

## INVITATION AND INSTRUCTIONS TO BIDDERS

(1) Competitive Sealed Bids for furnishing all labor and materials for

Solicitation No.: 53900-7-0000113662  
Project No.: 16-055-MSS  
Project Name: Emergency Generator Replacement  
Facility Name: Mexia State Supported Living Center  
Owner Agency Name: Texas Department of Aging & Disability Services

will be received by Procurement and Contracting Services (PCS) section of the, Texas Health and Human Services Commission (HHSC), with the following Schedule of Events:

Event	Date
Issue Invitation to Bid (ITB) / ESBID Posting	February 16, 2017
Pre-Bid Conference (PBC)	Location: Mexia State Supported Living Center 540 Chapel Drive   Building 511, Room 103 Mexia, Texas 76667-3490 On March 1, 2017 at 10:30 am
Complete Site Walk-Through	After the Pre-Bid or by appointment thru March 3, 2017 at noon
Final Questions Due	March 9, 2017 at 5:00 pm
Addenda with Q&A Target Posting Date	March 15, 2017
Last Day for Bidder to Publish for HUB Subcontractors	March 17, 2017
Sealed Bids Due	March 28, 2017 at 2:00pm

Sealed Bid Packages will be received in

Conference Room  
1100 W. 49<sup>th</sup> Street Mail code 2020  
Austin, TX 78756

[PCSBids@hhsc.state.tx.us](mailto:PCSBids@hhsc.state.tx.us)

until 2:00 p.m. Central Time on the Due Date

at which time they will be opened and read aloud. Any bid received after the above closing time will be returned unopened.

The State of Texas acting through HHSC as an agent for the Owner Agency is herein called the Owner.

(1) Each Competitive Sealed Bid should be submitted sealed in the official BID ENVELOPE supplied at the Pre-Bid Conference, or other equivalent sealed envelope clearly labeled with the following:

- 1) Solicitation Number
- 2) Project Number
- 3) Project Name
- 4) Facility Name
- 5) Owner Agency
- 6) Date and Time of Bid Opening

The Owner, Architect/Engineer (A/E) or PCS will not be responsible for the premature opening of any bid that is not submitted in the official BID ENVELOPE or other such sealed envelope which is not properly sealed, addressed and identified as described herein. Each sealed bid package must contain all of the following items or the bid will be disqualified:

- 1) Contractors Competitive Sealed Bid, properly signed and fully completed.
- 2) Bid Bond in the amount indicated in the Solicitation
- 3) HUB Subcontracting Plan, properly executed and signed.
- 4) Contractor Qualification Package, fully completed and signed.
- 5) Acknowledgement and Listing of Addenda

**(2) PRE-BID CONFERENCE**

A pre-bid conference will be held at:

**Mexia State Supported Living Center  
540 Chapel Drive | Building 511, Room 103  
Mexia, Texas 76667-3490  
On March 1, 2017 at 10:30 am**

ATTENDANCE AT THE PRE-BID CONFERENCE IS STRONGLY RECOMMENDED, as representatives from the facility, A/E, HHSC Maintenance and Construction, PCS and HUB will be in attendance either in person or via conference call. A facility walk-through will be part of this agenda, and this will be your primary opportunity to submit written questions concerning this project.

**(3) QUESTIONS/POINT OF CONTACT**

The sole point of contact for inquiries concerning this solicitation is:

Michael Klepfer, Procurement Project Manager (CTPM)  
HHSC Procurement and Contracting Services  
Tel: (512) 406-2548  
Fax: (512) 406-2601

[Michael.Klepfer@hhsc.state.tx.us](mailto:Michael.Klepfer@hhsc.state.tx.us)

Direct all communications relating to this solicitation in writing (e-mail and fax accepted) to the HHSC/PCS point of contact person named above. All questions must be submitted and received no later than the date listed in the solicitation. Written response to questions, via ESBD, are typically available within to (2) business days from submission or by addendum. All other communications between a respondent and HHS agency staff concerning this solicitation are prohibited; however the Sole Point of Contact may delegate additional points of contact as necessary to provide required subject matter expertise. In no instance is a respondent to discuss cost information contained in a response with the HHSC/PCS point of contact or any other staff prior to bid evaluation. Failure to comply with these requirements may result in response disqualification.

**(4) COMMUNICATIONS OF AND FORM OF BID**

Oral, telephonic or telegraphic will not be considered. Corrections, deletions or additions to bids may be made by fax or e-mail provided such transmission is received by PCS in correct and comprehensive form prior to the opening time of bids, and confirmed by letter. No telephone corrections, deletions or additions will be accepted.

Each bid shall be submitted on the Contractor's Bid form enclosed herein. The Contractor's Bid form must be signed by an authorized member of the contracting firm, and a response for all pricing requested must be provided. Bid Alternates must be completed by indicating 1) a specific dollar amount or 2) the statement of "no cost," or the statement of "no bid." The Contractor's Bid form must not be changed or altered in any manner, (this includes alterations of any terms included in the addendum, if any) or the Bid will be rejected.

**(5) BID SECURITY**

Each bid must be accompanied by a Bid Security in the form of a Bid Bond, Certified and /or Cashier's Check (on a solvent bank in the State of Texas, drawn to the order of the Owner Agency as identified above) which should be in the sum five percent (5%) of the total maximum amount of all bid items (excluding unit prices and deduct alternates). No other form of security will be accepted. Said security shall be satisfactory to the Owner and its amount shall be agreed upon by the submission of a bid to be the measure of liquidated damages which the Owner will sustain by the failure, neglect, or refusal of the Bidder to execute and deliver the contract, should the contract be awarded to the Bidder. If the Bidder defaults by failing to execute the contract, the said Bid Bond, Certified Check or Cashier's Check shall become the property of the Owner. If the bid is not accepted within sixty (60) calendar days after the time set for submission of bids, or if the successful bidder executes and delivers said contract, the said Bid Bond, Certified Check or Cashier's Check will be returned on receipt thereof. If the Owner has not made a contract award within sixty (60) calendar days after bids are opened, bidders may withdraw their bids without Prejudice; however, bidders have the option to extend the time in which their bids will be honored after the sixty (60) calendars day period.

(6) PLANS AND SPECIFICATIONS

Plans and Specifications are available with a refundable deposit of \$50.00 per set. Bidder must contact Michael Klepfer by e-mail at [Michael.Klepfer@hhsc.state.tx.us](mailto:Michael.Klepfer@hhsc.state.tx.us) to obtain such documents from A/E. Each Bidder will be held to have studied the Plans and Specifications, to have visited all sites affecting the proposed work, to have satisfied themselves regarding all existing conditions and measurements, and to have included in their bid an amount sufficient to cover all work. The Pre-Bid Conference is intended for this purpose.

The estimate construction budget for this project is \$336,190.<sup>00</sup>.

(7) DISCREPANCIES

Should any Bidder find discrepancies between the Plans and Specifications and have questions or any doubt as to their exact meaning, Bidder should notify the PCS at once. PCS, working with A/E, at their option may issue an addendum clarifying same. The Owner, PCS or A/E will not be responsible for oral instructions or for misinterpretations of Plans and Specifications. Additional bidding information including addenda will be issued to known plan holders and via ESBID.

(8) ADDENDA

The Owner, PCS and A/E reserve the right to issue Addenda at any time prior to the Bid Opening time. All such Addenda become, upon issuance, an inseparable part of the Contract Documents. Each Bidder shall include the cost of such Addenda, if any, and shall indicate such by acknowledging its receipt of all addenda in the space provided on the Contractor's Bid form.

(9) CONTRACTOR'S QUALIFICATIONS

All Bidders are required to include a properly completed Contractor's Qualification form that has been updated within the 12 months prior to the bid date with their bid. A bid will be rejected if this form is not submitted with the bid. The Owner reserves the right to request Bidders to submit any additional information to clarify the Contractor's Qualifications. The mere opening and reading aloud of a bid shall not constitute an invitation nor shall possession of plans and specifications constitute an invitation to bid. Criteria contained in Texas Government Code, Sec. 2269.055 will be considered in determining the award of a contract from this Solicitation. Additionally, the following requirements must be submitted as part of the Best Value determination:

1. Each contracting firm bidding on this project must have been in business at least five (5) years prior to bid opening date under the same business name.
2. If the contracting firm bidding this project is a subsidiary of another firm said subsidiary must have been in business for a minimum of five (5) years prior to bid opening date.
3. Each contracting firm submitting a sealed bid must have successfully completed a minimum of five (5) projects similar in scope to this project within the past five (5) years.
4. The contracting firm submitting a Competitive Sealed Bid must be in good standing with the State of Texas.
5. The contracting firm submitting each Competitive Sealed Bid must not have had a project completed by its bonding firm within the previous five (5) years of the bid opening date.
6. The successful contracting firm must assign a Superintendent to this project who has a minimum of five (5) years of experience as a Superintendent with projects of similar size and scope.

(10) HHSC CONFIDENTIAL INFORMATION

HHSC may provide or make available to Contractor, or Contractor may create or receive on behalf of HHSC, certain HHSC Confidential Information that is and must be afforded special treatment and protection under HIPAA in conjunction with Services or Deliverables that are being provided to HHSC by Contractor. Contractor will have access to or receive from HHSC, or create or receive on behalf of HHSC, certain electronic Protected Health Information that must be safeguarded in accordance with this Agreement and the security rules adopted by the U.S. Department of Health and Human Services (HHS) under HIPAA, 45 C.F.R. §§ 164.302-.318.

(11) STATE LABOR LAWS

All bidders must comply with State Labor Laws as required by current amended provisions of Section 2 of Article 5159a, Texas Civil Statutes. Contractor is required to pay not less than the specified minimum wage rates of the various applicable classes of labor.

The Contractor shall forfeit as a penalty to the State, sixty dollars (\$60.00) for each laborer, workman or mechanic employed for each calendar day or portion thereof, if such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by Contractor or by their subcontractor.

(12) BEST VALUE

The Owner reserves the right to reject any and all bids or portions thereof, including alternates, and to waive any or all formalities in connection therewith. Therefore, the Owner does not bind themselves to accept the lowest bid or any bid for this work or any part thereof and shall have the right to ask for new bids for the whole or parts, should they desire to do so. The lowest bid shall be determined by the sum of the base bid and the specific alternates selected by the Owner given the construction budget and work priorities at the time of selection.

(13) STATE SALES TAX

The Owner and Contractor are qualified for exemption from State and Local Sales Taxes pursuant to the provisions of Section 151.311 of the Texas Limited Sales, Excise and Use Tax Act for materials incorporated into the project. The Contractor performing this contract may purchase such materials by issuing to their supplier a Resale Certificate in lieu of tax. Such Certificates are available to the Contractor upon their procurement of a Sales Tax Permit and an Exemption Certificate from the office of the State Comptroller of Public Accounts. The State Comptroller of Public Accounts may be contacted by dialing 1-800-252-5555, a toll-free number.

