

TERMS AND CONDITIONS APPLICABLE TO ALL PROCUREMENTS

1. Terms and Conditions

1.1 Audit

1.1.1 Audit and Investigation

The Contractor understands that acceptance of funds under this Contract acts as acceptance of the authority of the OAG, State Auditor's Office (SAO) any successor agency or if applicable the federal government, to conduct an audit or investigation in connection with those funds. The Contractor further agrees to cooperate fully with the State Auditor's office or its successor in the conduct of the audit or investigation, including providing all records requested. The Contractor shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards.

1.1.2 Audit Exceptions

The Contractor has no unresolved audit exceptions with the OAG. An unresolved audit exception is an exception for which the Contractor has exhausted all administrative and/or judicial remedies and refuses to comply with any resulting demand for payment.

1.1.3 Legislative Appropriations

All obligations of the OAG are subject to the availability of legislative appropriations and, if applicable for federally funded procurements, to the availability of federal funds applicable to this procurement. The parties acknowledge that the ability of the OAG to make payments under this Contract is contingent upon the continued availability of funds for the Victim Assistance Strategy. The parties acknowledge that the OAG's continual ability to make payments under this Contract is contingent upon the funding levels appropriated to the OAG for the Strategy for each particular appropriation period. The OAG will use all reasonable efforts to ensure that such funds are available. The parties agree that if future levels of funding for the OAG Victim Assistance Strategy are not sufficient to continue operations without any operational reductions, the OAG, in its discretion, may terminate this Contract, either in whole or in part. In the event of such termination, the OAG will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination. The OAG shall make best efforts to provide reasonable written advance notice to Contractor of any such termination. In the event of such a termination, Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. OAG shall be liable for payments limited only to the portion of work the OAG authorized in writing and which the Contractor has completed, delivered to the OAG, and which has been accepted by the OAG. All such work shall have been completed, per the Contract requirements, prior to the effective date of termination.

1.1.4 Antitrust and Assignment of Claims

Pursuant to 15 U.S.C. §1, et seq., and Tex. Bus. & Comm. Code §15.01, et seq., the Contractor affirms that it has not violated the Texas antitrust laws or federal antitrust laws and has not communicated its bid for this Contract directly or indirectly to any competitor or any other person engaged in such line of business. The Contractor hereby assigns to the OAG any claims for overcharges associated with this Contract under 15 U.S.C. §1, et seq., and Tex. Bus. & Comm. Code §15.01, et seq.

1.1.5 Subcontracting Approval Required

It is contemplated by the parties hereto that Contractor shall conduct the performances provided by this Contract substantially with its own resources and through the services of its own staff. In the event that Contractor should determine that it is necessary or expedient to subcontract for any of the performances specified herein, Contractor shall subcontract for such performances only after Contractor has transmitted to the OAG a true copy of the subcontract Contractor proposes to execute with a subcontractor and has obtained the OAG's written approval for subcontracting the subject performances in advance of executing a subcontract. Contractor, in subcontracting for any performances specified herein, expressly understands and acknowledges that in entering into such subcontract(s), the OAG is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all terms of this procurement.

1.1.6 No Assignment by Contractor

Contractor will not assign its rights under this Contract or delegate the performance of its duties under this Contract without prior written approval from the OAG. Notwithstanding anything to the contrary in the Texas Business Organizations Code or any other Texas or other State Statute a merger shall not act to cause the assumption, by the surviving entity or entities, of this Contract and/or its associated rights and duties without the prior written approval of the OAG. The term "merger" as used in this Section includes, without limitation, the combining of two corporations into a single surviving corporation; the combining of two existing corporations to form a third newly created corporation; or the combining of a corporation with another form of business organization.

1.1.7 Fraud, Waste, and Abuse

The Contractor must report any suspected incident of fraud, waste or abuse associated with the performance of this Contract to any one of the following listed entities:

- a. The Contract Manager;
- b. The Director, Crime Victim Service Division
- c. The Deputy Director, Crime Victim Services Division
- d. The OAG Ethics Advisor
- e. The OAG's Fraud, Waste and Abuse Prevention Program ("FWAPP") Hotline (866-552-7937) or the FWAPP E-mailbox (FWAPP@oag.state.tx.us)

- f. The State Auditor's Office hotline for fraud (1-800-892-8348).

The report of suspected misconduct shall include (if known):

- a. The specific suspected misconduct;
- b. The names of the individual(s)/entity(ies) involved;
- c. The date(s)/location(s) of the alleged activity(ies);
- d. The names and all available contact information (phone numbers, addresses) of possible witnesses or other individuals who may have relevant information; and
- e. Any documents which tend to support the allegations.

The words fraud, waste or abuse as used in this Section has the following meanings:

- a. Fraud is the use of one's position for obtaining personal benefit (including benefit for family/friends) through the deliberate misuse or misapplication of resources or assets.
- b. Waste is the extravagant careless or needless expenditure of funds or consumption of property that results from deficient practices, system controls, or decisions.
- c. Abuse is the misuse of one's position, title or authority to obtain a personal benefit (including benefit for family/friends) or to attempt to damage someone else.

1.1.8 Cooperation with the OAG

The Contractor shall ensure that it cooperates with the OAG and other state or federal administrative agencies, if required, at no charge to the OAG, for purposes relating to the administration of this Contract. The Contractor agrees to reasonably cooperate with and work with the OAG's Contractors, subcontractors, and third party representatives as requested by the OAG.

