

State of Texas
Office of the Attorney General



REQUEST FOR PROPOSAL (RFP)

**Indirect Cost Allocation Plan and
Legal Billing Rates Consultant Services**

Request for Proposal Reference: 302-16-LBC001
Class: Item: 918-44, 918-46, 918-74

Posting Date: January 22, 2016
Response Due Date: February 24, 2016 (3:00 PM)

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TABLE OF CONTENTS

1	Introduction	5
2	Scope of Services	7
3	Procurement Process	9
3.1	Authority.....	9
3.2	Schedule of Events	9
3.3	Contract Documents	9
3.4	Attachments and Forms	10
3.5	Point of Contact Information	10
3.6	Solicitation Conference Information	10
3.7	Questions	11
4	HUB Subcontracting Statement.....	11
5	Response Submission Instructions	11
5.1	Response Submission Address	12
5.2	Important Information Regarding Offers.....	12
5.3	Submission Requirements	12
5.4	Part I. General Response & Specification Requirements	12
5.5	Part II. Pricing Response	13
5.6	General Response Requirements	13
5.7	Public Information Act	17
5.8	Offer Irrevocability.....	18
5.9	Discussions and Best and Final Offer.....	18
5.10	OAG Rights	18
5.11	Addendum	18
5.12	Evaluation and Award	19
5.13	OAG Assumptions.....	19
5.14	OAG Responsibilities	20
5.15	Contract Manager Requirements	20
6	Invoicing 21	
6.1	Submitting Invoices.....	21
6.2	Invoice Required Information.....	21
7	Terms and Conditions.....	22
7.1	Audit.....	22
7.3	Antitrust and Assignment of Claims.....	22
7.4	Subcontracting Approval Required	22
7.5	No Assignment by Contractor	23
7.6	Fraud, Waste, and Abuse	23
7.7	Cooperation with the OAG	23
7.8	Dispute Resolution	23
7.9	Information Protection Provisions	25
7.10	Security Incident.....	31
7.11	Commencement of Legal Action.....	31
7.12	Amendment	31
7.13	Termination of Contract	31
7.14	General Terms and Conditions	32

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1 Introduction

This Request for Proposal is filed pursuant to Texas Government Code section 2254.029(a).

The Office of the Attorney General of Texas ("the OAG") requests that professional consultants with documented expertise and experience in the field of indirect cost recovery and cost allocation plans for governmental units submit proposals to prepare an Indirect Cost Allocation Plan for State Fiscal Year 2015 ("FY15") (based on actual expenditures as presented in the OAG's Annual Financial Report (AFR) resulting in a federally approved fixed FY 2017 Indirect Cost Allocation Rate and to analyze and update standardized billing rates for legal services provided by the OAG. In accordance with Texas Government Code section 2254.029(b), the OAG hereby discloses that similar services related to Indirect Cost Allocation Plans and legal billing rates covering earlier fiscal years have been previously provided to the OAG by a consultant.

The OAG administers millions of dollars of federal funds for the Child Support (Title IV-D) and Medicaid (Title XIX) programs. Currently, the OAG is recouping its indirect costs from these federal programs based on rates approved by the United States Department of Health and Human Services ("DHHS").

The OAG also provides legal services to other state agencies. The consultant selected will be responsible for analyzing the existing billing rates and actual costs and then updating the legal services rates for use in State Fiscal Year 2017 ("FY17").

The consultant selected to prepare the Indirect Cost Allocation Plan and to develop current, standardized legal billing rates must demonstrate the necessary qualifications and experience listed in the "QUALIFICATIONS" section. The successful consultant will also be required to perform the services and generate the reports listed in the "SCOPE OF SERVICES" section. The acceptance of a proposal by the OAG, made in response to this Request for Proposal, will be based on the OAG's evaluation of the competence, knowledge, and qualifications of the consultant, in addition to the reasonableness of the proposed fee for services. If other considerations are equal, the OAG will give preference to a consultant whose principal place of business is in Texas or who will manage the consulting contract wholly from an office in Texas. The total contract award will not exceed Forty Thousand and NO/100 Dollars (\$40,000.00) per plan year.

1.1. Definitions

1.1.1. When capitalized, the following terms have the meaning set forth below. All other terms have the meaning set forth in the *Merriam Webster's Collegiate Dictionary*, Eleventh edition.

Term	Definition
Addendum	A modification of the RFP issued by the OAG
Contract	Any contract resulting from this procurement/RFP, consisting of the contract document(s).
Contractor	Corporation, partnership or entity that successfully meets the requirements of the RFP and is formally contracted to provide services.
Electronic State Business Daily (ESBD)	Texas marketplace where the solicitation is required to be posted. Located at: http://esbd.cpa.state.tx.us/ State agencies may also use the ESBD to report information relating to the business activity of the state which they consider to be of interest to the public.
Federal Employer Identification Number (FEIN)	A unique nine (9) digit number assigned to all Employers by the Internal Revenue Service (IRS).
Fiscal Year	September 1 through August 31 of a given year.
Local Time	Central standard time or daylight savings time, as is then prevailing, in Austin, Texas.

Term	Definition																				
OAG Business Day	<p>The days and hours (Monday through Friday, 8:00 a.m. To 5:00 p.m. Local Time) in which the OAG is open for business.</p> <p>The OAG is closed for business on the scheduled holidays indicated on the table below. If a scheduled holiday falls on a weekend, the holiday is generally not observed. The OAG Contract Manager or designee will communicate any variation from the standard holiday schedule as it becomes known.</p> <table border="1"> <thead> <tr> <th>Holiday</th><th>When Observed</th></tr> </thead> <tbody> <tr> <td>New Year's Day</td><td>January 1</td></tr> <tr> <td>Martin Luther King, Jr. Day</td><td>Third (3rd) Monday in January</td></tr> <tr> <td>Presidents' Day</td><td>Third (3rd) Monday in February</td></tr> <tr> <td>Memorial Day</td><td>Last Monday in May</td></tr> <tr> <td>Independence Day</td><td>July 4</td></tr> <tr> <td>Labor Day</td><td>First (1st) Monday in September</td></tr> <tr> <td>Veterans' Day</td><td>November 11</td></tr> <tr> <td>Thanksgiving</td><td>Fourth (4th) Thursday and Friday in November</td></tr> <tr> <td>Christmas</td><td>December 24, 25 and 26</td></tr> </tbody> </table>	Holiday	When Observed	New Year's Day	January 1	Martin Luther King, Jr. Day	Third (3 rd) Monday in January	Presidents' Day	Third (3 rd) Monday in February	Memorial Day	Last Monday in May	Independence Day	July 4	Labor Day	First (1 st) Monday in September	Veterans' Day	November 11	Thanksgiving	Fourth (4 th) Thursday and Friday in November	Christmas	December 24, 25 and 26
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OAG Contract Plan	A plan in which the OAG contracts with a vendor to provide medical cost containment services on behalf of victims and claimants for crime related medical billings.																				
Proposer	Any individual, partnership, or corporation submitting an Offer to this RFP.																				
Offer	A Proposer's submission to this solicitation. An Offer is a compilation of both the Requirements Submission and separate Pricing Submission.																				
RFP or Solicitation	A Request for Proposal, a formal document issued by the OAG to the market or vendor community requesting information or Offer for goods or services. (This document.)																				
Successful Proposer	The vendor awarded the Contract resulting from this RFP. Also "Contractor."																				