(14) ASBESTOS ABATEMENT AND REMOVAL

The work of this contract does not include the handling, removal, and abatement of asbestos containing materials (ACM) unless it is included in the scope of work in the contract. If the Contractor discovers ACM or has reason to believe it exists, the Owner shall be notified immediately and work shall stop in said area of asbestos contamination. The Owner will then arrange to have the area inspected and remove any ACM found or it will issue a change order to modify the scope of work. Neither the stoppage of work for the suspicion of ACM or its discovery and abatement shall entitle the Contractor to additional compensation unless the Owner fails to immediately conduct an inspection and remove any asbestos material found or executes a change order.

(15) TECHNICAL INFORMATION AND HISTORICALLY UNDERUTILIZED BUSINESSES

Bidders are strongly encouraged to attend the Pre-Bid Conference, as important project specific technical information will be discussed as well as specific information regarding mandatory compliance with the State's policy for utilization of Historically Underutilized Business (HUBs). The Contractor's Bid, including HUB documents, must be correctly completed for a bid to be considered responsive.

(16) COMPLIANCE WITH TEXAS FAMILY CODE

The bid includes a Statement of Compliance as required by Section 231.006, Texas Family Code as amended by Senate Bill 620, 76th Legislature. If not provided with the bid, the information required in the Statement of Compliance must be provided prior to execution of the contract. Delays in submitting information will delay execution of the contract.

(17) NON-DISCRIMINATION

During the bidding and performance of this Contract, the Contractor agrees as follows:

The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, sex, religion, age, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this non-discrimination article. The Contract shall include the provisions of this article in all subcontracts pertaining to the work.

(18) HUB SUBCONTRACTING PLAN

The Contractor shall comply with the Historically Underutilized Businesses (HUB) Subcontracting Plan (HSP) - Policy on Utilization of Historically Underutilized Businesses (HUBs) located with the Contractor's Bid in the Specifications. Contractor must complete all applicable sections of the HSP and submit all required documentation as noted in the HSP. **FAILURE TO COMPLY WITH THIS REQUIREMENT WILL DEEM THE CONTRACTOR'S BID NON-RESPONSIVE AND IT WILL NOT BE CONSIDERED FOR AWARD. Subcontracting opportunities may exist among the following class/item codes, as examples:**

- 975-26 RENTAL OF CRANES
- 988-15 FENCE INSTALLATION, MAINTENANCE AND REPAIR
- 914-27 CARPENTRY
- 914-28 CLEANING, INTERIOR/EXTERIOR, NEW CONSTRUCTION
- 913-62 CONSTRUCTION, CONCRETE, POUR-IN-PLACE, FORM, PLACE, FINISH
- 914-50 HEATING, VENTILATIONS AND AIR CONDITIONING (HVAC)
- 910-82 INSTALLATION SERVICES, ELECTRICAL WIRING
- 914-68 PLUMBING
- 910-82 LIGHTING MAINTENANCE SERVICES, ELECTRICAL
- 981-36 RENTAL OF FENCING
- 971-82 RENTAL OF PORTABLE TOILETS
- 934-84 PORTABLE TOILET SERVICING
- 977-73 PORTABLE TOILET RENTAL OR LEASE

Other subcontracting opportunities may exist as the project is developed.

(19) FOREIGN CORPORATIONS

Pursuant to the Texas Business Corporation Act, a foreign (out of state) corporation must have a Certificate of Authority to do business in the State of Texas. To obtain information on this matter, please contact the Secretary of State, Corporations Section (512) 463-5555.

(20) MINOR INFORMALITIES

HHSC reserves the right to waive minor informalities in a bid and award a contract that is in the best interest of the State of Texas. A "minor informality" is an omission or error that, in HHSC's determination, if waived or modified when evaluating bids, would not give a bidder an unfair advantage over other bidders or result in a material change in the bid or competitive sealed bid requirements. When HHSC determines that a bid contains a minor informality, it may at its discretion provide the respondent with the opportunity to correct.

(21) VENDOR PROTEST RULES

Bidders are hereby directed to the HHSC web site: [www.hhsc.state.tx.us/](http://www.hhsc.state.tx.us/) and within the Business Opportunities link are the Vendor Protest Rules which are in accordance with the Texas Administrative Code, Chapter 392, Subchapter C titled, "Protest Procedures for Certain Health and Human Services Commission Purchases." The code establishes formal procedures for protesting certain awards.

(22) DATA USE AGREEMENT

By entering a contract with a Texas Health & Human Services agency, you agree to be bound by the terms of the attached HHS Data Use Agreement.

END OF INVITATION AND INSTRUCTION TO BIDDERS

**HHS PROCUREMENT AND CONTRACTING SERVICES  
TERMS AND CONDITIONS BELOW APPLY TO THIS CONTRACT**

**1. RESPONSE REQUIREMENTS:**

- 1.1. Respondent must show price per unit. Facsimile (fax) submissions will be accepted. The telephone number for FAX submission of bids is 1-512-406-2690. This is the only number that will be used for the receipt of bids. The State shall not be responsible for failure of electronic equipment or operator error. Response must be submitted on form provided and returned to the location indicated.
- 1.2. Person signing response must have the authority to bind the firm in a contract.
- 1.3. Quote F.O.B. destination, freight prepaid and allowed. Otherwise, show exact delivery cost and terms.
- 1.4. Response must include Texas Identification Number (TIN), or Federal Employer's Identification Number (FEIN), full firm name and address of respondent on the response.
- 1.5. Additional terms and conditions attached to this solicitation will not be considered unless specifically referred to on this solicitation and may result in disqualification.

**2. SPECIFICATION:**

- 2.1. Catalog, brand names or manufacturer's references are descriptive only. Response must include the brand name and model number for exact product that is being offered. Any manufacturers' names, trade names, brand names, or catalog numbers used in the specifications are there for the purpose of establishing and describing style, general performance, and quality levels. Such references are not intended to be restrictive, and bids are invited on these and comparable brands or products of any manufacture
- 2.2. No substitutions permitted without written approval of the HHS agency
- 2.3. All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC, NEMA, or FCC.
- 2.4. Respondent agrees to comply with Texas Government Code, Title 10, Subtitle D, Section 2155.4441, relating to use of products produced in the State of Texas when performing services under this contract.
- 2.5. Prior to the response submission deadline, a respondent may:
  - 2.5.1. (1) withdraw its response by submitting a written request to the HHS Agency Point of Contact, or
  - 2.5.2. (2) Modify its proposal by submitting a written amendment to the HHS agency Point of Contact. The HHS agency may request proposal modifications at any time.

**3. SAFETY STANDARDS:**

- 3.1. All electrical items shall meet applicable safety standards of the federal occupational safety and health administration (OSHA). By signature on the response the respondent certifies that item or item(s) offered meet these standards
- 3.2. Vendor agrees to observe and encourage its employees and agents to observe safety measures and proper operating procedures at HHS agency sites at all times.
- 3.3. Vendor will direct their employees or agents to immediately report to HHSC any defect or unsafe condition encountered while on HHSC premises.

**4. REQUIRED AFFIRMATIONS:** By signing this response the respondent affirms the following:

- 4.1. The respondent has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this solicitation.
- 4.2. Pursuant to Texas Government Code, Title 10, Subtitle D, Section 2155.004(a), the respondent has not received compensation for participation in the preparation of specifications for this solicitation.
- 4.3. Antitrust - Pursuant to 15 U.S.C. Sec. 1, et seq. and Tex. Bus. & Comm. Code Sec. 15.01, et seq. neither the respondent nor the firm, corporation, partnership, or institution represented by the respondent, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the response made to any competitor or any other person engaged in such line of business. Vendor hereby assigns to ordering agency any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States 15 U.S.C.A., Section 1, et seq. (1973), and which arise under the antitrust laws of the State of Texas, Texas Business & Commerce Code, Ann., Sec. 15.01, et seq. (1967).
- 4.4. "Under Section 2155.006(b) of the Texas Government Code, a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified contract and acknowledges that any contract resulting from this IFB may be terminated and payment withheld if this certification is inaccurate."
- 4.5. Under Gov't Code § 2155.004, no person who prepared the specifications or this RFP has any financial interest in Respondent's Proposal. If Respondent is not eligible, then any contract resulting from this RFP shall be immediately terminated. Furthermore, "under Section 2155.004, Government Code, the vendor [Respondent] certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."
- 4.6. If applicable, pursuant to Texas Family Code, Title 5, Subtitle D, Section 231.006(d), regarding child support, the respondent certifies that the individual or business entity named in this solicitation is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any respondent subject to Section 231.006 must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the response. This information must be provided prior to award.

**5. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION:**

- 5.1. Responder certifies to the best of their knowledge and belief that by signing this solicitation response, the following:
  - 5.1.1. It is not ineligible for participation in federal or state assistance programs under Executive Order 12549, Debarment and Suspension.
  - 5.1.2. Neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
  - 5.1.3. It has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency.
  - 5.1.4. It is not subject to an outstanding judgment in a suit against vendor for collection of the balance of a debt.
  - 5.1.5. Where vendor/responder is unable to certify to any of the statements in this article, vendor/responder shall attach an explanation.
  - 5.1.6. Vendor/Responder shall not contract with a sub recipient nor procure goods or services from a subcontractor, at any tier, which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549.
  - 5.1.7. That none of the funds paid under this Contract will be used to pay any person for influencing or attempting to influence an officer or employee of any agency, a member, officer or employee of Congress or the state legislature or for obtaining any federal or state contract.

**6. COMPLIANCE:**

- 6.1. Awarded Vendor shall comply with any and all applicable federal, state, and local laws, including, but not limited to: The Immigration Reform and Control Act of 1986, All applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), and Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).



- 6.2. Immigration Reform: by this reference, Vendor will comply with all requirements of the Immigration Reform and Control Act of 1986 and the Immigration Act of 1990 (8 U.S.C. §1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after November 6, 1986, who will perform any labor or services under this Agreement.
- 6.3. Respondent certifies that they are in compliance with section 669.003 of the Government Code, relating to contracting with executive head of a State agency. If section 669.003 applies, respondent will complete the following information in order for the response to be evaluated:
- 6.4. Name of Former Executive; Name of State Agency; Date of Separation from State Agency; Position and Date of Employment with respondent
- 6.5. Conflict of Interest: Vendor will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain. Vendor will operate with complete independence and objectivity without actual, potential or apparent conflict of interest with respect to the activities conducted under this Agreement with the State of Texas.
- 6.6. Legal Requirements & Permits: Respondent has obtained all licenses, certifications, permits, and authorizations necessary to perform the Services under this Agreement and currently is in good standing with all regulatory agencies that regulate any or all aspects of Respondent's performance of this Agreement. Respondent will maintain all required certifications, licenses, permits, and authorizations during the term of this Agreement
- 6.7. Independent Contractor: It is understood and agreed that the awarded contractor is an independent contractor that neither party is, nor shall be considered to be, an agent, distributor or representative of the other. Neither party shall act or represent itself, directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf of, or in the name of the other.

