards, policies and procedures and identifying those that are applicable to the Contractor in its performance of this Contract. The DIR website can be viewed at [www.dir.state.tx.us](http://www.dir.state.tx.us).

#### **H.56 WARRANTIES**

##### **H.56.1 Third Party Warranties**

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

##### **H.56.2 Contractor Warranties**

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

- A. The Contractor/subcontractor(s) shall create and deliver all deliverables in accordance with the highest professional standards in the industry.
- B. The Contractor/subcontractor(s) shall use adequate numbers of qualified individuals with suitable training, education, experience, and skill to create and deliver the deliverables.
- C. The 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. The Contractor/subcontractor(s) shall use its best efforts to create and deliver the deliverables in the most cost-effective manner consistent with the required level of quality and performance.
- E. The Contractor/subcontractor(s) shall create and deliver the deliverables in a manner

- that does not infringe the proprietary rights of any third party.
- F. The Contractor/subcontractor(s) shall create and deliver the deliverables in a manner that complies with all applicable laws and regulations.
  - G. The Contractor has duly authorized the execution, delivery, and performance of this Contract.
  - H. The Contractor/subcontractor(s) has not provided any gifts, payments, or other inducements to any officer, employee, or agent of the Department.
  - I. The Contractor/subcontractor(s) shall not infringe any intellectual property right of any third party. In the course of performing work under this Contract, the Contractor/subcontractor(s) shall not use or copy any intellectual property owned by a third party without paying any required license fees or royalties.

#### **H. 57 DRUG-FREE WORKPLACE**

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

#### **H.58 AUTHORITY TO AUDIT**

- A. The Contractor understands that acceptance of funds directly under this Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds during the term of this Contract and for a period of four (4) years after termination of this Contract. The Contractor 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 the Contractor relating to this Contract.
- B. The Contractor shall ensure that this clause concerning the authority to audit funds, received either directly or indirectly, and the requirement to cooperate fully with the State Auditor's Office is included in any subcontract it awards.
- C. The Contractor shall reimburse the State of Texas for all costs associated with enforcing this provision.
- D. The Department reserves the right to audit the Contractor's records and documents regarding compliance with this Contract. The Contractor is also subject to audit by any other department or agency, including federal agencies, responsible for determining that the Department and the Contractor have complied with the applicable laws.

- E. Except as stated otherwise in the section herein entitled "Confidentiality and Security Requirements," the 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 the Department or the Contractor, the Contractor, shall refund the Department the full amount of such overpayments within thirty (30) days of such audit findings, or the Department at its option, reserves the right to deduct such amount owing to the Department from any payments due the Contractor.

#### **H.59 FRAUD, WASTE OR ABUSE**

- A. Fraud, waste or abuse provisions are included in Section H, Standard Terms and Conditions.
- B. In accordance with the Texas Government Code, Chapter 321, the State Auditor's Office (SAO) is authorized to investigate specific acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt or use of state funds.
- C. 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 the Department Office of the Inspector General at (512) 424-2015, the Department's Chief Auditor's Office at 512-424-4403, or Crime Stoppers at 1-800-832-8477.

#### **H.60 REDACTED DOCUMENTATION**

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

#### **H. 61 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 the 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 the Department by the Contractor upon completion, termination, or cancellation of this Contract. The Contractor may, at its own expense, keep copies of all its writings for its personal files. The Contractor shall not use, knowingly allow, or cause to have such materials used for any purpose other than the performance of the Contractor's obligations under this Contract without the prior written consent of the Department; provided, however, that the 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.

## **H.62 CONFIDENTIALITY AND SECURITY REQUIREMENTS**

### **H.62.1 General Confidentiality Requirements**

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

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

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

The Contractor shall notify TXDPS in writing of any unauthorized release of confidential information within two (2) business days of when the Contractor knows or should have known of such unauthorized release.

The Contractor further agrees to notify sub-recipient in writing of any unauthorized release of confidential information within two (2) business days of when the Contractor knows or should have known of any unauthorized release of confidential information obtained from sub-recipient(s).

The Contractor agrees to maintain all confidential information, regardless whether obtained from TXDPS or from sub-recipient(s) in confidence during the term of this contract and after the expiration or earlier termination of this Contract.

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

The Contractor acknowledges that TXDPS' and sub-recipient(s) confidential information is unique and valuable, and that TXDPS and sub-recipient(s) may have no adequate remedy at law if the Contractor does not comply with its confidentiality obligations under this Contract. Therefore, TXDPS 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 the Contractor if the Contractor fails to perform any of its confidentiality obligations under this Contract.

The Contractor shall immediately return to TXDPS 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 TXDPS requests that such confidential information be returned.

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

The FBI and TXDPS have computer security requirements. The Contractor's and subcontractor's employees working on this assignment shall sign and submit appropriate agreements and abide by these security requirements, within five (5) calendar days of a TXDPS' request.

#### **H.62.2 Sensitive Personal Information**

To the extent this subsection does not conflict with the subsection herein entitled "General Confidentiality Requirements," the Contractor shall 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 the Contractor maintains under this Contract, including data that is encrypted if the 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 the Contractor for the purposes of performing under this Contract is not a breach of system security unless the employee or agent of the Contractor uses or discloses the sensitive personal information in an unauthorized manner.

The 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 the Contractor under this Contract.

The Contractor shall notify TXDPS, any affected sub-recipient 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, the Contractor shall delay providing notice to the affected people and sub-recipients at TXDPS' request, if TXDPS determines that the notification shall impede a criminal investigation. The notification to the affected people shall be made as soon as TXDPS determines that it shall not compromise any criminal investigation.

The Contractor shall give notice as follows, at the 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 the Contractor demonstrates that the cost of providing notice would exceed \$250,000, the number of affected people exceeds 500,000, or the Contractor does not have sufficient contact information for the affected people, the Contractor may give notice as follows:
    - i. Electronic mail, if the Contractor has an electronic mail address for the affected people;
    - ii. Conspicuous posting of the notice on the Contractor's website;
    - iii. Notice published in or broadcast on major statewide media; or
  - b) If the 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," the Contractor may provide notice in accordance with that policy.

If this subsection requires the Contractor to notify at one time more than 10,000 people of a breach of system security, the 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, TXDPS is authorized to assess liquidated damages in the amount of (\$150,000.00) against the Contractor for the following damages; however, TXDPS reserves the right to claim actual damages for any damages other than the following: limited to the initial assessment and review of lost or compromised data. This amount is a reasonable estimate of the damages TXDPS shall suffer as a result of such breach and is enforceable. The 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 the Contractor, the Contractor's subcontractor, or the Contractor's agent. Any liquidated damages assessed under this Contract may, at TXDPS' option, be deducted from any payments due the Contractor. TXDPS has the right to offset any liquidated damages payable to TXDPS, as specified above, against any payments due to the Contractor. If insufficient payments are available to offset such liquidated damages, then Contractor shall pay to TXDPS any remaining liquidated damages within fifteen (15) calendar days following receipt of written notice of the amount due.

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

- A. Prior to the execution of this Contract, the Contractor shall provide the Department with proof of insurance coverages and shall maintain the insurance coverages listed herein throughout the term of this Contract. The Contractor has represented to the Department that the Contractor is prohibited from adding the Department as an additional insured to the Contractor's Workers' Compensation, Professional Liability, Cyber insurance, and Commercial Crime policies; therefore the Contractor shall ensure that the the Department shall be included as an additional insured on all policies other than Workers' Compensation, Professional Liability, Cyber Liability and Commercial Crime policies described below.. The Department shall be included as a loss payee on the Commercial Crime policy described below. In addition, the Department shall be included as a certificate holder under all policies described below.
- B. The insurance coverages shall be evidenced by prompt delivery to the Department upon its request of certificates of insurance executed by the insurer, or its authorized agent or representative, stating the coverage, limits, expiration dates and compliance with all applicable required provisions.
- C. Copies of certificates evidencing changes to insurance coverages, including extensions, renewals, cancellations and revisions shall be submitted to the Contract Administrator within thirty (30) calendar days of the effective date. This provision of this Contract is the Department's standing request to the Contractor for this information and no other ad hoc requests by the Department for same shall be required for the Department to invoke the Contractor's compliance with these provisions.
- D. All required insurance coverages shall contain endorsements prohibiting cancellation except upon at least thirty (30) calendar days prior written notice of cancellation to the Department; however, for all insurance coverages for which Contractor determines it is unable to obtain such endorsements and notifications, the Contractor shall provide at least thirty (30) calendar days prior written notice of cancellation to the Department Also, all required insurance coverages shall not be cancelled except upon the Contractor providing at least thirty (30) calendar days prior written notice to the Department or the Contractor providing the Department with at least thirty (30) calendar days prior written notice as provided in this Section I.1.D.
- E. The Contractor represents and warrants that all coverages are with companies duly licensed, admitted and authorized to do business in Texas, with "A VII" or better rating from A.M. Best Co. or in the case of surplus lines carriers for Professional Liability Insurance are with companies duly authorized to do business in Texas with such a rating or better, and authorized to provide the required coverages. The Contractor also represents and warrants that all of the above policies contain endorsements prohibiting cancellation exception upon at least thirty (30) calendar days prior written notice to the Department or as provided in Section I.1.D, the Contractor shall provide the Department with at least thirty (30) calendar days prior written notice as provided in Section I.1.D. The Contractor shall, within the time provided above, furnish proof to the Department of such coverage in the form of a Certificate of Insurance from the Contractor's insurance carrier or carriers, its authorized agent or representative indicating the above coverages. The Certificate shall be addressed to the Texas Department of Public Safety

as the Certificate holder and shall specify those policies for which the Department is included as an additional insured.