1.1.9 Dispute Resolution

1.1.9.1 The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by the OAG and Contractor to attempt to resolve any claim for breach of Contract made by Contractor:

- a. A claim for breach of Contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, Subchapter B, of the Government Code. . To initiate the process, the Contractor shall submit written notice, as required by subchapter B, to the Deputy Attorney General for Civil Litigation, Office of the Attorney General, P.O. Box 12548 (Mail Code 001), Austin, Texas 78711-2548. The notice shall specifically state that the provisions of Chapter 2260, Subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of the parties otherwise entitled to notice. Compliance with Subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C, of the Government Code.
- b. The contested case process provided in Chapter 2260, Subchapter C, of the Government Code is the sole and exclusive process for seeking a remedy for any and all alleged breaches of Contract by the OAG if the parties are unable to resolve their disputes under the negotiation process.
- c. Compliance with the contested case process is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this Contract by the OAG nor any other

conduct of any representative of the OAG relating to the Contract shall be considered a waiver of sovereign immunity to suit.

1.1.9.2 The submission, processing and resolution of a claim for breach of Contract is governed by the published rules adopted by the OAG pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.

1.1.9.3 Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by Contractor, in whole or in part.

1.2 Information Protection Provisions

1.2.1 General

1.2.1.1 Survival of Provisions

- a. Perpetual Survival and Severability
- b. OAG rights and privileges applicable to OAG Data shall survive expiration or any termination of this Contract, and shall be perpetual.
- c. As an exception to the foregoing perpetual survival, if certain OAG Data become publicly known and made generally available through no action or inaction of Contractor, then Contractor may use such publicly known OAG Data to the same extent as any other member of the public.
- d. If any term or provision of this Contract, including these Information Protection Provisions, shall be found to be illegal or unenforceable, it shall be deemed independent and divisible, and notwithstanding such illegality or unenforceability, all other terms or provisions in this Contract, including these Information Protection Provisions, shall remain in full force and effect and such term or provision shall be deemed to be deleted.

1.2.1.2 Data Retention and Destruction

- a. Contractor and OAG shall develop a mutually agreed upon detailed schedule, which must be compliant with the approved OAG Records Retention Schedule (OAG RRS), for the retention and possible destruction of OAG Data. The schedule will be based upon the Contract Services being performed and the Contractor's limited authorization to access, use, and disclose OAG Data. Subsequent to developing and agreeing upon that schedule, Contractor shall:
 1. Retain and destroy OAG Data in accordance with the detailed schedule for its retention and destruction; (According to OAG Data Sanitization standards)
 2. Destroy or purge OAG Data in a manner consistent with state policy and Federal regulations for destruction of private or confidential data and in such a way so that the Data are unusable and irrecoverable;
 3. Destroy all hard copy OAG Data by shredding to effect 5/16 inch wide or smaller strips and then either incinerating or pulping the shredded material; and
 4. Within five (5) calendar days (excluding weekends and federal holidays) of destruction or purging, provide the OAG with a completed OAG "Certificate of Destruction for Contractors and Contractors;" a copy of which is will be provided upon request.
- a. In the event of Contract expiration or termination for any reason, Contractor and Contractor's Agents shall completely purge as described in 8.2.1.2, all OAG Data from the information systems of Contractor and Contractor's Agents and no OAG Data will be retained by the Contractor. All hard-copy OAG Data shall (in accordance with the detailed retention schedule agreed to by Contractor and OAG under Section 8.2.1.2.a above) be destroyed. If immediate purging of all data storage components is not

- possible, the Contractor agrees that any OAG Data remaining in any storage component will be protected to prevent unauthorized disclosures.
- b. Within twenty (20) OAG Business Days of Contract expiration or termination, Contractor shall provide OAG with a signed statement detailing the nature of the OAG Data retained, type of storage media, physical location(s), and any planned destruction date.
 - c. In its sole discretion, the OAG may waive notification requirements or request reasonable changes to the detailed schedule for the retention and destruction of OAG Data.

1.2.1.3 Requests to Contractor for Confidential or Public Information

Contractor and Contractor's Agents expressly do not have any actual or implied authority to determine whether any OAG Data are public or exempted from disclosure. Tex. Gov't Code Chapter 552 defines the exclusive mechanism for determining whether OAG Data are subject to public disclosure. Contractor is not authorized to respond to public information requests on behalf of the OAG. Contractor agrees to forward to the OAG, by facsimile within one (1) OAG Business Day from receipt all request(s) for information associated with the Contractor's services under this Contract. Contractor shall forward any information requests to:

Public Information Coordinator

Office of the Attorney General

Fax (512) 494-8017

1.2.2 Physical and System Security

1.2.2.1 General/Administrative Protections

- a. At all times Contractor shall be fully responsible to OAG for the security of the storage, processing, compilation, or transmission of all OAG Data to which it has access, and of all equipment, storage facilities, and transmission facilities on which or for which such OAG Data are stored, processed, compiled, or transmitted.
- b. The Contractor (and Contractor's Agents) shall develop and implement internal protection systems, including information security access lists and physical security access lists (the "access protection lists"), designed to protect OAG Data in accordance with applicable law and the provisions for Data Security, Physical Security, and Logical/Information System Protections contained in this Contract. The access protection lists shall document the name and other identifying data for any individual authorized to access, use or disclose OAG Data, as well as any special conditions and limitations applicable to each authorization.
- c. The Contractor shall remove individuals from or change the access rights of individuals on the applicable access protection list immediately upon such individual no longer requiring certain access. At least monthly, the Contractor shall review and update its access protection lists and ensure that the access protection lists accurately reflect the individuals and their access level currently authorized. At least monthly, the Contractor shall report the results of these reviews and access changes to the OAG Contract Manager.
- d. The OAG shall have the right to review the Contractor's internal protection systems and access protection lists for all areas of the work site(s). The OAG may, with or without cause, and without cost or liability, revoke or deny any or all authorizations of individuals performing services under this Contract. If any authorization is revoked or denied by OAG, then Contractor shall immediately