**7. HHS Uniform EIR Accessibility Clause:**

- 7.1. (a) Applicability. This section applies if the contract requires the CONTRACTOR to procure or develop Electronic and Information Resources (EIR) for [HHS AGENCY], or to change any of [HHS AGENCY's] EIR. This section also applies if the contract requires the CONTRACTOR to perform a service or supply goods that include EIR that: (i) [HHS AGENCY] employees are required or permitted to access; or (ii) members of the public are required or permitted to access.
- 7.2. This section does not apply to incidental uses of EIR in the performance of a contract, unless the parties agree that the EIR will become property of the state or will be used by the HHS agency's Client/Recipient after completion of the contract.
- 7.3. Nothing in this section is intended to prescribe the use of particular designs or technologies or to prevent the use of alternative technologies, provided they result in substantially equivalent or greater access to and use of a product / service.
- 7.4. (b) Definitions.
  - 7.4.1. "Accessibility Standards" means the Electronic and Information Resources Accessibility Standards and the Web Site Accessibility Standards/Specifications.
  - 7.4.2. "Electronic and Information Resources" means information resources, including information resources technologies, and any equipment or interconnected system of equipment that is used in the creation, conversion, duplication, or delivery of data or information. The term includes, but is not limited to, telephones and other telecommunications products, information kiosks, transaction machines, Internet websites, multimedia resources, and office equipment, including copy machines and fax machines.
  - 7.4.3. "Electronic and Information Resources Accessibility Standards" means the accessibility standards for electronic and information resources contained in Volume 1 Texas Administrative Code Chapter 213.
  - 7.4.4. "Web Site Accessibility Standards/Specifications" means standards contained in Volume 1 Texas Administrative Code Chapter 206.
  - 7.4.5. "Products" means information resources technologies that are, or are related to, EIR.
- 7.5. (c) Accessibility Requirements. Under Texas Government Code Chapter 2054, Subchapter M, and implementing rules of the Texas Department of Information Resources, [HHS AGENCY] must procure Products that comply with the Accessibility Standards when such Products are available in the commercial marketplace or when such Products are developed in response to a procurement solicitation. Accordingly, CONTRACTOR must provide electronic and information resources and associated Product documentation and technical support that comply with the Accessibility Standards.
- 7.6. (d) Evaluation, Testing and Monitoring.
- 7.7. [HHS AGENCY] may review, test, evaluate and monitor CONTRACTOR's Products and associated documentation and technical support for compliance with the Accessibility Standards. Review, testing, evaluation and monitoring may be conducted before and after the award of a contract. Testing and monitoring may include user acceptance testing.
- 7.8. Neither (1) the review, testing (including acceptance testing), evaluation or monitoring of any Product, nor (2) the absence of such review, testing, evaluation or monitoring, will result in a waiver of the State's right to contest the CONTRACTOR'S assertion of compliance with the Accessibility Standards.
- 7.9. CONTRACTOR agrees to cooperate fully and provide [HHS AGENCY] and its representatives timely access to Products, records, and other items and information needed to conduct such review, evaluation, testing and monitoring.
- 7.10. (e) Representations and Warranties.
- 7.11. CONTRACTOR represents and warrants that: (i) as of the effective date of the contract, the Products and associated documentation and technical support comply with the Accessibility Standards as they exist at the time of entering the contract, unless and to the extent the Parties otherwise expressly agree in writing; and (ii) if the Products will be in the custody of the state or an HHS agency's client or recipient after the contract expiration or termination, the Products will continue to comply with such Accessibility Standards after the expiration or termination of the contract term, unless [HHS AGENCY and/or Client/Recipient, as applicable] uses the Products in a manner that renders it noncompliant.
- 7.12. In the event CONTRACTOR should have known, becomes aware, or is notified that the Product and associated documentation and technical support do not comply with the Accessibility Standards, CONTRACTOR represents and warrants that it will, in a timely manner and at no cost to [HHS AGENCY], perform all necessary steps to satisfy the Accessibility Standards, including but not limited to remediation, replacement, and upgrading of the Product, or providing a suitable substitute.
- 7.13. CONTRACTOR acknowledges and agrees that these representations and warranties are essential inducements on which [HHS AGENCY] relies in awarding this contract.
- 7.14. CONTRACTOR's representations and warranties under this subsection will survive the termination or expiration of the contract and will remain in full force and effect throughout the useful life of the Product.
- 7.15. (f) Remedies.
- 7.16. Pursuant to Texas Government Code Sec. 2054.465, neither CONTRACTOR nor any other person has cause of action against [HHS AGENCY] for a claim of a failure to comply with Texas Government Code Chapter 2054, Subchapter M, and rules of the Department of Information Resources.
- 7.17. In the event of a breach of CONTRACTOR's representations and warranties, CONTRACTOR will be liable for direct and consequential damages and any other remedies to which [HHS AGENCY] may be entitled. This remedy is cumulative of any and all other remedies to which [HHS AGENCY] may be entitled under this contract and other applicable law.

**8. SECURITY OF INFORMATION:**

- 8.1. The HHS agency may be in possession of confidential information and material which require protection under applicable laws and regulations, as well as policies and procedures, of the State of Texas and the United States. Confidential information and material obtained within or from the HHS agency may not be discussed, communicated, copied, extracted, or used in any manner by Awarded Vendor other than in fulfillment of the contract resulting from this solicitation. All confidential material must be returned to the HHS agency on completion or as requested.
- 8.2. By entering into contract, or purchase order, with a Texas Health & Human Services agency, you agree to be bound by the terms of the HHS Data Use Agreement (HHS-GC.DUA) Data Use Agreement: This is the general version that should be used for all contractors who access agency confidential information. It is available on the DUA website: [http://www.hhsc.state.tx.us/about\\_hhsc/BusOpp/data-use-agreement.pdf](http://www.hhsc.state.tx.us/about_hhsc/BusOpp/data-use-agreement.pdf). Information that explains the terms of the DUA and what laws require us to protect and safeguard agency confidential data can be found at: <http://hhscx.hhsc.state.tx.us/data-use-agreement-compliance/docs/understanding-dua.pdf>.

- 8.2.1.  If this box is checked, Section 8.2 does not apply to the contract, or purchase order, because the contractor will not have access to confidential information.

**9. VENDOR CERTIFICATION INFORMATION TECHNOLOGY STAFF AUGMENTATION:**

9.1. In addition to those Vendor Certifications included in the [Department of Information Resources' Appendix A "Standard Terms and Conditions for INFORMATION TECHNOLOGY STAFF AUGMENTATION SERVICES."](#) Vendor certifies on behalf of Vendor and its designated Order Fulfillers that they:

- 9.1.1. will use any information received while providing services to an individual customer under the Contact only for the purpose of providing those services;
- 9.1.2. will treat any information so received as confidential and will not disclose, reveal, communicate, impart, or divulge the information or any summary or synopsis of the information in any manner or any form whatsoever without prior written authorization to do so from the relevant individual customer; and
- 9.1.3. are not authorized to make any representations concerning the work done for an individual customer to third parties for promotional, research, or other commercial or proprietary purposes without the individual customer's written advance approval.

**10. FELONY CONVICTION NOTICE:** "Contractor represents and warrants that Contractor has not and Contractor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised the HHS agency as to the facts and circumstances surrounding the conviction."

**11. AWARD:**

- 11.1. The HHS agency reserves the right to waive minor informalities in a proposal and award a contract that is in the best interest of the State of Texas. A "minor informality" is an omission or error that, in the HHS agency's determination, if waived or modified when evaluating proposals, would not give a bidder an unfair advantage over other bidders or result in a material change in the response requirements. When the HHS agency determines that a response contains a minor informality, it may at its discretion provide the respondent with the opportunity to correct.
- 11.2. SAM-Suspension, debarment, and terrorism: bidder certifies that the bidding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that bidder is in compliance with the state of Texas statutes and rules relating to procurement and that bidder 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.sam.gov>
- 11.3. The State reserves the right to make an award on the basis of low line item, low total of line items, or in any other combination that will serve the best interest of the State.
- 11.4. Tie responses-Awards will be made in accordance with Texas Administrative Code, Title 34, Part 1, 20.36(b)(3) (Awards), and 20.38 (Preferences).
- 11.5. A response to this solicitation is an offer to contract based upon the terms, conditions and specifications contained herein. Responses do not become orders until a purchase order and/or contract is released by an HHS agency Purchasing Agent or designee through a written purchase order/contract. The contract shall be governed, construed, and interpreted under the laws of the State of Texas.
- 11.6. Option to Extend Services: The respondent by submission of a response to this solicitation agrees that the HHSC may require continued performance, beyond the initial term or renewal contract term, of any of the herein described services at the rates specified herein. This option may be exercised more than once, for the purpose of meeting HHS agency procurement goals but the total extension of performance hereunder shall not exceed one hundred twenty (120) calendar days. Such extension of services shall be subject to all specifications and terms and conditions of the contract resulting from this procurement, with the sole and limited exception that the original date of termination shall be extended pursuant to this provision. The HHS agency may exercise this option upon notice to the awarded respondent.
- 11.7. As a result of the consolidation due to House Bill 2292 (HB 2292), some of the contracting and procurement activities for the HHS Agencies have been assigned to the Procurement and Contracting Services (PCS) section of HHSC. As such, PCS will administer the initial stages of the procurement process, prior to the contract award, including announcement and publication, handling of communications from the respondent, as well as managing the receipt and handling of valid responses for final review and evaluation. PCS directs the execution of the contract after the awarded vendor has been selected. The contract(s) issued as a result of this solicitation may be utilized by one or all of the Texas Health and Human Services (HHS) agencies listed below:
  - Health and Human Services Commission (HHSC)
  - Department of Family and Protective Services (DFPS)
  - Department of State Health Services (DSHS)
  - Department of Assistive and Rehabilitative Services (DARS)
  - Department of Aging and Disability Services (DADS)

HHSC/PCS will issue an individual purchase order, contract or release for each HHS agency, region, city, or location-requiring goods or services under the contract(s). Each purchase order will include the delivery/service location and bill to address for the HHS agency requesting goods/services.

**12. DELIVERY:**

- 12.1. Respondent must show number of days required to place material in receiving agency's designated location under normal conditions. Failure to state delivery time obligates respondent to deliver in 14 calendar days. Delivery shall be made during normal working hours only, unless prior approval has been obtained from the HHS agency.
- 12.2. If delivery will be delayed, contractor shall notify the HHS agency. Default in promised delivery or failure to meet specifications authorizes the HHS agency to purchase goods and/or services elsewhere and charge full increase, if any, in cost and handling to defaulting Contractor. Any damages incurred by the HHS agency as a result of the default may also be assessed to the defaulting Awarded Vendor.
- 12.3. Products delivered that fail to meet specifications or are not the actual item(s) awarded on the contract shall be rejected or returned at the vendor's expense. Item(s) will be purchased on the open market, and any resulting increase in price shall be charged to awarded vendor.