2 Scope of Services

2.1 The successful consultant will be required to comply with the consulting services, performances, terms and conditions as described below.

2.2 The selected consultant will accumulate and analyze all data that are required. The OAG is not expected to provide any staff resources to the selected consultant. The OAG will provide a liaison with staff within the OAG and with other state agencies, as appropriate.

2.3 Recommendations. Consultant shall make recommendations throughout the Term of this Contract to improve the integration and reconciliation of indirect and direct billing methodologies.

2.4 Indirect Cost Allocation Plan. Consultant will prepare an Indirect Cost Allocation Plan based upon actual expenditures as presented in the OAG's Annual Financial Report (AFR) for FY 2015 and resulting in federally approved fixed FY 2017 Indirect Cost Allocation Rates.

2.4.1 Planning. Consultant shall plan for the review of the methodologies, rates and obtain the necessary information, raw cost data, and statistical data necessary to identify allocable costs for evaluating, preparing, submitting and negotiating the final Indirect Cost Allocation Plans.

2.4.2 Review the Indirect Cost Methodologies and Develop Rates. Consultant shall review the indirect cost methodologies of the OAG to determine areas of cost recovery which will maximize revenue from the recovery of indirect costs. Consultant shall also develop new indirect cost rates throughout the OAG, as appropriate.

2.4.3 Prepare Indirect Cost Allocation Plan. After Consultant completes work applicable to the *Review the Indirect Cost Methodologies and Develop Rates*, Consultant will prepare an Indirect Cost Allocation Plan in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards that satisfy the requirements of the United States Department of Health & Human Services, Region VI, DCA (hereinafter referred to as "DHHS"), based upon actual expenditures as presented in the OAG's AFR for FY 2015 and resulting in a federally approved fixed FY 2017 Indirect Cost Allocation Rate. Consultant shall perform all necessary services to prepare and obtain approval for the Indirect Cost Allocation Plan to include but not limited to:

- 2.4.3.1** Identify the sources of financial information;
- 2.4.3.2** Inventory all federal and other programs administered by the OAG;
- 2.4.3.3** Classify all OAG divisions;
- 2.4.3.4** Determine administrative divisions;
- 2.4.3.5** Determine allocation bases for allotting services to benefitting divisions;
- 2.4.3.6** Develop allocation data for each allocation base;
- 2.4.3.7** Prepare allocation worksheets based upon actual FY15 expenditures which includes a reconciliation to the OAG AFR;
- 2.4.3.8** Summarize costs by benefitting division;
- 2.4.3.9** Collect cost data for all of the programs included in the inventory of federal and other programs administered by the OAG;
- 2.4.3.10** Determine indirect cost rates throughout the OAG on an annual basis;
- 2.4.3.11** Acquire and include information on costs billed or allocated internally to programs and funding sources.
- 2.4.3.12** Prepare and present draft Indirect Cost Allocation Plan to the OAG for

review and comment *no later than April 8, 2016*;

2.4.3.13 Formalize the Actual FY15 Indirect Cost Allocation Plan and present it to the DHHS *no later than April 30, 2016*; and

2.4.3.14 Negotiate the Indirect Cost Allocation Plan resulting in fixed FY 2017 Indirect Cost Allocation Rates approval with DHHS *no later than August 31, 2016*, unless the OAG agrees in writing to extend that date.

2.5 Legal Billing. Consultant will prepare FY 2017 billing rates for legal services and reconcile FY 2015 legal billing rates with actual costs of legal services. The FY 2017 billing rates for legal services will be used to directly bill state agencies and other users of the legal services of the OAG.

2.5.1 Planning. Consultant shall plan for the review of the methodologies, rates and obtain the necessary information, raw cost data, and statistical data necessary to reconcile the existing rates with actual costs and to prepare an updated report regarding the standardized Legal Billing Rates,

2.5.2 Reconcile FY 2015 Legal Billing Rates with Actual Costs. Consultant will reconcile FY 2015 legal billing rates with actual costs of the OAG in providing the legal services and provide to the OAG a report of that reconciliation;

2.5.3 FY 2017 Billing Rates for Legal Services and Reconciliation Report. Consultant shall develop and present a report to the OAG for the FY 2017 billing rates for legal services which will be used to directly bill state agencies and other users of the legal services of the OAG. Consultant shall also prepare a final report which reconciles FY 2015 billing rates with actual costs for the OAG. Consultant will perform all services necessary to prepare and deliver the reports to the OAG. Examples of the types of services to be performed are:

2.5.3.1 Review current criteria used by the OAG for charging various agencies;

2.5.3.2 Determine the types of legal services provided to the agencies;

2.5.3.3 Compile direct hours for each type of service;

2.5.3.4 Determine effort reporting requirements;

2.5.3.5 Reexamine billing rate options;

2.5.3.6 Determine the actual cost of services;

2.5.3.7 Analyze and confirm revenues and cost analyses;

2.5.3.8 Prepare and present a draft Legal Services Billing Schedule for FY 2015 actual costs and legal billing rates to be used in FY 2017 (based on FY 2015 actual costs including roll forward adjustments) to the OAG *no later than July 15, 2016*; and

2.5.3.9 Formalize the FY 2017 Legal Services Billing Schedule *no later than August 31, 2016*.

2.6 DHHS Approval. The Parties agree that one of the primary purposes of this Contract is for the OAG to have the Indirect Cost Allocation Plan and Legal Billing Rates approved by the DHHS. Therefore, Consultant will negotiate the approval of the final FY 2015 Indirect Cost Allocation Plan resulting in federally approved fixed FY 2017 Indirect Cost Allocation Rates and the FY 2017 Legal Billing Rates with DHHS, keeping the OAG fully informed about all significant developments relating to DHHS approval.

2.7 Delivery of Final Approved Plans. Consultant will deliver to the OAG ten [10] copies

of the approved Indirect Cost Allocation Plan. Consultant will also deliver to the OAG eight [8] copies of the final FY 2017 Legal Billing Rates Report and eight [8] copies of the detailed report reconciling FY 2015 legal billing rates with actual costs.

2.8 Provision of Audit Assistance. Regardless of time period, Consultant will respond to questions and defend them should the Indirect Cost Allocation Plan, indirect cost rates or legal billing schedules or methodologies be questioned or audited.

