



Texas Department of Criminal Justice

Bryan Collier
Executive Director

May 30, 2023

Re: Solicitation Number 696-BF-23-P012, Banking Services

Dear Prospective Contractor:

The deadline for receipt of proposals is 3:00 p.m. Central Time on June 29, 2023. Late proposals, emailed, and facsimile offers will not be accepted. Offers that do not meet specifications or certifications shall be disqualified. Documents that do not have signatures, are incomplete or are not legible shall be disqualified.

Questions concerning the solicitation requirements must be submitted in writing before 3:00 p.m. Central Time, June 06, 2023. Questions may be emailed to my attention.

Interested offerors must submit their name, address and email address to me to ensure they receive amendments. Amendments to this solicitation will be posted on the Electronic State Business Daily. TDCJ will not be responsible for any offeror's failure to receive amendments or changes if the offeror has not submitted their name, address, and email address. This information may be email.

Thank you for your interest in conducting business with the Texas Department of Criminal Justice. If you have any questions, please call me at (936) 437-7040 or Kelly Scott at (936) 437-7001.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kristie Robertson".

Kristie Robertson, CTCD, CTCM
Texas Department of Criminal Justice
Contracts and Procurement Department
Information, Technology, Construction & Utilities
Two Financial Plaza, Suite 525
Huntsville, Texas 77340

Our mission is to provide public safety, promote positive change in offender behavior, reintegrate offenders into society, and assist victims of crime.

P.O. Box 99
Huntsville, Texas 77342-0099
(936) 437-7015
www.tdcj.state.tx.us

SOLICITATION, OFFER AND AWARD

1. CONTRACT NO.	2. SOLICITATION NO.	3. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFO) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	4. DATE ISSUED
	696-BF-23-P012		May 30, 2023

SOLICITATION

5. Sealed offers will be received by the Department until 3:00 p.m. Central Daylight Time (CDT) on Thursday, June 29, 2023, and submitted to: TDCJ Contracts and Procurement Department Information Technology, Construction and Utilities Branch Two Financial Plaza, Suite 525 Huntsville, Texas 77340 Attention: 696-BF-23-P012	6. FOR INFORMATION CONTACT: Contract Specialists: Kristie Robertson, CTCD, CTCM Kelly Scott, CTCD, CTCM PHONE: (936) 437-7040 or (936) 437-7001 EMAIL: kristie.robertson@tdcj.texas.gov kelly.scott@tdcj.texas.gov
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OFFER (Must be fully completed by Offeror)

7. DISCOUNT FOR PROMPT PAYMENT:→	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %
8. ACKNOWLEDGMENT OF AMENDMENTS: <i>The Offeror acknowledges receipt of amendments to the SOLICITATION for Offerors and related documents numbered and dated:</i>	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
9. NAME AND ADDRESS OF OFFEROR:→			10. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or Print)	
11. TELEPHONE NO. (Include area code)	12. SIGNATURE		13. OFFER DATE	

TO BE COMPLETED AT TIME OF AWARD

Document Type: 9

Statutory Cite: Texas Government Code, Section 2155.132

This award consummates the Contract which consists of the following documents: (a) the State's solicitation, and solicitation amendments, such provisions, representations, certifications, specifications, and negotiated changes as hereby incorporated and attached to this award; (b) the Contractor's offer, points of clarification, responses to clarification request and/or best and final offer, and negotiated changes as hereby incorporated and attached to this award; and (c) this award. In the event of a conflict between any terms and conditions of this Contract document with the Contractor's offer, points of clarification and/or best and final offer, the terms which are more favorable to the Department shall prevail.

The total amount for the Base Period (September 1, 2023 – August 31, 2025) shall not exceed \$0.00.

Contractor	Texas Department of Criminal Justice	
By: _____	By: _____	
Name: _____	Ron Steffa	
Title: _____	Chief Financial Officer	
Date: _____	Date: _____	

SUMMARY OF KEY DATES FOR PROPOSAL SUBMISSION

May 30, 2023	Post to ESBD
June 06, 2023	3:00 p.m. Last Day to Submit Written Questions for Clarification to the Department
June 14, 2023	5:00 p.m. Last Day to Submit Responses to Offerors Questions
June 29, 2023	3:00 p.m. Deadline for Receipt of Proposals in Huntsville Late Offers will not be accepted.
September 1, 2023	Service Commencement Date

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SECTION A – CONTRACT DEFINITIONS

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

ACH means Automated Clearing House.

Authorized Representative means the person designated in writing to act for and on behalf of a party of this Contract, which designation has been furnished to the other party hereto as described in Section G.2.1.

Biennium means any of the two (2) year periods beginning on September 1 and ending on August 31 of odd numbered years, which periods are used for budgetary purposes by the State of Texas.

Contract means the Contract Documents that form the Contract, which represents the entire and integrated agreement between the Department and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Department and a Subcontractor or (2) between any persons or entities other than the Department and Contractor.

Contract Monitor means the department employee responsible for technical administration of this Contract. See Section G.2.3 for full explanation.

Contract Specialist means the Department employee responsible for general administration of the Contract, negotiation of any changes and issuance of written changes/modifications to the Contract, as described in Section G.2.2.

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

Contractor means the individual, corporation, company, partnership, firm, or other organization that has contracted to perform the Work under this Contract.

Court Orders means any orders or judgments issued by a court of competent jurisdiction and any stipulations, agreements, conditions of Community Supervision, or plans entered into in connection with litigation that are applicable to the operation and management of the program and relate to the custodial care of Inmates. For purposes of this Contract, this term includes such orders, judgments, stipulations, plans or agreements applicable to the Department.

Day(s) means calendar Days, unless otherwise specified.

Department means the Texas Department of Criminal Justice (TDCJ), an agency of the State of Texas.

Department Policy/Policies means all written policies, procedures, standards, guidelines, directives, and manuals of the Texas Board of Criminal Justice (TBCJ) and the Department applicable to providing the Services specified under this Contract.

Event of Default means any of the events or circumstances described in Section I.2.

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.

Material Failure means the failure of a party to fulfill one (1) or more obligations essential to achieving the purpose of this Contract.

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

Payment(s) means the amount(s) agreed to be paid by the Department to the Contractor for Services 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.

Service(s) means delivery by the Contractor of requirements in accordance with the terms and conditions of this Contract. Also known as Work.

Subcontractor means a person or organization who contracts under, or for the performance of part or the entire Contract between the Department and the Contractor. The subcontract may be directly with the Contractor or with another subcontractor.

TBCJ means the Texas Board of Criminal Justice.

Work means delivery by the Contractor of the services in accordance with the terms and conditions of the Contract. See Services.

SECTION B – SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 PRICING SCHEDULE

B.1.1 Monthly Earnings / Expense Rates for State Funds

Average Ledger Balance	\$2,571,601
Less Float of _____ %	_____
Less Reserve Requirements _____ % of Collected Balance	_____
Balance Available to Bank	_____
Daily T-Bill Rate 1.00% + or - _____ % / 365 X 30 = _____ %	_____
Total Interest Earned: (Collected Balance X Adjusted Daily Rate)	_____

Service Category	Type of Service	Monthly Volume	Per Unit Cost	Extended Total
Balance Related Service	FDIC Assessment	2,571,599	_____	_____
Depository Service	Account Maintenance	5	_____	_____
Depository Service	Deposit Correction-Noncash-RDS	1	_____	_____
Depository Service	General Checks Paid-Truncated	4,201	_____	_____
Depository Service	Returns-Chargeback	2	_____	_____
Depository Service	Return Item Other Special Inst	4	_____	_____
Depository Service	Returns-Additional Advice	7	_____	_____
Depository Service	Debits Posted-Electronic	4	_____	_____
Depository Service	Credits Posted-Electronic	216	_____	_____
Depository Service	Deposit Account Statements	5	_____	_____
Depository Service	Gen Disb Cks Pd-Image	545	_____	_____
Depository Service	Check Deposit-ICL or RDSO	168	_____	_____
Depository Service	Image Deposited Items-RDSO	957	_____	_____
Depository Service	Account Transfer	3	_____	_____
General ACH Services	ACH Reports-Electronic	1	_____	_____
General ACH Services	ACH Delete/Reversal	1	_____	_____
General ACH Services	ACH Return Item	1	_____	_____
General ACH Services	ACH Monthly Maintenance	1	_____	_____
General ACH Services	ACH Input Echannel	104	_____	_____
General ACH Services	ACH Blocks Auth Instructions	7	_____	_____
General ACH Services	ACH Blocks Auth Maintenance	5	_____	_____
General ACH Services	ACH on US Credits	133	_____	_____
General ACH Services	ACH on US Credits-Same Day	1	_____	_____
General ACH Services	ACH Credit Received Item	126	_____	_____
General ACH Services	ACH Debit Received Item	134	_____	_____
Wire Transfer	Incoming Domestic Wire	85	_____	_____
Wire Transfer	Book Credit	3	_____	_____
Account Reconciliation	ARP Partial Positive Pay Maint-Supp	5	_____	_____
Account Reconciliation	ARP Partial Positive Pay Item	4,741	_____	_____
Account Reconciliation	ARP Recon Output File	2	_____	_____
Account Reconciliation	ARP Void Cancel Items	823	_____	_____
Account Reconciliation	ARP Max Dollar Maint	2	_____	_____
Account Reconciliation	Positive Pay Exceptions	45	_____	_____
Account Reconciliation	ARP Positive Pay Return-Other	5	_____	_____

Remote Deposit Services	Remote Deposit Account Maint	2	
Remote Deposit Services	Remote Deposit Ck Image Processing	957	
Remote Deposit Services	Remote Dep OL-Item Storage	46,011	
Image Services	Image Archive-90 days	4,914	
Image Services	Image Subscription	9	
Miscellaneous	Non-relationship Cust Ck Cashed	395	

Note: Provide a list of other bank services/cost not included above.

Average Daily Balance based on historical data and subject to change.