**13. CANCELLATION OR EARLY TERMINATION:**

- 13.1. CONVENIENCE: The HHS agency reserves the right to terminate, in whole or in part without recourse or penalty 30 days written notice to the Contractor, of its intent to terminate the contract.
- 13.2. CAUSE OR DEFAULT - This contract may be terminated immediately by the HHS agency for any failure of the awarded vendor(s) to comply with the terms and conditions of the contract.
- 13.3. EXCESS OBLIGATIONS - The purchase order and/or contract awarded from this solicitation is subject to termination or cancellation, without penalty to HHSC, either in whole or in part, subject to the availability of state funds. HHSC is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. HHSC will not be liable to respondent for any damages, which are caused or associated with such termination or cancellation and HHSC will not be required to give notice.
- 13.4. Abandonment or Default: If the Respondent abandons or defaults work on this contract and causes the work to be re-bid, the Respondent may not be considered on future bids to perform similar work. Damages for abandonment or default of this contract by the Respondent may be assessed at HHSC's option.
- 13.5. HHSC may cancel all or any part of the resulting purchase order and /or contract if the awarded contractor fails to comply with any requirement of the purchase order and/or contract, including but not limited to this solicitation and its General Terms and Conditions. HHSC may also obtain substitute goods and services, may withhold acceptance and payments to the awarded respondent and may pursue all rights and remedies against the awarded respondent under the purchase order and/or contract and any applicable law. In addition, HHSC will report defaulting awarded contractor to the Texas Procurement and Support Services (TPASS) for possible action against defaulting contractor, including but not limited to removal from the TPASS Centralized Master Bidders List (CMBL).
- 13.6. Right to Recover: HHSC reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to HHSC under the purchase order and/or contract under applicable law, including, but not limited to, attorneys' fees and court costs, if termination or cancellation is at contractor's request or if termination or cancellation is for cause. This right is in addition to any other remedies available to HHSC under the purchase order and/or contract or under applicable law.

**14. RESPONSIBILITY FOR NEGLIGENCE:** Awarded Vendor agrees to bear all risk of loss or damage to the product due to defects therein, unfitness or obsolescence thereof, and negligence or willful misconduct of Awarded Vendor or its employees, agents, or representatives.



- 15. FORCE MAJEURE:** Neither party shall be liable for any failure or delay in performing its contract obligations if such failure or delay is due to any cause beyond the reasonable control of such party, including, but not limited to, unusually severe weather, strikes, natural disasters, fire, civil disturbance, epidemic, war, court order or acts of God.
- 16. PATENTS OR COPYRIGHTS:** Awarded Vendor(s) must defend, at its own expense, any action brought against the State of Texas to the extent that it is based on a claim that the product(s) supplied by Awarded Vendor or the operation of such product(s) pursuant to the current release and modification level on any programming aid, infringes a United States patent, copyright, or trade secret. Awarded Vendor(s) must pay those costs and damages finally awarded against the State of Texas in any such claim.
- 17. WORK MADE FOR HIRE.** All work performed pursuant to this Contract, developed or prepared for the HHS agency, is the exclusive property of the HHS agency. All right, title and interest in and to said property shall vest in the HHS agency upon creation and shall be deemed to be a work made 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 the HHS agency, or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to the HHS agency. The HHS agency shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor must give the HHS agency and the State of Texas, as well as any person designated by the HHS agency and 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.
- 18. REPRODUCTION RIGHTS:** Awarded Vendor(s) agrees that the HHS agency is free to reproduce, without royalty, all manuals, publications, maintenance programs, diagnostics and documents for exclusive use by the HHS agency for State of Texas business. The HHS agency is free to reproduce, without royalty, necessary material selectively extracted from publications provided, for incorporation into the HHS agency-published manuals, which are for exclusive use by State-authorized systems. Any proprietary statement contained in any document will be referenced if that document, or any part thereof, is used.
- 19. TEXAS PUBLIC INFORMATION ACT:** Responses submitted to this solicitation are subject to release by the HHS agency under Texas Government Code, Chapter 552 (Texas Public Information Act), unless responses, or specific parts thereof, can be shown to fall within one or more of the exceptions listed in the Act. If the Respondent believes that parts of a response are exempt from disclosure under the Texas Public Information Act, Respondent must specify those parts and the exception(s) that it believes apply, with specific detailed reasons. Vague and general claims to confidentiality are not acceptable; the HHS agency must have sufficient information to give to the Attorney General of Texas if his/her opinion is requested. The Attorney General of Texas has previously ruled that the exception in Texas Government Code, Section 552.014 (advantage to competitors or respondents), generally does not apply after the contract has been awarded.
- 20. REQUESTS FOR INFORMATION** The Contractor shall not provide information generated or otherwise obtained in the performance of its responsibilities under this Contract to any party other than the HHS agency and its authorized agents except as otherwise provided by this Contract or after obtaining written permission of the HHS agency.
- 21. INDEMNIFICATION:** Awarded Vendor shall defend, indemnify, and hold harmless the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of Awarded Vendor or any agent, employee, subcontractor, or supplier of Awarded Vendor in the execution or performance of this contract.
- 22. RIGHT TO AUDIT:** Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. 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. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.
- 23. DEFAULT:** Contractor shall comply with and act in good faith in the performance of all provisions of this Contract and any amendments.
- REMEDIES AND SANCTIONS:** In accordance with §2261.101, Government Code Remedies and Sanctions: – agencies shall incorporate language which shall hold contractors accountable for breach of contract or substandard performance without unfairly limiting competition.
- 23.1. The HHS agency may impose remedies and sanctions as described in this solicitation for Contractor's default under this Contract.
- 23.2. The HHS agency at its own discretion may impose as many remedies and sanctions as appropriate on a case-by-case basis.
- 24. RECORDS RETENTION:** Contractor must retain all invoices, records and other documents pertinent to this contract until four (4) years following the expiration or termination of this contract, until any audits in progress are completed or until any lawsuits relating to this contract are resolved whichever is later.
- 25. PAYMENT:** Prior to any payment being made, the HHS agency must certify that the goods and services being invoiced have been received and accepted. Awarded Vendor shall submit an itemized invoice showing the HHS agency purchase order or contract number. Payment shall be made in accordance with the Texas Government Code, Chapter 2251 (Texas Prompt Payment Act).
- 26. ASSIGNMENT BY CONTRACTOR:** Awarded Vendor shall not assign all or any portion of its rights under or interests in this contract without prior written consent of the HHS agency contract manager. Any written request for assignment must be accompanied by written acceptance of the assignment by the assignee. Except where otherwise agreed in writing by the HHS agency contract manager, assignment will not release Awarded Vendor from its obligations pursuant to this contract.
- 27. PAYMENT OF CONTRACTOR DEBT:** In accordance with Texas Government Code, Section 403.055(h), Respondent agrees that any payments due to the Awarded Vendor under this contract will be applied toward any debt, including but not limited to delinquent taxes and child support, which is owed by the Awarded Vendor to the State of Texas. Payments will be so applied until such debts and back taxes are paid in full. Federal law may super cede this requirement.
- 28. DISCLOSURE OF INFORMATION:** The Comptroller General of the United States, or any of its duly authorized representatives, must have access to any books, documents, papers and records of the Awarded Vendor which are directly pertinent to this contract.
- 29. GOVERNING LAW:** This contract is being executed and delivered to the State of Texas. This contract is intended to be performed in the State of Texas and the laws of Texas shall govern the validity, construction, enforcement and interpretation of this contract. The venue of any suit brought as a result of the contract/agreement shall be held in any competent court of jurisdiction in the county in which the goods and services are received. If any part of the contract shall be held unenforceable, the rest of the contract will nevertheless remain in full force and effect. The contract represents the entire agreement of the parties; any amendment thereof must be in writing and signed by the parties.
- 30. DISPUTE RESOLUTION:** The dispute resolution process, provided for in Texas Government Code, Title 10, Chapter 2260, shall be used by HHS Agency and the contractor to attempt to resolve any claim for breach of contract made by the contractor.
- 31. COMPLIANCE WITH STATE AND FEDERAL ANTI-DISCRIMINATION LAWS**
- 31.1. Contractor agrees to comply with state and federal anti-discrimination laws, including without limitation: 1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.); 2) Sec. 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794); 3) Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); 4) Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107); 5) Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688); 6) Food Stamp Act of 1977 (7 U.S.C. §200 et seq.); 7) HHSC's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement. Contractor agrees to comply with all amendments to the referenced laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any aid, care, service or other benefits provided by Federal or State funding, or otherwise be subjected to discrimination.
- 31.2. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. Applicable state and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. CONTRACTOR agrees to ensure that its policies do not have the effect of excluding or limiting the participation of persons in its programs, benefits, and activities on the basis of national origin. Contractor also agrees to take reasonable steps to provide

services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.

- 31.3. Contractor agrees to comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
- 31.4. Upon request, Contractor will provide THE HHS agency with copies of all of the Contractor's civil rights policies and procedures.
- 31.5. Contractor must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Agreement. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this section must be directed to: HHSC Civil Rights Office, 701 W. 51st Street, mail code W206, Austin, Texas 78751. Phone toll free: (888) 388-6332; phone: (512) 438-7232; TTY Toll free: (877) 432-7232; Fax: (512) 438-5885

**DATA USE AGREEMENT  
BETWEEN THE  
TEXAS HEALTH AND HUMAN SERVICES ENTERPRISE  
AND  
\_\_\_\_\_ (“CONTRACTOR”)**

This Data Use Agreement (“DUA”), effective as of the Base Contract (“Effective Date”), is entered into by and between the Texas Health and Human Services Enterprise agency \_\_\_\_\_ (“HHS”) and \_\_\_\_\_ (“CONTRACTOR”), and incorporated into the terms of HHS Contract No. \_\_\_\_\_, in Travis County, Texas (the "Base Contract").

**ARTICLE 1. PURPOSE; APPLICABILITY; ORDER OF PRECEDENCE**

The purpose of this DUA is to facilitate creation, receipt, maintenance, use, disclosure or access to Confidential Information with CONTRACTOR, and describe CONTRACTOR’s rights and obligations with respect to the Confidential Information and the limited purposes for which the CONTRACTOR may create, receive, maintain, use, disclose or have access to Confidential Information. **45 CFR 164.504(e)(1)-(3)** This DUA also describes HHS’s remedies in the event of CONTRACTOR’s noncompliance with its obligations under this DUA. This DUA applies to both Business Associates and contractors who are not Business Associates who create, receive, maintain, use, disclose or have access to Confidential Information on behalf of HHS, its programs or clients as described in the Base Contract.

As of the Effective Date of this DUA, if any provision of the Base Contract, including any General Provisions or Uniform Terms and Conditions, conflicts with this DUA, this DUA controls.