- use its best efforts to assist the OAG in preventing access, use or disclosure of OAG Data and the Contractor shall be given written notice of the denial.
- e. OAG, in its sole discretion and without consulting Contractor, may immediately terminate OAG system access for anyone performing services under this Contract.
 - f. Contractor shall immediately notify the OAG Contract Manager when any person Contractor authorized to access the OAG systems is no longer authorized to have such access. This notice includes re-assigned or terminated individuals.
 - g. The Contractor's physical access security and logical access security systems must track and log all access attempts and failures. The access security systems must produce access logs on request. These logs must identify all access failures and breaches. Notwithstanding anything to the contrary in this Contract, the physical access and logical access security systems logs for any particular calendar year must be retained for a period of seven (7) calendar years after the last calendar day of the calendar year in which they were created. Thus a log created on January 1, 2007 may be disposed of, with all other systems access logs created in 2007, on January 1, 2015. All physical access and logical access security systems logs must be stored to electronic media. Any stored log must be produced for viewing access and copying upon request of the OAG within five (5) OAG Business Days of the request.
 - h. Contractor shall maintain appropriate audit trails to provide accountability for use and updates to OAG Data, charges, procedures, and performances. Audit trails maintained by Contractor shall, at a minimum, identify the supporting documentation prepared by Contractor to permit an audit of the system by tracing the activities of individuals through the system. Contractor's automated systems must provide the means whereby authorized personnel have the ability to audit and to verify contractually required performances and to establish individual accountability for any action that can potentially cause access to, generation of, or modification of OAG Data. Contractor agrees that Contractor's failure to maintain adequate audit trails and corresponding documentation shall create a presumption that the services or performances were not performed.
 - i. OAG Data are not allowed on mobile/remote/portable storage devices; nor may storage media be removed from the facility used by Contractor. Contractor may submit, to the OAG Contract Manager, a written request for an exception to these prohibitions. If OAG finds it necessary to allow data on mobile/remote/portable storage devices, or to allow storage media to be removed from a facility used by Contractor, OAG will specify any encryption standard Contractor shall follow for mobile/remote/portable storage devices and the circumstance(s) under which storage media may be removed.

1.2.2.2 Physical Security

- a. The computer site and related infrastructures (e.g. Information system servers, protected interface equipment, associated peripherals, communications equipment, wire closets, patch panels, etc.) Must have physical security that at all times protects OAG Data against any unauthorized access to, or routine viewing of, computer devices, access devices, and printed and stored data.
- b. Data accessed shall always be maintained in a secure environment (with limited access by authorized personnel both during work and non-work hours) using devices and methods such as, but not limited to: alarm systems, locked containers of various types, fireproof safes, restricted areas, locked rooms, locked buildings, identification systems, guards, or other devices reasonably expected to prevent loss or unauthorized removal of manually held data. Contractor shall also protect against unauthorized use of passwords, keys, combinations, access logs, and badges.
- c. The Contractor agrees that the systems operation room (which houses network equipment, servers and other centralized processing hardware) shall be accessible only by authorized IT personnel or executive management.

- d. In situations such as remote terminals, or office work sites where all of the requirements of a secure area with restricted access cannot be maintained, the equipment shall receive the highest level of protection. This protection must include (where communication is through an external, non-organization-controlled network [e.g., the Internet]) multifactor authentication that is compliant with NIST SP 800-63, Electronic Authentication Guidance level 3 or 4, and shall be consistent with IRS Publication 1075, Section 4.7. Alternate Work Sites.
- e. Contractor shall protect information systems against environmental hazards and provide appropriate environmental protection in facilities containing information systems.

1.2.2.3 Logical/Information System Protections

1.2.2.3.1 The Contractor shall take all reasonable steps to ensure the logical security of all information systems used in the performance of this Contract, including:

- 1. Independent oversight of systems administrators and programmers;
- 2. Restriction of user, operator, and administrator accounts in accordance with job duties;
- 3. Authentication of users to the operating system and application software programs;
- 4. Contractor shall adhere to OAG-approved access methods, and the protection and use of unique identifiers such as user identifications and passwords;
- 5. Contractor shall have an authorization process for user access and privileges. Any access not granted is prohibited;
 - a. Contractor shall maintain an access protection list that details the rights and privileges with respect to each such user;
 - b. Audit trails for user account adds, deletes, and changes, as well as, access attempts and updates to individual data records; and
 - c. Protection to prevent unauthorized processing in or changes to software, systems, and OAG Data in the production environment.

1.2.2.3.2 Contractor shall implement protection for the prevention, detection and correction of processing failure, or deliberate or accidental acts that may threaten the confidentiality, availability, or integrity of OAG Data.

1.2.2.3.3 Contractor shall implement counter-protection against malicious software on Contractor's internal systems used in contract performance.

1.2.2.3.4 Contractor shall ensure that relevant Security Incidents are identified, monitored, analyzed, and addressed.

1.2.2.3.5 Contractor shall apply a high-level of protection toward hardening all security and critical server communications platforms and ensure that operating system versions are kept current.

1.2.2.3.6 Contractor shall adhere to mutually agreed upon procedures for authorizing hardware and software changes, and for evaluation of their security impact.

1.2.2.3.7 Contractor shall institute a process that provides for immediate revocation of a user's access rights and the termination of the connection between systems, if warranted by the nature of any Security Incident.

1.2.3 Security Audit

1.2.3.1 Right to Audit, Investigate and Inspect

1.2.3.1.1 Without notice, the Contractor shall permit, and shall require Contractor's Agents to permit the OAG, the State Auditor of Texas, and any of their designees to:

- 1. Monitor and observe the operations of, and to perform security investigations, audits, and reviews of the operations and records of, the Contractor and Contractor's Agents;

2. Inspect its information system in order to assess security at the operating system, network, and application levels; provided, however, that such assessment shall not interfere with the daily operations of managing and running the system;
 3. Enter, unannounced, into the offices and places of business of the Contractor and Contractor's Agents for a security inspection of the facilities and operations used in the performance of Contract Services. Specific remedial measures may be required in cases where the Contractor or Contractor's Agents are found to be noncompliant with physical and/or data security protection.
- 1.2.3.1.2 Any audit of documents shall be conducted at the Contractor's principal place of business and/or the location(s) of the Contractor's operations during the Contractor's normal business hours and at the OAG's expense. Contractor shall provide to OAG and such auditors and inspectors as OAG may designate in writing, on Contractor's premises, (or if the audit is being performed of a Contractor's Agent, the Agent's premises, if necessary) space, office furnishings (including lockable cabinets), telephone and facsimile services, at least one workstation connected to each Contractor system subject to the audit, utilities and office-related equipment and duplicating services as OAG or such auditors and inspectors may reasonably require to perform the audits.
- 1.2.3.1.3 Contractor shall supply to the OAG and the State of Texas any data or reports rendered or available in conjunction with any security audit of Contractor or Contractor's Agents if those reports pertain, in whole or in part, to the Contract Services. This obligation shall extend to include any report(s) or other data generated by any security audit conducted up to one (1) year after the date of termination or expiration of the contract.