B.1.2 Monthly Earnings / Expense Rates for Local Funds

Average Ledger Balance	\$55,360,439
Less Float of _____ %	
Less Reserve Requirements _____ % of Collected Balance	
Balance Available to Bank	
Daily T-Bill Rate 1.00% + or - _____ % / 365 X 30 = _____ %	
Total Interest Earned: (Collected Balance X Adjusted Daily Rate)	

Service Category	Type of Service	Monthly Volume	Per Unit Cost	Extended Total
Balance Related Service	FDIC Assessment	55,360,438		
Depository Services	Account Maintenance	4		
Depository Service	Deposit Correction-Noncash-RDS	1		
Depository Services	General Checks Paid Truncated	10,535		
Depository Services	ZBA Master Account Maintenance	1		
Depository Services	ZBA Subsidiary Account Maint	2		
Depository Services	ZBA Per Transactions	42		
Depository Services	Return Email Images	10		
Depository Services	Returns- Chargeback	10		
Depository Services	Return Item Other Special Inst	2		
Depository Services	Returns - Single Item Adv	12		
Depository Services	Debits Posted - Electronic	38		
Depository Services	Credits Posted - Electronic	161		
Depository Services	Deposit Account Statements	4		
Depository Services	Cks Deposited - ICL or RSDO	93		
Depository Services	Image Deposited Items - ICL	7,042		
Depository Services	Transmission Maintenance	1		
Depository Services	Images Deposited Items - RSDO	810		
Depository Services	Account Transfer	9		
General ACH Services	ACH Reports-Electronic	4		
General ACH Services	ACH Monthly Maintenance	1		
General ACH Services	ACH Input Echannel	2		

General ACH Services	ACH Blocks Auth Instructions	9	_____	_____
General ACH Services	ACH Blocks Auth Maintenance	4	_____	_____
General ACH Services	ACH Originated Addenda	737	_____	_____
General ACH Services	ACH Notif of Change (NOC)	2	_____	_____
General ACH Services	ACH On Us Debits	208	_____	_____
General ACH Services	ACH Off Us Debits	2,062	_____	_____
General ACH Services	ACH Unauthorized Entry	1	_____	_____
General ACH Services	ACH Credit Received Item	149	_____	_____
General ACH Services	ACH Debit Received Item	50	_____	_____
General ACH Services	ACH Return Item	33	_____	_____
Wire Transfer	Incoming Domestic Wire	1	_____	_____
Wire Transfer	Elec Wire Out – Domestic	11	_____	_____
Wire Transfer	Elec Wire Out - Book DB	2	_____	_____
Wire Transfer	Book Credit	1	_____	_____
Account Reconciliation	ARP Full Pay Maintenance-PPR Supp	2	_____	_____
Account Reconciliation	ARP Full Pay Input Per Item	11,906	_____	_____
Account Reconciliation	ARP Recon Output File	2	_____	_____
Account Reconciliation	Void Cancel Items	1,483	_____	_____
Account Reconciliation	Positive Pay Exceptions	13	_____	_____
Account Reconciliation	ARP Positive Pay Return-Other	9	_____	_____
Remote Deposit Services	Remote Dep - Account Maintenance	2	_____	_____
Remote Deposit Services	Remote Dep CK Image Processing	810	_____	_____
Remote Deposit Services	RDSOL - Item Storage	37,856	_____	_____
Image Services	Image Subscription	1	_____	_____
Miscellaneous	Photocopy-Manual	10	_____	_____
Miscellaneous	Charge per Contract	1	_____	_____
Miscellaneous	Non-relationship customer check cashed	320	_____	_____

Note: Provide a list of other bank services/cost not included above.

Average Daily Balance based on historical data and subject to change.

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

Pursuant to Texas Government Code, Chapter 2155.132, the Texas Department of Criminal Justice (TDCJ), hereafter referred to as the Department, is accepting proposals for professional banking services.

C.2 GENERAL DUTIES AND OBLIGATIONS

The Contractor shall comply with applicable federal and state laws, and other legal or court ordered requirements, whether now in effect or hereafter effected or implemented including but not limited to Texas Government Code Section 501.015 and Chapter 2257. Specifically, in order to comply with Texas Government Code Section 501.015 and for the convenience of the Department for certain transactions Contractor shall have a physical location in Huntsville, Texas. In the event the Contractor does not have a physical location in Huntsville, Texas, the Contractor shall arrange by subcontract or otherwise for the maintenance and availability of funds in a bank with a physical location in Huntsville, Texas, in an amount specified by the TDCJ of not less than \$100,000.00.

The Contractor shall follow all applicable State and Federal laws, TDCJ policies, guidelines, standards, and any National Institute of Standards and Technology (NIST) standards in relation to information security and/or cybersecurity the TDCJ deems applicable. At all times the Contractor shall be fully responsible to the TDCJ for the security of the storage, processing, compilation, or transmission of all the TDCJ Stored Data/Information to which the Contractor has access, and for the security of all equipment, storage facilities, and transmission facilities on which or for which such TDCJ Stored Data/Information is stored, processed, compiled, or transmitted. In addition, the Contractor must complete and accept a non-disclosure agreement with the TDCJ before performing work on this Contract.

Security Incidents:

Immediately upon discovery of a breach or suspected breach of system security or unauthorized exposure of sensitive personal information, confidential information, or information where the disclosure of which is regulated by law, the Contractor shall notify the TDCJ of the breach or suspected breach. The Contractor must provide a written report within twenty-four (24) consecutive hours to include, at a minimum, date and time of the breach or suspected breach, how the breach or suspected breach occurred, name of the offending parties, if known, extent of damage or potential damage, name of the Contractor's management person conducting the investigation, and action(s) taken by the Contractor for remedy. If the breach was conducted by any Contractor employee, the immediate removal of the employee from the Contract is mandatory. See Section 2054.1125, Tex. Gov't Code, as amended by Texas Senate Bill 64, 86th Legislature (2019).

C.3 SPECIFIC DUTIES AND OBLIGATIONS FOR BANKING SERVICES**C.3.1 Accounts Included**

State Funds include five (5) accounts:

Manager's Clearing;
Revolving Discharge (1st account);
Revolving Discharge (2nd account);
Advance Travel; and

Revolving Expense Account.

Local Funds include four (4) accounts:

Inmate Trust Fund;
Commissary Service Option;
Inmate Trust Fund-EFTPS – Electronic Funds Transfer Payment System; and
ECOMM

The Contract may be amended to include opening of additional account(s) or closing any account(s) that the Department may require to open/close by law or policy during the Contract period.

C.3.2 Services Provided

Banking services to be provided include, but are not limited to:

- The full range of depository services;
- Check processing;
- Transfer balances between accounts;
- Positive Pay;
- Wire transfers;
- Remote deposit;
- ACH services;
- Account reconciliation; and
- Online banking, with controlled access through unique user identification and password.

The average ledger balance for State and Local Funds shall be maintained at a level that is most advantageous to the Department.

C.3.3 Monthly Account Analysis

A monthly account analysis will be prepared by the Contractor in the same format as found in Section B. The monthly cycle end date shall be on the last day of each month and made available no later than ten (10) calendar days from the end of the previous month.

Contractor shall supply individual account analysis and a summary account analysis for State and Local Funds. The summary statement is the basis for determining the amount of service fee, if any, that is payable. The net amount due to the Contractor, if any, shall be debited from an account designated by the Department. If the awarded Contractor utilizes a Subcontractor as outlined in C.2, the cost incurred shall be at the Contractor's expense.

C.3.4 Supplies

Contractor shall provide triplicate carbonless encoded deposit slips. Remote deposit scanners shall be provided at no cost to the Department.

Contractor shall provide five (5) remote deposit scanners comparable to Digital Check Teller Scan TS240. The Contractor scanners must be capable of capturing digitized images of Treasury Checks, Employee Commissary Money Orders, Comptroller Checks, and other payment forms identified by the Department. The scanner shall be capable of producing a copy of the document, endorsing option, and file to upload to bank remote deposit software. These scanners will be placed at the TDCJ Commissary and Trust Fund and Cashier/Travel Department administrative offices in Huntsville, TX. These scanners shall be designed for a non-technical person to operate after the Contractor's training and configuration, which shall consist of, at a minimum:

1. Document speed up to 75 per minute.
2. Compatible with Windows 10 and Windows 11, 64-bit operating systems;
3. Built in diagnostics compatible, with remote monitoring and management software, compatible to API Toolkit;
4. Endorsement option;
5. Comparable unit size: 7.5" height x 11.10" length x 5.10" depth x 5.20 lbs.;
6. Paper Size:
Up to UNI A6
Document height: 2.12" – 4.13"
Document length: 3.19" – 8.98"
Weight: 16 – 28 lbs.;
7. Ability to read a Magnetic Ink Character Recognition (MICR) code line, images, and data transmitted through Universal Serial Bus (USB) interface with PC; and
8. External Power Supply and cord: +100V – 240V, 50/60Hz voltage sensing.

C.3.5 Collateral

State and Local Funds must be insured under the Federal Deposit Insurance Corporation (FDIC). Amounts over FDIC coverage must be secured 100% by collateral as outlined in Texas Government Code, Chapter 2257. All such collateral will be held in safekeeping by a third-party bank. A copy of each safekeeping receipt is to be filed with the Contract Monitor, as listed in Section G.2.3. Contractor shall furnish monthly statements on the market value of the pledged securities.

C.3.6 Funds Availability

Contractor shall provide to the Department a detailed Funds Availability Schedule to include cutoff times for current day processing of credits received by ACH, wire, remote deposits and banking centers.

C.3.7 Adjustments

Debit and credit adjustments should only be originated through the proofing process. Debit and credit memos must include bank account, amount, deposit date, date of the adjustment and explanation. All adjustments must be accompanied by detailed documentation and shall be automatically emailed to the Department when the adjustment is posted.

C.3.8 Returned Items

State Funds and Local Funds do not require non-sufficient funds (NSF) checks to be redeposited. NSF checks for State Funds and Local Funds should be returned to the Contract Monitor for further processing. Any NSF check should be charged against the account originally credited.

C.3.9 Online Banking Service

Contractor shall provide a website and log-in information for a review of the online banking system. Contractor shall fully describe the security and other features assigned to the online banking system to include:

- Name of the third-party provider for the online services, if not bank owned and supported;
- The online banking security must be self-administered by the Department;
- Online system must use transaction limits, file dollar limits or both;
- Multifactor/advanced authentication is required;
- Account transactions must be validated by token or pin identification; and
- Current day activity, at a minimum, must be updated hourly.

C.3.10 Information Reporting System

Contractor shall provide access to an Internet based information reporting system for the State and Local Funds. This system must provide the following:

- Current day reporting to include balances, incoming wires and ACH activity;
- Previous day's closing balance;
- Initiate, approve and view stop payments;
- Debit and credit adjustments to include images;
- Images for checks, return checks and deposit slips to include each item associated with the deposit with viewing capabilities of ninety (90) days;
- Initiate, approve and view account transfers;
- ACH origination;
- Positive Pay with partial or full reconciliation and exception transactions;
- View and print individual account analysis statements and analysis summary statements;
- View and print the paid item settlement for discharge accounts; and
- Online system should have capabilities to generate custom reports.

C.3.11 Positive Pay

Contractor shall describe the system requirements to perform the data transfer and include:

- The timeline for submission;
- System must have capabilities for up to five (5) transfers per day;
- Describe how checks are verified by teller if not listed on the file transfer;
- Describe method of notification for items not listed on the file transfer;
- Describe the approval method for items not listed on the file transfer, verbal or email; and
- Outline the timeline for approval or denial of positive pay exception items.

C.3.12 ACH Services

Contractor shall provide a secure Internet website to electronically send and receive funds via repetitive and non-repetitive ACH and wire transfers. ACH service should include the following:

- Template for repetitive ACH;
- Ability to generate same day ACH and the flexibility to schedule ACH;
- Ability to view source originator or specified Contractor contact; and
- Outline the cut off times for ACH initiation.