- F. The Contractor represents and warrants that, within five (5) business days of receipt of notice of tentative contract award, it shall provide the Department with proof of coverage and represents and warrants that it shall maintain the following coverages throughout the term of this Contract, at the 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 dollars and 00/100 ( \$500,000.00) per each accident; and b) by disease, five hundred thousand dollars and 00/100 (\$500,000.00) per employee with a per policy aggregate of one million dollars and 00/100 (\$1,000,000.00).
  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 dollars and 00/100 (\$2,000,000.00) per occurrence. Such coverage can be made up of a combination of primary and umbrella/excess coverage policies.
  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 limits for bodily injury (including death) and property damage limits of two million dollars and 00/100 (\$2,000,000.00) per occurrence, two million dollars and 00/100 (\$2,000,000.00) products/completed operations aggregate and five million dollars and 00/100 (\$5,000,000.00) general aggregate. Such coverage can be made up of a combination of primary and umbrella/excess coverage policies.
    - 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 the Department.
    - b. Coverage, including any renewals, if written on a claims-made form, shall have the same retroactive date as the original policy applicable to this Contract.
    - c. The CGL policy shall include coverage for the property of third parties.
    - d. For those policies requiring the Department to be named as an additional insured, the Department shall be named as an additional insured by using endorsement CG2026 or broader. For those policies requiring the Department to be included as an additional insured, the Department shall be included by using a Blanket Additional Insured endorsement.
- G. **Professional Liability** (including Errors and Omissions) including coverage for the rendering of, or failure to render, professional services with minimum limits of one million dollars and 00/100 (\$1,000,000.00) per claim, two million dollars and 00/100 (\$2,000,000.00) annual aggregate.

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

- H. **Commercial Crime Insurance** to cover losses from Employee Dishonesty with a minimum limit of fifty thousand dollars and 00/100 (\$50,000.00) each occurrence endorsed to cover third party property. The Department shall be a joint loss payee.
- I. **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 the Contractor under or as a result of this Contract. This insurance shall provide sufficient coverage(s) for the Contractor, the Department, and affected third parties for the review, repair, notification, remediation and other response to such events, including but not limited to, breaches or similar incidents under Chapter 521, Texas Business and Commerce Code. Prior to contract execution, the Department may, in its sole discretion, confer with the Texas Department of Insurance to review such coverage(s) prior to approving them as acceptable under this Contract. Thereafter, the Contractor shall endeavor to obtain modified coverage(s) as reasonably requested by the Department within ten (10) calendar days of the Contractor's receipt of such request from the Department. In making requests for the Contractor to obtain modified coverages for Cyber Insurance under these provisions, the Department shall confer with the Texas Department of Insurance to determine that the requested modifications are available in the insurance market at a commercially reasonable cost.

#### **I.1.1 Additional Provisions**

The Contractor agrees that with respect to the above required insurance:

- A. The Commercial General Liability and Automobile policies contain and state, in writing, the name or Include, as specified in the above provisions, the Department and its officers, employees and representatives as additional insureds to all applicable policies.
- B. The Commercial General Liability and Automobile policies shall include blanket waiver of subrogation for bodily injury (Including death), property damage or any other loss for claims related to the Contractor's negligence.
- C. All insurance contracts and certificate(s) of insurance shall contain and state, in writing, that the Contractor's insurance is the primary insurance in regards to the Department, its officers, employees and elected representatives for claims related to the Contractor's negligence. This provision is not applicable to the professional liability, workers compensation, cyber, or crime policies.
- 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. The Contractor through an insurance agent authorized to do business in the State of Texas shall obtain all insurance coverage and an insurance company authorized to issue such coverage in Texas shall provide such coverage.
- G. All insurance coverage obtained by the Contractor shall continue in full force and effect during the term of the Contract. No Contract shall be entered into between the Contractor and the Department unless acceptable insurance certificates are received by the Department by the date scheduled for the execution of the Contract. Proof of insurance policies in a form acceptable to the Department shall be delivered prior to the date on which the services of the Contractor shall commence.
- H. All insurance coverages shall be provided by insurance carriers duly licensed and admitted or authorized as described in Section I.1.E. Best or equivalent rating by a similar insurance rating service.
- I. The Contractor may choose the amount of deductible for any other insurance coverage required (above) to be obtained by the Contractor; however except as it relates to professional liability insurance, in no event shall such deductible for each occurrence exceed five (5) percent of the required yearly aggregate limit of coverage.
- J. The Contractor shall be responsible for the first dollar defense coverage. All general liability and professional liability policies shall provide defense in addition to the policy limits; however, on the prior written approval of the Department, the Contractor's policy limits may be inclusive of the defense.
- 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 and maintain for its 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 shall be at least as broad as the primary coverage.

### **I.1.2 Subcontractor's and Independent Contractor's Insurance**

The Contractor's insurance policies shall provide coverage for the Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, and any other representatives who may provide services under this Contract. The Contractor shall require any subcontractors or independent contractors providing services under this Contract to maintain insurance policies in compliance with requirements for the Contractor under this Contract. The Contractor shall monitor compliance of such subcontractors and independent contractors with these requirements throughout the term of this Contract.

### **I.2 SUBCONTRACTS**

- A. The Contractor shall assume full responsibility for all deliverables under this Contract. The Department shall consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges under this Contract. If any part of the deliverables is planned to be subcontracted, the Contractor shall include a list of all subcontractors, including the firm name, address, and contact

person of each subcontractor, a complete description of the deliverables to be subcontracted, financial statements for each subcontractor, and descriptive information concerning each subcontractor's qualifications.

- B. The Contractor shall not delegate any duties under this Contract to a subcontractor unless the Department has given written consent to the delegation. The Department shall have the right to approve all subcontractors and to require the Contractor to replace any subcontractor found, in the opinion of the Department, either initially or based on performance, to be unacceptable.
- C. The management of any subcontractor shall be the sole responsibility of the Contractor, and failure by a subcontractor to perform shall be deemed to be failure of the Contractor. The Contractor shall make all payments to subcontractors and suppliers. The Department shall not direct payments for deliverables acquired in connection with this Contract other than to the Contractor, nor shall the Department release the Contractor from having to perform any obligations under this Contract, notwithstanding the fact that a subcontractor may have been engaged by the Contractor to perform those obligations.
- D. The Contractor 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.
- E. This Section 1.2 and other provisions of this Contract relating to Contractor's subcontractors shall also apply to independent contractors provided by the Contractor under this Contract.

### **I.3 HISTORICALLY UNDERUTILIZED BUSINESSES (HUB) REQUIREMENTS**

The HUB Sub-Contracting Plan (HSP) submitted with the Qualification is accepted, and becomes part the Contract and is attached as Exhibit J.1.

After contract award, the Department shall coordinate a post-award meeting with the successful Contractor to discuss HSP reporting requirements. The 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 the 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 the Department's Contract Manager and/or HUB Program Office within 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, the Department shall evaluate to determine the probability of additional subcontracting opportunities. The Contractor shall submit any HSP change request for the 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 the contractor decides to subcontract any part of the 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. The 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**

- A. The Department reserves the right to assess liquidated damages at an amount up to that specified in this Contract or Project Assignment, if any, for each calendar day the Contractor misses the deadline for each deliverable. The Parties acknowledge that the harm that shall be caused to the Department by such a delay is difficult to estimate; however, the amount of liquidated damages listed herein is a reasonable estimate and is enforceable.
- B. The Contractor shall not be responsible and liquidated damages may not be assessed due to any delay caused by schedule amendments requested by the Department, delays as the result of activity that is the responsibility of the Department Project Team, as long as the Contractor timely files its deficiency report as required by the Section herein entitled "Rolling Estoppel" or delays that the Department deems were outside the control of the Contractor. The burden of proof that the delay is attributable to the Department rests with the Contractor.
- C. Any liquidated damages assessed under this Contract may, at the Department's option, be deducted from any payments due to the Contractor. The Department has the right to offset any liquidated damages payable to the Department, as specified above, against any payments due to the Contractor. If insufficient payments are available to offset such liquidated damages, then the Contractor shall pay to the Department any remaining liquidated damages within fifteen (15) calendar days following receipt of written notice of the amount due.

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

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

#### **I.6 OTHER AUDITS**

DHS, FEMA, Comptroller General of the United States, SAO, TXDPS, and any other authorized agency as designated by the Department, reserve the right to audit the Contractor during or after

the performance period. The Contractor shall grant access to all contract related records and take such action to facilitate the performance of such audit(s) conducted pursuant to this Section.

#### **I.7 RECORDS RETENTION**

The Contractor shall retain records for a period of at least three (3) years from the day the Contractor submits its final invoice or expenditure report. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the 3-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later. Contract records include financial and program/progress reports, support documents, statistical records, draft and final reports, memoranda of discussions with the Department, and other documents (including but not limited to travel and other receipts) that support the activity and/or expenditure of the contract funds. These materials shall be made available for inspection by the Department, State Auditor's Office (SAO), the Department of Homeland Security (DHS), FEMA, or any other authorized agency as designated by the Department, upon request for the purpose of making audits, examinations, excerpts, and transcriptions.