1.2.4 Security Incidents

1.2.4.1 Response to Security Incidents

- 1.2.4.2 Contractor shall detect and respond to Security Incidents which might occur. Contractor shall document its relevant procedures and processes into an internal incident response plan and provide such plan for OAG approval no later than thirty (30) days prior to OAG Data being provided to Contractor. The OAG, in its discretion, may withhold fifty percent (50%) of Contractor's monthly invoices for each month until an OAG-approved incident response plan is in place.

1.2.4.3 Notice

- 1.2.4.3.1 Within one (1) hour of discovering or having any reason to believe that there has been, any physical, personnel, system, or OAG Data Security Incident Contractor shall initiate risk mitigation and notify the OAG ISO and the OAG Contract Manager, by telephone and by email, of the Security Incident and the initial risk mitigation steps taken. Contractor shall send email notification of incidents: incidents@texasattorneygeneral.gov
- 1.2.4.3.2 Within twenty-four (24) hours of the discovery, Contractor shall conduct a preliminary risk analysis of the Security Incident; commence an investigation into the incident; and provide a written report utilizing a OAG Security Incident Report to the OAG- ISO, with a copy to the OAG Contract Manager fully disclosing all information relating to the Security Incident and the results of the preliminary risk analysis. This initial report shall include, at a minimum: nature of the incident (e.g., data loss/corruption/intrusion); cause(s); mitigation efforts; corrective actions; and estimated recovery time.
- 1.2.4.3.3 Each day thereafter until the investigation is complete, Contractor shall:
1. Provide the OAG- ISO, or the OAG- ISO's designee, with a daily oral or email report regarding the investigation status and current risk analysis; and

2. Confer with the OAG- ISO or the OAG- ISO's designee, regarding the proper course of the investigation and risk mitigation.
3. Whenever daily oral reports are provided, Contractor shall provide, by close of business each Friday, an email report detailing the foregoing daily requirements.

1.2.4.4 Final Report

- 1.2.4.4.1 Within five (5) OAG Business Days of completing the risk analysis and investigation, Contractor shall submit a written Final Report to the OAG-ISO with a copy to the OAG Contract Manager, which shall include:
 - 1.2.4.4.2 A detailed explanation of the cause(s) of the Security Incident;
 - 1.2.4.4.3 A detailed description of the nature of the Security Incident, including, but not limited to, extent of intruder activity (such as files changed, edited or removed; Trojans), and the particular OAG Data affected; and
 - 1.2.4.4.4 A specific cure for the Security Incident and the date by which such cure shall be implemented, or if the cure has been put in place, a certification to the OAG that states: the date that Contractor implemented the cure and a description of how the cure protects against the possibility of a recurrence.
 - 1.2.4.4.5 If the cure has not been put in place by the time the report is submitted, Contractor shall within thirty (30) calendar days after submission of the final report, provide a certification to the OAG that states: the date that Contractor implemented the cure and a description of how the cure protects against the possibility of a recurrence.
 - 1.2.4.4.6 If Contractor fails to provide a Final Report and Certification within forty-five (45) calendar days, or as otherwise agreed to, of the Security Incident, Contractor agrees the OAG may exercise any remedy in equity, provided by law, or identified in the Contract.
- 1.2.4.5 Independent Right to Investigate
The OAG reserves the right to conduct an independent investigation of any Security Incident, and should OAG choose to do so, Contractor shall cooperate fully, making resources, personnel and systems access available.

1.2.5 Remedial Action

1.2.5.1 Remedies Not Exclusive and Injunctive Relief

- 1.2.5.1.1 The remedies provided in this section are in addition to, and not exclusive of, all other remedies available within this Contract, or at law or in equity. OAG's pursuit or non-pursuit of any one remedy for a Security Incident(s) does not constitute a waiver of any other remedy that OAG may have at law or equity.
- 1.2.5.1.2 If injunctive or other equitable relief is available, then Contractor agrees that the OAG shall not be required to post bond or other security as a condition of such relief.

1.2.5.2 Notice and Compensation to Third Parties

- 1.2.5.2.1 In the event of a Security Incident, third-party or individual data may be compromised, and the OAG and Contractor agree that the actual harm to such third parties caused by the Security Incident is difficult to estimate.
- 1.2.5.2.2 Furthermore, OAG and Contractor agree, that a reasonable forecast of just compensation is for the Contractor to provide to individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Security Incident:

1. Notification of the event;
2. Actual damages sustained by the individual as a result of the Security Incident and any prescribed statutory damages; and