3 Procurement Process

3.1 Authority

This procurement shall be conducted in accordance with the State Purchasing and General Services Act (Title 10, Subtitle D, and Chapters 2151 through 2176, Texas Government Code) and the rules of the Texas Comptroller of Public Accounts (TCPA) Texas Procurement and Support Services Division (TPASS), including, but not limited to, procedures prescribed by TPASS.

Any Amendment to this procurement solicitation will be posted as an ADDENDUM on the ELECTRONIC STATE BUSINESS DAILY (ESBD). It is the responsibility of interested parties to periodically check the ESBD for updates to the procurement prior to submitting a bid. The Respondent's failure to periodically check the ESBD will in no way release the selected vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFP.

3.2 Schedule of Events

Table 1. Schedule of Events outlines the schedule of events of the OAG procurement process. The OAG reserves the right to change the dates shown below.

Table 1. Schedule of Events

Post RFP Document	January 22, 2016
Pre-Solicitation Conference	February 1, 2016 (2:00 PM)
Deadline for Submission of Written Questions	February 8, 2016
Questions and Answers Document Posted	February 15, 2016
Deadline for Submission of Proposals	February 24, 2016 (3:00 PM)
Expected Award Date	March 21, 2017

3.3 Contract Documents

The Contract resulting from this procurement may consist of the provisions in this RFP, including its attachments, forms, exhibits and any Addendum; the Successful Proposer's Offer; any OAG request for a Best and Final Offer (BAFO); the Successful Proposer's BAFO Response and the OAG Purchase Order (PO). No prior agreement or understanding, oral or otherwise, of the parties or their agents will be valid or enforceable unless embodied in these documents. In the event of a conflict between the provisions of these documents, the documents are given the following order of priority:

- (1) OAG PO;
- (2) OAG Request for BAFO, if any;
- (3) the Successful Proposer's BAFO Response, if any;
- (4) the RFP; and
- (5) the Successful Proposer's Offer to the RFP.

However, the OAG, in its sole discretion, may elect to have the Contract resulting from this procurement consist of one (1) document. This document will contain all of the rights and duties of the parties extracted from the relevant terms and conditions of: the RFP (including its attachments, forms, exhibits, and any Addendum); the Successful Proposer's Response; the Request for BAFO, if any; and the Successful Proposer's BAFO Response, if any. Prior to award the OAG will prepare the Contract for review by the apparent awardee. Discussions may be had concerning possible revisions to the Contract in order to clarify points, further define Contract text, or to correct minor technicalities. Agreement shall be reached on any such matters for the Contract to be signed and a PO to be issued. If the OAG is unable to reach an agreement on the Contract with the apparent awardee, the Response representing the second-best interest of the state may be selected. The final Contract will be reviewed with the appropriate members of the project team before execution.

3.4 Attachments and Forms

This RFP also includes the following Attachments and Forms.

Attachments (Forms)		
A	Draft Consulting Services Contract Between the Office of the Attorney General and Name of Contractor	See attachments to ESBD posting
B	Proposer Pricing Sheet	See attachments to ESBD posting

3.5 Point of Contact Information

Rick Blincoe, CTPM, CTCM, OAG Procurement Division, phone (512) 936-7928, is the sole point of contact for this procurement. Routine correspondence (**not Proposer's Response to this RFP; see Section 5.1**) may be directed to Rick Blincoe as follows:

Mailing address: Office of the Attorney General
Rick Blincoe CTPM, CTCM
Deputy Director Procurement Division
Office of the Attorney General
PO Box 12548
Austin, TX 78711-2548
Email: Rick.Blincoe@texasattorneygeneral.gov

DO NOT SUBMIT RESPONSES (PROPOSALS) TO THE ABOVE MAILING OR EMAIL ADDRESS.

Proposer shall make no contact with other OAG personnel, except as permitted by the point of contact, concerning this RFP. The only exception to this requirement is that Proposer may contact the OAG Historically Underutilized Businesses (HUB) Coordinator directly with questions regarding proper submission of the HUB Subcontracting Plan (HSP) (if required by Section 4). The HUB Coordinator, Evan Kelley may be reached at 512/475-4523 or via email at Evan.Kelley@texasattorneygeneral.gov. Failure to comply with this requirement may result in disqualification.

3.6 Solicitation Conference Information

The Pre-Solicitation Conference is scheduled for the date and time listed above in Section 3.2, Schedule of Events. Attendance is encouraged but not mandatory. The location of the conference is:

Ground Floor Conference Room
Price Daniel Sr. State Office Building
209 W. 14th Street, Room 139
Austin, Texas 78701

3.7 Questions

All questions regarding this procurement shall be submitted in writing to the point of contact listed in Section 3.5 Point of Contact. The deadline for submitting questions regarding this RFP is the date and time listed in Section 3.2 Schedule of Events.

Any questions submitted will be answered at the sole discretion of the OAG in a Question and Answer (Q&A) Document posted on the ESBD. Only answers provided in writing by the OAG shall be considered official. All questions should, to the degree possible, cite the specific RFP section and paragraph number(s) to which the question refers.

Information in any form other than the materials constituting this RFP, the Question and Answer Document(s), and any RFP Addendum shall not be binding on the OAG.

4 HUB Subcontracting Statement

Because the estimated value of the contract is less than \$100,000, respondents are not required by Texas Government Code §2161.251 to submit a HUB Subcontracting Plan at the time of submission. However, it is the policy of the Office of the Attorney General to promote and encourage contracting and subcontracting opportunities for State of Texas certified Historically Underutilized Businesses (HUBs) in all contracts in compliance with Texas Government Code Chapter 2161. Eligible Respondents are encouraged to become HUB certified. Respondents may find State of Texas HUB applications at:

<http://www.window.state.tx.us/procurement/prog/hub/hub-forms/>.

Definitions for State of Texas HUB certifiable businesses can be found in 34 Texas Administrative Code Chapter 20, Subchapter B, which is available at:

[https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=5&ti=34&pt=1&ch=20&sc h=B&rl=Y](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=34&pt=1&ch=20&sc h=B&rl=Y)

5 Response Submission Instructions

To ensure the integrity of the competitive process, a Proposer may not directly or indirectly communicate any of the contents of its Proposal (hereafter referred to as Proposer) to:

- a. a competitor of the Proposer; or
- b. any other company, corporation, firm, partnership, individual, or related entities of the same, engaged in the same line of business as the Proposer; or
- c. a related entity of the Proposer engaged in the same line of business as the Proposer.

This prohibition is in effect during the preparation of the offer and while the offer is pending with the OAG, including the negotiation and finalization of any resulting contract. The term related entities includes, but is not limited to, affiliates, subsidiaries, associates, branches and divisions. It does not include entities that may from time to time enter into teaming agreements with one another to provide services under a contract with a third party but otherwise have no legal relationship with each other. The Proposer may communicate with teaming partners, subcontractors and other entities that are part of the Proposer's offer as long as they are not part of another Proposer's offer submitted in response to this solicitation.