**ARTICLE 2. DEFINITIONS**

For the purposes of this DUA, **capitalized, underlined terms have the meanings set forth in the following:** Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (42 U.S.C. §1320d, *et seq.*) and regulations thereunder in 45 CFR Parts 160 and 164, including all amendments, regulations and guidance issued thereafter; The Social Security Act, including Section 1137 (42 U.S.C. §§ 1320b-7), Title XVI of the Act; The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a and regulations and guidance thereunder; Internal Revenue Code, Title 26 of the United States Code and regulations and publications adopted under that code, including IRS Publication 1075; OMB Memorandum 07-18; Texas Business and Commerce Code Ch. 521; Texas Government Code, Ch. 552, and Texas Government Code §2054.1125. In addition, the following terms in this DUA are defined as follows:

“**Authorized Purpose**” means the specific purpose or purposes described in the Scope of Work of the Base Contract for CONTRACTOR to fulfill its obligations under the Base Contract, or any other purpose expressly authorized by HHS in writing in advance.

“**Authorized User**” means a Person:

- (1) Who is authorized to create, receive, maintain, have access to, process, view, handle, examine, interpret, or analyze Confidential Information pursuant to this DUA;
- (2) For whom CONTRACTOR warrants and represents has a demonstrable need to create, receive, maintain, use, disclose or have access to the Confidential Information; and
- (3) Who has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information as required by this DUA.

**“Confidential Information”** means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to CONTRACTOR or that CONTRACTOR may create, receive, maintain, use, disclose or have access to on behalf of HHS that consists of or includes any or all of the following:

- (1) Client Information;
- (2) Protected Health Information in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information;
- (3) Sensitive Personal Information defined by Texas Business and Commerce Code Ch. 521;
- (4) Federal Tax Information;
- (5) Personally Identifiable Information;
- (6) Social Security Administration Data, including, without limitation, Medicaid information;
- (7) All privileged work product;
- (8) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.

**“Legally Authorized Representative”** of the Individual, as defined by Texas law, including as provided in 45 CFR 435.923 (Medicaid); 45 CFR 164.502(g)(1) (HIPAA); Tex. Occ. Code § 151.002(6); Tex. H. & S. Code § 166.164; Estates Code Ch. 752 and Texas Prob. Code § 3.

### **ARTICLE 3. CONTRACTOR'S DUTIES REGARDING CONFIDENTIAL INFORMATION**

#### **Section 3.01 Obligations of CONTRACTOR**

CONTRACTOR agrees that:

(A) CONTRACTOR will exercise reasonable care and no less than the same degree of care CONTRACTOR uses to protect its own confidential, proprietary and trade secret information to prevent any portion of the Confidential Information from being used in a manner that is not expressly an Authorized Purpose under this DUA or as Required by Law. **45 CFR 164.502(b)(1); 45 CFR 164.514(d)**

(B) CONTRACTOR will not, without HHS's prior written consent, disclose or allow access to any portion of the Confidential Information to any Person or other entity, other than Authorized User's Workforce or Subcontractors of CONTRACTOR who have completed training in confidentiality, privacy, security and the importance of promptly reporting any Event or Breach to CONTRACTOR's management, to carry out the Authorized Purpose or as Required by Law.

HHS, at its election, may assist CONTRACTOR in training and education on specific or unique HHS processes, systems and/or requirements. CONTRACTOR will produce evidence of completed training to HHS upon request. **45 C.F.R. 164.308(a)(5)(i); Texas Health & Safety Code §181.101**

(C) CONTRACTOR will establish, implement and maintain appropriate sanctions against any member of its Workforce or Subcontractor who fails to comply with this DUA, the Base Contract or applicable law. CONTRACTOR will maintain evidence of sanctions and produce it to HHS upon request. **45 C.F.R. 164.308(a)(1)(ii)(C); 164.530(e); 164.410(b); 164.530(b)(1)**

(D) CONTRACTOR will not, without prior written approval of HHS, disclose or provide access to any Confidential Information on the basis that such act is Required by Law without notifying HHS so that HHS may have the opportunity to object to the disclosure or access and seek appropriate

relief. If HHS objects to such disclosure or access, CONTRACTOR will refrain from disclosing or providing access to the Confidential Information until HHS has exhausted all alternatives for relief. **45 CFR 164.504(e)(2)(ii)(A)**

(E) CONTRACTOR will not attempt to re-identify or further identify Confidential Information or De-identified Information, or attempt to contact any Individuals whose records are contained in the Confidential Information, except for an Authorized Purpose, without express written authorization from HHS or as expressly permitted by the Base Contract. **45 CFR 164.502(d)(2)(i) and (ii)** CONTRACTOR will not engage in prohibited marketing or sale of Confidential Information. **45 CFR 164.501, 164.508(a)(3) and (4); Texas Health & Safety Code Ch. 181.002**

(F) CONTRACTOR will not permit, or enter into any agreement with a Subcontractor to, create, receive, maintain, use, disclose, have access to or transmit Confidential Information, on behalf of CONTRACTOR without requiring that Subcontractor first execute the Form Subcontractor Agreement, Attachment 1, which ensures that the Subcontractor will comply with the identical terms, conditions, safeguards and restrictions as contained in this DUA for PHI and any other relevant Confidential Information and which permits more strict limitations; and **45 CFR 164.502(e)(1)(1)(ii); 164.504(e)(1)(i) and (2)**

(G) CONTRACTOR is directly responsible for compliance with, and enforcement of, all conditions for creation, maintenance, use, disclosure, transmission and Destruction of Confidential Information and the acts or omissions of Subcontractors as may be reasonably necessary to prevent unauthorized use. **45 CFR 164.504(e)(5); 42 CFR 431.300, et seq.**

(H) If CONTRACTOR maintains PHI in a Designated Record Set, CONTRACTOR will make PHI available to HHS in a Designated Record Set or, as directed by HHS, provide PHI to the Individual, or Legally Authorized Representative of the Individual who is requesting PHI in compliance with the requirements of the HIPAA Privacy Regulations. CONTRACTOR will make other Confidential Information in CONTRACTOR's possession available pursuant to the requirements of HIPAA or other applicable law upon a determination of a Breach of Unsecured PHI as defined in HIPAA. **45 CFR 164.524 and 164.504(e)(2)(ii)(E)**

(I) CONTRACTOR will make PHI as required by HIPAA available to HHS for amendment and incorporate any amendments to this information that HHS directs or agrees to pursuant to the HIPAA. **45 CFR 164.504(e)(2)(ii)(E) and (F)**

(J) CONTRACTOR will document and make available to HHS the PHI required to provide access, an accounting of disclosures or amendment in compliance with the requirements of the HIPAA Privacy Regulations. **45 CFR 164.504(e)(2)(ii)(G) and 164.528**

(K) If CONTRACTOR receives a request for access, amendment or accounting of PHI by any Individual subject to this DUA, it will promptly forward the request to HHS; however, if it would violate HIPAA to forward the request, CONTRACTOR will promptly notify HHS of the request and of CONTRACTOR's response. Unless CONTRACTOR is prohibited by law from forwarding a request, HHS will respond to all such requests, unless HHS has given prior written consent for CONTRACTOR to respond to and account for all such requests. **45 CFR 164.504(e)(2)**

(L) CONTRACTOR will provide, and will cause its Subcontractors and agents to provide, to HHS periodic written certifications of compliance with controls and provisions relating to information privacy, security and breach notification, including without limitation information related to data transfers and the handling and disposal of Confidential Information. **45 CFR 164.308; 164.530(c); 1 TAC 202**

(M) Except as otherwise limited by this DUA, the Base Contract, or law applicable to the Confidential Information, CONTRACTOR may use or disclose PHI for the proper management and

administration of CONTRACTOR or to carry out CONTRACTOR's legal responsibilities if: **45 CFR 164.504(e)(ii)(1)(A)**

(1) Disclosure is Required by Law, provided that CONTRACTOR complies with Section 3.01(D);

(2) CONTRACTOR obtains reasonable assurances from the Person to whom the information is disclosed that the Person will:

(a) Maintain the confidentiality of the Confidential Information in accordance with this DUA;

(b) Use or further disclose the information only as Required by Law or for the Authorized Purpose for which it was disclosed to the Person; and

(c) Notify CONTRACTOR in accordance with Section 4.01 of any Event or Breach of Confidential Information of which the Person discovers or should have discovered with the exercise of reasonable diligence. **45 CFR 164.504(e)(4)(ii)(B)**

(N) Except as otherwise limited by this DUA, CONTRACTOR will, if requested by HHS, use PHI to provide data aggregation services to HHS, as that term is defined in the HIPAA, 45 C.F.R. §164.501 and permitted by HIPAA. **45 CFR 164.504(e)(2)(i)(B)**

(O) CONTRACTOR will, on the termination or expiration of this DUA or the Base Contract, at its expense, return to HHS or Destroy, at HHS's election, and to the extent reasonably feasible and permissible by law, all Confidential Information received from HHS or created or maintained by CONTRACTOR or any of CONTRACTOR's agents or Subcontractors on HHS's behalf if that data contains Confidential Information. CONTRACTOR will certify in writing to HHS that all the Confidential Information that has been created, received, maintained, used by or disclosed to CONTRACTOR, has been Destroyed or returned to HHS, and that CONTRACTOR and its agents and Subcontractors have retained no copies thereof. Notwithstanding the foregoing, CONTRACTOR acknowledges and agrees that it may not Destroy any Confidential Information if federal or state law, or HHS record retention policy or a litigation hold notice prohibits such Destruction. If such return or Destruction is not reasonably feasible, or is impermissible by law, CONTRACTOR will immediately notify HHS of the reasons such return or Destruction is not feasible, and agree to extend indefinitely the protections of this DUA to the Confidential Information and limit its further uses and disclosures to the purposes that make the return of the Confidential Information not feasible for as long as CONTRACTOR maintains such Confidential Information. **45 CFR 164.504(e)(2)(ii)(J)**

(P) CONTRACTOR will create, maintain, use, disclose, transmit or Destroy Confidential Information in a secure fashion that protects against any reasonably anticipated threats or hazards to the security or integrity of such information or unauthorized uses. **45 CFR 164.306; 164.530(c)**

(Q) If CONTRACTOR accesses, transmits, stores, and/or maintains Confidential Information, CONTRACTOR will complete and return to HHS at [infosecurity@hhsc.state.tx.us](mailto:infosecurity@hhsc.state.tx.us) the HHS information security and privacy initial inquiry (SPI) at Attachment 2 . The SPI identifies basic privacy and security controls with which CONTRACTOR must comply to protect HHS Confidential Information. CONTRACTOR will comply with periodic security controls compliance assessment and monitoring by HHS as required by state and federal law, based on the type of Confidential Information CONTRACTOR creates, receives, maintains, uses, discloses or has access to and the Authorized Purpose and level of risk. CONTRACTOR's security controls will be based on the National Institute of Standards and Technology (NIST) Special Publication 800-53. CONTRACTOR will update its security controls assessment whenever there are significant changes in security controls for HHS Confidential Information and will provide the updated document to HHS. HHS also reserves the right to request updates as needed to satisfy state and federal monitoring requirements. **45 CFR 164.306**