C.3.13 Remote Deposit and Capture Service including Check Truncation and Check Conversion

The Contractor shall provide the following:

- Scanning equipment as described in Section C.3.4;
- Provide software associated with the scanning equipment;
- Outline the transfer and batching procedures;
- Describe the security measures utilized for the transfer and images transmittal;
- Outline the timeline to receive same day credit of deposit; and
- Outline the document retention policy for checks converted to ACH or processed via remote deposit capture.

C.3.14 Bank Agreements

In addition to this Contract, the Contractor may request the Department to enter into modified bank operating agreements for all services the Contractor provides, e.g. ACH agreement, wire transfer agreement, third party banking, etc. The Contractor shall provide a copy of all agreements which will be required for contract services.

C.3.15 Optional Added Value

The Department would like the option to utilize digital payment platforms such as employee(s)' or inmate(s)' PayPal, Zelle, and debit cards for the following:

- Issuing employees' travel payments;
- Issuing funds to inmates releasing from the Department; and/or
- Accepting payments for funds owed to the Department.

The Optional Added Value is not required by the Department.

SECTION D – RESERVED FOR FUTURE USE

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

- A. The Department and other government regulatory agencies have the right to inspect and test all Services called for by this Contract, to the extent practicable at all times and places during the Contract Term. The Department shall perform inspections in a manner that will not unduly interfere with the Contractor's performance of Services. The Contractor shall furnish, and shall require subcontractors to furnish, at no increase in the Contract price, all reasonable assistance for the safe and convenient performance of these duties.
- B. From time to time 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 related specifically to the Services, including financial records, employee records (including time and attendance records), and Inmate records generated by the Contractor and its subcontractors in connection with the performance of this Contract.
- C. If subject to the outcome of an audit or inspection, 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.4.5 of this Contract.
 1. If any of the Services are non-compliant with the Contract requirements, as identified by the Department, the Contractor shall be notified describing the specific areas of non-compliance. The Contractor shall have a twenty (20) Day period to file a written response detailing corrective action(s) taken to address all items of non-compliance. The response must include supporting documentation which verifies execution of corrective action(s) taken. 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. Any areas of non-compliance shall be corrected within twenty (20) Days or by the date of the Department approved extension.
 2. If any of the Services are non-compliant with the Contract requirements, as identified by a government regulatory agency, the Contractor must resolve all items identified as non-compliant by the deadline established by the Department.

E.2 INSPECTION BY STATE EMPLOYEES

The Contractor shall allow at all times the employees/agents of the Governor, members of the Legislative and all other members of the Executive and Judicial branches of the State of Texas, as well as any other persons designated by the Department and the Texas Board of Criminal Justice, to monitor delivery of the service.

E.3 AGENCY'S RIGHT TO AUDIT

Contractor will make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Contractor pertaining to the contract for purposes of inspecting, monitoring, auditing, or evaluating by Department and the State of Texas.

E.4 AUDITS BY OTHER AGENCIES

- A. Upon receipt of audits or monitoring reports pertaining to Services under this Contract that are conducted by agencies or entities other than the Department, the Contractor shall provide copies thereof to the Department within thirty (30) Days.
- B. The Contractor shall provide to the Department copies of responses to audits and/or monitoring reports within seven (7) Days of issuance. Audits or monitoring reports may include allegations or complaints involving Service operations or the Contractor and its employees (including consultants, independent contractors and their employees, agents, and volunteer workers).
- C. The Contractor shall retain all original audits and monitoring reports that are conducted by other agencies. These records shall be maintained in accordance with the Department's Records Retention Schedule. If those records are still in their retention period at the termination of the Contract, all originals shall be physically transferred to the Department.

E.5 FRAUD, WASTE OR ABUSE

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

SECTION F – DELIVERIES OR PERFORMANCE**F.1 PERIOD OF PERFORMANCE**

The Contract will consist of a Base Period (September 1, 2023 through August 31, 2025) and three (3) one (1) year renewal Option Periods (September 1, 2025 through August 31, 2026, September 1, 2026 through August 31, 2027 and September 1, 2027 through August 31, 2028).

SECTION G – CONTRACT ADMINISTRATION DATA**G.1 CLAUSES INCORPORATED BY REFERENCE**

This Contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contract Specialist will make their full text available.

G.2 AUTHORITY – AUTHORIZED REPRESENTATIVE, CONTRACT SPECIALIST, CONTRACT MONITOR AND ACCOUNT REPRESENTATIVE**G.2.1 Authorized Representative**

- A. In the case of the Contractor, 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 Executive Director is hereby designated as its Authorized Representative. The Executive Director has designated the Chief Financial Officer to act in his/her behalf on 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 Executive 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 Executive Director) or his/her designated representative (the Chief Financial Officer) 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 Executive Director or his/her designated representative. In the event the Contractor makes any change at the direction of any person other than the Executive Director or his/her designated representative, the change will be considered to have been made without authority and no adjustment will be made in the Contract price to cover any increase in cost incurred as a result thereof.

G.2.2 Contract Specialist

- A. The Contract Specialist for administration of this Contract is Kristie Robertson.
- B. The telephone number for the Contract Specialist is (936) 437-7040.
- C. The email address for the Contract Specialist is kristie.robertson@tdcj.texas.gov.
- D. The Contract Specialist is responsible for general administration of this Contract, negotiation of any changes and final issuance of written changes/modifications to this Contract. All requests by the Contractor to modify the Contract shall be made in writing to the Contract Monitor and a copy submitted to the Contract Specialist.

G.2.3 Contract Monitor

- A. The Contract Monitor for administration of this Contract is: Tanya Greene.
- B. The telephone number for the Contract Monitor is (936) 437-8115.
- C. The facsimile number of the Contract Monitor is (936) 437-6306.
- D. The e-mail address is tanya.greene@tdcj.texas.gov.
- E. The Contract Monitor is not authorized to make any representations or commitments of any kind on behalf of the Department's Authorized Representative as described in Section G.2.
- F. The Contract Monitor 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 Contract obligations or the statement of work, changes will be issued in writing and signed by the Department's Authorized Representative as described in Section G.2.1.

G.2.4 Account Representative

The Contractor shall provide an Account Representative 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. The Account Representative shall have full authority to act for the Contractor in the performance of the required services. The Account Representative or a designated representative shall meet with the Contract Monitor to discuss problems as they occur.

- A. The Account Representative for administration of this Contract is: _____.
- B. The telephone number for the Account Representative is: _____.
- C. The facsimile number of the Account Representative is: _____.
- D. The e-mail address is: _____.

G.3 INVOICE REQUIREMENTS

- A. The Contractor shall invoice the Department for each calendar month, one (1) calendar month in arrears for the amount due for Services, and the Department shall pay such invoice thirty (30) Days after receipt of an accurate Contractor's invoice and supporting documentation. The Contractor may offer prompt payment discount, for example, one percent (1%), fifteen (15) Days (refer to page 1, block 7 of the Solicitation, Offer and Award form) if the Contractor desires expedited Payments. Prompt payment discounts and payment terms must be stated on each invoice.
- B. The Contractor's invoice(s) shall include the following information:
 1. Name of business, remittance address, and invoice date;
 2. Contract number;

3. Description(s), price and quantity of Services rendered; and
4. Payment terms, including prompt payment discount, if applicable.

C. Invoices shall be submitted to the office designated below:

TDCJ – Cashier's Office
PO Box 4015
Huntsville, Texas 77342-4015

D. The Contractor shall invoice the Department for each calendar month, one (1) calendar month in arrears for the amount due and the Department, subject to its usual auditing and accounting procedures, shall pay such invoice thirty (30) days after receipt of an accurate Contractor's invoice.

G.4 PAYMENTS

- A. It is recommended that the Contractor receive Payment via Electronic Funds Transfer (EFT) also known as Direct Deposit.
- B. Regardless as to whether Direct Deposit is chosen, the Contractor shall, upon Contract award, submit a completed Vendor Maintenance Direct Deposit and Substitute W-9 Form to the following address:

Texas Department of Criminal Justice
Attention: Accounts Payable
P.O. Box 4018
Huntsville, Texas 77342-4018

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

The form and instructions can be found at the following link on the TDCJ website:
https://www.tdcj.texas.gov/divisions/bfd/acct_accts_pay.html.

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

- E. Payment is to be made by the Department to the Contractor after all Services are rendered and invoices have been submitted accurately and completely.
- F. Partial Payments may be made when the amount of the invoice is sufficient, in the opinion of the Department, to justify processing the Payment.

G. The Contractor shall have thirty (30) Days from receipt of Payment to submit a request for consideration to review any discrepancies or inaccuracies.

G.4.1 Payment Adjustment

- A. The Department may elect to deduct from its Payment(s) as specified in Section G.4.5, or any money determined to be due as specified under Section E.1.C.
- B. If it is determined the amount of Payment(s) is not adequate to cover the money due to the Department, then all of the Contractor Payment shall be withheld, and an invoice issued to the Contractor for the 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.4.2 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 Texas Government Code, Section 2251.025, provided, however, that this provision shall not excuse failure by the Department to make Payment in strict accordance with this Contract.

G.4.3 Compensation for Additional Services

- A. The Department recognizes that the Contractor has entered into this Contract and has offered to furnish the Services hereunder based upon Department Policies in effect as of the date of this Contract.
- B. If there are changes in such Department Policies which changes are not as a result of changes in laws, government regulations or Court Orders generally applicable to the Department and which necessitate a change in the scope of Services furnished by the Contractor so as to increase the cost of operating and managing the program or performing other Services contemplated in this Contract, then the Contractor may be provided extra compensation for the Additional Services required.
- C. The Contractor shall request in writing, together with such supporting documentation or information as the Department may reasonably request, the additional compensation the Contractor desires to offset the Contractor's increase in costs for furnishing the Additional Services because of such change in Department Policies.
- D. The parties shall make a good faith effort to mutually agree on the cost adjustment prior to the implementation of the new policy at the Facility, unless implementation of the new policy is required immediately due to security or public safety issues.
- E. If mutual agreement is not reached within thirty (30) Days, the Contractor shall implement the new policy, with both parties continuing negotiations until such time as a mutual agreement is reached or sixty (60) Days has lapsed as set forth in Section G.4.4 below. Cost adjustments will be retroactive to the date that the Contractor implemented said policy.
- F. In the event that such changes in Department Policy are the result of changes in laws or government regulations, the Contractor shall be financially responsible for incurring any additional cost to comply with the terms of such policies and this Contract.

G.4.4 Failure to Agree on Compensation for Additional Services

If the parties cannot agree on a per diem adjustment or compensation for Additional Services within sixty (60) Days of the date the Contractor's request is received by the Department, the Contractor may utilize the dispute resolution process as outlined in Section I.2.8.

G.4.5 Withholding of Payment

- A. The Department shall have the right to withhold the Contractor Payment until the failures described below have been corrected:
 1. Failure to respond to audit reports as set forth in Section E.I.C; and
 2. 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. Contractor Payments withheld shall be released upon the Department's satisfaction that compliance has been achieved for thirty (30) consecutive Days.
- D. With the exception of disputed issues, such withholding of final Payment by the Department shall not exceed one hundred twenty (120) Days from the date of Contract termination.