When a related entity of the Proposer (whether related at the time offers are due or at any time thereafter) submits a competing offer, the OAG may require additional information to ensure each separate offer is independent. Failure to provide or fully disclose all such information may, at OAG discretion, disqualify Proposer or result in the termination of any resulting contract. **PROPOSER HAS AN ONGOING DUTY TO UPDATE ALL INFORMATION INCLUDED IN ITS OFFER AT ANY TIME THAT SUCH INFORMATION CHANGES.**

To be eligible for consideration, Offers shall be received and time stamped in the OAG Procurement Division by no later than the date and time specified in Section 2.2 Schedule of Events. Late Offers will not be considered under any circumstances and will be returned unopened.

Offers shall be labeled with RFP reference. It is the Proposer's responsibility to appropriately mark and deliver the Response to the OAG by the specified time and date. Pages shall be numbered and contain an organized, paginated table of contents corresponding to the section and pages of the Response.

Telephone, email, U.S. Postal Service, and facsimile Offers will not be accepted. Offers may be accepted until the date and time established for receipt.

5.1 Response Submission Address

Offers may be submitted by hand delivery, commercial delivery (e.g., FedEx, UPS, and DHL), or courier to the appropriate address listed below:

Office of the Attorney General
Procurement Division
Attn: Rick Blincoe, CTPM, CTCM
W. P. Clements Building
300 W. 15th St., 3rd Floor
Austin, TX 78701-1649

5.2 Important Information Regarding Offers

If sending a Response by courier, overnight delivery or hand delivery it is incumbent upon the Proposer to allow for sufficient time to permit delivery by the courier delivery service. Proposer is advised that due to security measures there may be delays to screen packages, route packages, and screen delivery personnel related to packages intended for the OAG. **The Response shall be received in the Procurement Division located at 300 West 15th Street, 3rd Floor, by the required deadline (see Section 3.2). Time and date stamp of the Procurement Division shall be the final determinant of whether a Response was received timely by the OAG.**

The Proposer is solely responsible for allowing sufficient time for the timely arrival of the Response in the Procurement Division. The Proposer shall allow for the time taken by the delivery service and the OAG internal mail services or procedures to deliver the Response to the Procurement Division.

5.3 Submission Requirements

The Proposer shall submit the RFP response in two (2) parts: Part I. General Response and Specification Requirements and Part II Pricing Response.

5.4 Part I. General Response & Specification Requirements

- a. Proposer shall submit one (1) original hard copy with original signatures, five (5) hard copies and one (1) copy of media (i.e., CD or thumb (flash) drive) containing one (1) electronic copy of the Requirements Submission-in Microsoft Word format (*.doc or *.docx) or searchable Adobe Portable Document Format (*.pdf).
- b. The electronic copy shall be indexed or book marked. Pages shall be numbered and contain an organized, paginated table of contents corresponding to the sections and pages of the Response. The electronic copy shall be an EXACT REPLICA of the signed original.

- c. The Response shall be clearly labeled with the title: RFP # **302-16-LBC001 Response Submission**. The Response shall be organized into the following sections:

Section 1.1: Transmittal Letter
Section 1.2: Executive Summary
Section 1.3: Project Proposal
Section 1.4: Qualifications
Section 1.5: References and Financial Condition
Section 1.6: Disclosure

5.5 Part II. Pricing Response

- a. Proposer shall submit one (1) original hard copy with original signatures, two (2) hard copies and one (1) copy of media (i.e., CD or thumb (flash) drive) containing one (1) electronic copy of the Requirements Submission in Microsoft Word format (*.doc or *.docx) or Adobe Portable Document Format (*.pdf). The electronic copy shall be an EXACT REPLICA of the signed original. The pricing submission shall submit pricing in Microsoft Excel format (.xls/*.xlsx) or in Searchable Adobe Portable Document Format (*.pdf). Failure to submit a complete Pricing Submission may result in disqualification of the Response.
- b. The Response shall be clearly labeled with the title: RFP # **302-14AH-MCC Response Submission, Part II - Pricing Requirements**. The Response shall be organized into the following sections:

Section 2.1: Proposer Pricing Sheet (Attachment C)

5.6 General Response Requirements

5.6.1 Transmittal Letter

A letter that identifies the person or entity submitting the proposal and includes a commitment by that person or entity to provide the services required by the OAG. The letter must state, "The proposal enclosed is binding and valid at the discretion of the OAG." The letter must specifically identify the project for this proposal. The letter must include "full acceptance of the terms and conditions of the Request for Proposal." Any exceptions to the Request for Proposal must be specifically noted in the letter. However, any exceptions to the terms and conditions of the Request for Proposal or subsequently negotiated contract may disqualify the Consultant from further consideration at the OAG's discretion.

5.6.2 Executive Summary

A summary of the contents of the proposal, excluding cost information. Address services that are offered beyond those specifically requested as well as those offered within specified deliverables. Explain any missing or other requirements not met, realizing that failure to provide necessary information or offer required service deliverables may result in disqualification of the proposal.

5.6.3 Project Proposal

5.6.3.1 A detailed description of the plan of action to fulfill all of the requirements as described in Section 2 Scope of Services; and

5.6.3.2 Detailed information on the consultant staff to be assigned to the project.

5.6.4 Qualifications

Each individual, company, or organization submitting a proposal must include all of the references and financial status information as specified within this Request for Proposal (see the section below titled “References and Financial Condition”) at the time of opening or it will be disqualified. Each consultant that submits a proposal must present evidence or otherwise demonstrate to the satisfaction of the OAG that such entity:

- 5.6.4.1 Has the expertise to prepare and successfully negotiate the type of Indirect Cost Allocation Plan described above;
- 5.6.4.2 Has a thorough understanding of cost allocation issues and has the expertise in the preparation of Indirect Cost Allocation Plans at the state agency level;
- 5.6.4.3 Has a thorough understanding of legal services billing procedures and has the expertise in the preparation of a Legal Services Billing Schedule; and
- 5.6.4.4 Can develop and execute the Indirect Cost Allocation Plan and Legal Services Billing Schedule within the required time frames as described in Section 2, Scope Of Services.

5.6.5 References and Financial Condition

Prospective consultants will provide the names of at least three (3) different references meeting the following criteria:

- 5.6.5.1 The reference company or entity must have engaged the prospective consultant for the same or similar services as those to be provided in accordance with the terms of this Request for Proposal;
- 5.6.5.2 The services must have been provided by the prospective consultant to the reference company or entity within the five (5) years preceding the issuance of this Request for Proposal;
- 5.6.5.3 The reference company or entity must not be affiliated with the prospective consultant in any ownership or joint venture arrangement;
- 5.6.5.4 References must include the company or entity name, address, contact name, and telephone number for each reference. The OAG may not be used as a reference. The contact name must be the name of a senior representative of the reference company or entity who was directly responsible for interacting with the prospective consultant throughout the performance of the engagement and who can address questions about the performance of the prospective consultant from personal experience. References will accompany the proposal.
- 5.6.5.5 The prospective consultant will provide a signed release from liability for each reference provided in response to this requirement. The release from liability will absolve the specified reference company or entity from liability for information provided to the OAG concerning the prospective consultant's performance of its engagement with the reference.
- 5.6.5.6 The prospective consultant must disclose if and when it has filed for bankruptcy within the last seven (7) years. For prospective consultants conducting business as a corporation, partnership, limited liability partnership, or other form of artificial person, the prospective consultant

must disclose whether any of its principals, partners, or officers have filed for bankruptcy within the last seven (7) years.