3. One year of credit monitoring services, at no-cost to each such individual, entity, or the OAG.
 - a. Subject to OAG review and approval, Contractor shall provide notice of the Security Incident, with such notice to include:
 1. A brief description of what happened;
 2. A description, to the extent possible, of the types of personal data that were involved in the security breach (e.g., full name, SSN, date of birth, home address, account number, etc.);
 3. A brief description of what is being done to investigate the breach, mitigate losses, and to protect against any further breaches;
 4. Contact procedures for those wishing to ask questions or learn additional data, including a toll-free telephone number, website and postal address;
 5. Steps individuals should take to protect themselves from the risk of identity theft, including steps to take advantage of any credit monitoring or other service the Contractor shall offer; and
 6. Contact information for the Federal Trade Commission website, including specific publications.
 7. Notice of the Security Incident shall comply with Section 504 of the Rehabilitation Action of 1973, with accommodations that may include establishing a Telecommunications Device for the Deaf (TDD) or posting a larger-type notice on the website containing notice. Contractor and OAG shall mutually agree on the methodology for providing the notice required in this subsection. Neither party shall unreasonably withhold such agreement; however the notice method must comply with the notification requirements of Section 521.053, Texas Business and Commerce Code (as currently enacted or subsequently amended). Provided further that Contractor must also comply with Section 521.053's "consumer reporting agency" notification requirements.
 - b. If OAG, in its sole discretion, elects to send notice of the Security Incident in lieu of the Contractor sending notice, then Contractor shall reimburse to the OAG all costs associated with preparing and providing notice. If the Contractor does not reimburse such cost within thirty (30) calendar days of request OAG shall have the right to collect such cost by offsetting or reducing any future payments owed to Contractor.

1.2.5.3 Commencement of Legal Action

Contractor shall not commence any legal proceeding on OAG's behalf without the OAG's express written consent.

1.3 Amendment

This Contract shall only be amended or modified as follows. First duly authorized representatives of the parties must execute a writing denominated as an amendment to the Contract. Second the OAG must adopt the amendment by issuing it as an attachment to an OAG PO change notice. Contractor shall not be entitled to payment for any additional services, work, or products that are not authorized by a properly executed Contract amendment.

1.4 Termination of Contract

1.4.1 Convenience of the State of Texas

OAG reserves the right to terminate the Contract at any time, in whole or in part, without penalty, by providing thirty (30) calendar days advance written notice, if OAG determines that such termination is in its best interest. In the event of such a termination, Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. OAG shall be liable for payments limited only to the portion of work the OAG authorized in writing and which the Contractor has completed, delivered to the OAG, and which has been accepted by the OAG. All such work shall have been completed, per the Contract requirements, prior to the effective date of termination. The OAG shall have no other liability including no liability for any costs associated with the termination.

1.4.2 Cause/Default

If the Contractor fails to provide the contracted for commodities and or services according to the provisions of this Contract, or fails to comply with any of the terms or conditions of this Contract, the OAG may, upon written notice of default to Contractor, immediately terminate all or any part of this Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under this Contract.

The OAG may exercise any other right, remedy or privilege which may be available to it under applicable law of the State and any other applicable law or proceed by appropriate court action to enforce the provisions of this Contract, or to recover damages for the breach of any agreement being derived from this Contract. The exercise of any of the foregoing remedies will not constitute a termination of this Contract unless the OAG notifies the Contractor in writing prior to the exercise of such remedy. The Contractor will remain liable for all covenants and indemnities under the aforesaid agreement. The Contractor will be liable for all costs and expenses, including court costs, incurred by the OAG with respect to the enforcement of any of the remedies listed herein.

1.4.3 Change in Federal or State Requirements

If Federal or State laws or regulations or other Federal or State requirements are amended or judicially interpreted so that either party cannot reasonably fulfill this Contract and if the parties cannot agree to an amendment that would enable substantial continuation of the Contract, the parties shall be discharged from any further obligations under this Contract.

1.4.4 Rights upon Termination of the Contract

In the event that the Contract is terminated for any reason or upon its expiration, in whole or in part, the OAG shall retain ownership of all associated work products and documentation with any order that results from or is associated with this Contract in whatever form that they exist.

1.4.5 Survival of Terms

Termination of this Contract for any reason, in whole or in part, shall not release the Contractor from any liability or obligation set forth in this Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination.

1.5 General Terms and Conditions

1.5.1 State and Federal Terms and Conditions

1.5.1.1 Compliance with Law

Contractor shall comply with all state and federal laws, rules, regulations, requirements and guidelines applicable to Contractor: providing services to OAG as these laws, rules, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. Contractor's obligations include compliance with all such state and federal laws, rules, regulations, requirements and guidelines applicable to Contractor that become effective at any time during any term or renewal of this Contract. OAG reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for OAG's or Contractor's compliance with all applicable state and federal laws, rules, regulations, requirements and guidelines.

1.5.1.2 Civil Rights

The Contractor agrees that no person shall, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. The Contractor shall comply with Executive Order 11246, "Equal Employment Opportunity" as amended by Executive Order 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity", and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor". The Contractor shall ensure that all subcontracts comply with the above referenced provisions.

1.5.1.3 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion from Participation

Contractor certifies by entering into this Contract, that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. The certification requirement of this provision shall be included in all subcontracts.

1.5.1.4 Records Retention

Contractor shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in this Contract. Contractor shall retain all such records for a period of seven (7) years after the expiration of the term of this Contract, or until the OAG or the United States are satisfied that all audit and litigation matters are resolved, whichever period is longer. Contractor shall grant access to all books, records and documents pertinent to this Contract to the OAG and the State Auditor of Texas for the purposes of inspecting, auditing, or copying such books, records and documents. The requirements of this provision shall be included in all subcontracts.

Contractor shall be in compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 USC 1857(h)) Section 508 of the Clean Water Act (33 USC 1368) Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). The requirements of this provision shall be included in all subcontracts that exceed \$100,000.

1.5.1.5 Lobbying Disclosure

Contractor shall comply with the provisions of a federal law known generally as the Lobbying Disclosure Acts of 1989, and the regulations of the United States Department of Health and Human Services promulgated pursuant to said law, and shall make all disclosures and certifications as required by law. Contractor shall submit with its Proposal the Certification Regarding Lobbying included with this solicitation (see Form F). This certification certifies that the Contractor will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence any officer or employee of any Federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. It also certifies that the Contractor will disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award by completing and submitting Standard Form LLL. The requirements of this provision shall be included in all subcontracts exceeding \$100,000.