G.4.6 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.

SECTION H – SPECIAL CONTRACT REQUIREMENTS**H.1 RESERVED FOR FUTURE USE****H.2 SUBCONTRACTORS**

- A. The Contractor may subcontract for the performance of any of its responsibilities to provide Services pursuant to this Contract.
- B. No subcontract may be entered into unless the Department provides prior written approval, which approval may not be unreasonably withheld.
- C. If a subcontractor is deemed to be needed for an event of an emergency nature, verbal approval may be obtained through an Authorized Department Representative. The Contractor shall submit a written request with supporting documentation for approval, by the Department, as soon as possible.
- D. The Contractor shall furnish to the Department copies of all subcontracts, without regard to the amount of annual payments.
- E. Any arrangement by the Contractor with an affiliate or member company to provide Services for this Contract shall be subject to the subcontractor provisions of this Section.
- F. No contractual relationship shall exist between the Department and any subcontractor and the Department shall accept no responsibility whatsoever for the conduct, actions, or omissions of any subcontractor selected by the Contractor.
- G. The Contractor shall be responsible for the management of the subcontractors in the performance of their work.
- H. A subcontractor may not work directly with the Department in any manner and shall not be included in Contract negotiations, renewals, audits or any other discussions except at the request of the Department.
- I. Unless waived in writing by the Department, the subcontract shall contain the following:
 - 1. An acknowledgement that the subcontract is subject to the Contract between the Department and the Contractor (the "Master Contract").
 - 2. The subcontractor shall agree to comply with the terms of the Master Contract to the extent applicable with respect to goods and Services being provided under the subcontract. It is the intention of the parties of the subcontract that the subcontractor shall "stand in the shoes" of the Contractor with respect to fulfilling the duties and obligations of the Contractor to the Department under the Master Contract.
 - 3. The Department's approval of a subcontract does not relieve the Contractor of its duty to perform under the Master Contract.
 - 4. The Department shall be deemed a "third party beneficiary" to the subcontract.
 - 5. The subcontract shall contain the required Authority to Audit Clause referenced in Exhibit J.1, paragraph 39, and the required Non-Discrimination Clause referenced in Section I.9.

H.2.1 Reserved for Future Use**H.2.2 Reserved for Future Use****H.3 CRIMINAL HISTORY INFORMATION COMPLIANCE**

The parties do not anticipate that the Department will need to share criminal history record information regarding inmates or former inmates with the Contractor in order for the Contractor to perform the Services contemplated herein. Criminal history information means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information and other formal criminal charges and their dispositions. The term does not include information as to convictions, fingerprint information, and driving records.

In the event the Department provides the Contractor with criminal history information, the Contractor agrees to comply with the confidentiality requirements of all applicable federal and state laws including Texas Government Code, Section 411.083; and the FBI Criminal Justice Information Services (CJIS) Security Policy. More specifically, the Contractor agrees and acknowledges as follows:

- A. The Department hereby specifically authorizes that the Contractor may have access to criminal justice history to the extent such access is necessary or appropriate to enable the Contractor to perform the Services contemplated herein.
- B. The Contractor agrees to limit the use of such criminal justice information for the purposes set to herein.
- C. The Contractor agrees to maintain the confidentiality and security of the criminal justice history information in compliance with federal and state statutes, rules and regulations, and return or destroy such information when it is no longer needed to perform the Services contemplated herein.
- D. In the event that the Contractor's employee(s) fails to comply with the terms hereof, the Contractor shall take corrective action with the employee(s). Such corrective action must be acceptable to the Department. An intentional or knowing violation may also result in civil and criminal violations under federal and state laws. Additionally, the Contractor shall submit for the Department's approval, the Contractor's corrective action plan to ensure full compliance with the terms hereof. Until such time as the corrective action plan is approved by the Department, the Contractor shall not be authorized to fill any vacant positions unless special authorization is granted in writing by the Department which authorization shall not be unreasonably withheld.

H.3.1 No Felony Criminal Convictions

Respondent represents that neither Respondent nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred Respondent has fully advised Agency in writing of the facts and circumstances surrounding the convictions.

H.4 OTHER CONFIDENTIAL OR SENSITIVE INFORMATION

- A. The parties hereto acknowledge and agree that in order for the Contractor to perform the Services contemplated herein, the Department may have to provide the Contractor with, or the

Contractor may have access to, certain information, other than criminal history information, that is confidential pursuant to federal or state laws, rules, or regulations, or that is personal information considered to be "sensitive." The Contractor agrees that such confidential or sensitive information shall only be used for the purpose of performing Services contemplated herein. Such information shall not be disclosed, copied or transmitted for any purpose other than for the performance of Services contemplated herein.

B. In the event that the Contractor's employee(s) fails to comply with the terms hereof, the Contractor shall take corrective action with the employee(s). Such corrective action must be acceptable to the Department. An intentional or knowing violation may also result in civil and criminal violations under federal and state laws. Additionally, the Contractor shall submit for the Department's approval, the Contractor's corrective action plan to ensure full compliance with the terms hereof. Until such time as the corrective action plan is approved by the Department, the Contractor shall not be authorized to fill any vacant positions unless special authorization is granted in writing by the Department which authorization shall not be unreasonably withheld.

H.5 BOOKS AND RECORDS

The Contractor must retain all financial records, including supporting documents, statistical records, and any other records or books, relating to the Contractor's performance under this Contract. These records must be maintained in accordance with the Department's Records Retention Schedule (Section E.4.C). The Contractor will grant access to all books, records, and documents pertinent to the Contract to the TDCJ, SAO, and any federal governmental entity that has authority to review records due to federal funds being spent under this Contract.

H.6 ORGANIZATIONAL AND NAME CHANGE

The Contractor shall submit written notification to the Department within thirty (30) Days of any changes in the Contractor's name, address, telephone number, and email address with an effective date of such change. For changes in the Contractor's name, a letter is required on original Contractor letterhead, explaining the circumstances of the name change and the new name. The letter should be signed by the Authorized Representative, its President or any Vice President, showing the change and the effective date of the 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.7 FREE EXERCISE OF RELIGION

The Contractor is prohibited from substantially burdening an employee's or Inmate's free exercise of religion.

H.8 DELAY OF SERVICES

The Contractor shall meet its obligations to commence Services within the time frames defined by the Contract. In the event the Contractor fails to meet those time frames as defined by the Contract, absent extensions from the Department, the Department will have the right to obtain the Services from another source and charge the cost thereof to the Contractor for each Day that Services are not performed due to delays caused by the Contractor's nonperformance. The Department will provide written notification to the Contractor by certified mail, return receipt requested, of the charges which will include the date of imposition and the amount that has accrued daily as of the date of the notification.

H.9 TRANSITION

- A. Upon termination of this Contract, the Contractor agrees to work with the Department under the Department's management supervision for a period of sixty (60) Days, prior to the expiration of the Contract, to ensure the orderly transfer and efficient transition from current Contractor management to either Department management or management by a third party.
- B. During this transition period, the Contractor shall transfer all Inmate records to the Department if requested to do so by the Department. In the event the Contractor requires copies of any records after Contract expiration and program management transition, the Department will furnish copies to the Contractor at the Contractor's expense.

H.10 UTILIZATION OF PRODUCTS AND MATERIALS PRODUCED IN TEXAS

- A. The Contractor shall comply with Texas Government Code, Section 2155.4441, relating to service contract use of products produced in the State of Texas.
- B. In performing Services under this Contract, the Contractor shall purchase products and materials produced in the State of Texas when they are available at a price and time comparable to products and materials produced outside of Texas.

SECTION I – CONTRACT CLAUSES**I.1 ADVERTISING OF AWARD**

The Contractor agrees not to refer to awards in commercial advertising in such a manner as to state or imply that the product(s) or Service(s) provided are endorsed or preferred by the Department or is considered by the Department to be superior to other products or services.

I.2 DEFAULT AND TERMINATION**I.2.1 Default by the Contractor**

Each of the following shall constitute an Event of Default on the part of the Contractor:

- A. A Material Failure to keep, observe, perform, meet, or comply with any covenant, agreement, term, or provision of this Contract to be kept, observed, met, performed, or complied with by the Contractor hereunder, when such failure continues for a period of twenty (20) Days after the Contractor's receipt of written notice thereof;
- B. A Material Failure to meet or comply with Department Policy, any court order, federal or state requirement or law, when such failure continues for a period of twenty (20) Days after the Contractor's receipt of written notice thereof;
- C. A Material Failure to comply with any Department Policy for which the Contractor has been expressly required to comply and for which the Contractor has not received a prior written waiver from the Department, when such failure continues for a period of twenty (20) Days after the Contractor's receipt of written notice thereof;
- D. Insolvency of the Contractor as evidenced by any of the following occurrences:
 1. Its inability to pay its debts;
 2. Any general assignment for the benefit of creditors;
 3. Any decree or order appointing a receiver or trustee for it or substantially all of its property to be entered and, if entered without its consent, not to be stayed or discharged within sixty (60) Days;
 4. Any proceedings under any law relating to bankruptcy, insolvency, or the reorganization or relief of debtors to be instituted by or against it and, if contested by it, not to be dismissed or stayed within sixty (60) Days; or
 5. Any judgment, writ of attachment or execution, or any similar process to be issued or levied against a substantial part of its property which is not released, stayed, bonded, or vacated within sixty (60) Days after issue or levy.
- E. The discovery by the Department that any statement, representation or warranty in this Contract is false, misleading, or erroneous in any material respect; or
- F. A failure by the Contractor to comply with contractual terms and conditions, resulting in a breach of security or health and safety standards. This Event of Default may result in the immediate termination of this Contract.

I.2.2 Further Opportunity to Cure

- A. If an Event of Default of the type specified in Section I.2.1 occurs and the Contractor reasonably believes that such Event of Default cannot be cured within the twenty (20) Days allowed in Section I.2.1 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 twenty (20) 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 must be reasonable in the circumstances, may allow, or not allow, the Contractor to pursue such plan of cure.
- C. The decision of the Department will be communicated in writing to the Contractor.
- D. The Department agrees that it will not exercise its remedies thereunder 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 twenty (20) Day time period shall be tolled during the period of time the request is pending before the Department.

I.2.3 Remedy of the Department

When an Event of Default by the Contractor has been determined to exist, the Department's Authorized Representative will notify, in writing, the Contractor of such Event of Default, and subject to the provisions of Section I.2.2, the Department will have the right to pursue any remedy it may have by law or in equity including, but not limited to:

- A. Reducing its claim to a judgment;
- B. Taking action to cure the Event of Default, in which case the Department may offset against any Payments owed to the Contractor all reasonable costs incurred by the Department in connection with its efforts to cure such Event of Default;
- C. Withholding of funds as authorized in Section G.4.5; or
- D. Exercising a Termination for Default.
 1. In the event of Termination for Default the Department shall offset against Payments owed to the Contractor any reasonable amounts expended by the Department to cure the Event of Default.
 2. The Department will have no further obligations to the Contractor after such termination.
 3. The Department may also acquire, in the manner the Department considers appropriate, Services similar to those terminated and the Contractor will be liable to the Department for any increase in costs for those Services.