- 5.6.5.7 As part of any proposal submission, the prospective consultant must include information regarding financial condition, including income statements, balance sheets, and any other information which accurately shows the prospective consultant's current financial condition. The OAG reserves the right to request such additional financial information as it deems necessary to evaluate the prospective consultant, and by submission of a proposal, the prospective consultant agrees to provide same.

5.6.6 Disclosure

- 5.6.6.1 Any individual who provides a proposal for consulting services in response to this Request for Proposal and who has been employed by the OAG or any other state agency(ies) at any time during the two (2) years preceding the tendering of the proposal will disclose in the proposal:

- 5.6.6.1.1 the nature of the previous employment with the OAG or any other state agency(ies);
- 5.6.6.1.2 the date(s) the employment(s) terminated; and
- 5.6.6.1.3 the annual rate(s) of compensation for the employment(s) at the time(s) of termination.

- 5.6.6.2 Each consultant that submits a proposal must certify to the following:

- 5.6.6.2.1 consultant has no unresolved audit exceptions(s) with the OAG. An unresolved audit exception is an exception for which the consultant has exhausted all administrative and/or judicial remedies and refuses to comply with any resulting demand for payment.
- 5.6.6.2.2 consultant certifies that the consultant's staff or governing authority has not participated in the development of specific criteria for award of this contract, and will not participate in the selection of consultant(s) awarded contracts.
- 5.6.6.2.3 consultant has not retained or promised to retain an agent or utilized or promised to utilize a consultant who has participated in the development of specific criteria for the award of contract, nor will participate in the selection of any successful consultant.
- 5.6.6.2.4 consultant agrees to provide information necessary to validate any statements made in consultant's response, if requested by the OAG. This may include, but is not limited to, granting permission for the OAG to verify information with third parties, and allowing inspection of consultant's records.
- 5.6.6.2.5 consultant understands that failure to substantiate any statements made in the response when substantiation is requested by OAG may disqualify the response, which could cause the consultant to fail to receive a contract or to receive a contract for an amount less than that requested.

- 5.6.6.2.6 consultant certifies that the consultant's organization has not had a contract terminated or been denied the renewal of any contract for non-compliance with policies or regulation of any state or federal funded program within the past five years nor is it currently prohibited from contracting with a government agency.
- 5.6.6.2.7 consultant certifies that its Corporate Texas Franchise Tax payments are current, or that it is exempt from or not subject to such tax.
- 5.6.6.2.8 consultant 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 the submitted response.
- 5.6.6.2.9 neither the consultant nor the firm, corporation, partnership or institution represented by the consultant, anyone acting for such firm, corporation partnership or institution has violated the antitrust laws of this State, the Federal antitrust laws nor communicated directly or indirectly its response to any competitor or any other person engaged in such line or business.
- 5.6.6.2.10 under Family Code §231.006 (relating to child support), the consultant certifies that the individual or business entity named in this response is not ineligible to receive a specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
- 5.6.6.2.11 if the consultant is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the consultant certifies that it either: (a) holds a permit issued by the Texas comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the consultant's business in Texas; or (b) does not sell tangible personal property or services that are subject to the state and local sales and use tax.
- 5.6.6.2.12 consultant certifies that if a Texas address is shown as the address of the vendor, Vendor qualifies as a Texas Bidder as defined in 34 TAC 20.32(68).
- 5.6.6.2.13 consultant certifies that it has not received compensation for participation in the preparation of the specifications for this solicitation.
- 5.6.6.2.14 consultant must answer the following questions:
 - 5.6.6.2.14.1 If an award is issued, do you plan to utilize a subcontractor or supplier for any portion of the contract? If consultant plans to utilize a subcontractor, the subcontractor will comply with the same terms as the consultant as

contained in this solicitation and other relevant OAG policy and procedure and the subcontractor must be approved in advance by OAG.

5.6.6.2.14.2 If yes, what percentage of the total award would be subcontracted or supplied by Historically Underutilized Businesses (HUBs)?

5.6.6.2.14.3 If no, explain why no subcontracting opportunities are available or what efforts were made to subcontract part of this project.

5.6.6.2.14.4 Is consultant certified as a Texas HUB?

5.7 Public Information Act

As an agency, the OAG will strictly adhere to the requirements of Chapter 441, Subchapter L of the Texas Government Code regarding the preservation, management, and retention of state records and Chapter 552 of the Texas Government Code (the "Texas Public Information Act") regarding the disclosure of public information. As a result, by participating in this RFP process you acknowledge that all information, documentation and other materials you submit an Offer to this RFP will constitute state records for the purposes of Chapter 441, Subchapter L of the Texas Government Code and absent an exception to disclosure, be subject to public disclosure under the Texas Public Information Act.

The OAG is without authority to agree that any information submitted will not be subject to disclosure. Disclosure is governed by the Texas Public Information Act (the "Act"), Chapter 552 of the Texas Government Code. Under the Act all information held by governmental bodies is subject to public disclosure unless it falls within one of the Act's specific exceptions to disclosure. Proposers are advised to consult with their legal counsel concerning disclosure issues resulting from this RFP process and to take precautions to safeguard trade secrets and other proprietary information.

If it is necessary for a Proposer to include information that it considers to be proprietary or otherwise confidential in its Offer, the Proposer shall clearly mark all copies of the proprietary or otherwise confidential information, documentation or materials that are being provided to the OAG with a written notice identifying the specific exception(s) to disclosure under the Texas Public Information Act that the Proposer claims is/are applicable to such information, documentation, or material. Subchapter C of the Texas Public Information Act sets forth the Act's exceptions to the required disclosure of information. Please note that claiming a disclosure exception for provided information does not automatically render such information confidential. Further merely making a blanket claim that all of the submitted information is protected from disclosure because it contains some proprietary information is not acceptable, and shall not render the entire submission confidential. The OAG, at its sole discretion, may choose to disqualify any Offer that is marked confidential or proprietary in its entirety. Any information which is not clearly identified as proprietary or confidential shall be deemed to be subject to disclosure pursuant to the Act.