#### **I.8 CRIMINAL HISTORY BACKGROUND CHECKS**

Upon request, all the Contractor personnel who shall be performing work under this Contract shall submit to a TXDPS fingerprint-based criminal history background investigation and obtain a security pass prior to performing work under this Contract. The Department has the right to prevent the Contractor personnel from working on the contract, including gaining access to the building(s) and computer system(s) if the Department determines that the person does not pass the background check or fails to otherwise maintain a security clearance.

The Contractor shall also provide the sub-recipient by e-mail, or otherwise in writing, a list of the names and staff positions of personnel initially assigned to a compliance review and shall notify the sub-recipient of personnel changes specifically, when a Contractor's staff person is added or shall no longer be working on their assigned compliance review(s). A copy of that notice shall be provided to the Department Program Manager or designee. The Department Program Manager or designee shall also be notified in like manner when a contractor's staff member is no longer expected to be working on this Contract.

**SECTION J - LIST OF EXHIBITS**

<b>EXHIBIT NO.</b>	<b>TITLE</b>	<b>NUMBER OF PAGES</b>
J.1	HUB Subcontracting Plan (Section I.3)	13
J.2	Direct Deposit form (Section – G.3)	2
J.3	Contractor W-9 Form (Section G.3.C)	1
J.4	TX Application for Payee Identification Number	2
J.5	Contractor Background Clearance (HR-22) – (Section-I-6)	1
J.6	Compliance Review Budget (Section C.5.B)	2
J.7	Grant Monitoring Budget (Section C.5.A)	3



# HUB Subcontracting Plan (HSP) Quick Checklist

**Method 1 – If all (100%) of your subcontracting opportunities will be performed using only HUB vendors, complete:**

- Section 1 - Respondent and Requisition Information
- Section 2 a. – Yes, I will be subcontracting portions of the contract
- Section 2 b. – List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors
- Section 2 c. – Yes
- Section 4 – Affirmation
- HSP GFE Method A (Attachment A) – Complete this attachment for each subcontracting opportunity

**Method 2 – If any of your subcontracting opportunities will be performed using HUB protégés, complete:**

- Section 1 - Respondent and Requisition Information
- Section 2 a. – Yes, I will be subcontracting portions of the contract
- Section 2 b. – List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to HUB protégés (Skip Section 2 c and 2 d)
- Section 4 – Affirmation
- HSP GFE Method B (Attachment B) – Complete Section B-1, Section B-2, and B-4 only for each HUB Protégé subcontracting opportunity as applicable.

**Method 3 – If you are subcontracting with HUB vendors and Non-HUB vendors, and the aggregate percentage of the contract you will subcontract with a 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, complete:**

- Section 1 - Respondent and Requisition Information
- Section 2 a. – Yes, I will be subcontracting portions of the contract
- Section 2 b. – List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to HUB vendors and Non HUB vendors
- Section 2 c. – No
- Section 2 d. – Yes
- Section 4 – Affirmation
- HSP GFE Method A (Attachment A) – Complete this attachment for each subcontracting opportunity

**Method 4 – If you are subcontracting with HUB vendors and/or Non-HUB vendors, and the aggregate percentage of the contract you will subcontract with a Texas certified HUBs, with which you have a continuous contract\* in place with for five (5) years or less, does not meet or exceed the HUB Goal, complete:**

- Section 1 - Respondent and Requisition Information
- Section 2 a. – Yes, I will be subcontracting portions of the contract
- Section 2 b. – List all the portions of work you will subcontract, and indicated the percentage of the contract you expect to award to HUB vendors and Non HUB vendors
- Section 2 c. – No

- Section 2 d. – No
- Section 4 – Affirmation
- HSP GFE Method B (Attachment B) – Complete this attachment for each subcontracting opportunity

**Method 5 – If you are not subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., equipment, supplies, materials, and/or employees), complete:**

- Section 1 – Respondent and Requisition Information
- Section 2 a. – No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources
- Section 3 – Self Performing Justification
- Section 4 – Affirmation

*\*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.*



# 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)(iii), 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: \_\_\_\_\_ State of Texas VID #: \_\_\_\_\_  
 Point of Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_ Fax #: \_\_\_\_\_
- b. Is your company a State of Texas certified HUB?  - Yes  - No
- c. Requisition #: \_\_\_\_\_ Bid Open Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_  
(mm/dd/yyyy)

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

**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 continuous contract* in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs .
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/prog/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.



**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.)

**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/proq/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.

\_\_\_\_\_  
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.



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

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

**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 #: \_\_\_\_\_ Description: \_\_\_\_\_

## 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?
		/ /	<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		/ /	<input type="checkbox"/> - Yes <input type="checkbox"/> - No
		/ /	<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?
	/ /	<input type="checkbox"/> - Yes <input type="checkbox"/> - No
	/ /	<input type="checkbox"/> - Yes <input type="checkbox"/> - No

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

Enter your company's name here: _____	Requisition #: _____
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**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 # <small>(Required if Texas Certified HUB)</small>	Approximate Dollar Amount	Expected Percentage of Contract
	<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		\$	%
	<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):

**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.

# 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:		State of Texas VID #: <span style="border-bottom: 1px solid black; width: 30%;"></span>
Point-of-Contact:		Phone #: <span style="border-bottom: 1px solid black; width: 30%;"></span>
E-mail Address:		Fax #: <span style="border-bottom: 1px solid black; width: 30%;"></span>

<b>Section B</b>	<b>CONTRACTING STATE AGENCY AND REQUISITION INFORMATION</b>	
Agency Name:		
Point-of-Contact:		Phone #: <span style="border-bottom: 1px solid black; width: 30%;"></span>
Requisition #:		Bid Open Date: <span style="border-bottom: 1px solid black; width: 30%;"></span>

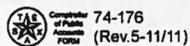
<b>Section C</b>	<b>SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION</b>	
<b>1.</b>	<p style="text-align: center;"><b>Our firm must receive your bid response to this subcontracting opportunity no later than 5:00 P.M., Central Daylight Time on:</b></p> <p style="text-align: right; margin-right: 50px;">_____ [Date]</p>	
<p><b>Potential Subcontractor's Bid Response Due Date:</b></p>	<p><small>In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to <u>at least three (3)</u> Texas certified HUBs, and allow the HUBs <u>at least seven (7) working days</u> to respond to the notice prior to submitting our bid response to the contracting agency. In addition, we must provide the same notice to <u>two (2)</u> or more minority/women trade organizations or development centers <u>at least seven (7) working days</u> 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>	
<b>2.</b>	<b>Subcontracting Opportunity Scope of Work:</b>	
<b>3.</b>	<b>Required Qualifications:</b>	
<input type="checkbox"/>	- Not Applicable	
<b>4.</b>	<b>Bonding/Insurance Requirements:</b>	
<input type="checkbox"/>	- Not Applicable	
<b>5.</b>	<b>Location to review plans/specifications:</b>	
<input type="checkbox"/>	- Not Applicable	