I.2.4 Termination for Convenience

The Department may, in its sole discretion, terminate this Contract, with or without cause, by providing the Contractor with sixty (60) Days prior written notice of such termination.

I.2.5 Termination by Mutual Agreement

The parties may terminate this Contract by mutual agreement, the terms of which shall be set forth in writing.

I.2.6 Termination Procedures

A. Upon Termination for Default, Termination for Convenience, Termination by Mutual Agreement, as heretofore mentioned, or Termination for Excess Obligations (Exhibit J.1, paragraph 24), the following procedures will be adhered to:

1. The Department will immediately notify the Contractor in writing specifying the effective termination date.
2. After receipt of the Notice of Termination, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Contract:
 - a. Place no further subcontracts or orders in support of this Contract;
 - b. Terminate all subcontracts; and
 - c. Cancel all orders as applicable.

B. Upon termination, the Contractor shall be entitled to receive from the Department, Payment for all Services satisfactorily furnished under this Contract up to and including the date of termination. Claims submitted after one hundred eighty (180) Days from the date of termination will not be considered.

I.2.7 Default by the Department

Each of the following shall constitute an Event of Default on the part of the Department if not cured by the Department within twenty (20) Days after receiving written notice thereof:

- A. Failure by the Department to observe and perform any material covenant, condition, or agreement on its part to be observed or performed; or
- B. Its failure or refusal to substantially fulfill any of its material obligations hereunder, unless caused by the default of the Contractor.

I.2.8 Remedy of the Contractor

Upon an Event of Default by the Department, the Contractor's sole remedy shall be to follow the Dispute Resolution Process in Exhibit J.1, paragraph 23.

I.3 NO WAIVER OF RIGHTS

- A. No failure on the part of any party to exercise, and no delay in exercising, and no course of dealing with respect to any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or in the exercise of any other right.
- B. The remedies provided in this Contract are cumulative and non-exclusive of any remedies provided by law or in equity, except as expressly set forth herein.

I.4 TAXES/WORKER'S COMPENSATION/UNEMPLOYMENT INSURANCE – INCLUDING INDEMNITY

- A. THE CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, THE CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF THE CONTRACTOR'S AND THE CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. THE CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE DEPARTMENT AND/OR THE STATE SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES, OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.
- B. THE CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE DEPARTMENT, THE TBCJ, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. THE CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND THE CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. THE CONTRACTOR AND THE DEPARTMENT AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

I.5 NO WAIVER OF DEFENSES

- A. Neither the Department nor the Contractor shall waive, release or otherwise forfeit any possible defense the Department or the Contractor may have regarding claims arising from or made in connection with the performance of the Services by the Contractor without the consent of the other party.
- B. The Department and the Contractor shall reserve all such available defenses and 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.

I.6 INDEPENDENT CONTRACTOR

- A. The Contractor is associated with the Department only for the purposes and to the extent set forth herein, and with respect to the performance of Services 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. The Contractor shall be solely responsible for (and the Department shall have no obligation with respect to) payment of all Federal Income, FICA, and other taxes owed or claimed to be owed by the Contractor, arising out of the Contractor's association with the Department pursuant hereto, and the Contractor shall indemnify and hold the Department harmless from and against any and all liability from all losses, damages, claims, costs, penalties, liabilities, and expenses howsoever arising or incurred because of, incident to, or otherwise with respect to any such taxes.

I.7 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 business where the failure to so maintain might have a material adverse effect on its ability to perform its obligations under this Contract.

I.8 APPROVAL OF CONTRACT

- A. This Contract is subject to written approval of the Executive Director of the Department and shall not be binding until so approved.
- B. For Contracts valued over \$1,000,000.00 in the initial Contract Term, the Executive Director's approval shall be given only on the approval of the TBCJ.

I.9 NON-DISCRIMINATION

In the performance of this Contract, the Contractor warrants that it shall not discriminate against any employee, subcontractor, participant or provider on account of race, color, disability or perceived disability, religion, sex, 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/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.

I.10 CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of the Contract shall be kept confidential unless otherwise provided by law and shall not be made

available to any individual or organization by the Contractor or the Department without prior approval of the other party.

I.11 CONTRACT CHANGES

- A. Changes/modifications to this Contract (except Contract extensions in accordance with Sections I.12 and I.13; administrative changes, such as changing the Contract Specialist 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.
- B. The Department, at its sole discretion, may revise funding during the course of this Contract by issuing a unilateral modification.

I.12 OPTION TO EXTEND THE TERM OF THE CONTRACT

- A. The Department may, at its sole discretion, extend the Contract Term by written notice to the Contractor within ten (10) Days prior to the expiration of the Contract, provided that the Department shall give the Contractor a preliminary written notice of its intent to extend at least sixty (60) 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.
- D. The Department may exercise its option to extend Services two (2) times for a total of two (2) renewal Option Periods for a potential Contract duration of five (5) years.

I.13 OPTION TO EXTEND SERVICES

- A. In order to address the immediate operational or service delivery needs, the Department may require continued performance beyond the Contract Term or any Option Period(s) exercised pursuant to Section I.12 of any Services specified in this Contract.
- B. The Department may exercise an extension of Services under this Section for a maximum of one (1) year.
- C. Any extension made pursuant to this Section shall comply with the General Appropriations Act.

I.14 SEVERABILITY

In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, 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.

I.15 IMMIGRATION

The Contractor represents and warrants that it will comply with the requirements of the Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.) and all subsequent immigration laws and amendments.

I.16 NO LIABILITY UPON TERMINATION

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 established in Exhibit J.1, paragraph 23.

I.17 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 may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or the Department.

I.18 INTELLECTUAL PROPERTY INDEMNIFICATION

- A. THE CONTRACTOR WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE STATE OF TEXAS AND THE DEPARTMENT AGAINST ANY ACTION OR CLAIM BROUGHT AGAINST THE STATE OF TEXAS AND/OR THE DEPARTMENT THAT IS BASED ON A CLAIM THAT SOFTWARE INFRINGES ANY PATENT RIGHTS, COPYRIGHT RIGHTS OR INCORPORATED MISAPPROPRIATED TRADE SECRETS. THE CONTRACTOR WILL PAY ANY DAMAGES ATTRITABLE TO SUCH CLAIM THAT ARE AWARDED AGAINST THE STATE OF TEXAS AND/OR THE DEPARTMENT IN A JUDGEMENT OR SETTLEMENT.**
- B. IF THE DEPARTMENT'S USE OF THE SOFTWARE BECOMES SUBJECT TO A CLAIM, OR IS LIKELY TO BECOME SUBJECT TO A CLAIM, IN THE SOLE OPINION OF THE DEPARTMENT, THE CONTRACTOR SHALL, AT ITS SOLE EXPENSE (1) PROCURE FOR THE DEPARTMENT THE RIGHT TO CONTINUE USING SUCH SOFTWARE UNDER THE TERMS OF THIS CONTRACT; OR (2) REPLACE OR MODIFY THE SOFTWARE SO THAT IT IS NON-INFRINGEMENT.**

I.19 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS, AS REQUIRED BY TEXAS ADMINISTRATIVE CODE, TITLE 1, PART 10, CHAPTER 213

- A. Effective September 1, 2006 State Agencies and Institutions of Higher Education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in Texas Administrative Code, Title 1, Part 10, Chapter 213, when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
- B. The Contractor shall provide the Department with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under the Rehabilitation Act, Section 508), or indicate that the product/service accessibility information is available from the General Services Administration "Accessibility Requirements Tool (ART)" (<https://section508.gov/art/#/>). Contractors not listed with the "ART" or supplying a URL to their VPAT must provide the Department with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "ART" or obtaining a copy of the VPAT is located at <https://www.section508.gov/>.

I.20 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, willingly 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.

I.21 FORCE MAJEURE

- A. Neither the Contractor nor the Department shall be liable to the other for any delay in, or failure of performance, of any requirement included in this Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform.
- B. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, epidemics, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.
- C. Each party must inform the other in writing, with proof of receipt, within three (3) Working Days of the existence of such force majeure, or otherwise waive this right as a defense.

I.22 NOTICES

- A. Any written notices required under this Contract will be delivered by carrier service to the Contractor's office address specified on Page 1 of this Contract by U.S. mail or email.
- B. Notices to the Department shall be sent to the Department's Contract Specialist as defined in Section G.2.2.
- C. Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this Section by written notification to the other party. This change shall be incorporated with a unilateral modification.

I.23 SUBSTITUTIONS

Substitutions are not permitted without written approval of the Department.

SECTION J – LIST OF EXHIBITS

EXHIBIT NO.	TITLE	PAGES
J.1	TDCJ Required Contract Clauses	8
J.2	Questionnaire	2

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In this document, the terms Contractor and Vendor, when referring to the following affirmations (whether framed as certifications, representations, warranties, or in other terms) refer to Respondent, and the affirmations apply to all Respondents regardless of their business form (e.g., individual, partnership, corporation).

Respondent represents and warrants that all certifications, representations, warranties, and other provisions in this Affirmations and Solicitation Acceptance apply to Respondent and all of Respondent's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Solicitation or any Contract resulting from this Solicitation.

Respondent must provide information, as applicable, and affirms, without exception, as follows:

- 1. Terms and Conditions Attached to Response.** Any terms and conditions attached to a Response will not be considered unless specifically referred to in the Response.
- 2. Complete and Accurate Information.** Respondent represents and warrants that all statements and information provided to the TDCJ are current, complete, and accurate. This includes all statements and information in this Solicitation Response.
- 3. Public Information Act.** Respondent understands that the TDCJ will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material prepared and submitted in connection with this Solicitation, or any resulting Contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Respondent is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
- 4. Contracting Information Responsibilities.** Respondent represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J (Additional Provisions Related to Contracting Information), Chapter 552 of the Government Code, may apply to the Contract and the Respondent agrees that the Contract can be terminated if the Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.
- 5. Assignment.** Respondent shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the TDCJ. Any attempted assignment in violation of this provision is void and without effect.
- 6. Texas Bidder.** Respondent certifies that if a Texas address is shown as the address of the Respondent on this Response, the Respondent qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.
- 7. Dealings with Public Servants.** Respondent has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity,

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special discount, trip, favor, or service to a public servant in connection with this Solicitation Response, this Solicitation, or any Contract resulting from this Solicitation.

8. **Prior Disaster Relief Contract Violation.** Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit state agencies from accepting a Response or awarding a Contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Respondent certifies that the individual or business entity named in this 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.
9. **Child Support Obligation.** Under Section 231.006(d) of the Texas Family Code regarding child support, Respondent certifies that the individual or business entity named in this Response is not ineligible to receive the specified payment and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Respondent subject to Section 231.006 of the Texas Family Code, must include in the Response the names and social security numbers of each person with at least 25% ownership of the business entity submitting the Response. Enter name and social security numbers for each person. This information must be provided prior to Contract award.