In the event that the OAG receives a request under the Texas Public Information Act for a copy of any information, documentation, or other material for which an exception to required disclosure under the Act is claimed, the OAG will undertake a good faith effort to provide the Proposer with notice of the request for release of provided information and afford the Vendor the opportunity to brief the facts that bring the information under the applicable exceptions of the Act. The Vendor would submit the brief to the Open Records Division of the OAG. The Open Records Division is the division within the OAG that governmental bodies (including divisions of the OAG) seeking to withhold information under the Public Information Act shall request a decision on whether the information is accepted from disclosure. It is not possible to obtain a decision prior to a request

for public disclosure being made because the Open Records Division does not render advisory opinions.

As noted above, when circumstances warrant, the OAG will seek to withhold information, documentation, or other material under the Act by submitting a brief to the Open Records Division of the OAG seeking to withhold information it believes is excepted from disclosure, especially to protect its interests in situations involving competitive procurements.

Additionally, if Proposer marks the Offer as copy written or protected by copyright, the Proposer grants OAG a license to reproduce the Offer in order to comply with any legal requirements to produce the document. This includes, but is not limited to, the Texas Public Information Act and any reports for the Legislative Budget Board.

5.8 Offer Irrevocability

Offers submitted in response to this RFP are irrevocable for one hundred twenty (120) calendar days following the closing date. This period may be extended at the OAG Procurement Director's request only by a Proposer's written agreement.

5.9 Discussions and Best and Final Offer

The OAG, at its sole discretion, may discuss acceptable or potentially acceptable Offers with Proposers (in this context "discuss" means to clarify, modify and/or negotiate). If discussions occur, all Proposers with Offers found to be acceptable or potentially acceptable shall be given an opportunity to discuss their Offers with the OAG and, if applicable, revise Offers accordingly with the BAFO process described below.

A time and place shall be set for receipt of any requests for BAFO. Changes to Offers or prices after BAFO shall only be allowed if the OAG, in its sole discretion, determines that resubmission would be in the public interest.

5.10 OAG Rights

All submitted Offers become the property of the OAG. The OAG reserves the right to use any and all ideas presented in any Response to this RFP. Selection or rejection of any Response does not affect this right.

The rights of the OAG include, but are not limited to:

1. cancelation of the RFP, at its sole discretion;
2. suspension of the procurement process and issuance of RFP Addendum;
3. rejection, in whole or in part, of any and all Offers received in response to this RFP;
4. waiver of administrative deficiencies and/or minor technicalities in Offers received;
5. utilization of any and all ideas submitted in the Offers received;
6. directing any Proposer to submit Response modifications addressing any subsequent RFP addendum;
7. elimination of any requirements that are not met by all Proposers upon notice to all parties submitting Offers;
8. making typographical corrections to Offers, with the concurrence of the Proposer;
9. changing computational errors with the written concurrence of the Proposer; and
10. requesting any Proposers to clarify their Offers and/or submit additional information pertaining to their Response.

5.11 Addendum

Any Amendment to this procurement solicitation will be posted as an addendum on the Electronic State Business Daily. It is the responsibility of interested parties to periodically check the ESD for updates to the procurement prior to submitting a bid. The Respondent's failure to periodically check the ESD will in no way release the selected vendor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFP.

Proposer is required to acknowledge the Addendum by returning the Addendum with the Response or by including some other written acknowledgement in the Response.

5.12 Evaluation and Award

The OAG has sole discretion and may reject any and all offers, or terminate this RFP, amend or re-issue this RFP. The OAG reserves the right to remedy technical errors in the RFP process, waive any informalities and irregularities relating to any or all offers and qualifications submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of services resulting from this RFP. The issuance of this RFP does not constitute a commitment by the OAG to award any contract. The OAG intends to use any material provided in response to this RFP as a means of identifying, selecting and contracting with an entity offering the best value to the OAG.

5.12.1 Initial Responsiveness Screening

The OAG will perform an initial responsiveness screening of the Response to verify completion of the Response and signature of all required accompanying documentation. A Response determined not to be responsive may be disqualified. A Response which passes the initial responsiveness screening will move forward to the Financial Assurance Review.

5.12.2 Financial Assurance Review

The OAG will review the financial resources and financial responsibility of the Proposer and/or the Proposer's agents to determine adequacy to perform the required services. Financial assurance review information determined not to be responsive may disqualify the Proposer from further consideration. Any Proposer whose financial resources or financial responsibility are determined to be inadequate to perform the required services shall be disqualified; disqualification may occur at any time prior to OAG's issuance of the PO.

5.12.3 Determining Best Value

To determine which Response offers the best value and is in the State's best interest, the OAG will evaluate the following criteria and assign a total score for each Response based on a scale of one hundred percent (100%) using the following percentages:

Demonstrated Competence:	45%
Knowledge and Qualifications:	45%
Fair and Reasonable Fee:	10%

The evaluator comments and the scores will be reviewed to determine if discussions are necessary and to determine which Offers shall qualify for discussions. If discussions are held, a BAFO will be requested. Offers to the BAFO request will be reviewed and scored. Upon the ultimate conclusion of the Evaluation Process, the OAG will award to the Proposer with the highest scoring Response, provided that it is in the state's best interest to do so.

5.12.4 Purchase Order

The OAG will issue a Purchase Order as result of this RFP process. All PO and award decisions will be made based upon the OAG and the state's best interest. No quantities are guaranteed.

5.13 OAG Assumptions

5.13.1 General Assumptions

- 5.13.1.1 The Contractor is not required to be geographically located in Austin, Texas. However, the OAG does expect that there will be onsite meetings for

implementation, training and yearly performance reviews, held at an OAG Austin facility.

- 5.13.1.2 The Contractor will provide all services from within the contiguous United States.
- 5.13.1.3 The OAG will not reimburse the Contractor for travel expenses related to performing services under the Contract resulting from this RFP.
- 5.13.1.4 All implementation activities will be completed prior to the operations start date. The OAG assumes a 60 day implementation period beginning shortly after award of a Contract and ending when the Contractor's Solution is in place and has been fully tested, approved and accepted by the OAG. The OAG, at its sole discretion, may grant additional time.
- 5.13.1.5 The Contractor will cooperate and work proactively with the OAG and other OAG Contractors to coordinate the transition of existing services, if applicable.
- 5.13.1.6 Proposers shall have the legal right to sell or re-sell all products described in their responses.
- 5.13.1.7 The intended use of Offers' products or services does not violate any state or federal laws with regard to data security or consumer privacy.
- 5.13.1.8 The Contractors products or services are intended primarily for the purposes described herein.
- 5.13.1.9 Use of any proposed product or service shall not require extensive additional development, data storage, or integration on the part of the OAG.

5.14 OAG Responsibilities

- 5.14.1 The OAG will provide a Project manager to work with the Contractor during the development and implementation of the contract.
- 5.14.2 The OAG will assign a Contract manager to ensure that the Contractor and the agency are in compliance with the requirements, terms and conditions included in the RFP.