(R) CONTRACTOR will establish, implement and maintain any and all appropriate procedural, administrative, physical and technical safeguards to preserve and maintain the confidentiality, integrity, and availability of the Confidential Information, and with respect to PHI, as described in the HIPAA Privacy and Security Regulations, or other applicable laws or regulations relating to Confidential Information, to prevent any unauthorized use or disclosure of Confidential Information as long as CONTRACTOR has such Confidential Information in its actual or constructive possession. **45 CFR 164.308 (administrative safeguards); 164.310 (physical safeguards); 164.312 (technical safeguards); 164.530(c)(privacy safeguards)**

(S) CONTRACTOR will designate and identify, subject to HHS approval, a Person or Persons, as Privacy Official **45 CFR 164.530(a)(1)** and Information Security Official, each of whom is authorized to act on behalf of CONTRACTOR and is responsible for the development and implementation of the privacy and security requirements in this DUA. CONTRACTOR will provide name and current address, phone number and e-mail address for such designated officials to HHS upon execution of this DUA and prior to any change. **45 CFR 164.308(a)(2)**

(T) CONTRACTOR represents and warrants that its Authorized Users each have a demonstrated need to know and have access to Confidential Information solely to the minimum extent necessary to accomplish the Authorized Purpose pursuant to this DUA and the Base Contract, and further, that each has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information contained in this DUA. **45 CFR 164.502; 164.514(d)**

(U) CONTRACTOR and its Subcontractors will maintain an updated, complete, accurate and numbered list of Authorized Users, their signatures, titles and the date they agreed to be bound by the terms of this DUA, at all times and supply it to HHS, as directed, upon request.

(V) CONTRACTOR will implement, update as necessary, and document reasonable and appropriate policies and procedures for privacy, security and Breach of Confidential Information and an incident response plan for an Event or Breach, to comply with the privacy, security and breach notice requirements of this DUA prior to conducting work under the DUA. **45 CFR 164.308; 164.316; 164.514(d); 164.530(i)(1)**

(W) CONTRACTOR will produce copies of its information security and privacy policies and procedures and records relating to the use or disclosure of Confidential Information received from, created by, or received, used or disclosed by CONTRACTOR on behalf of HHS for HHS's review and approval within 30 days of execution of this DUA and upon request by HHS the following business day or other agreed upon time frame. **45 CFR 164.308; 164.514(d)**

(X) CONTRACTOR will make available to HHS any information HHS requires to fulfill HHS's obligations to provide access to, or copies of, PHI in accordance with HIPAA and other applicable laws and regulations relating to Confidential Information. CONTRACTOR will provide such information in a time and manner reasonably agreed upon or as designated by the Secretary, or other federal or state law. **45 CFR 164.504(e)(2)(i)(I)**

(Y) CONTRACTOR will only conduct secure transmissions of Confidential Information whether in paper, oral or electronic form. A secure transmission of electronic Confidential Information in motion includes secure File Transfer Protocol (SFTP) or Encryption at an appropriate level or otherwise protected as required by rule, regulation or law. HHS Confidential Information at rest requires Encryption unless there is adequate administrative, technical, and physical security, or as otherwise protected as required by rule, regulation or law. All electronic data transfer and communications of Confidential Information will be through secure systems. Proof of system, media or device security and/or Encryption must be produced to HHS no later than 48 hours after HHS's written request in response to a compliance

investigation, audit or the Discovery of an Event or Breach. Otherwise, requested production of such proof will be made as agreed upon by the parties. De-identification of HHS Confidential Information is a means of security. With respect to de-identification of PHI, "secure" means de-identified according to HIPAA Privacy standards and regulatory guidance. **45 CFR 164.312; 164.530(d)**

(Z) CONTRACTOR will comply with the following laws and standards *if applicable to the type of Confidential Information and Contractor's Authorized Purpose*:

- Title 1, Part 10, Chapter 202, Subchapter B, Texas Administrative Code;
- The Privacy Act of 1974;
- OMB Memorandum 07-16;
- The Federal Information Security Management Act of 2002 (FISMA);
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA) as defined in the DUA;
- Internal Revenue Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies;
- National Institute of Standards and Technology (NIST) Special Publication 800-66 Revision 1 – An Introductory Resource Guide for Implementing the Health Insurance Portability and Accountability Act (HIPAA) Security Rule;
- NIST Special Publications 800-53 and 800-53A – Recommended Security Controls for Federal Information Systems and Organizations, as currently revised;
- NIST Special Publication 800-47 – Security Guide for Interconnecting Information Technology Systems;
- NIST Special Publication 800-88, Guidelines for Media Sanitization;
- NIST Special Publication 800-111, Guide to Storage of Encryption Technologies for End User Devices containing PHI; and
- Any other State or Federal law, regulation, or administrative rule relating to the specific HHS program area that CONTRACTOR supports on behalf of HHS.

#### **ARTICLE 4. BREACH NOTICE, REPORTING AND CORRECTION REQUIREMENTS**

##### **Section 4.01. *Breach or Event Notification to HHS. 45 CFR 164.400-414***

(A) CONTRACTOR will cooperate fully with HHS in investigating, mitigating to the extent practicable and issuing notifications directed by HHS, for any Event or Breach of Confidential Information to the extent and in the manner determined by HHS.

(B) CONTRACTOR'S obligation begins at the Discovery of an Event or Breach and continues as long as related activity continues, until all effects of the Event are mitigated to HHS's satisfaction (the "incident response period"). **45 CFR 164.404**

(C) Breach Notice:

1. Initial Notice.

a. For federal information, including without limitation, Federal Tax Information, Social Security Administration Data, and Medicaid Client Information, within the first, consecutive clock hour of Discovery, and for all other types of Confidential Information not more than 24 hours after

Discovery, or in a timeframe otherwise approved by HHS in writing, initially report to HHS's Privacy and Security Officers via email at: [privacy@HHSC.state.tx.us](mailto:privacy@HHSC.state.tx.us) and to the HHS division responsible for this DUA; and **IRS Publication 1075; Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a; OMB Memorandum 07-16 as cited in HHSC-CMS Contracts for information exchange.**

b. Report all information reasonably available to CONTRACTOR about the Event or Breach of the privacy or security of Confidential Information. **45 CFR 164.410**

c. Name, and provide contact information to HHS for, CONTRACTOR's single point of contact who will communicate with HHS both on and off business hours during the incident response period.

2. 48-Hour Formal Notice. No later than 48 consecutive clock hours after Discovery, or a time within which Discovery reasonably should have been made by CONTRACTOR of an Event or Breach of Confidential Information, **provide** formal notification to the State, including all reasonably available information about the Event or Breach, and CONTRACTOR's investigation, including without limitation and to the extent available: **For (a) - (m) below: 45 CFR 164.400-414**

a. The date the Event or Breach occurred;

b. The date of CONTRACTOR's and, if applicable, Subcontractor's Discovery;

c. A brief description of the Event or Breach; including how it occurred and who is responsible (or hypotheses, if not yet determined);

d. A brief description of CONTRACTOR's investigation and the status of the investigation;

e. A description of the types and amount of Confidential Information involved;

f. Identification of and number of all Individuals reasonably believed to be affected, including first and last name of the individual and if applicable the, Legally authorized representative, last known address, age, telephone number, and email address if it is a preferred contact method, to the extent known or can be reasonably determined by CONTRACTOR at that time;

g. CONTRACTOR's initial risk assessment of the Event or Breach demonstrating whether individual or other notices are required by applicable law or this DUA for HHS approval, including an analysis of whether there is a low probability of compromise of the Confidential Information or whether any legal exceptions to notification apply;

h. CONTRACTOR's recommendation for HHS's approval as to the steps Individuals and/or CONTRACTOR on behalf of Individuals, should take to protect the Individuals from potential harm, including without limitation CONTRACTOR's provision of notifications, credit protection, claims monitoring, and any specific protections for a Legally Authorized Representative to take on behalf of an Individual with special capacity or circumstances;

i. The steps CONTRACTOR has taken to mitigate the harm or potential harm caused (including without limitation the provision of sufficient resources to mitigate);

j. The steps CONTRACTOR has taken, or will take, to prevent or reduce the likelihood of recurrence of a similar Event or Breach;

k. Identify, describe or estimate of the Persons, Workforce, Subcontractor, or Individuals and any law enforcement that may be involved in the Event or Breach;

l. A reasonable schedule for CONTRACTOR to provide regular updates to the foregoing in the future for response to the Event or Breach, but no less than every three (3) business days or as

otherwise directed by HHS, including information about risk estimations, reporting, notification, if any, mitigation, corrective action, root cause analysis and when such activities are expected to be completed; and

m. Any reasonably available, pertinent information, documents or reports related to an Event or Breach that HHS requests following Discovery.

**Section 4.02 Investigation, Response and Mitigation. For A-F below: 45 CFR 164.308, 310 and 312; 164.530**

(A) CONTRACTOR will immediately conduct a full and complete investigation, respond to the Event or Breach, commit necessary and appropriate staff and resources to expeditiously respond, and report as required to and by HHS for incident response purposes and for purposes of HHS's compliance with report and notification requirements, to the satisfaction of HHS.

(B) CONTRACTOR will complete or participate in a risk assessment as directed by HHS following an Event or Breach, and provide the final assessment, corrective actions and mitigations to HHS for review and approval.

(C) CONTRACTOR will fully cooperate with HHS to respond to inquiries and/or proceedings by state and federal authorities, Persons and/or Individuals about the Event or Breach.

(D) CONTRACTOR will fully cooperate with HHS's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such Event or Breach, or to recover or protect any Confidential Information, including complying with reasonable corrective action or measures, as specified by HHS in a Corrective Action Plan if directed by HHS under the Base Contract.

**Section 4.03 Breach Notification to Individuals and Reporting to Authorities. Tex. Bus. & Comm. Code §521.053; 45 CFR 164.404 (Individuals), 164.406 (Media); 164.408 (Authorities)**

(A) HHS may direct CONTRACTOR to provide Breach notification to Individuals, regulators or third-parties, as specified by HHS following a Breach.

(B) CONTRACTOR must obtain HHS's prior written approval of the time, manner and content of any notification to Individuals, regulators or third-parties, or any notice required by other state or federal authorities. Notice letters will be in CONTRACTOR's name and on CONTRACTOR's letterhead, unless otherwise directed by HHS, and will contain contact information, including the name and title of CONTRACTOR's representative, an email address and a toll-free telephone number, for the Individual to obtain additional information.

(C) CONTRACTOR will provide HHS with copies of distributed and approved communications.