Name: _____
SSN: _____

Name: _____
SSN: _____

Name: _____
SSN: _____

FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Disclosure of requested social security numbers is required under Section 231.006(c) and Section 231.302(c)(2) of the Texas Family Code. The social security numbers will be used to identify persons that may owe child support and will be kept confidential to the fullest extent permitted by law. If submitted by email, Responses containing social security numbers must be encrypted. Failure by a Respondent to provide or encrypt the social security numbers as required may result in disqualification of the Respondent's Response.

10. **Suspension and Debarment.** Respondent certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.
11. **Excluded Parties.** Respondent certifies that it is not listed in the prohibited vendors list authorized by Executive Order Number 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control.

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- 12. Foreign Terrorist Organizations.** Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
- 13. Executive Head of a State Agency.** In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Respondent certifies that it is not (1) the executive head of the TDCJ, (2) a person who at any time during the four years before the date of the Contract was the executive head of the TDCJ, or (3) a person who employs a current or former executive head of the TDCJ.
- 14. Human Trafficking Prohibition.** Under Section 2155.0061 of the Texas Government Code, the Respondent certifies that the individual or business entity named in this 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.
- 15. Debts and Delinquencies.** Respondent agrees that any payments due under any Contract resulting from this Solicitation, shall be applied towards any debt or delinquency that is owed to the State of Texas.
- 16. Lobbying Prohibition.** Respondent represents and warrants that payments to Respondent and Respondent's receipt of appropriated or other funds under any Contract resulting from this Solicitation, are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).
- 17. Buy Texas.** Respondent agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.
- 18. Disaster Recovery Plan.** Respondent agrees that upon request of the TDCJ, Respondent shall provide copies of its most recent business continuity and disaster recovery plans.
- 19. Computer Equipment Recycling Program.** If Respondent is submitting a Response for the purchase or lease of computer equipment, then Respondent certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.
- 20. Cybersecurity Training.** Respondent represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.
- 21. Restricted Employment for Certain State Personnel.** Respondent acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving Respondent may not accept employment from Respondent before the second anniversary of the date the Contract is signed or the procurement is

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terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.

- 22. No Conflicts of Interest.** Respondent represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to the TDCJ under this Solicitation and any resulting Contract and that Respondent's provision of the requested goods and/or services under this Solicitation and any resulting Contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
- 23. Dispute Resolution.** Any dispute arising under this Contract, which is not disposed of by mutual agreement between the TDCJ and the Respondent shall be resolved in accordance with Texas Government Code, Chapter 2260. At all times during the dispute resolution process, the Respondent shall continue providing services in a diligent manner and without delay, according to all applicable provisions of this Contract.
- 24. Excess Obligations Prohibited.** The Contract is subject to termination or cancellation, without penalty to the TDCJ, either in whole or in part, subject to the availability of state funds. The TDCJ is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If the TDCJ becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render either the TDCJ's or Respondent's delivery or performance under the Contract impossible or unnecessary, the Contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, the TDCJ will not be liable to the Respondent for any damages, that are caused or associated with such termination, or cancellation, and the TDCJ will not be required to give prior notice.
- 25. Governing Law.** The Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the TDCJ.
- 26. Antitrust.** The undersigned affirms under penalty of perjury of the laws of the State of Texas that (a) in connection with this Response, neither I nor any representative of the Respondent has violated any provision of the Texas Free Enterprise and Antitrust Act, Texas Business and Commerce Code, Chapter 15; (b) in connection with this Response, neither I nor any representative of the Respondent has violated any federal antitrust law; and (c) neither I nor any representative of the Respondent has directly or indirectly communicated any of the contents of this Response to a competitor of the Respondent or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Respondent.
- 27. Indemnification.** THE RESPONDENT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, THE TDCJ, THE TBCJ, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE RESPONDENT OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE

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

THE TDCJ SHALL NOT INDEMNIFY RESPONDENT OR ANY OTHER ENTITY UNDER THE CONTRACT.

28. E-Verify. Respondent certifies that for contracts for services, Respondent shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the Contract to determine the eligibility of:

- a. all persons employed by the Respondent to perform duties within Texas; and
- b. all persons, including subcontractors, assigned by the Respondent to perform work pursuant to the Contract within the United States of America.

29. Former Agency Employees. If this Solicitation is for an employment contract, a professional services contract or a consulting services contract under Chapter 2254 of the Texas Government Code, Respondent represents and warrants that neither Respondent nor any of Respondent's employees including, but not limited to, those authorized to provide services under the Contract, were former employees of the TDCJ during the twelve (12) month period immediately prior to the date of the execution of the Contract.

30. Disclosure of Prior State Employment – Consulting Services. In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Respondent certifies that it does not employ an individual who has been employed by the TDCJ or another agency at any time during the two years preceding the submission of the Response or, in the alternative, Respondent has disclosed in its Response the following:

a. The nature of the previous employment with the TDCJ or the other State of Texas agency:

b. The date the employment was terminated and the reason for the termination:

c. The annual rate of compensation for the employment at the time of its termination:

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31. Entities that Boycott Israel. Pursuant to Section 2271.002 of the Texas Government Code, Respondent certifies that either (1) it meets an exemption criterion under Section 2271.002; or (2) it does not boycott Israel and will not boycott Israel during the term of the Contract resulting from this Solicitation. If Respondent refuses to make that certification, Respondent shall state here any facts that make it exempt from the boycott certification:

32. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 CFR 200.216). Respondent certifies that the individual or business entity named in this Response or Contract is not ineligible to receive the specified Contract or funding pursuant to 2 CFR 200.216.

33. Financial Participation Prohibited. Pursuant to Section 2155.004(b) of the Texas Government Code, Respondent certifies that the individual or business entity named in this Response or Contract is not ineligible to receive the specified Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.

34. COVID-19 Vaccine Passports. Pursuant to Texas Health and Safety Code, Section 161.0085(c), Respondent certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Respondent's business. The Respondent acknowledges that such a vaccine or recovery requirement would make Respondent ineligible for a state-funded contract.

35. Energy Company Boycotts. If Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Respondent verifies that Respondent does not boycott energy companies and will not boycott energy companies during the term of the Contract. If Respondent does not make that verification, Respondent must so indicate in its Response and state why the verification is not required.

36. Entities that Discriminate Against Firearm and Ammunition Industries. If Respondent is required to make a verification pursuant to Section 2274.002 of the Texas Government Code (relating to prohibition on contracts with companies that discriminate against firearm and ammunition industries), Respondent verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the Contract against a firearm entity or firearm trade association. If the Respondent does not make that verification, Respondent must state here why the verification is not required:

37. State Auditor's Right to Audit. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under

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the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

- 38. Critical Infrastructure.** Pursuant to Texas Government Code, Section 2274.0102, Respondent certifies that neither it nor its parent company, nor any affiliate of Respondent or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Texas Government Code, Section 2274.0103, or (2) headquartered in any of those countries.
- 39. Enforcement of Certain Federal Firearms Laws Prohibited.** In accordance with House Bill 957, Acts 2021, 87th Leg., R.S., if Texas Government Code, Section 2.101 is applicable to the Respondent, the Respondent certifies that it is not ineligible to receive state grant funds pursuant to Texas Government Code, Section 2.103.
- 40. Permits and Licenses.** Respondent represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to any Contract resulting from this Solicitation.
- 41. False Statements.** Respondent represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Response with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Response and any resulting contract.
- 42. Signature Authority.** By submitting this Response, the Respondent represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any Contract that may result from the submission of this Response.
- 43. Data Management and Security Controls.** In accordance with Section 2054.138 of the Texas Government Code, Respondent certifies that it will comply with the security controls required under this contract and will maintain records and make them available to Agency as evidence of Respondent's compliance with the required controls.

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

Questionnaire

1.1 Services Provided (35%)

1. Fully describe the Positive Pay processes, providing technology requirements and costs associated.
2. Describe the bank's timetable regarding same-day credit for deposits, including incoming ACH's and wires, also customer initiation of ACH's and wires.
3. ACH process must have capabilities for same day and scheduled ACH transmittals with the ability to view source originator.
4. What are your guidelines for determining if items have either one (1) or two (2) day float?
5. How does the bank handle file reversals and deletions/cancellations? Provide deadline for request.
6. Is the online banking system bank owned and supported or is this service provided by a third party? If third party owned and/or supported, provide Contractor name.
7. Does the bank use a third-party bank to monitor pledged securities for collateralization?
8. Describe the fee, if any, associated with collateralization of deposits.
9. Will the Department be automatically notified of the need for additional collateral? How will the Department be notified?
10. Outline the process to increase/decrease securities.

1.2 Income/Fees (25%)

1. Complete and include Section B.
2. In addition to Section B, what other factors affect the monthly service charge?

1.3 Qualifications (10%)

1. Provide a copy of the most recent annual Shareholder Report.
2. Provide a listing of all Texas bank locations and addresses.
3. What differentiates your services from other providers?
4. Will the bank offer any transition incentive?
5. Provide a list of names, titles, phone and fax numbers, and e-mail addresses of bank contact personnel.
6. Provide a copy of all agreements which will be required to be executed under the contract award.
7. Provide names and phone numbers of three references with comparable volumes who are currently using the services requested in this RFP.
8. Provide any additional information considered to be relevant.

1.4 Customer Service (10%)

1. Describe the responsibilities of customer service personnel, including a chain-of-command for problem resolution.
2. Provide the hours of operation for customer service support.
3. Is there a cost associated with research assistance? If so, provide the fee schedule.
4. Describe the training available for all bank services.

1.5 Reporting System(10%)

1. Provide a list and samples of available reports.
2. How many days of history can be accessed via online system without bank representative research?
3. Can customized reports be generated by the Department?
4. Describe the level of detail in all reports, including the ability to view deposits as well as the items that make up the deposit.
5. Describe the features of inquiry capabilities. Does this include the capability to inquire about specific transaction types?

1.6 Disaster Recovery and Security Administration (10%)

1. Briefly describe the bank's Disaster Recovery Plan in the event of a disaster or emergency situation.
2. Describe the bank's security procedures for all services outlined in this RFP.
3. Access to information and performance of functions must be segregated by user. How will this be accomplished?
4. What limitations are used in administering accounts?

SECTION K – REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS

(NOTE TO OFFEROR: RESPONSES MUST BE SUBMITTED ON THESE PAGES, AS THEY BECOME, AND ARE INCORPORATED BY REFERENCE, PART OF THE CONTRACT FOR THE AWARDED CONTRACTOR)

K.1 HISTORICALLY UNDERUTILIZED BUSINESS (HUB) REPRESENTATION**K.1.1 Definition**

A. "Historically Underutilized Business (HUB)" 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 percent (51%) 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 percent (51%) 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 HUB, as determined under another paragraph of this subdivision; or
5. A supplier contract between a HUB as determined under another paragraph of this subdivision, and a prime Offeror under which the HUB is directly involved in the manufacture or distribution of the goods or otherwise warehouses and ships the goods.