**MINORITY/WOMEN TRADE  
ORGANIZATIONS/DEVELOPMENT CENTERS**  
*Texas Department of Public Safety HUB Program*

ORGANIZATION	MAILING ADDRESS	PHONE	FAX	EMAIL
American Indian Chamber of Commerce of Texas	P.O. Box 163047, Fort Worth, TX 76161	972-241-6450	972-241-6454	<a href="mailto:umarshall@aicct.com">umarshall@aicct.com</a>
Black Contractors Association – Dallas/Fort Worth	1409 S. Lamar Street, Suite 251, Dallas, TX 75215	214-485-0483	214-485-0467	<a href="mailto:info@blackcontractors.org">info@blackcontractors.org</a> , <a href="mailto:rigipson@blackcontractors.org">rigipson@blackcontractors.org</a>
Capital City African American Chamber of Commerce	5407 North IH-35, Suite 304, Austin, TX 78723	512-459-1181	512-459-1183	<a href="mailto:ceo@capcitychamber.org">ceo@capcitychamber.org</a>
Dallas Black Chamber of Commerce	2838 Martin Luther King Jr. Boulevard, Dallas, TX 75215	214-421-5200	214-421-5510	<a href="mailto:chum@dbcc.org">chum@dbcc.org</a> , <a href="mailto:cro@dbcc.org">cro@dbcc.org</a> , <a href="mailto:rgates@dbcc.org">rgates@dbcc.org</a>
DFW Minority Supplier Development Council	2710 North Stemmons Freeway, North Tower, Suite 900, Dallas, TX 75207-2212	214-630-0747	214-637-2241	<a href="mailto:rafia@dfwmsdc.com">rafia@dfwmsdc.com</a> , <a href="mailto:sourcing@dfwmsdc.com">sourcing@dfwmsdc.com</a>
Dallas Hispanic Chamber of Commerce	4622 Maple Avenue, Suite. 207, Dallas, TX 75219	214-521-6007	214-520-1687	<a href="mailto:maribel@gdhcc.com">maribel@gdhcc.com</a>
El Paso Hispanic Chamber of Commerce	2401 E. Missouri St., El Paso, TX 79903	915-566-4066	915-566-9714	<a href="mailto:treed@ephcc.org">treed@ephcc.org</a>
Fort Worth Metropolitan Black Chamber of Commerce	1150 South Freeway, Suite 211, Fort Worth, TX 76104	817-871-6538	817-332-6438	<a href="mailto:bholden@fwmbcc.org">bholden@fwmbcc.org</a>
Golden Triangle Minority Business Council		409-962-8530	409-722-5402	<a href="mailto:Hatcher.beverly@gtmhc.com">Hatcher.beverly@gtmhc.com</a>
Greater Houston Business Procurement Forum	17071/2 South Post Oak Blvd., PMB 273, Houston, TX 77056	832-216-2185	713-436-8333	<a href="mailto:milton@houstonbiz.org">milton@houstonbiz.org</a>
Hispanic Contractors Association - Houston	7 Parker Road, Houston, TX 77076	832-883-5078	Use email	<a href="mailto:randymagdalen@yahoo.com">randymagdalen@yahoo.com</a>
Hispanic Contractors Association –San Antonio	8300 Pat Booker, RM 233 Live Oak, San Antonio, TX 78233	210-444-1100	210-444-1101	<a href="mailto:admin@hcadesa.org">admin@hcadesa.org</a> ,
Hispanic Contractors Association – Regional	2210 W. Illinois Avenue, Dallas, TX 75224-1636	972-786-0909	972-786-0910	<a href="mailto:raul@regionalhca.org">raul@regionalhca.org</a>
Houston Hispanic Chamber of Commerce	1801 Main Street, Suite 890, Houston, TX 77002	713-644-7070	713-644-7377	<a href="mailto:mvelasquez@houstonhispanicchamber.com">mvelasquez@houstonhispanicchamber.com</a> <a href="mailto:jmancilla@houstonhispanicchamber.com">jmancilla@houstonhispanicchamber.com</a> ; <a href="mailto:info@houstonhispanicchamber.com">info@houstonhispanicchamber.com</a>
Houston Minority Supplier Development Council	Three Riverway, Suite 555, Houston, TX 77056	713-271-7805	713-271-9770	<a href="mailto:angela.freeman@hmsdc.org">angela.freeman@hmsdc.org</a> , <a href="mailto:terry.williams@hmsdc.com">terry.williams@hmsdc.com</a>
National Association of Minority Contractors Inc.–Houston	3825 Dacoma St., Houston, TX. 77092	713-843-3791	713-843-3701	<a href="mailto:info@namctexas.org">info@namctexas.org</a>
Regional Hispanic Contractors Association (RHCA)		972-786-0909	972-786-0910	<a href="mailto:Julio@regionalhca.org">Julio@regionalhca.org</a>
San Antonio Hispanic Chamber of Commerce	200 East Grayson, Suite 203, San Antonio, TX 78215	210-225-0462	210-225-2485	<a href="mailto:adrianm@sahcc.org">adrianm@sahcc.org</a>
Southwest Minority Supplier Development Council	912 Bastrop Highway, Ste. 101, Austin, TX 78741	512-386-8766	512-386-8988	<a href="mailto:jenniger@smsdc.org">jenniger@smsdc.org</a> , <a href="mailto:eva@smsdc.org">eva@smsdc.org</a>
	3463 Magic Dr., #300, San Antonio, TX 78229	210-659-2160	Use email	
Texas Asian Chamber of Commerce	P.O. Box 26918, Austin, TX 78755	512-485-1090	Use email	<a href="mailto:txasianchamber@gmail.com">txasianchamber@gmail.com</a>
Texas Association of African American Chambers of Commerce (TAAACC)	P.O. Box 13064, Austin, TX 78711-3064	512-535-5610	Use email	<a href="mailto:taaac179@yahoo.com">taaac179@yahoo.com</a>
Texas Association of Historically Underutilized Businesses	P.O. Box 684726, Austin, TX 78768-4726		915-5857751, 512-288-9121	<a href="mailto:info@texashubs.org">info@texashubs.org</a> , <a href="mailto:rmata@tgsaustin.com">rmata@tgsaustin.com</a>
Texas Association of Mexican American Chambers of Commerce (TAMACC)	3000 South IH-35, Suite 305, Austin, TX 78704	512-444-5727	512-444-4929	<a href="mailto:panton@tamacc.org">panton@tamacc.org</a>

Tri-County Black Chamber of Commerce	P.O. Box 88376, Houston, TX 77288	832-875-3977	713-218-051 713-839-7329	<a href="mailto:procurement@tcbcc.org">procurement@tcbcc.org</a>
U.S. Hispanic Contractors Association de Austin	319 Congress Ave., Ste 250 Austin, TX 78723	512-922-0507	Use email	<a href="mailto:info@ushca-austin.com">info@ushca-austin.com</a>
U.S. Pan Asian American Chamber of Commerce – SW		682-367-1393	817-469-9485	<a href="mailto:gmcdermott@uspaacc-sw.org">gmcdermott@uspaacc-sw.org</a>
Women's Business Council - Southwest	2201 North Collins, Suite 158, Arlington, TX 76011	817-299-0566	Use email	<a href="mailto:asteele@wbcsouthwest.org">asteele@wbcsouthwest.org</a>
Women's Business Enterprise Alliance (WBEA)	4100 Westheimer Rd., Ste 260, Houston, TX 77027	713-681-9232	713-681-9242	<a href="mailto:bids@wbea-texas.org">bids@wbea-texas.org</a>
Women Contractors Association (WCA)	10807 Jones Rd, PMB 164, Houston, TX 77065	713-807-9977	713-807-9917	<a href="mailto:director@womencontractors.org">director@womencontractors.org</a>



# Vendor Direct Deposit / Advance Payment Notification Authorization

This form may be used by vendors or individual recipients  
- to receive payments from the state of Texas by direct deposit  
- to change or cancel existing direct deposit information

For Comptroller's Use Only

For State Agency Use  
 Advance Payment Notification  
 International Payments Verification  
 Interagency Transfer

## Transaction Type

**SECTION 1**  
 New setup (Sections 2, 3, 4 and 5 - Section 6 is optional)  
 Change financial institution (Sections 2, 3, 4 and 5 - Section 6 is optional)  
 Change account number (Sections 2, 3, 4 and 5 - Section 6 is optional)  
 Change account type (Sections 2, 3, 4 and 5 - Section 6 is optional)  
 Cancellation (Sections 2 and 4 - Sections 7 and 8 for state agency use)

## Payee Identification

**SECTION 2**  
Social Security Number (SSN) or Employer Identification Number (EIN) \_\_\_\_\_ Mail code (If not known, leave blank.) \_\_\_\_\_  
Payee name (Business/Individual) \_\_\_\_\_ Phone number ( ) \_\_\_\_\_ ext. \_\_\_\_\_  
Mailing address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP code \_\_\_\_\_

## Financial Institution (Completion by financial institution is recommended.)

**SECTION 3**  
Financial institution name \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_  
Routing transit number (9 digits) \_\_\_\_\_ Customer account number (maximum 17 characters) \_\_\_\_\_ Type of account  
 Checking  Savings  
Financial representative name (optional) \_\_\_\_\_ Title (optional) \_\_\_\_\_  
Financial representative signature (optional) \_\_\_\_\_ Phone number (optional) ( ) \_\_\_\_\_ ext. \_\_\_\_\_ Date (optional) \_\_\_\_\_

## Authorization for Setup, Changes or Cancellation (required)

**SECTION 4**  
I authorize the Texas Comptroller of Public Accounts to deposit my payments from the state of Texas to my financial institution electronically. I understand that the Texas Comptroller of Public Accounts will reverse any payments made to my account in error.  
I further understand that the Texas Comptroller of Public Accounts will comply at all times with the National Automated Clearing House Association's rules. (For further information on these rules, please contact your financial institution.)  
Authorized signature \_\_\_\_\_ Printed name \_\_\_\_\_ Date \_\_\_\_\_  
**sign here** ▶

## International Payments Verification (required)

**SEC 5** Will these payments be forwarded to a financial institution outside the United States? .....  YES  NO

## Authorization for Advance Payment Notification Setup (optional)

**SECTION 6**  
I authorize the Texas Comptroller of Public Accounts to send an email notification one business day prior to the payment posting to my account.  
Contact name (Please print) \_\_\_\_\_ Contact phone number ( ) \_\_\_\_\_ ext. \_\_\_\_\_  
Email address \_\_\_\_\_

## Cancellation by Agency (for state agency use)

**SEC 7** Reason \_\_\_\_\_ Date \_\_\_\_\_

## Authorized Signature (for state agency use)

**SECTION 8**  
Signature \_\_\_\_\_ Date \_\_\_\_\_  
Phone number ( ) \_\_\_\_\_ ext. \_\_\_\_\_ Agency number \_\_\_\_\_  
Agency name \_\_\_\_\_  
Comments \_\_\_\_\_  
**sign here** ▶

Please return your completed form to:

## Instructions for Vendor Direct Deposit / Advance Payment Notification Authorization

*Under Ch. 559, Government Code, you are entitled to review, request and correct information we have on file about you, with limited exception in accordance with Ch. 552, Government Code. To request information for review or to request error correction, contact us at (800) 531-5441, ext. 6-6057.*

Section 1: Select the appropriate transaction type(s).

Section 2: Provide the Social Security Number or Employer Identification Number (EIN).

Section 3: Completion by financial institution is recommended.

**Important:** Your direct deposit account information may be different from the account information printed on your checks. It is recommended that you contact your financial institution to confirm your direct deposit account information.

**Note:** A prenote test will be sent to your financial institution for the account information entered into the Comptroller's system. The prenote test is for a period of six banking days, and it is sent to your financial institution to verify your account information. If no further action is required by your financial institution, your direct deposit instructions will become effective when the six banking day prenote time frame has expired.