5.15 Contract Manager Requirements

The Selected Proposer shall appoint a Contract Manager who will serve as the primary contact to resolve any and all problems that may arise during the term of the Contract. This individual will be available approximately one (1) month prior to the starting date of the Contract to assure smooth transition between contractors, if necessary. The Selected Proposer is to work closely with the agency to fulfill the services required in this proposal and insure satisfaction to the OAG. The Selected Proposer shall provide the name of the Contract Manager upon award of the contract.

The Contract Manager, or other designated staff as identified by the Selected Proposer and approved by OAG, shall also serve as the contact for the purpose of handling and resolving inquiries about matters relating to the review, audit and/or non-payment of bills. The Contract Manager shall be available to attend meetings and make presentations as requested by the OAG. The Contract Manager shall also be available approximately one (1) month after termination of the contract.

6 Invoicing

The Contractor shall adhere to the following invoice provisions. The OAG will not be liable for any services rendered or obligations incurred on behalf of the OAG by the Contractor before execution of a PO. The OAG shall process a properly prepared invoice for payment in accordance with the state procedures for issuing state payments and the Chapter 2251 of Texas Government Code (the "Texas Prompt Payment Act").

6.1 Submitting Invoices

Invoices shall be submitted to the OAG Accounting Division at:

Accounts Payable Section
Office of the Attorney General
Accounting Division, Mail Code 003
PO Box 12548
Austin, TX 78711-2548
Invoices@texasattorneygeneral.gov

6.2 Invoice Required Information

The Successful Proposer shall invoice the OAG by the 10th day of the month following the prior month. The items invoiced shall be described in the same fashion as the OAG's PO. Each invoice shall include the following information:

- ❖ PO Number;
- ❖ Vendor Name;
- ❖ Vendor's Tax Identification Number;
- ❖ Vendor's Address;
- ❖ Vendor's Contact Phone Number
- ❖ Invoice Schedule
- ❖ Invoice Review

The OAG shall review each invoice for Contract compliance and completeness. If the OAG determines that an invoice is not acceptable under the provisions of the Contract resulting from this RFP or is otherwise incomplete, the Successful Proposer shall correct any deficiencies before the OAG will process the invoice for payment.

- 6.1.1 The Successful Proposer shall provide additional information and/or documentation as the OAG may reasonably require.
- 6.1.2 The Successful Proposer shall respond to an OAG request for additional information and/or documentation to support payment.
- 6.1.3 The Successful Proposer shall provide additional information and/or documentation as the OAG may reasonably require.
- 6.1.4 The Successful Proposer shall respond to an OAG request for additional information and/or documentation to support payment within five (5) calendar days of receipt of request.

7 Terms and Conditions

7.1 Audit

7.1.1 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.

7.1.2 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.

7.2 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 Indirect Cost Allocation Plan and Legal Billing Rates Consultant Services. 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 for the Indirect Cost Allocation Plan and Legal Billing Rates Consultant Services 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.

7.3 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.

7.4 Subcontracting Approval Required

Respondent must perform the Contract with its own resources and those subcontractors identified in Respondent's HUB Subcontracting Plan (if required by Section 4). In the event that Respondent determines that it is necessary or expedient to execute additional or alternative subcontracts for any of the performances under the Contract, Respondent must submit a revised HUB Subcontracting Plan (if required by Section 4) for prior approval before executing any subcontracts. Respondent must also transmit to the Office of the Attorney General for review and prior Office of the Attorney General approval a true copy of the subcontract it proposes to execute with a subcontractor.

Respondent, in subcontracting for any performances specified in the RFP or resulting Contract, expressly understands and acknowledges that in entering into such subcontract(s), the Office of the

Attorney General is in no manner liable to any subcontractor(s) of the Respondent. In no event will this provision relieve Respondent of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all terms of this RFP and Contract. Respondent must manage all quality and performance, project management, and schedules for subcontractors. Respondent is solely responsible and accountable for the completion of all work for which Respondent has subcontracted.

7.5 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.

7.6 Fraud, Waste, and Abuse

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

- The Contract Manager;
- The Director, Crime Victim Service Division
- The Deputy Director, Crime Victim Services Division
- The OAG Ethics Advisor
- The OAG’s Fraud, Waste and Abuse Prevention Program (“FWAPP”) Hotline (866-552-7937) or the FWAPP E-mailbox (FWAPP@oag.state.tx.us)
- The State Auditor’s Office hotline for fraud (1-800-892-8348).

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

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

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

- 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.
- Waste is the extravagant careless or needless expenditure of funds or consumption of property that results from deficient practices, system controls, or decisions.
- 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.

7.7 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.

7.8 Dispute Resolution

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

7.8.1.1 **Informal Meetings.** The Office of the Attorney General and Contractor will meet as needed to implement the terms of this Contract and will make a good faith attempt to resolve any disputes informally.

7.8.1.2 **Alternative Dispute Resolution at State Office of Administrative Hearings.** If the Parties' attempts to resolve their disagreements informally fail, the parties may agree, but are not required, to utilize the non-binding alternative dispute resolution services of the State Office of Administrative Hearings (SOAH) to attempt to resolve their disagreements, claims, or disputes under this Contract. Contractor will pay all costs of the mediation unless the Office of the Attorney General, in its sole good faith discretion, approves its payment of all or part of such costs. The Office of the Attorney General or Contractor's participation in, or the results of, any mediation under this subsection or the provisions of this Section will not be construed as a waiver by the Office of the Attorney General or Contractor of any rights, privileges, defenses, remedies, or immunities available to the parties under this Contract or available to the Office of the Attorney General as an agency of the State of Texas.

7.8.1.3 **Texas Government Code Chapter 2260.** The Parties must use the dispute resolution process provided for in Texas Government Code Chapter 2260, as further described in this Section, to attempt to resolve any claim for breach of this Contract made by Contractor.

Contractors must submit claims for breach of this Contract that the Parties cannot resolve in the ordinary course of business according to the negotiation process provided in Texas Government Code Chapter 2260, Subchapter B. To initiate the process, Contractor must submit written notice, as required by subchapter B, to the Office of the Attorney General's Executive Director and to the Office of the Attorney General as stated in Section B.4.3. This written notice must specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. Compliance by Company with subchapter B is a condition precedent to the filing of a contested case proceeding under Texas Government Code Chapter 2260, Subchapter C.

The contested case process provided in Texas Government Code Chapter 2260, Subchapter C is Contractor's sole and exclusive process for seeking a remedy for any alleged breach of this Contract by the Office of the Attorney General if the Parties are unable to resolve their disputes informally. Compliance with the contested case process provided in Texas Government Code Chapter 2260, Subchapter C is a condition precedent to seeking consent to sue from the Legislature under Texas Civil Practices and Remedies Code Chapter 107. Neither the execution of this Contract by the Office of the Attorney General nor any other conduct of any the Office of the Attorney General representative relating to this Contract will be considered a waiver of sovereign immunity.