B. "Economically Disadvantaged Person" means a person who is economically disadvantaged because of the person's identification as a member of a certain group including Black Americans, Hispanic Americans, Women, Asian Pacific Americans, Native Americans and Service-Disabled Veterans, 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 Offeror represents and certifies as part of its proposal that it [] is, or [] is not, a HUB certified by the Texas Statewide Procurement Division.

K.2 FRANCHISE TAX REPRESENTATION

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

K.3 TYPE OF BUSINESS ORGANIZATION

The Offeror, 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 Offeror 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.4 REPRESENTATIONS OF OFFEROR

The Offeror 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.4.1 Organization and Qualification

If the Offeror 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.4.2 Authorization

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

K.4.3 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 Offeror 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 Offeror or any of its properties, except any such conflict, breach, or default which would not materially and adversely affect the Offeror'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 Offeror.

K.4.4 No Defaults under Agreements

The Offeror 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 Offeror 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 Offeror's ability to perform its obligations under this Contract.

K.4.5 Compliance with Laws

Neither the Offeror nor its officers and directors purporting to act on its behalf have been advised or have reason to believe that the Offeror 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 Offeror 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 Offeror's ability to perform its obligations under this Contract.

K.4.6 No Litigation

- A. The Offeror certifies that there is not now pending, or to its knowledge threatened, any action, suit or proceeding to which the Offeror, 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 Offeror'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 Offeror further certifies that no labor disturbance by the employees of the Offeror exists or is imminent which may be expected to materially and adversely affect the Offeror's ability to perform its obligations under this Contract.
- C. Prior to the Department making an award of this Contract, the Department may require Offerors being considered for the award to recertify the representations set forth above. The Department, in its sole discretion, may disqualify any Offeror 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 Offeror's ability to perform its obligations under this Contract.
- D. During the term of this Contract, to include extensions hereof, the Offeror shall notify the Department in writing within five (5) Days of the Offeror having received knowledge of any actions, suits or proceedings filed against the Offeror, or any of its employees, or to which the Offeror, 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 Offeror'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 Offeror's ability to perform its obligations under this Contract; and
 3. Is brought by or on behalf of a State of Texas Inmate regardless as to any anticipated material adverse change in the Offeror's ability to perform its obligations under this Contract.
- E. The Contractor shall provide in writing, to the Contract Specialist, a quarterly report listing litigation identified in the above requirements.

K.4.7 Taxes

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

C. The Offeror represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, state, or local income, sales or excise taxes of the Offeror or its employees.

K.4.8 Financial Statements

A. The Offeror shall provide to the Department a copy of its most recent financial report. This report must include, as a minimum the following financial information:

1. 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 Offeror at the date shown and the results of its operations for the period covered and has been prepared in conformity with Generally Accepted Accounting Principles (GAAP) applied on a consistent basis, except as discussed in the notes to the financial statement.

K.4.9 No Adverse Change

Since the date of the Offeror'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 Offeror from that reflected in such balance sheet which is material to the Offeror's ability to perform its obligations under this Contract.

K.4.10 Disclosure

There is no material fact which materially and adversely affects or in the future will (so far as the Offeror 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 Offeror prior to the date hereof.

K.4.11 No Collusion

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

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

K.4.12 Disclosure of Interested Parties

In accordance with Texas Government Code, Section 2252.908, a governmental entity or State Agency may not enter into a contract valued at \$1,000,000.00 or greater with a business entity unless the business entity, in accordance with Texas Administrative Code, Title 1, Part 2, Chapter 46, Rules 46.1, 46.3 and 46.5, submits a disclosure of interested parties to the governmental entity

or State Agency at the time the business entity submits the signed Contract to the governmental entity or State Agency.

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

K.4.13 Notification

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

K.4.14 Deceptive Trade Practices; Unfair Business Practices

The Offeror represents and warrants that it has not been the subject of allegations of Deceptive Trade Practice 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 Offeror has not been found to be liable for such practices in such proceedings. The Offeror certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practice violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

K.4.15 Abortion Provider and Affiliate Transactions Prohibited

Respondent represents and warrants that the contract is not a taxpayer resource transaction prohibited by Section 2272.003 of the Texas Government Code and that payments made by Agency to Respondent and Respondent's receipt of appropriated funds under the contract are not prohibited by Article IX, Section 6.24 of the General Appropriations Act.

K.4.16 Americans With Disabilities Act

Respondent represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA) and its implementing regulations, as each may be amended.

K.4.17 Equal Employment Opportunity

Respondent represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

K.4.18 Legal and Regulatory Actions

Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Respondent or any of the individuals or entities included in the Response within the five (5) calendar years immediately preceding the submission of the Response that would or could impair Respondent's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to Agency's consideration of the Response. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Respondent's performance under the contract, relate to the solicited or similar goods or services, or otherwise be relevant to Agency's consideration of the Response. In addition, Respondent represents and warrants that it shall notify Agency in writing within five (5) business

days of any changes to the representations or warranties in this clause and understands that failure to so timely update Agency shall constitute breach of contract and may result in immediate termination of the contract.

K.5 REPRESENTATIONS OF THE DEPARTMENT

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

K.5.1 Authorization

The Department has the requisite power to enter into this Contract and perform its obligations thereunder and by proper action has duly authorized the execution, delivery and performance hereof.

K.5.2 No Violation of Agreements

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, security agreement, contract or other agreement or instrument to which the Department 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 Department or any of its properties, except any such conflict, breach or default which would not materially and adversely affect the Department's ability to perform its obligations under this Contract.

K.5.3 Disclosure

There is no material fact which materially and adversely affects or in the future will (so far as the Department can now reasonably foresee) materially and adversely affect its ability to perform its obligations under this Contract or which might require changes in or additions to the Services required under this Contract that would increase the cost to the Offeror of providing such Services, which has not been accurately set forth in this Contract or otherwise accurately disclosed in writing to the Offeror by the Department prior to the date hereof.

K.6 AUTHORIZED NEGOTIATORS

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

K.7 PAYEE IDENTIFICATION NUMBER

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

Payee Identification Number: _____ or

Federal Taxpayer Identification Number: _____.

K.8 POINT OF CONTACT

The Offeror shall provide the name, title, telephone number, address, and email address of a point of contact for questions concerning the submitted proposal.

Name: _____ Title: _____

Telephone Number: (____) _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Email Address: _____.

SECTION L – INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS**L.1 AMENDMENTS TO SOLICITATIONS**

- A. If this Solicitation is amended all terms and conditions which are not modified remain unchanged.
- B. The Department will post amendment(s) to this Solicitation for downloading in .pdf format via the Texas Electronic State Business Daily (ESBD) at the following address: <http://www.txsmartbuy.com/esbd>.
- C. Offerors shall acknowledge receipt of all amendment(s) to this Solicitation by signing and returning the amendment(s); identifying the amendment number and date in the space provided for this purpose on the Solicitation, Offer and Award form, page 1, block 8; or by letter or email.
- D. The Department must receive the acknowledgment by the date and time specified for receipt of the proposals.
- E. Failure to acknowledge amendment(s) may subject proposal to rejection.

L.2 LATE SUBMISSIONS, MODIFICATIONS AND WITHDRAWALS OF PROPOSALS

- A. Proposals must be time stamped at the office designated in this Solicitation, on or before the date and time specified.
- B. Proposals received at the designated location after the exact date and time specified will not be considered.
- C. Proposals cannot be altered, amended or modified by email or otherwise after the closing date and time.
- D. Alterations made before the closing date and time should be initialed by the Offeror or its authorized agent.
- E. Proposals cannot be withdrawn after the closing date and time without approval by the Department based on an acceptable written reason.
- F. Failure to submit all documentation by the proposal closing date and time may result in disqualification of the proposal from further consideration.

L.3 SIGNATURES ON PROPOSALS SUBMITTED

- A. Proposals from a partnership shall be signed in the firm name by at least one general partner or in the firm name by an Attorney-in-fact.
- B. If signed by an Attorney-in-fact, there shall be attached to the proposal a Power of Attorney, evidencing the authority to sign the proposal, dated and executed by all partners in the firm.
- C. Proposals from a corporation shall have the correct corporate name thereon, and the signature of an authorized officer of the corporation.
- D. The title of office held by the person signing for the corporation shall appear below the signature of the officer.

- E. Proposals from an individual doing business under a firm or fictitious name shall be signed in the name of the individual doing business under the proper firm name.
- F. Proposals from a joint venture shall be signed by all members, or by a member of the joint venture, if there is attached to the proposal a copy of the Joint Venture Agreement evidencing that the proposal is signed by the member who has authority to bind the joint venture.

L.4 PROPOSAL ACCEPTANCE PERIOD

- A. All proposals will be valid for two hundred and forty (240) Days after the submission date and will constitute an irrevocable proposal to the Department for the two hundred and forty (240) Day period.
- B. Such period may be extended beyond the two hundred and forty (240) Days, upon mutual agreement of both parties.

L.5 CONTRACT AWARD

- A. The Department may award a Contract resulting from this Solicitation to the responsible Offeror(s) whose proposal(s), conforming to this Solicitation, will be most advantageous to the Department. Cost or price, technical and other factors, specified elsewhere in this Solicitation may be considered.
- B. The Department may (a) reject any or all proposals if such action is in the public interest, (b) accept other than the lowest priced proposal, and (c) waive minor informalities and minor irregularities in proposals received.
- C. A written award or acceptance of a proposal, mailed or otherwise furnished to the successful Offeror within the time for acceptance specified in the proposal shall result in a binding Contract without further action by either party.
- D. The Department reserves the right, at its sole discretion, to make multiple Contract awards from this Solicitation. The Department reserves the right to make no awards in the event of inconsistent rates and/or the absence of available competition.

L.6 RIGHTS OF THE DEPARTMENT

- A. The Department reserves the right to waive, change, add or delete any terms or conditions of this Solicitation.
- B. The Department reserves the right to reject any one proposal and/or all proposals or portions of proposals submitted in response to this Solicitation.
- C. All proposals become the property of the Department.
- D. The Department reserves the right to use for its benefit ideas contained in the proposals submitted.
- E. The Department is not liable for any costs or damages that may be incurred by an Offeror(s) or prospective Offeror(s), in the preparation, formulation, or presentation of a proposal(s).
- F. In case of ambiguity or lack of clarity, the Department may adopt such interpretations as may be advantageous to the Department.

- G. Upon review of proposals, the Department may select, in its judgment, the Offeror's proposal most advantageous to the Department, with whom to negotiate final definitive Contract(s).
- H. All representations made by the Department are subject to the availability of legislative appropriations and do not represent an obligation on the part of the State of Texas, the Department or the TBCJ.
- I. The Department reserves the right to withdraw this Solicitation at any time for any reason.
- J. The Department reserves the right to award no Contract and to solicit additional proposals at a later time.
- K. The Department reserves the right, at its sole discretion, to make an award from this Solicitation. The Department reserves the right to not make an award in the event of inconsistent rates and/or the absence of available competition.
- L. The Department incurs no obligation regarding this Solicitation unless and until a Contract is fully executed by the parties. However, all proposals received by the Department will remain confidential until the evaluation process is complete.
- M. The Department may at its discretion request Offerors to make an oral presentation to Department representatives in support of their proposals.