Section 4: Must be completed in its entirety, and no alterations to the authorization language will be accepted.

Section 5: **If you receive state payments by direct deposit which are forwarded from a United States financial institution to a financial institution outside the United States, please contact the Texas Comptroller of Public Accounts at (512) 936-8138 and FAX your form to (512) 475-5424.**

Section 6: Provide the contact name, phone number and email address to which payment notifications are to be sent. Notifications are sent for direct deposit payments only, and emails are sent one business day prior to the deposit.

**Submit the completed form to the state agency with which you are conducting business. If the agency is unknown, please call (512) 936-8138 to obtain contact information.**

### **For State Agency Use**

Section 7: Provide reason for cancellation request.

Section 8: Must be completed if submitting form to the Comptroller's office for international payment verification, advance payment notification or interagency transfer processing. Indicate requested action using the "For State Agency Use" box located at the top of the form.

If an international payments verification, advance payment notification or interagency transfer is requested by the agency, select the desired action(s) in the box on the upper right corner of the form and submit the form to the Comptroller's office. State agencies should complete the direct deposit setup or change prior to submitting the form to the Comptroller's office.





AP-152 (Rev.4-03/8)

For Comptroller's use only

TEXAS APPLICATION FOR PAYEE IDENTIFICATION NUMBER

• Shaded areas for state agency use only • See instructions on back

1. Is this a new account? YES NO Mail Code 000 Enter Mail Code Agency number

2. PAYEE IDENTIFICATION NUMBER (PIN) - indicate the type of number you are providing to be used for your PIN. 1 - Federal Employer's Identification (FEI) Number 2 - Social Security Number (SSN) 3 - Comptroller's assigned number

PAYEE INFORMATION (Please print or type) 4. Name of payee (individual or business to be paid) 5. Mailing address where you want to receive payments 6. (Optional) 7. (Optional) 8. (Optional) 9. City State ZIP Code Zone Code

10. SIC Code Security Type Code (0, 1, 2) Payee telephone number (Area code and number)

11. OWNERSHIP CODES - Check only one code by the appropriate ownership type that applies to you or your business. I - Individual Recipient (not owning a business) E - State Employee S - Sole Ownership P - Partnership J - Joint Venture L - Limited Partnership T - Texas Corporation A - Professional Association C - Professional Corporation O - Out-of-State Corporation G - Governmental Entity U - State agency / University F - Financial institution R - Foreign (out of U.S.A.)

12. Payment Assignment? YES NO Note: A copy of the assignment agreement between payees must be attached. Assignee name Assignee PIN Assignment date

13. Comments 14. sign here Authorized signature (Applicant or authorized agent) Date Agency name Prepared by Phone (Area code and number) 15.

## TEXAS APPLICATION FOR PAYEE IDENTIFICATION NUMBER



**CAROLE KEETON STRAYHORN • TEXAS COMPTROLLER OF PUBLIC ACCOUNTS**

Claims Division  
Austin, Texas 78774-0100

### WHO MUST SUBMIT THIS APPLICATION -

This application must be submitted by every person (sole owner, individual recipient, partnership, corporation or other organization) who intends to bill agencies of the state government for goods, services provided, refunds, public assistance, etc. The Payee Identification Number (PIN) will be required on all maintenance submitted by state agencies. The use of this number on all billings will reduce the time required to process billings to the State of Texas.

**NOTE: To expedite processing of this application, please return the completed application to the state agency with which you are conducting business. It is not necessary for the payee to sign or complete this form. The state agency representative may complete the form for the payee.**

### FOR ASSISTANCE -

For assistance in completing this application, please call the State Comptroller's Office at 1-800-531-5441, extension 3-3660, toll free nationwide. The Austin number is 512-463-3660. (From a Telecommunication Device for the Deaf (TDD) ONLY call 1-800-248-4099 toll free. The Austin number is 512-463-4621.)

### NOTICE TO STATE AGENCIES -

*When this form is used to set up additional mail codes, Sections I, II and V must be completed. State agencies may refer to the Texas Payee Information System Guide for additional information.*

### GENERAL INSTRUCTIONS -

- Please write only in white areas. (Shaded areas are for state agency use only.)
- Do not use dashes when entering Social Security, Federal Employer's Identification (FEI) or Comptroller's assigned numbers.
- Disclosure of your Social Security Number is required. This disclosure requirement has been adopted under the Federal Privacy Act of 1974 (5 U.S.C.A. sec. 552a(note)(West 1977), the Tax Reform Act of 1976 (42 U.S.C.A. sec. 405(c)(2)(C) (West 1992), and TEX. GOV'T. CODE ANN. sec. 403.055 (Vernon Supp. 1992). Your Social Security Number will be used to help the Comptroller of Public Accounts administer the state's tax laws and for other purposes. See Op Tex. Atty Gen. No. H-1255(1978).

### SPECIFIC INSTRUCTIONS -

#### SECTION I - PAYEE IDENTIFICATION NUMBER

Enter a nine-digit Federal Employer's Identification (FEI) Number issued by the Internal Revenue Service if the business is a partnership or corporation, etc. Enter a nine-digit Social Security Number or the nine-digit Federal Employer's Identification (FEI) Number issued by the Internal Revenue Service if a sole owner. Enter the nine-digit Social Security Number if an individual recipient. The comptroller's assigned number is a number issued by the Texas Comptroller's Office for specialized usage. Please enter only ONE of these numbers and check the type of number entered. If known, enter the Texas Taxpayer Number in item 3.

#### SECTION II - PAYEE INFORMATION

Items 4 through 9 - Enter the complete name and mailing address where you want payments to be received. Names of individuals must be entered first name first. Each line cannot exceed 50 characters including spaces. If the name is more than 50 characters, continue the name in Item 5 and begin the address in Item 6. Item 9 - Enter the city, state and ZIP code.

#### SECTION III - OWNERSHIP CODES

Item 11 - Check the box next to the appropriate ownership code and enter additional information as requested. Please check only one box in this section. The Secretary of State's Office may be contacted at 512-463-5555 for information regarding Texas charter or file numbers.

#### SECTION IV - PAYMENT ASSIGNMENT

Item 12 - Use when one payee is assigning payment to another payee. When setting up an assignment payment, fill out this section completely and include the assignment agreement between the assignee and the assignor.

#### SECTION V - COMMENTS AND IDENTIFICATION

Item 13 - Enter any additional information that may be helpful in processing this application. Items 14 and 15 are for identification purposes. Always complete the identification section, including comments and authorized signature.

*Under Ch. 559, Government Code, you are entitled to review, request, and correct information we have on file about you, with limited exceptions in accordance with Ch. 552, Government Code. To request information for review or to request error correction, contact us at the address or toll-free number listed on this form.*

# TEXAS DEPARTMENT OF PUBLIC SAFETY Vendor Background Information

With few exceptions, you have the right to request and be informed about information that the State of Texas collects about you. You are entitled to receive and review the information upon request. You also have the right to ask the state agency to correct any information that is determined to be incorrect. (Reference: Government Code, Sections 522.021, 522.023, 559.004.)

Instructions: Answer all questions completely. If the question is not applicable write "N.A." Write "UNKNOWN" only if you do not know the answer and cannot obtain the answer from personal records.

### Type or print

DPS Contact and Number (Required): \_\_\_\_\_

Position Applied For: \_\_\_\_\_

Has applicant been fingerprinted as a DPS Contractor within the last 3 years?  Yes Date: \_\_\_\_\_  No

Company Name and Number: \_\_\_\_\_

Office Address: \_\_\_\_\_

### PERSONAL BACKGROUND

Applicant Full Name: \_\_\_\_\_

Other Names (Aliases, maiden names, nick names, etc.): \_\_\_\_\_

Residence Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Area Code and Telephone Numbers:

Home: \_\_\_\_\_ Office: \_\_\_\_\_ Cellular: \_\_\_\_\_

Email Address: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Place of Birth: \_\_\_\_\_ Sex: \_\_\_\_\_ Race: \_\_\_\_\_

SSN: \_\_\_\_\_ DL No.: \_\_\_\_\_ Class: \_\_\_\_\_ State: \_\_\_\_\_ DL Expires: \_\_\_\_\_

Eye Color: \_\_\_\_\_ Hair Color: \_\_\_\_\_ Scars, tattoos or other distinguishing marks: \_\_\_\_\_

### CERTIFICATION THAT MY ANSWERS ARE TRUE

I have read and understand each of the above questions. My statements on this form and any attachments to this form are true, complete, and correct to the best of my knowledge and belief and are made in good faith.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Compliance Review Budget  
Disaster Compliance Professional Services Contract**

<b>Date</b>		<b>Program</b>		<b>Prepared By</b>	
<b>Project #</b>		<b>Category</b>		<b>Phone #</b>	
<b>Subrecipient</b>				<b>Disaster</b>	