The submission, processing, and resolution of Contractor's claim is governed by CPA's published rules, in 34 Tex. Admin. Code Chapter 1, Subchapter F.

7.8.1.4 **Company's Continued Performance.** Notwithstanding any other provision of this Contract to the contrary, unless otherwise requested or approved in writing by [AGENCY], Contractor must continue performance and will not be excused from performance during the period any breach of contract claim, dispute or mediation is pending under either of the above processes.

However, Contractor may suspend performance during the pendency of such claim or dispute if Contractor has complied with all provisions of Texas Government Code § 2251.051 and such suspension of performance is expressly applicable and authorized under that law.

7.8.2 The submission, processing and resolution of a claim for breach of Contract is governed by Texas Government Code (TGC) Chapter 2260, as currently effective, hereafter enacted or subsequently amended.

7.8.3 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.

7.9 Information Protection Provisions

7.9.1 General

7.9.1.1 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.

7.9.1.2 Data Retention and Destruction

- a. Contractor and OAG shall develop a mutually agreed upon detailed schedule, which shall 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.
 5. In the event of Contract expiration or termination for any reason, Contractor and Contractor's Agents shall completely purge as described in 7.9.1.2, 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 7.9.1.2) 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.
 6. 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.
 7. 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.

7.9.1.3 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

7.9.2 Physical and System Security

7.9.2.1 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 shall track and log all access attempts and failures. The access security systems shall produce access logs on request. These logs shall 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 shall 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 shall be stored to electronic media. Any stored log shall 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 performance. 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 shall provide the means whereby authorized personnel have the ability to audit and to verify contractually required performance 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 performance 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.

7.9.2.2 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 shall 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.

7.9.2.3 Logical/Information System Protections

- a. 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;
 - i. Contractor shall maintain an access protection list that details the rights and privileges with respect to each such user;
 - ii. Audit trails for user account adds, deletes, and changes, as well as, access attempts and updates to individual data records; and
 - iii. Protection to prevent unauthorized processing in or changes to software, systems, and OAG Data in the production environment.
- b. 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.
- c. Contractor shall implement counter-protection against malicious software on Contractor's internal systems used in contract performance.
- d. Contractor shall ensure that relevant Security Incidents are identified, monitored, analyzed, and addressed.
- e. 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.
- f. Contractor shall adhere to mutually agreed upon procedures for authorizing hardware and software changes, and for evaluation of their security impact.
- g. 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.

7.9.3 Security Audit

7.9.3.1 Right to Audit, Investigate and Inspect

- a. 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.

- 7.9.3.2 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.

- 7.9.3.3 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.

7.9.3.4 Security Incidents

a. Response to Security Incidents

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.

b. Notice

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

- c. 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.

d. 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.

7.9.3.5 Final Report

- a. 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:
- b. A detailed explanation of the cause(s) of the Security Incident;

- c. 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
- d. 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.
- e. 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.
- f. 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.

7.9.3.6 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.

7.9.4 Remedial Action

7.9.4.1 Remedies Not Exclusive and Injunctive Relief

- a. 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.
- b. 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.

7.9.4.2 Notice and Compensation to Third Parties

- a. 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.
- b. 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.
- c. 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 Act 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 shall comply with the notification requirements of Section 521.053, Texas Business and Commerce Code (as currently enacted or subsequently amended). Provided further that Contractor shall also comply with Section 521.053's "consumer reporting agency" notification requirements.

7.10 Security Incident

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.

7.11 Commencement of Legal Action

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

7.12 Amendment

This Contract shall only be amended or modified as follows. First duly authorized representatives of the parties shall execute a writing denominated as an amendment to the Contract. Second the OAG shall 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.

7.13 Termination of Contract

7.13.1 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.

7.13.2 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.

7.13.3 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.

7.13.4 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.

7.13.5 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.

7.14 General Terms and Conditions

7.14.1 State and Federal Terms and Conditions

7.14.1.1 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.

7.14.1.2 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.

7.14.1.3 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.

7.14.1.4 Records Retention

Contractor shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performance 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.

7.14.1.5 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.

7.14.2 Certifications

7.14.2.1 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.

7.14.2.2 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.

7.14.2.3 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.

7.14.2.4 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.

7.14.2.5 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>.

7.14.2.6 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.

7.14.3 General Responsibilities

7.14.3.1 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.

7.14.3.2 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.

7.14.3.3 Indemnification and Liability

a. Acts or Omissions

Vendor shall indemnify and hold harmless the State of Texas and Customers, 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 Vendor 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 Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM

7.14.3.4 Infringements

- a. Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.
- b. Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by:
 - i. use of the product or service for a purpose or in a manner for which the product or service was not designed
 - ii. any modification made to the product without Vendor's written approval
 - iii. any modifications made to the product by the Vendor pursuant to Customer's specific instructions
 - iv. any intellectual property right owned by or licensed to Customer, or
 - v. any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

- c. If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense;
 - i. procure for the Customer the right to continue to use the affected portion of the product or service, or
 - ii. modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing

7.14.3.5

Taxes/ Workers' Compensation/Unemployment Insurance – Including Indemnity

- a. VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, 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. VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, 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. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

7.15 Certifications

7.15.1 Insurance

- a. Contractor will be required to obtain the following insurance coverage in connection with this Contract

- Comprehensive General Liability Insurance with a minimum limit of \$1,000,000 for each occurrence, an aggregate of \$2,000,000, Medical Expense(each person) of \$5,000
 - Personal Injury and Advertising Liability of \$1,000,000, Products/Completed Operations aggregate Limit of \$2,000,000 and Damage to Premises Rented to You of \$50,000.
 - 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
 - Workers' Compensation coverage as required by law with statutory limits for the State of Texas as follows: Employer's Liability of \$1,000,000, Disease – Each Employee of \$1,000,000, and Disease – Policy Limit of \$1,000,000
- b. All policies shall contain a waiver of subrogation against the OAG, its officers and employees, for bodily injury (including death), property damage or any other loss.
- c. Proof of, or commitment for, the insurance coverage detailed in subsections 85.4.1.1 shall 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 shall 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.
- d. 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.
- e. 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.

7.15.1.1 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.

7.15.1.2 Electrical Items

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

7.15.1.3 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."

7.15.1.4 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.

7.15.1.5 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, Proposer 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 Proposer.

7.15.1.6 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.

7.15.1.7 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.

7.15.1.8 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.

7.15.2 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.

7.15.3 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.

7.15.4 Headings

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

7.15.5 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.

7.15.6 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.

7.15.7 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.

7.15.8 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.

7.15.9 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 reason,
- 4) Having purchase orders that have been cancelled in the previous 12 months for non-performance (i.e. late delivery, etc.).

Contractor performance information is located on the CPA 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 Proposer.

7.15.10 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.

7.15.11 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 shall 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.

7.15.12 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.

7.15.13 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.

7.15.14 Substitutions

Substitutions are not permitted without written approval of OAG.

7.15.15 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.