(D) CONTRACTOR will have the burden of demonstrating to the satisfaction of HHS that any notification required by HHS was timely made. If there are delays outside of CONTRACTOR's control, CONTRACTOR will provide written documentation of the reasons for the delay.

(E) If HHS delegates notice requirements to CONTRACTOR, HHS shall, in the time and manner reasonably requested by CONTRACTOR, cooperate and assist with CONTRACTOR's information requests in order to make such notifications and reports.

## ARTICLE 5. SCOPE OF WORK

Scope of Work means the services and deliverables to be performed or provided by CONTRACTOR, or on behalf of CONTRACTOR by its Subcontractors or agents for HHS that are described in detail in the Base Contract. The Scope of Work, including any future amendments thereto, is incorporated by reference in this DUA as if set out word-for-word herein.

## ARTICLE 6. GENERAL PROVISIONS

### **Section 6.01 *Ownership of Confidential Information***

CONTRACTOR acknowledges and agrees that the Confidential Information is and will remain the property of HHS. CONTRACTOR agrees it acquires no title or rights to the Confidential Information.

### **Section 6.02 *HHS Commitment and Obligations***

HHS will not request CONTRACTOR to create, maintain, transmit, use or disclose PHI in any manner that would not be permissible under applicable law if done by HHS.

### **Section 6.03 *HHS Right to Inspection***

At any time upon reasonable notice to CONTRACTOR, or if HHS determines that CONTRACTOR has violated this DUA, HHS, directly or through its agent, will have the right to inspect the facilities, systems, books and records of CONTRACTOR to monitor compliance with this DUA. For purposes of this subsection, HHS's agent(s) include, without limitation, the HHS Office of the Inspector General or the Office of the Attorney General of Texas, outside consultants or legal counsel or other designee.

### **Section 6.04 *Term; Termination of DUA; Survival***

This DUA will be effective on the date on which CONTRACTOR executes the DUA, and will terminate upon termination of the Base Contract and as set forth herein. If the Base Contract is extended or amended, this DUA is updated automatically concurrent with such extension or amendment.

(A) HHS may immediately terminate this DUA and Base Contract upon a material violation of this DUA.

(B) Termination or Expiration of this DUA will not relieve CONTRACTOR of its obligation to return or Destroy the Confidential Information as set forth in this DUA and to continue to safeguard the Confidential Information until such time as determined by HHS.

(D) If HHS determines that CONTRACTOR has violated a material term of this DUA; HHS may in its sole discretion:

1. Exercise any of its rights including but not limited to reports, access and inspection under this DUA and/or the Base Contract; or
2. Require CONTRACTOR to submit to a corrective action plan, including a plan for monitoring and plan for reporting, as HHS may determine necessary to maintain compliance with this DUA; or
3. Provide CONTRACTOR with a reasonable period to cure the violation as determined by HHS; or
4. Terminate the DUA and Base Contract immediately, and seek relief in a court of competent jurisdiction in Travis County, Texas.

Before exercising any of these options, HHS will provide written notice to CONTRACTOR describing the violation and the action it intends to take.

(E) If neither termination nor cure is feasible, HHS shall report the violation to the Secretary.

(F) The duties of CONTRACTOR or its Subcontractor under this DUA survive the expiration or termination of this DUA until all the Confidential Information is Destroyed or returned to HHS, as required by this DUA.

**Section 6.05 *Governing Law, Venue and Litigation***

(A) The validity, construction and performance of this DUA and the legal relations among the Parties to this DUA will be governed by and construed in accordance with the laws of the State of Texas.

(B) The Parties agree that the courts of Travis County, Texas, will be the exclusive venue for any litigation, special proceeding or other proceeding as between the parties that may be brought, or arise out of, or in connection with, or by reason of this DUA.

**Section 6.06 *Injunctive Relief***

(A) CONTRACTOR acknowledges and agrees that HHS may suffer irreparable injury if CONTRACTOR or its Subcontractor fails to comply with any of the terms of this DUA with respect to the Confidential Information or a provision of HIPAA or other laws or regulations applicable to Confidential Information.

(B) CONTRACTOR further agrees that monetary damages may be inadequate to compensate HHS for CONTRACTOR's or its Subcontractor's failure to comply. Accordingly, CONTRACTOR agrees that HHS will, in addition to any other remedies available to it at law or in equity, be entitled to seek injunctive relief without posting a bond and without the necessity of demonstrating actual damages, to enforce the terms of this DUA.

**Section 6.07 *Indemnification***

CONTRACTOR will indemnify, defend and hold harmless HHS and its respective Executive Commissioner, employees, Subcontractors, agents (including other state agencies acting on behalf of HHS) or other members of its Workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this DUA or from any acts or omissions related to this DUA by CONTRACTOR or its employees, directors, officers, Subcontractors, or agents or other members of its Workforce. The duty to indemnify, defend and hold harmless is independent of the duty to insure and continues to apply even in the event insurance coverage required, if any, in the DUA or Base Contract is denied, or coverage rights are reserved by any insurance carrier. Upon demand, CONTRACTOR will reimburse HHS for any and all losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party to the extent caused by and which results from the CONTRACTOR's failure to meet any of its obligations under this DUA. CONTRACTOR's obligation to defend, indemnify and hold harmless any Indemnified Party will survive the expiration or termination of this DUA.

**Section 6.08 *Insurance***

(A) In addition to any insurance required in the Base Contract, at HHS's option, HHS may require CONTRACTOR to maintain, at its expense, the special and/or custom first- and third-party



insurance coverages, including without limitation data breach, cyber liability, crime theft and notification expense coverages, with policy limits sufficient to cover any liability arising under this DUA, naming the State of Texas, acting through HHS, as an additional named insured and loss payee, with primary and non-contributory status, with required insurance coverage, by the Effective Date, or as required by HHS.

(B) CONTRACTOR will provide HHS with written proof that required insurance coverage is in effect, at the request of HHS.

**Section 6.09 Fees and Costs**

Except as otherwise specified in this DUA or the Base Contract, including but not limited to requirements to insure and/or indemnify HHS, if any legal action or other proceeding is brought for the enforcement of this DUA, or because of an alleged dispute, contract violation, Event, Breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of this DUA, each party will bear their own legal expenses and the other cost incurred in that action or proceeding.

**Section 6.10 Entirety of the Contract**

This Data Use Agreement is incorporated by reference into the Base Contract and, together with the Base Contract, constitutes the entire agreement between the parties. No change, waiver, or discharge of obligations arising under those documents will be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced.

**Section 6.11 Automatic Amendment and Interpretation**

Upon the effective date of any amendment or issuance of additional regulations to HIPAA, or any other law applicable to Confidential Information, this DUA will automatically be amended so that the obligations imposed on HHS and/or CONTRACTOR remain in compliance with such requirements. Any ambiguity in this DUA will be resolved in favor of a meaning that permits HHS and CONTRACTOR to comply with HIPAA or any other law applicable to Confidential Information.

**ATTACHMENT 1. SUBCONTRACTOR AGREEMENT FORM**  
**HHS CONTRACT NUMBER \_\_\_\_\_**

The DUA between HHS and CONTRACTOR establishes the permitted and required uses and disclosures of Confidential Information by CONTRACTOR.

CONTRACTOR has subcontracted with \_\_\_\_\_ (SUBCONTRACTOR) for performance of duties on behalf of CONTRACTOR which are subject to the DUA. SUBCONTRACTOR acknowledges, understands and agrees to be bound by the identical terms and conditions applicable to CONTRACTOR under the DUA, incorporated by reference in this Agreement, with respect to HHS Confidential Information. CONTRACTOR and SUBCONTRACTOR agree that HHS is a third-party beneficiary to applicable provisions of the subcontract.

HHS has the right but not the obligation to review or approve the terms and conditions of the subcontract by virtue of this Subcontractor Agreement Form.

CONTRACTOR and SUBCONTRACTOR assure HHS that any Breach or Event as defined by the DUA that SUBCONTRACTOR Discovers will be reported to HHS by CONTRACTOR in the time, manner and content required by the DUA.

If CONTRACTOR knows or should have known in the exercise of reasonable diligence of a pattern of activity or practice by SUBCONTRACTOR that constitutes a material breach or violation of the DUA or the SUBCONTRACTOR's obligations CONTRACTOR will:

1. Take reasonable steps to cure the violation or end the violation, as applicable;
2. If the steps are unsuccessful, terminate the contract or arrangement with SUBCONTRACTOR, if feasible;
3. Notify HHS immediately upon reasonably discovery of the pattern of activity or practice of SUBCONTRACTOR that constitutes a material breach or violation of the DUA and keep HHS reasonably and regularly informed about steps CONTRACTOR is taking to cure or end the violation or terminate SUBCONTRACTOR's contract or arrangement.

**This Subcontractor Agreement Form is executed by the parties in their capacities indicated below.**

**CONTRACTOR**

**SUBCONTRACTOR**

**BY:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE** \_\_\_\_\_, **201** .

**DATE:** \_\_\_\_\_

**HHS Procurement and Contracting Services****SOLICITATION ADDENDUM****SOLICITATION ADDENDUM:#** 

for

**SOLICITATION:#** Date: PCS Purchaser/Contract Administrator: Phone: Fax: Date Due: & Due Time: **DESCRIPTION OF THE ADDENDUM:**

This Addendum is issued to reflect the following information, clarification or change:

Changes to the timeline: Sealed Bids are due on April 5, 2017 at 2:00 pm.

Final Questions Due - March 17, 2017 by 5:00 pm

Addenda with Q&amp;A Target Posting - Date March 22, 2017

Last Day for Bidder to Publish for HUB Subcontractors - March 24, 2017

Sealed Bids are due on April 5, 2017 at 2:00 pm.

See next pages for Q&amp;A responses.

**Failure to acknowledge receipt of this addendum may result in response rejection. Respondents may acknowledge receipt by one of the following methods:**

1. Sign and return this addendum to HHSC-PCS with the solicitation response; or
2. Acknowledge receipt of this addendum on face of your response, or
3. If response has already been submitted by respondent, respondent may acknowledge receipt by signing and faxing the addendum to the fax number above prior to solicitation due date and time:

Authorized Signature:  Digitally signed by Michael Klepfer  
Date: 2017.03.15 07:27:33 -05'00' Date: Printed Name of Authorized Signature: Business Entity Name:

**PROJECT 16-055-MSS  
EMERGENCY GENERATOR REPLACEMENT  
MEXIA STATE SUPPORTED LIVING CENTER  
MEXIA, TEXAS  
FAI Project No. 201601900  
March 9, 2017**



**ADDENDUM NO. 1:**

**PRE-BID CONFERENCE GENERAL ITEMS:**

**Item No. 1:** The Pre-Bid Conference Sign-in Sheet is attached and included as Part of the Addendum.

**CONTRACTOR GENERAL QUESTIONS:**

- Item No. 2:** Will a ground wire be required to be installed in feeder conduits if no ground exists?  
**Response:** Some generators have a ground rod installed and some do not. Contractor shall furnish and install new 8'-0" long copper ground rod at each new generator. This applies to Base Bid and Each Alternate.
- Item No. 3:** Electrical power service shut down?  
**Response:** There will be shut-downs involved. The Contractor will be required to coordinate with the Facility for any shut-downs. Contractor is required to notify the Facility of any schedule shut-down 24 hours prior to actual shut-down.
- Item No. 4:** The Facility stated the generators with the highest priority for installation is at Buildings 559 and 747.
- Item No. 5:** Contractor check-in location will be at Building 624. Contractor contract shall be Kelly Wilson, Plant Manager. (254) 230-6168.