Phase	Labor Category	# of Staff	Total Hours	Hourly Rate	Extended Cost	Schedule	Due Date
Review Planning					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
	<b>Phase Total</b>		<b>0</b>	<b>0</b>		<b>\$0.00</b>	<b>Assignment Plan</b>
Preliminary Study					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
	<b>Phase Total</b>		<b>0</b>	<b>0</b>		<b>\$0.00</b>	
Internal Control Evaluation (if requested)					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
	<b>Phase Total</b>		<b>0</b>	<b>0</b>		<b>\$0.00</b>	
Field Work					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
	<b>Phase Total</b>		<b>0</b>	<b>0</b>		<b>\$0.00</b>	<b>Start Fieldwork</b>
						<b>Conduct Exit Conf</b>	<b>mm/dd/yy</b>
Reporting					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
	<b>Phase Total</b>		<b>0</b>	<b>0</b>		<b>\$0.00</b>	<b>First Draft</b>
						<b>Final Report</b>	<b>mm/dd/yy</b>
<b>TOTAL LABOR BUDGETED</b>			<b>0</b>		<b>\$0.00</b>		

	Travel Expense Type	# of Staff	# of Days/ Nights/Miles	Rate or Amount	Travel Extended Cost	Travel Expense Explanation
<b>Travel</b>	Transportation				\$0.00	
	Lodging				\$0.00	
	Meals				\$0.00	
	Taxes				\$0.00	
	Other				\$0.00	
	Other				\$0.00	
<b>Total Travel Budgeted</b>					<b>\$0.00</b>	
<b>GRAND TOTAL BUDGETED</b>						<b>\$0.00</b>
<b>Notes</b>						
<b>For TXDPS Use ONLY</b>						
<b>Approvals</b>			<b>TXDPS Program Manager or Designee</b>		<b>Date</b>	

**Grant Monitoring Budget  
Disaster Compliance Professional Services Contract**

<b>Date</b>		<b>Program</b>		<b>Prepared By</b>	
<b>Project #</b>		<b>Category</b>		<b>Phone #</b>	
<b>Subrecipient</b>				<b>Disaster</b>	

Month	Labor Category	# of Staff	Total Hours	Hourly Rate	Extended Cost	Proposed Activities
May					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
	<b>Monthly Total</b>		<b>0</b>	<b>0</b>		
June					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
	<b>Monthly Total</b>		<b>0</b>	<b>0</b>		
July					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
	<b>Monthly Total</b>		<b>0</b>	<b>0</b>		
August					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
	<b>Monthly Total</b>		<b>0</b>	<b>0</b>		
September					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
	<b>Monthly Total</b>		<b>0</b>	<b>0</b>		

October					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
	<b>Monthly Total</b>	<b>0</b>	<b>0</b>		<b>\$0.00</b>		
November					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
	<b>Monthly Total</b>	<b>0</b>	<b>0</b>		<b>\$0.00</b>		
December					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
	<b>Monthly Total</b>	<b>0</b>	<b>0</b>		<b>\$0.00</b>		
January					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
	<b>Monthly Total</b>	<b>0</b>	<b>0</b>		<b>\$0.00</b>		
February					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
	<b>Monthly Total</b>	<b>0</b>	<b>0</b>		<b>\$0.00</b>		
March					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
	<b>Monthly Total</b>	<b>0</b>	<b>0</b>		<b>\$0.00</b>		
April					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
	<b>Monthly Total</b>	<b>0</b>	<b>0</b>		<b>\$0.00</b>		

May					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
	<b>Monthly Total</b>	<b>0</b>	<b>0</b>		<b>\$0.00</b>	
June					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
	<b>Monthly Total</b>	<b>0</b>	<b>0</b>		<b>\$0.00</b>	
July					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
	<b>Monthly Total</b>	<b>0</b>	<b>0</b>		<b>\$0.00</b>	
August					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
	<b>Monthly Total</b>	<b>0</b>	<b>0</b>		<b>\$0.00</b>	
<b>TOTAL LABOR BUDGETED</b>		<b>0</b>			<b>\$0.00</b>	

	Travel Expense Type	# of Staff	# of Days/ Nights/Miles	Rate or Amount	Travel Extended Cost	Travel Expense Explanation
Travel	Transportation				\$0.00	
	Lodging				\$0.00	
	Meals				\$0.00	
	Taxes				\$0.00	
	Other				\$0.00	
	Other				\$0.00	
<b>Total Travel Budgeted</b>					<b>\$0.00</b>	

<b>GRAND TOTAL BUDGETED</b>					<b>\$0.00</b>
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<b>Notes</b>	
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**For TXDPS Use ONLY**

<b>Approvals</b>		<b>TXDPS Program Manager or Designee</b>	<b>Date</b>

## SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF CONTRACTORS

### K.1 HISTORICALLY UNDERUTILIZED BUSINESS (HUB) REPRESENTATION

#### K.1.1 Definition

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

1. A corporation formed for the purpose of making a profit in which fifty-one (51) percent or more of all classes of the shares of stock or other equitable securities are owned by one or more economically disadvantaged persons who have a proportionate interest and actively participate in the corporation's control, operation and management;
2. A sole proprietorship created for the purpose of making a profit that is completely owned, operated and controlled by an economically disadvantaged person;
3. A partnership formed for the purpose of making a profit in which fifty-one (51) percent or more of the assets and interest in the partnership are owned by one or more economically disadvantaged persons who have a proportionate interest and actively participate in the partnership's control, operation, and management;
4. A joint venture in which each entity in the venture is a historically underutilized business, as determined under another paragraph of this subdivision; or
5. A supplier Contract between a historically underutilized business as determined under another paragraph of this subsection and a prime Contractor under which the historically underutilized business is directly involved in the manufacture or distribution of the goods or otherwise warehouses and ships the goods.
6. A supplier Contract between a Historical Underutilized Business as determined under another paragraph of this subsection and a prime Contractor under which the Historically Underutilized Business is directly involved in the manufacturer or distribution of the goods or otherwise warehouses and ships the goods.

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

#### K.1.2 Representation

The Contractor represents and certifies as part of its Qualifications Response that it  is, or  is not, a HUB certified by the Texas Procurement and Support Services (TPASS).

### K.2 CHILD SUPPORT REPRESENTATION

A. Under the Texas Family Code, Section 231.006, a child support obligor who is more than thirty (30) days delinquent in paying child support and a business entity in which

the obligor is a sole proprietor, partner, shareholder or owner with an ownership interest of at least 25% is not eligible to receive payments from State funds under a Contract to provide property, materials or services.

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

Check ONE:

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

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

If subject to Section 231.006, an offer must include names and social security numbers of each person with at least a 25% ownership of the business entity submitting offer.

_____	_____	_____	_____
Print Name	SSN	Print Name	SSN

_____	_____	_____	_____
Print Name	SSN	Print Name	SSN

The Contractor certifies that the individual or business entity named in this Qualifications Response is not ineligible to receive the specified payments and acknowledges that any resultant Contract may be terminated and Payment may be withheld if this certification is inaccurate.

**K.3 FRANCHISE TAX REPRESENTATION**

The Contractor represents and certifies, as part of this Qualifications Response that it is not currently delinquent in the payment of any franchise tax owed the State of Texas.

**K.4 TYPE OF BUSINESS ORGANIZATION**

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

- A. It operates as  a corporation incorporated under the laws of the State of \_\_\_\_\_,  an individual,  a partnership,  a nonprofit organization or  a joint venture; or
- B. If the Contractor is a foreign entity, it operates as  an individual,  a partnership,  a nonprofit organization,  a joint venture, or  a corporation, registered for business in \_\_\_\_\_ (country).

**K.5 PREFERENCE CLAIM**

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

**K.5.1 Source and Specification Preferences**

- Products of persons with mental or physical disabilities.
- Products made of recycled, remanufactured, or environmental sensitive materials including recycled steel.
- Energy efficient products.
- Rubberized asphalt paving material.
- Recycled motor oil and lubricants.

**K.5.2 Tie-Qualification Preferences**

- Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran.\*
- Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran.\*
- Agricultural products produced or grown in Texas.
- Agricultural products or services offered by Texas bidders.\*
- Services offered by a Texas bidder that is owned by a Texas resident Serviced-disabled veteran.\*
- Services offered by a Texas bidder that is not owned by a Texas resident Serviced-disabled veteran.
- Texas vegetation native to the region.
- USA produced supplies, materials, equipment or agricultural products.

**K.5.3 Additional Preferences**

- Products produced at facilities located on formerly contaminated property.
- Products and services from economically depressed or blighted areas.
- Contractor that meet or exceed air quality standards.
- Recycled or reused computer equipment of other manufacturers.
- Foods of higher nutritional value (for consumption in a public cafeteria only).
- Commercial production company or advertising agency local in Texas.

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

**K.6 REPRESENTATIONS OF THE CONTRACTOR**

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

**K.6.1 Organization and Qualification**

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

**K.6.2 Authorization**

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

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

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

**K.6.4 No Defaults under Agreements**

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

**K.6.5 Compliance with Laws**

Neither the Contractor nor its officers and directors purporting to act on its behalf have been advised or have reason to believe that the Contractor or such officers and directors have not been conducting business in compliance with all applicable laws, rules and regulations of the jurisdictions in which the Contractor is conducting business, including all safety laws and laws with respect to discrimination in hiring, promotion or pay of employees or other laws affecting employees generally, except where failure to be in compliance would not materially and adversely affect the Contractor's ability to perform its obligations under this Contract.