1.5.2 Certifications

1.5.2.1 Child Support Obligations

Under Section 231.006, Texas Family Code, (relating to child support) the Contractor, by signing this Contract, certifies that it is not ineligible to receive a payments under this Contract and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

1.5.2.2 Certification Concerning Dealings with Public Servants

Contractor, by signing this Contract, certifies that it has not given nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this transaction.

1.5.2.3 Certification Concerning Financial Participation

Pursuant to §2155.004, Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate. Section 2155.004 prohibits a person or entity from receiving a state contract if they received compensation for participating in preparing the solicitation or specifications for the contract.

1.5.2.4 Certification Concerning Hurricane Relief

Sections 2155.006 and 2261.053, Government Code, prohibit the OAG from awarding a contract to any person who, in the past five years, has been convicted of

violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004 of the Government Code, occurring after September 24, 2005. Under §2155.006, Government Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.

1.5.2.5 Certification Concerning Participation Eligibility

Contractor certifies that it and its principals are eligible to participate in this Contract and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement and contracting and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.

1.5.2.6 Certification Concerning Conflicts of Interest

Contractor represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to the OAG under this Contract and that Contractor's provision of the requested services under this Contract would not reasonably create an appearance of impropriety.

1.5.3 General Responsibilities

1.5.3.1 Independent Contractor

This Contract shall not render the Contractor an employee, officer, or agent of the OAG for any purpose. The Contractor is and shall remain an independent Contractor in relationship to the OAG. The OAG shall not be responsible for withholding taxes with respect to the Contractor's compensation under this Contract. The Contractor shall have no claim against the OAG under this Contract for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

1.5.3.2 No Implied Authority

Any authority delegated to the Contractor by the OAG is limited to the terms of this Contract. The Contractor shall not rely upon implied authority and specifically is not delegated authority under this Contract to:

- a. Make public policy;
- b. Promulgate, amend, or disregard OAG Victim Assistance program policy;
or
- c. Unilaterally communicate or negotiate, on behalf of the OAG, with any member of the U.S. Congress or any member of their staff, any member of the Texas Legislature or any member of their staff, or any federal or state agency. However, the Contractor is required to cooperate fully with the OAG in communications and negotiations with federal and state agencies, as directed by the OAG.

1.5.3.3 Indemnification and Liability

1.5.3.3.1 Hold Harmless and Indemnification

THE CONTRACTOR SHALL HOLD HARMLESS AND INDEMNIFY THE OAG AND ITS EMPLOYEES, AGENTS, AND CONTRACTORS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, ALLEGATIONS, SUITS, ACTIONS, JUDGMENTS, LOSSES, DAMAGES, OR LIABILITIES, OF ANY NATURE WHATSOEVER, ARISING OUT OF OR RELATING TO THIS CONTRACT, OR THAT ARE MADE OR THREATENED AS A RESULT OF THIS CONTRACT, OR THAT ARE ASSOCIATED WITH THE PERFORMANCE OF THIS CONTRACT (HEREINAFTER "CLAIMS"). THIS PROVISION INCLUDES ANY CLAIM FOR THE INFRINGEMENT OF ANY UNITED STATES OR INTERNATIONALLY PROTECTED PATENTS OR COPYRIGHTS ARISING OUT OF THE CONTRACTOR'S OR THE OAG'S USE OF ANY EQUIPMENT, MATERIALS, INFORMATION, OR IDEAS EMPLOYED OR FURNISHED BY THE CONTRACTOR IN CONNECTION WITH THE PERFORMANCES CALLED FOR IN THIS CONTRACT. THIS PROVISION ALSO INCLUDES INJURIES TO ANY PERSONS PRESENT ON OAG OWNED, LEASED, OR OCCUPIED PROPERTY OR PREMISES, WHETHER OR NOT THOSE PERSONS ARE OAG EMPLOYEES, AND IT INCLUDES DAMAGES TO ANY PERSONAL PROPERTY THAT IS PRESENT ON OAG OWNED, LEASED, OR OCCUPIED PROPERTY OR PREMISES, WHETHER OR NOT THE PERSONAL PROPERTY IS OWNED BY THE OAG.

THE CONTRACTOR SHALL REIMBURSE THE OAG FOR ALL EXPENSES INCURRED BY THE OAG IN DEFENDING ANY AND ALL CLAIMS, WHATSOEVER. THE CONTRACTOR'S OBLIGATION TO INDEMNIFY THE OAG AND REIMBURSE THE OAG'S DEFENSE COSTS SHALL ARISE AT THE TIME NOTICE OF A CLAIM IS FIRST PROVIDED TO EITHER THE CONTRACTOR OR THE OAG, REGARDLESS OF WHETHER OR NOT A CLAIMANT HAS FILED SUIT ON THE CLAIM. THE CONTRACTOR AND THE OAG AGREE TO FURNISH, WITHIN TEN (10) CALENDAR DAYS OF RECEIPT OR KNOWLEDGE OF A CLAIM, WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. UPON THE OAG'S WRITTEN DEMAND, THE CONTRACTOR SHALL REIMBURSE THE OAG, WITHIN THIRTY (30) CALENDAR DAYS OF THE WRITTEN DEMAND, FOR THE OAG'S COSTS INCURRED DUE TO ANY CLAIM, INCLUDING BUT NOT LIMITED TO, COURT COSTS, ADMINISTRATIVE PROCEEDINGS COSTS, EXPERT FEES, ATTORNEYS' FEES INCURRED BY THE OAG

IN DEFENDING OR INVESTIGATING CLAIMS, AND, ANY MONIES NECESSARY TO SETTLE ANY CLAIM AGAINST THE OAG.