L.7 PROPOSAL PREPARATION INSTRUCTIONS

Purpose of Instructions

- A. These instructions are designed to assure the submission of information essential to the understanding and the comprehensive evaluation of the Offeror's proposal.
- B. Proposals shall be prepared in accordance with these instructions, providing all required information in the format specified.
- C. Failure of a proposal to show compliance with these instructions may be grounds for exclusion of the proposal from further consideration.

Submission of Proposals

- D. It is the Offeror's responsibility to ensure that the proposal is delivered to the address shown on the Solicitation, Offer and Award form, page 1, block 5, by the deadline. Proposals must be time stamped at the designated address on or before the date and time specified.
- E. The Offeror must complete and sign all required forms, including all required written material by the proposal closing date and time.
- F. Each package received must be marked with the Department's Solicitation number. If multiple packages are shipped, the packages shall be labeled as multiple packages, i.e., "1 of 4, 2 of 4", etc.
- G. Each page of the proposal must include the name of the Offeror making the proposal.
- H. The Offeror must clearly indicate if any of the information contained in the proposal is confidential or proprietary in nature, by applying a legend to the page that indicates confidential or proprietary information is contained on said page. The Offeror must indicate which

paragraph contains confidential or proprietary information by inserting the words "confidential/proprietary information" in bold type, enclosed by parentheses, at the beginning of the paragraph containing such information.

- I. The Offeror is asked to consider that all material submitted should be directly pertinent to the requirements of this Solicitation. Extraneous narrative, elaborate brochures, uninformative public relations materials, and other similar documents shall not be submitted.
- J. Proposals must be typed or printed on standard letter paper (8 1/2" x 11"), pages numbered, with a table of contents and the sections clearly labeled.
- K. Proposals shall be submitted in three (3) volumes as described below in Sections.
- L. Offerors are to submit each volume in an unbound original (suitable for photocopying), to include one (1) "read only" Compact Disc (CD) or USB Flash Drive.
- M. Each proposal must demonstrate that the operations conform to applicable state and federal standards and Department Policies.

L.7.1 Volume One – Business/Technical Proposal

NO PRICING DATA SHALL BE SUBMITTED IN THIS VOLUME.

Volume One, Section 1 – Information Section

- A. Cover Page: Name and address of the Offeror, date of proposal and signature of authorized official.
- B. Introduction: Clear description of the Offeror submitting the proposal, including an outline of organizational capabilities, goals and purposes.
- C. Information Sheet: Including all information required of each Offeror.
 1. Name, address, email address, telephone number and fax number of the Offeror and all Co-Offerors. Also, identify by name and title, email address, telephone number and fax number a contact person for all inquiries. The contact person shall be responsible for fielding and responding to all inquiries from the Department.
 2. Business form of Offeror (e.g., corporation, partnership, etc.), if applicable.
 - a. If a corporation, include the date and state of incorporation.
 - b. The names and addresses of principal officers, directors, or partners.
 3. A brief biography and complete resumé of the person or persons who will administer any resulting Contract.
 4. Offerors shall furnish descriptions of all similar services or projects provided to the Department or other institutions and governmental agencies, to include company name, point of contact name and title, phone number, fax number, email address, contract numbers, and dates of performance. The Department reserves the right to contact any or all references or consult applicable Department Divisions to evaluate past performance.

5. Offerors shall include a list of any contracts that have been cancelled or terminated, along with an explanation of the cancellation or termination and the name, email address and phone number of a contact person from the institution or agency that cancelled or terminated the contract. Offerors shall also include a list of all legal actions pending against their organization and the outcomes of any final judgements.
6. Documentation from the appropriate state entity which indicates the Offeror is properly certified to conduct business in the state of Texas and not in debt or owing to the state of Texas (e.g., The Certificate of Existence from the Texas Secretary of State and the Franchise Tax Account Status from the Texas Comptroller of Public Accounts). In the event the Offeror is not a corporation, the Offeror shall state that they are not a corporation and certify that they are not in debt or owing to the state of Texas.

D. Project Schedule: A time schedule shall be submitted by the Offeror that outlines the entire project from award of Contract to when full operation can begin. The schedule shall reflect a Contract start date of September 1, 2023.

Volume One, Section 2 – Contract Forms

This Section shall contain the following completed Contract sections (on original forms) with original signatures, where applicable:

- A. Solicitation, Offer and Award Form (with amendments(s) acknowledged as per Section L.1.C);
- B. Section G.4.D, Payments, remittance address (if not electing to receive direct deposit); and
- C. Section K, Representations, Certifications and Other Statements of Offerors.

L.7.2 Volume Two – Technical Portion of Proposal

NO PRICING DATA SHALL BE SUBMITTED IN THIS VOLUME

Volume Two, Section 1 – Technical Requirements

- A. This Section of the proposal shall consist of the Offeror's response to the requirements in Section C herein.
- B. Prospective Offerors shall ensure that all material submitted should be directly pertinent to the requirements of this Solicitation and shall be formatted as to the specific requirements of Section C.
- C. The Offeror shall also identify all exceptions it takes to the technical requirements in Section C of this Solicitation and all exceptions for which it requests approval.

Volume Two, Section 2 – Solicitation Compliance and Exceptions

- A. In this Section, the Offeror shall respond to each requirement of Sections E through I, inclusive of the Solicitation and indicate whether it proposes to comply.
- B. For the purpose of facilitating discussions, for every instance where the Offeror does not propose to comply or agree to a requirement, the Offeror shall propose an alternative and describe its reasoning, therefore.

C. It is not necessary to respond on a paragraph by paragraph basis except as required for clarity; for example, if the Offeror agrees to the terms of Sections E through I of the Solicitation in its entirety, a single statement to that effect will suffice.

L.7.3 Volume Three – Business/Cost Proposal

The following Contract sections shall be completed and included in this section:

1. Section B.1, Pricing Schedule; and
2. Exhibit J.2, Questionnaire

L.8 DISCUSSION AND CORRESPONDENCE

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

PRIMARY CONTACT

Texas Department of Criminal Justice
Contracts and Procurement Department
Information Technology, Construction and Utilities Branch
Kristie Robertson, Contract Specialist
Two Financial Plaza, Suite 525
Huntsville, Texas 77340
Email: kristie.robertson@tdcj.texas.gov

SECONDARY CONTACT

Texas Department of Criminal Justice
Contracts and Procurement Department
Information Technology, Construction and Utilities Branch
Kelly Scott, Contract Specialist
Two Financial Plaza, Suite 525
Huntsville, Texas 77340
Email: kelly.scott@tdcj.texas.gov

B. Questions concerning any technical aspect of the Solicitation must be submitted in writing by email to the Contacts above. The Offeror's question(s) shall only be to clarify specific provisions in this Solicitation and shall reference the specific Section that requires clarification. Written answers to the clarification questions will then be provided to all parties requesting copies of the Solicitation through the Information Technology, Construction and Utilities Branch. Offerors should only rely on the written information provided in this manner. Offerors are specifically barred from making contact with any Department personnel involved in this Solicitation for the purpose of discussing their proposal.

C. Offerors are reminded that **Tuesday, June 6, 2023, at 3:00 PM., CDT**, is the last day to submit written questions for clarification to the Department. The Offeror is specifically cautioned against relying on any oral information. The responsiveness of each proposal will be evaluated upon the written instructions given in the Solicitation and any amendments thereto. Unauthorized contact with Department personnel could result in the proposal being rejected in its entirety.

D. The Department will post answers to all questions in a form of an amendment, and all amendments to this Solicitation will be available for downloading in .pdf format via the ESBD, at the following address: <http://www.txsmartbuy.com/esbd>.

L.9 RESERVED FOR FUTURE USE**L.10 LEGISLATIVE BUDGET BOARD (LBB) POSTINGS**

After award of contract(s), information, documentation, and other material in connection with this Solicitation or any resulting Contract may be subject to public disclosure pursuant to Texas Government Code, Chapter 552 ("the Texas Public Information Act"). Any part of the Solicitation response that is of a proprietary nature must be clearly and prominently marked as such by the Offeror. **For major contracts, the proposal submitted by the awarded Offeror is subject to public access on the Legislative Budget Board's website in accordance with Texas Government Code, Section 322.020.**

SECTION M – EVALUATION FACTORS FOR AWARD**M.1 SELECTION PROCESS**

- A. The Department will assemble an Evaluation Committee to review, evaluate and rank proposals. The Evaluation Committee, at its sole option, may choose to validate any aspect of the written proposal. No information will be provided about the status of the proposals while they are under evaluation.
- B. Selection of a proposal for award will be based on the "Best Value" to the Department. The Department will solely determine the "Best Value" through evaluation of each proposal in accordance with Texas Government Code, Title 10, Subchapter B, Section 2155.074(b).
- C. At any stage in the process, the Department may request clarification or additional information to assist in determining the qualifications, competence and ability of the Offeror to provide the required Service. The Department reserves the right to accept or reject all or part of any proposal, waive minor technicalities and award the Contract to best serve the interest of the State.
- D. The Department may select proposals within a competitive range with whom to negotiate. The Department may notify in writing any or all Offerors whose proposals have been found to be responsive in the detailed evaluation phase.
- E. In accordance with Texas Government Code, Sections 2155.074 and 2155.075, vendor performance may be used as a factor in the award.
- F. An Offeror's past performance will be measured based upon pass/fail criteria in compliance with applicable provisions of Texas Government Code, Sections 2155.074, 2155.075, and 2156.007. Offerors may fail this selection criterion for any of the following conditions:
 - 1. A score of less than 'C' or Legacy Unsatisfactory in the Vendor Performance Tracking System;
 - 2. Currently under a Corrective Action Plan through the Texas Comptroller of Public Accounts;
 - 3. Having repeated negative Vendor Performance Reports for the same reason; or
 - 4. Having purchase orders or contracts that have been cancelled in the previous twelve (12) months for non-performance (i.e. late delivery, etc.).
- G. The Department may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by Section 2262.055 of the Texas Government Code), the Department may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of the Department, and any negative findings, as determined by the Department, may result in non-award to the Offeror.

M.2 MINIMUM QUALIFICATIONS

The Department has established the following criteria as minimum Contractor (business entity) qualifications to be eligible to submit a proposal to this Solicitation. Offerors from business entities not meeting these qualifications shall be disqualified from further consideration.

- A. The Offeror must possess a minimum of ten (10) years of experience in providing similar services.
- B. The Offeror must possess the ability to commence operations (start-up) without financial assistance from the Department.

M.3 EVALUATION CRITERIA

The following are evaluation criteria. While negotiation of proposals may be held, Offerors are advised to submit their most competitive cost and technical proposals.

M.3.1 Service Provided (35%)**M.3.2 Income/Fees (25%)****M.3.3 Qualifications (10%)****M.3.4 Customer Service (10%)****M.3.5 Reporting System (10%)****M.3.6 Disaster Recovery and Security Administration (10%)**