**K.6.6 No Litigation**

- A. The Contractor certifies that there is not now pending, or to its knowledge threatened, any action, suit or proceeding to which the Contractor, or any of its employees, are a party, before or by any court or governmental agency or body, which may result in any material adverse change in the Contractor's ability to perform its obligations under this Contract, or any such action, suit or proceeding related to environmental or civil rights matters.
- B. The Contractor further certifies that no labor disturbance by the employees of the Contractor exists or is imminent which may be expected to materially and adversely affect the Contractor's ability to perform its obligations under this Contract.
- C. Prior to the Department making an award of this Contract, the Department may require the Contractor(s) being considered for the award to recertify the representations set forth above. The Department, in its sole discretion, may disqualify any Contractor that in the opinion of the Department is a party, or who has any employees that are a party, to any action, suit or proceeding that may result in any material adverse change in the Contractor's ability to perform its obligations under this Contract.
- D. During the term of this Contract, to include extensions hereof, the Contractor shall notify the Department in writing within five (5) days of the Contractor having received knowledge of any actions, suits or proceedings filed against the Contractor, or any of its employees, or to which the Contractor, or any of its employees, are a party, before or by any court or governmental agency or body, which:
  - 1. May result in any material adverse change in the Contractor's ability to perform its obligations under this Contract;
  - 2. Filed in any federal court, state court, or federal or state administrative hearing within the State of Texas regardless as to any anticipated material adverse change in the Contractor's ability to perform its obligations under this Contract;
  - 3. Is brought by or on behalf of a State of Texas Offender regardless as to any anticipated material adverse change in the Contractor's ability to perform its obligations under this Contract; and
  - 4. In addition to the above requirements, the Contractor shall provide in writing, to the Contract Administrator, a quarterly report listing litigation identified in the above requirements. Specific date to be determined at the time of award.

**K.6.7 Taxes**

- A. The Contractor has filed all necessary federal, state and foreign income and franchise tax returns and has paid all taxes as shown to be due thereon.
- B. The Contractor has no knowledge of any tax deficiency which has been or might be asserted against it and which would materially and adversely affect the Contractor's ability to perform its obligations under this Contract.

**K.6.8 Financial Statements**

- A. The Contractor has delivered to the Department a copy of its most recent audited financial statements. These statements shall include, as a minimum the following financial information:
1. Audited balance sheet;
  2. Statement of income; and
  3. Any changes in financial position of the company.
- B. This statement fairly presents the financial position of the Contractor at the date shown and the results of its operations for the period covered, and have been prepared in conformity with generally accepted accounting principles applied on a consistent basis, except as discussed in the notes to the financial statement.

**K.6.9 No Adverse Change**

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

**K.6.10 Disclosure**

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

**K.6.11 No Collusion**

- A. The Contractor represents and certifies its employees, agents and representatives have not and shall not discuss or disclose the terms of its Qualifications Response and its submission or response thereto with any third party other than persons or entities, which the Contractor engaged to assist it with respect to such response or submission.
- B. Neither the Contractor nor the firm, corporation, partnership or institution represented by the Contractor or anyone acting for such firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the Qualifications Response made to any competitor or any other person engaged in such line of business.

**K.6.12 Ethics****K.6.12.1 Conflict of Interest**

Pursuant to Section 572.051, Government Code, any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established. Section 572.051, Government Code, outlines the ethical standards required of state

officers and employees who interact with public purchasers in the conduct of state business.

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

**K.6.12.2 No Gratuities**

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

**K.6.13 No Compensation**

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

**K.6.14 Contracting with Executive Head of State Agency**

- A. The Contractor represents and certifies that it is in compliance with the Texas Government Code, Section 669.003 relating to contracting with the executive head of a state agency.
- B. If Section 669.003 applies, the Contractor shall complete the following information in order for the Qualifications Response to be evaluated:

Name of Former Executive: \_\_\_\_\_

Name of State Agency: \_\_\_\_\_

Date of Separation from State Agency: \_\_\_\_\_

Date of Employment with the Contractor: \_\_\_\_\_

**K.6.15 Notification**

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

**K.6.16 Suspension, Debarment and Terrorism**

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

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

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

**K.6.18 Deceptive Trade Practices; Unfair Business Practices**

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

**K.6.19 Former Executives**

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

**K.6.20 OSHA**

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

**K.6.21 EEOC**

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

**K.6.22 ADA**

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

**K.6.23 Buy in Texas**

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

**K.6.24 Government Code Chapter 556**

The Contractor represents and warrants that the CPA's payments to the Contractor and the Contractor's receipt of appropriated or other funds under any Contract resulting from this RFQ are not prohibited by the Texas Government Codes, Section 556.005 or Section 556.008.

**K.6.25 Computer Equipment**

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

**K.6.26 Lawsuits, Court Actions**

By signature hereon, and by checking or initialing either Subsection (a) Subsection (b), as applicable, the Contractor represents and warrants the following:

- A. The Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against the Contractor or any of the individuals or entities that would or could impair the Contractor's performance under any Contract resulting from this RFQ, relate to the solicited or similar goods or services, or otherwise be relevant to the agency's consideration of the Contractor's Offer. The Contractor represents and warrants that it is not aware of any such court or governmental agency actions, proceedings or investigations, etc. against the Contractor or any of these individuals or entities within the five (5) calendar years

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

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

**K.6.27 Agreement to Terms**

The Contractor represents and warrants that it has read and agrees to all terms and conditions of this RFQ, unless the Contractor specifically takes an exception and offers an alternative provision in the Contractor's Offer as provided in Section L.8.2 E of this RFQ.

**K.7 AUTHORIZED NEGOTIATORS**

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

John Short, (410) 961-0494

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**K.8 PAYEE IDENTIFICATION NUMBER**

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

Payee Identification Number: 1366055558501 or

Federal Taxpayer Identification Number: \_\_\_\_\_.

**K.9 POINT OF CONTACT**

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

Name: John Short Title: Partner

Phone Number: (410) 961-0494 Fax Number: ( )

Street Address: 100 Congress Avenue, Suite 2000

City: Austin State: TX Zip Code: 78701

E-mail Address: John.Short@us.gt.com

**K.10 CERTIFICATION**

By signature hereon, the Contractor represents and warrants that the individual signing this document and the documents made part of this RFQ and the Contractor is authorized to sign such documents on behalf of the company and to bind the company under any Contract which may result from the submission of this Offer.

By signing hereon, the Contractor represents and warrants that all statements and information prepared and submitted in response to this RFQ are current, complete and accurate.

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

The Contractor makes the foregoing Representations and Certifications as part of its Qualifications Response.

Grant Thornton  
Name of the Contractor

405-TDEM-13-Q30678  
Solicitation No.

  
Signature of Authorized Individual

December 19, 2012  
Date

John Short, Partner  
Typed Name of Authorized Individual

Note: The penalty for making false statements shall void the submitted Qualifications Response or any resulting Contracts, and the Contractor shall be removed from all bid lists.

# MODIFICATION OF CONTRACT

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<b>1A. Contract No.</b>	<b>1B. Order No. (PO,JO,SA)</b>	<b>2. Modification No.</b>	<b>3. Effective Date</b>
405-EMD-13-14-C32508		M-001	September 1, 2014

<b>4. Issued By:</b>  Texas Department of Public Safety Procurement and Contract Services Technology Branch P.O. Box 4087 Austin, Texas 78773-0130	<b>5. Name and Address of Contractor (No., street, city, state &amp; ZIP code)</b>  Grant Thornton, LLP 100 Congress Avenue, Suite 2000 Austin, TX 78701
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**6. BILATERAL MODIFICATION ISSUED PURSUANT TO AUTHORITY UNDER:** Section H.15 Contract Changes, and Section H.16 Option to Extend The Term of the Contract.

**7. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 E-MAIL TO THE ISSUING OFFICE.**

**8. PURPOSE OF MODIFICATION:** First of three, one year renewals for dates 09/01/2014-08/31/2015. Revising: C.5.A. Area One, Grant Monitoring Tasks; C.5.B. Area Two, Compliance Review Tasks; C.5.C. Area Three, A-133 Audits and Other Administrative Tasks; D.1. Reports and Deliverables Required from the Contractor; H.4.6. Termination for Listing on Federal Excluded Party List; and adding Exhibit #J.8, Disaster Compliance Professional Services Contract.

**9. DESCRIPTION OF MODIFICATION:**

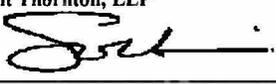
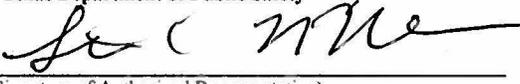
A. As per Section H.16 this modification to TXDPS and Grant Thornton, LLP. Contract 405-EMD-13-14-C32508 shall exercise the first renewal for the period of September 01, 2014 through August 31, 2015.

B. Any amounts remaining under the prime contract, dated 05/09/2013 are not closed out and may be applied or carried forward to the renewal period of 09/01/2014 through 08/31/2015.

C. Multiple revisions to the Contract language are listed beginning on page 2 of 6, and 3 of 6 of this Modification.

D. Addition of Exhibit #J.8- Disaster Compliance Professional Services Contract Grant Monitoring Budget-Non-Project Associated Costs worksheet listed on Page 4 through 6.

Except as provided herein, all terms and conditions of the contract referenced above, as hereto changed, remain unchanged and in full force and effect.