1.5.3.3.2 Contractor's Liability for Damage to OAG's Property

The Contractor shall be liable for all damages to OAG owned, leased, or occupied property and equipment caused by the Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to this Contract. For damage to equipment, the Contractor shall, at the sole option of the OAG, repair, replace, or pay for any and all OAG owned, leased, or controlled equipment that is damaged or lost by the Contractor or its employees, agents, subcontractors, or suppliers (including delivery and cartage companies) in connection with any performance pursuant to this Contract. If the OAG directs the Contractor to repair, replace, or pay for such equipment, then the Contractor shall do so within forty-eight (48) hours of being notified of same by the OAG. For damages to real property or structures on real property, the Contractor shall present to the OAG for prior approval, within forty-eight (48) hours of the damage occurring, a detailed plan for repairing the damage. Such plan shall include a schedule showing when the repairs should be completed. The OAG shall have a reasonable period of time to review and approve the plan. The OAG shall not unreasonably withhold approval of the plan and shall discuss its concerns with the Contractor before disapproving any plan. If the Parties cannot resolve the OAG's concerns, the Contractor may not implement the plan and shall instead submit an alternative plan for repair to the OAG within forty-eight (48) hours of being instructed to do so by the OAG in writing. The Contractor may implement the plan for repair once written approval from the OAG is received.

1.5.3.3.3 Force Majeure

The OAG shall not be responsible for performance of the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the OAG.

The Contractor shall not be liable to the OAG for non-performance or delay in performance of a requirement under this Contract if such non-performance or delay is due to one of the following occurrences, which occurrence must not be preventable through the exercise of reasonable diligence, be beyond the control of the Contractor, cannot be circumvented through the use of alternate sources, work-around plans, or other means and occur without its fault or negligence: fire; flood; lightning strike; weather damage; earthquake; tornado; hurricane; snow or ice storms; equipment break down; acts of war, terrorism,

riots, or civil disorder; strikes and disruption or outage of communications, power, or other utility.

In the event of an occurrence under the above paragraph, the Contractor will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Contractor continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Contractor shall immediately notify the OAG Contract Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

1.5.3.4 News Releases

The OAG does not endorse any vendor, commodity, or service. News releases pertaining to this transaction and/or advertisements, publications, declarations and any other pronouncements by the Contractor using any means or media mentioning the State of Texas or the OAG must be approved in writing by the OAG prior to public dissemination.

1.5.3.5 Debts or Delinquencies Owed Texas

As required by §2252.903, Government Code, the Contractor agrees that any payments due under this Contract shall be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.

1.5.3.6 Personnel Comportment

Contractor and Contractor subcontractor personnel and agents shall be courteous and professional in all communications during their performance of the requirements of this Contract. Any actions deemed unprofessional must be remedied to the satisfaction of the OAG Contract Manager. The OAG reserves the right, in its sole discretion, to require the immediate removal and replacement of any Contractor and/or Contractor subcontractor personnel and agents deemed by the OAG to be discourteous, unprofessional, incompetent, careless, unsuitable or otherwise objectionable. Any replacement personnel assigned by Contractor to perform services under this Contract must have qualifications for the assigned position that equal or exceed those of the person being replaced.

1.5.3.7 Background Reviews

OAG shall have the right to perform initial and periodic detailed background reviews, to include a criminal records check, on Contractor and any of Contractor's Agents that are assigned to provide services to the OAG or are authorized to access, or are requesting to access, OAG Data. Upon request, and to assist OAG in performing background reviews and criminal records checks, Contractor shall provide identifying data and any required consent and authorization to perform such reviews and checks.

1.5.3.8 OAG Rights to Monitor Operations

Contractor shall allow, and shall require all subcontractors to allow, the OAG to have unannounced access to the offices and work sites of, and to monitor and observe the operations of, and to perform investigations, and reviews of the operations and records of the Contractor and its subcontractors, as deemed necessary by the OAG, to: assure compliance with the requirements, intent and spirit of this RFO, as it pertains to the performing of services under this RFO; and to assure compliance with federal and state law, regulations, and rules, and OAG policies and procedures or other written OAG requirements as they relate to the performing of services required by this RFO.

1.5.4 Special Terms and Conditions

1.5.4.1 Insurance

1.5.4.1.1 Contractor will be required to obtain the following insurance coverage in connection with this Contract

- a. Comprehensive General Liability Insurance with a minimum limit of \$500,000 for each occurrence with an aggregate of \$1,000,000
- b. Automobile Liability Insurance for all owned, non-owned and hired vehicles with minimum limits of Bodily Injury of \$250,000 for each person and \$500,000 for each occurrence and Property Damage Limits of \$100,000 for each occurrence; and
- c. Workers' Compensation coverage as required by law with statutory limits for the State of Texas.

1.5.4.1.2 All policies must contain a waiver of subrogation against the OAG, its officers and employees, for bodily injury (including death), property damage or any other loss.

1.5.4.1.3 Proof of, or commitment for, the insurance coverage detailed in subsections 85.4.1.1 must be presented in the form acceptable to the OAG at the time of response. If Contractor submits a commitment for insurance, an award of this Contract to the Contractor may, in the sole discretion of the OAG, be revoked if actual proof of insurance is not received by the OAG within ten (10) calendar days of the Contractor being notified of the award. THE CONTRACTOR SHALL NOT COMMENCE ANY WORK UNDER THIS CONTRACT UNTIL PROOF OF INSURANCE, IN THE FORM ACCEPTABLE TO THE OAG, HAS BEEN RECEIVED BY THE OAG. The insurance coverage must be written by a company licensed to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the OAG, and Contractor shall not cause said insurance coverage to be canceled nor permit any insurance to lapse. Failure to maintain such coverage may void the Contract. The proof of, or commitment for, the insurance and the insurance policies shall contain a provision that coverage afforded under the policies will not be modified, canceled or allowed to expire until at least thirty (30) calendar days prior written notice has been given to the OAG.

1.5.4.1.4 Contractor shall provide the OAG with immediate written notice of cancellation by the insurer of any required coverage or a material change by Contractor or the insurer that affects the coverage. In the event that any of the coverage is canceled by the insurer for any reason, the Contractor shall obtain replacement coverage acceptable to the OAG no later than fifteen (15) OAG Business Days after the cancellation of coverage. If the Contractor fails to maintain the required coverage, the OAG shall have the right (without the obligation to do so) to secure same in the name and for the account of the OAG, in which event the Contractor *shall pay the cost* thereof.