<b>9A. Name and Title of Authorized Representative (Type or Print)</b>  Scott King	<b>9B. Grant Thornton, LLP</b>   _____ (Signature of Authorized Representative)	<b>9C. Date Signed</b>  8/28/2014
<b>10A. Authorized Representative</b>  Steven C. McCraw Director	<b>10B. Texas Department of Public Safety</b>   _____ (Signature of Authorized Representative)	<b>10C. Date Signed</b>



Revise Section C.5.A. Area One, Grant Monitoring Tasks, C.5.A.4 Services and Deliverables, to read: The Contractor shall, upon request by Department Program Manager or designee, provide grant monitoring services by: assessing sub-recipient's needs/status; assigning sub-recipient monitoring teams; developing an accessible case management file; completing data entry and document uploads of sub-recipient files to a grant monitoring system; developing a Compliance and Monitoring Plan for each sub-recipient; correcting deficiencies in sub-recipient project files; assessing sub-recipient compliance policies and procedures as requested; evaluating sub-recipients' internal controls as requested, providing technical assistance and training to sub-recipients as needed; conducting sub-recipient monitoring visits and contacts; attending TDEM section and program meetings to discuss issues, problems or changes; providing regular status reports on assigned projects; collecting data from sub-recipients for Quarterly FEMA Reports, management reports, or other ad hoc reporting as needed; processing sub-recipient funding requests with local match documentation; coordinating sub-recipient grant change requests and appeals; referring Project Worksheets (PW) for closeout; processing Public Information Requests (PIRs); conducting Damage Assessments and producing reports; advising and assisting sub-recipients with development and approval of projects; participating in subrecipient kickoff meetings, Applicant Briefings and other grant initiation activities and any other monitoring or grant related activities as assigned, including preparing project file for transfer to another project officer if requested.

Revise Section C.5.A. Area One, Grant Monitoring Tasks, C.5.A.4.B Services and Deliverables to read:

- B. Provide a grant monitoring budget to the Department Program Manager or designee for approval prior to beginning grant monitoring work for each assignment (See Exhibit J.7 for assignments assigned by subrecipient project. For activities not associated with a particular project, provide a grant monitoring budget to the Department Program Manager or designee for approval prior to beginning grant monitoring work for each assignment See Exhibit J.8).

Revise Section C.5.A.7. Payment of Services to read:

Eligible travel expenses shall comply with the State of Texas travel requirements as found at the following link: <https://fmx.cpa.state.tx.us/fmx/travel/index.php>. In accordance with Government Code 660.007(b), the Department further restricts travel costs for lodging to \$85/night and meals to \$46/day. The Contractor shall not charge the Department for rates in excess of \$85/night or \$46/day unless a waiver has been issued in writing in advance by the Department Program Manager for this Contract.

Revise Section C.5.B. Area Two, Compliance Review Tasks, C.5.B.7 Payment of Services, to read:

Eligible travel expenses shall comply with the State of Texas travel requirements as found at the following link: <https://fmx.cpa.state.tx.us/fmx/travel/index.php>. In accordance with the Texas Government Code 660.007(b), the Department further restricts travel costs for lodging to \$85/night and meals to \$46/day. The Contractor shall not charge the Department for rates in excess of \$85/night or \$46/day unless a waiver has been issued in writing in advance by the Department Program Manager for this Contract.

Revise Section C.5.C. Area Three, A-133 Audits and Other Administrative Tasks, C.5.C.6 Payment of Services, to read:

Eligible travel expenses shall comply with the State of Texas travel requirements as found at the following link: <https://fmx.cpa.state.tx.us/fmx/travel/index.php>. In accordance with the Texas Government Code 660.007(b), the Department further restricts travel costs for lodging to \$85/night and meals to \$46/day. The Contractor shall not charge the Department for rates in excess of \$85/night or \$46/day unless a waiver has been issued in writing in advance by the Department Program Manager for this Contract.

Revise Section D.1 REPORTS AND DELIVERABLES REQUIRED FROM THE CONTRACTOR

FREQUENCY	DUE DATE	REPORT - DELIVERABLE	AUTHORITY
As needed	Within five days of receipt of Public Information Request.	Copies of requested files, including report of exceptions will be submitted to TDEM	Contract, Section C.5.A
As needed	Daily, for the duration that Damage Assessments are being conducted	Worksheets for each site and a spreadsheet consolidating/ summarizing the assessments	Contract, Section C.5.A

Revise Section 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, to read:

The Department shall have the absolute right to terminate this Contract without recourse as follows: a) if the 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 the Contractor becomes suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration; or if the Contractor becomes listed on the State of Texas Debarred Vendor List. The Department shall provide the Contractor with written notice to terminate this Contract, which termination shall become effective immediately upon the Contractor's receipt of the notice.

**TXDPS Exhibit #J.8 – 405-TDEM-13-Q30678**

**Disaster Compliance Professional Services Contract  
 Grant Monitoring Budget – Non-Project Associated Costs\*\***

Date  Program  Prepared By   
 Phone #   
 Disaster

Month	Labor Category	# of Staff	Total Hours	Hourly Rate	Extended Cost	Proposed Activities
September					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
	<b>Monthly Total</b>	<b>0</b>	<b>0</b>		<b>\$0.00</b>	
October					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
	<b>Monthly Total</b>	<b>0</b>	<b>0</b>		<b>\$0.00</b>	
November					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
	<b>Monthly Total</b>	<b>0</b>	<b>0</b>		<b>\$0.00</b>	
December					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
	<b>Monthly Total</b>	<b>0</b>	<b>0</b>		<b>\$0.00</b>	
January					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
	<b>Monthly Total</b>	<b>0</b>	<b>0</b>		<b>\$0.00</b>	
February					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	
					\$0.00	

	<b>Monthly Total</b>	<b>0</b>	<b>0</b>		<b>\$0.00</b>		
<b>March</b>					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
	<b>Monthly Total</b>	<b>0</b>	<b>0</b>		<b>\$0.00</b>		
<b>April</b>					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
	<b>Monthly Total</b>	<b>0</b>	<b>0</b>		<b>\$0.00</b>		
<b>May</b>					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
	<b>Monthly Total</b>	<b>0</b>	<b>0</b>		<b>\$0.00</b>		
<b>June</b>					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
	<b>Monthly Total</b>	<b>0</b>	<b>0</b>		<b>\$0.00</b>		
<b>July</b>					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
	<b>Monthly Total</b>	<b>0</b>	<b>0</b>		<b>\$0.00</b>		
<b>August</b>					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
					\$0.00		
	<b>Monthly Total</b>	<b>0</b>	<b>0</b>		<b>\$0.00</b>		
<b>TOTAL LABOR BUDGETED</b>		<b>0</b>			<b>\$0.00</b>		

	Travel Expense Type	# of Staff	# of Days/ Nights/Miles	Rate or Amount	Travel Extended Cost	Travel Expense Explanation	
Travel	Transportation				\$0.00		
	Lodging				\$0.00		
	Meals				\$0.00		
	Taxes				\$0.00		
	Other				\$0.00		
	Other				\$0.00		
<b>Total Travel Budgeted</b>					<b>\$0.00</b>		
<b>GRAND TOTAL BUDGETED</b>						<b>\$0.00</b>	
Notes							
<b>For TXDPS Use ONLY</b>							
Approvals		<b>TXDPS Program Manager or Designee</b>				<b>Date</b>	

**\*\*NOTE:** This billing format shall only be used for those expenses that cannot be tied to a particular project. These activities can include: preliminary damage assessments, applicant briefings and setup, processing program application packets, kick-off meetings, broad project development activities before a temporary tracking number is assigned to identified each project, information requests – but only if it cannot be allotted by project, and other education and training related to applicants – but only if specifically assigned. No other costs can be included unless specific written guidance by TDEM allows for those expenses to be charged in this billing format.

# MODIFICATION OF CONTRACT

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<b>1A. Contract No.</b>  405-EMD-13-14-C32508	<b>1B. Order No.</b> (PO,JO,SA)	<b>2. Modification No.</b>  M-002	<b>3. Effective Date</b>  September 1, 2015
<b>4. Issued By:</b>  Texas Department of Public Safety Procurement and Contract Services Technology Branch P.O. Box 4087 Austin, Texas 78773-0130		<b>5. Name and Address of Contractor</b> (No., street, city, state & ZIP code)  Grant Thornton, LLP 100 Congress Avenue, Suite 2000 Austin, TX 78701	
<b>6. BILATERAL MODIFICATION ISSUED PURSUANT TO AUTHORITY UNDER:</b> Section H.15 Contract Changes, and Section H.16 Option to Extend The Term of the Contract.			
<b>7. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>1</u> E-MAIL TO THE ISSUING OFFICE.</b>			
<b>8. PURPOSE OF MODIFICATION:</b> Second of three, one year renewals for dates 09/01/2015-08/31/2016.			
<b>9. DESCRIPTION OF MODIFICATION:</b>  A. As per Section H.16 this modification to TXDPS and Grant Thornton, LLP. Contract 405-EMD-13-14-C32508 shall exercise the second renewal for the period of September 01, 2015 through August 31, 2016.  B. Any amounts remaining under the prime contract, dated 05/10/2013 that are pending final closeout may be applied or carried forward to the renewal period of 09/01/2015 through 08/31/2016.			
Except as provided herein, all terms and conditions of the contract referenced above, as hereto changed, remain unchanged and in full force and effect.			
<b>9A. Name and Title of Authorized Representative</b> (Type or Print)  Scott King	<b>9B. Grant Thornton, LLP</b>   _____ (Signature of Authorized Representative)	<b>9C. Date Signed</b>	
<b>10A. Authorized Representative</b>  Steven C. McCraw Director		<b>10B. Texas Department of Public Safety</b>   _____ (Signature of Authorized Representative)	<b>10C. Date Signed</b>  8/26/15