1.5.4.1.5 If any of the insurance coverage detailed above are required to remain in force after the completion of all services, an additional certificate evidencing continuation of such coverage shall be submitted at the same time that Contractor submits its final invoice for payment under the Contract.

1.5.4.2 Permits

The Contractor shall be responsible, at Contractor's expense, for obtaining any and all permits or licenses required by city, county, state, or federal rules, regulations, law, or codes.

1.5.4.3 Electrical Items

All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC, or NEMA.

1.5.4.4 Date Standard

Four-digit year elements will be used for the purposes of electronic data interchange in any recorded form. The year shall encompass a two digit century that proceeds, and is contiguous with, a two digit year of century (e.g. 1999, 2000, etc.). Applications that require day and Month information will be coded in the following format: CCYYMMDD. Additional representations for week, hour, minute, and second, if required, will comply with the international standard ISO 8601: 1988, "Data elements and interchange formats--Information interchange--Representation of dates and times."

1.5.4.5 Offshoring

All work to be performed under this Contract, unless pre-approved differently in writing by the OAG, shall be performed entirely within the United States and its territories.

1.5.4.6 Executive Head

Pursuant to §669.003, Government Code, the OAG may not enter into a contract with a person who employs a current or former executive head of the OAG until four years has passed since that person was the executive head of the OAG. By executing this Contract, the Contractor certifies that it does not employ any person who was the executive head of the OAG in the past four years.

If Section 669.003 applies, Offeror will complete the following information in order for the bid to be evaluated:

Name of Former Executive; Name of State Agency; Date of

Separation from State Agency; Position with Bidder; and Date of Employment with Offeror.

1.5.4.7 Terminated Contracts

By executing this Contract, the Contractor certifies that it has not had a contract terminated or been denied the renewal of any contract for non-compliance with policies or regulations of any state or federally funded program within the past five years nor is it currently prohibited from contracting with a governmental agency.

1.5.5 Non-Waiver of Rights

Failure of a party to require performance by another party under this Contract will not affect the right of such party to require performance in the future. No delay, failure, or waiver of either party's exercise or partial exercise of any right or remedy under this Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a party of any breach of any term of this Contract will not be construed as a waiver of any continuing or succeeding breach. Should any provision of this Contract be invalid or unenforceable, the remainder of the provisions will remain in effect.

1.5.6 No Waiver of Sovereign Immunity

THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS CONTRACT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY THE OAG OR THE STATE OF TEXAS OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY THAT THE OAG OR THE STATE OF TEXAS MAY HAVE BY OPERATION OF LAW.

1.5.7 Severability

If any provision of this Contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the Contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.

1.5.8 Applicable Law and Venue

Contractor agrees that this Contract in all respects shall be governed by and construed in accordance with the laws of the State of Texas, except for its provisions regarding conflicts of laws. Contractor also agrees that the exclusive venue and jurisdiction of any legal action or suit concerning this Contract is, and that any such legal action or suit shall be brought, in a court of competent jurisdiction in Travis County, Texas. Contractor further agrees that all payments shall be due and payable in Travis County, Texas.

1.5.9 Headings

The headings for each section of this Contract are stated for convenience only and are not to be construed as limiting.

1.5.10 Entire Agreement

This Contract represents the entire agreement between the parties. No prior agreement or understanding, oral or otherwise, of the parties or their agents will be valid or enforceable unless embodied in the Contract documents.

1.5.11 Texas Bidder

By signing this bid, bidder certifies that if a Texas address is shown as the address of the bidder, bidder qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part 1, Chapter 20.

1.5.12 Additional Terms

Any terms and conditions attached to a solicitation will not be considered unless specifically referred to on this solicitation and may result in disqualification.

1.5.13 Vendor Performance

State agencies shall report a vendor's performance on any purchase of \$25,000 or more from contracts administered by the commission or any other purchase made through an agency's delegated authority or a purchase made pursuant to the authority in Government Code, Title 10, Subtitle D or a purchase exemption from CPA/TPASS procurement rules and procedures.

1.5.14 Past Performance

A Respondent's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of §2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Respondents may fail this selection criterion for any of the following conditions:

- 1) A score of less than 90% in the Vendor Performance System,
- 2) Currently under a Corrective Action Plan through the CPA,
- 3) Having repeated negative Vendor Performance Reports for the same
- 4) Having purchase orders that have been cancelled in the previous 12 months for non-performance (i.e. late delivery, etc.).

reason,

Contractor performance information is located on the CPA web

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

OAG may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 Texas Administrative Code §20.108), OAG 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 OAG, and any negative findings, as determined by OAG, may result in non-award to the Offeror.

1.5.15 Buy Texas

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

1.5.16 Work Made for Hire

For the purposes of this Contract, the term "Work" is defined as all reports, statistical analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research, materials, intellectual property or other property developed, produced, or generated in connection with this Contract. All work performed pursuant to this Contract is made the exclusive property of OAG. All right, title and interest in and to said property shall vest in OAG upon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to this Contract. To the extent that title to any such work may not, by operation of law, vest in OAG, or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to OAG. OAG shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor must give OAG and/or the State of Texas, as well as any person designated by OAG and/or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to Contractor for the services rendered under this Contract.

1.5.17 Drug Free Work Place

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

1.5.18 Notice

Any written notices required under this Contract will be by either hand delivery to Contractor's office address specified on Page 1 of this Contract or by U.S. Mail, certified, return receipt requested, to OAG. 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.

1.5.19 Substitutions

Substitutions are not permitted without written approval of OAG.

1.5.20 Liability for Taxes

Contractor 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 Contractor or its employees. OAG shall not be liable for any taxes resulting from this Contract.