**ELECTRICAL SPECIFICATIONS**

**Item No. 6:** Specification Section 26 32 13, Engine-Generator System is attached and included as part of this Addendum.



Fort Worth, TX 76103  
2001 Beach Street, Suite 530  
817.336.0543  
Texas Registered Professional  
Engineering Firm F-298

**PRE- BID CONFERENCE**  
**SIGN IN SHEET**

Solicitation No.: 53900-7-0000113662  
PROJECT NUMBER: 16-055-MSS  
PROJECT NAME: Emergency Generator Replacement

MEETING LOCATION: Mexia State Supported Living Center  
540 Chapel Drive | Building 511, Room 103  
Mexia, Texas 76667-3490  
On March 1, 2017 at 10:30 am

Please Print All Information Clearly

<p>Name: <u>Kevin Mathis</u> Company: <u>HHSC M=C</u> Address: <u>909 W. 45th St, Bldg. 633</u> <u>Austin, TX 78751</u> Phone: <u>(512) 206-4617</u> Fax: <u>(512) 266-4862</u> Email: <u>Kevin.mathis@hhsc.state.tx.us</u></p>	<p>Name: <u>Kelly Wilson</u> Company: <u>MSSLC</u> Address: <u>1725 540 CHAPEL DR.</u> <u>MEXIA, TX</u> Phone: <u>254-562-1310</u> Fax: <u>562-1576</u> Email: <u>Kelly.Wilson@dads.state.tx.us</u></p>
<p>Name: <u>LARRY AKERS</u> Company: <u>FAI ENGINEERS INC</u> Address: <u>2001 BEACH ST.</u> <u>Ft. Worth, TX</u> Phone: <u>817-336-0543</u> Fax: _____ Email: <u>LAKERS@FAIENGINEERS.COM</u></p>	<p>Name: <u>Stephen Ysebaert</u> Company: <u>Acumen Enterprises</u> Address: <u>1504 Falcon Dr.</u> <u>De Soto, TX 75115</u> Phone: <u>972-572-0701</u> Fax: <u>972-572-0889</u> Email: <u>stephen@acumen-enterprises.com</u></p>
<p>Name: <u>John Harris</u> Company: <u>MP Electric</u> Address: <u>P.O. Box 20184</u> <u>Waco, TX 76702</u> Phone: <u>254-846-4666</u> Fax: <u>254-846-2018</u> Email: <u>john@mpelectric.net</u></p>	<p>Name: <u>Hugh Cornelius</u> Company: <u>Lochridge Priest</u> Address: <u>2901 East Industrial</u> <u>Waco TX 76705</u> Phone: <u>254-379-3817</u> Fax: _____ Email: <u>hcorneilius@lochridgepriest.com</u></p>
<p>Name: <u>SAM Dowdy</u> Company: <u>COPPERA, LLC</u> Address: <u>421 TALBOT ST</u> <u>TAYLOR, TX 76574</u> Phone: <u>512 365 1838</u> Fax: _____ Email: <u>SAM@COPPERACO.COM</u></p>	<p>Name: <u>Dan Michalek</u> Company: <u>Lochridge - Priest Inc</u> Address: <u>2901 East Industrial</u> <u>Waco TX 76705</u> Phone: <u>903-851-9642</u> Fax: _____ Email: <u>Dmichalek@LochridgePriest.com</u></p>
<p>Name: <u>JASON CORTES</u> Company: <u>DEH UNITED FUELING SOLUTIONS</u> Address: <u>1475 AVES SUITE 200</u> <u>GRANA PRAIRE, TX 75070</u> Phone: <u>817-530-1917</u> Fax: _____ Email: <u>JCORTES@DH-UNITED.COM</u></p>	<p>Name: <u>David Schelwinski</u> Company: <u>MSSLC</u> Address: <u>540 CHAPEL DR.</u>  Phone: <u>254 562 1287</u> Fax: <u>254 562 1576</u> Email: <u>David.Schelwinski@dads.state.tx.us</u></p>

## SECTION 26 32 13

### ENGINE-GENERATOR SYSTEM

#### PART 1 - GENERAL

##### 1.00 RELATED DOCUMENTS

- A. Related documents which govern the work specified in this section.
  - 1. The Conditions of the Contract.
  - 2. Other applicable sections of the specifications.

##### 1.01 DESCRIPTION OF WORK

- A. The extent of engine-generator system work is indicated by drawings and schedules, and by the requirements of this section. The engine-generator system is defined to include, but is not necessarily limited to, engine-generator set, starting system, fuel supply system, automatic transfer switches, and all necessary accessories, instruments, devices, etc., required to provide a complete and operating system of Class 24, Type 10, Level 2 Configurations.

##### 1.02 QUALITY ASSURANCE

- A. Equipment furnished under this section shall be guaranteed against defective parts or workmanship under terms of the manufacturer's and dealer's standard warranty for a period of two years and shall cover full parts and labor.

##### 1.03 SUBMITTALS

- A. **Manufacturer's Data:** Submit manufacturer's data on engine-generator set, transfer switches, all auxiliary systems and accessories; manufacturer's certification, Owner's manuals, etc. Manufacturer's certification shall state that the complete installation of the engine-generator set, accessories, and appurtenances will function as intended in the space and configuration as shown on the drawings.
- B. **Shop Drawings:** Submit dimensioned drawings of installed engine-generator system including, but not necessarily limited to, an accurately scaled equipment layout, connection details of auxiliary systems, and electrical connection details of automatic transfer switches and controls.
- C. **Substitutions:** The engine generator set listed under Part 2 of this section establishes the minimum quality considered acceptable, however, other units will be considered if adequate data is submitted to the Engineer at least 10 days prior to bid opening date, and written approval to bid is granted. The Engineer reserves the right to reject proposed substitutes. No later substitutes will be considered. Each bidder submitting an alternate unit for consideration shall furnish the following information:
  - 1. Drawings of the engine-generator set offered hereunder.
  - 2. Literature describing the engine-generator and indicating its current production status.



3. Drawings and/or literature describing auxiliary equipment to be furnished.
4. The following data in tabulated form:
  - a. Make of engine.
  - b. Number of cylinders.
  - c. Bore, inches.
  - d. Stroke, inches.
  - e. Piston displacement, cubic inches.
  - f. Piston speed, feet per minute, at rated RPM.
  - g. BMEP at rated KW output.
  - h. Combustion air required, cubic feet per minute.
  - i. Cooling air required, cubic feet per minute.
  - j. Engine heat radiated to ambient, BTU per hour.
  - k. Generator heat radiated to ambient, BTU per hour.
  - l. Exhaust gas flow, cubic feet per minute.
  - m. Allowable exhaust back pressure, inches of mercury.
  - n. Make and type of generator.
  - o. Generator electrical rating, KVA or KW at 0.8 power factor.
  - p. Number and type of bearings.
  - q. Exciter type.
  - r. Prototype test data with certification of testing.

## **PART 2 - PRODUCTS**

### **2.00 MATERIALS AND EQUIPMENT**

- A. The engine-generator system shall be standby rated to carry the specified load continuously for the duration of a utility service outage.
- B. Engine-generator system shall be housed in manufacturer's standard weatherproof sound attenuated Level 1 enclosure. Enclosure shall be sized to house engine-generator set, batteries, fuel transfer pump if required, controls, and generator main circuit breaker(s) and exhaust silencer. Exhaust silencer will be mounted inside enclosure.
- C. Enclosure shall be painted in standard factory colors.
- D. The generator set shall be provided with a sound attenuated housing which allows the generator set to operate at full rated load in an ambient temperature of up to 100°F. The enclosure shall reduce the sound level of the generator set while operating at full rated load to a maximum level of 86 dba at any location 7 meters from the generator set in a free field environment.
- E. Engine generator set shall be water cooled, propane gas driven as manufactured by Generac, or other manufacturer will be considered only if the proposed substitution is submitted & approved 10 days prior to bidding. Final approval is subject to owners review & input.

### **2.01 GENERATOR**

- A. Description:

Engine Generator System  
Generator Replacement  
Mexia State Supported Living Center  
Carlsbad, Texas

1. Refer to Plans for Generator Sizes
2. Operating P.F.: 0.8
3. Continuous KVA: as indicated
4. Enclosure: Weatherproof Insulated & sound attenuated, 86 DBA at 7 meters.
5. Duty: Continuous
6. R.P.M.: 1800
7. Voltage Regulation:  $\pm 2\%$ ;  $\pm 5\%$  adjustment
8. Regulator: Solid state, silicon controlled rectifier
9. Voltage: as Indicated
10. 3 phase, 4 wire
11. Frequency: 60 Hz
12. Type: Brushless
13. Exciter Type: Rotating
14. Coupling: Flexible disc
15. Amortisseur Windings: Full
16. Temperature Rise: Per NEMA MG 1-22.40
17. Insulation: Class F, NEMA MG 1-1.65

B. Performance: Measured in accordance with NEMA MG 1-22.42 and MG 1-22.43:

1. Efficiency at Full Load: 95.6%
2. Efficiency at 3/4 Load: 95.6%
3. Harmonic Content: Less than 6%
4. Wave Form Deviation Factor, No Load Line-to-Line: Less than 6%
5. Telephone Influence Factor, Open Circuit: Less than 50

## 2.02 ENGINE

- A. The engine shall be a compression ignition engine. It shall be a two or four stroke cycle, water cooled, solid-injection or unitized-injection type engine of either vertical in-line or V-type.
- B. Engine Description:
1. As required for each generator
- C. The rated net horsepower of the engine at the generator synchronous speed, with all accessories attached, shall not be less than that required to produce the KW specified above. The horsepower rating shall take into account generator efficiency. The generator set shall be rated to produce the specified KW continuously without overload, at an ambient temperature of 110°F at the altitude of the site.
- D. The unit shall be fueled with propane gas.
- E. The engine speed shall be governed by an electric governor, to maintain rated speed under variable load conditions from no-load to full-load generator output. Speed droop adjustable 5%, automatic overspeed shutdown.
- F. Fuel System:

1. The fuel system shall be that which is normally used by the propane engine manufacturer. It shall include a replaceable element fuel filter and water separator conveniently located for servicing.
  2. Day Tank: Existing Owner furnished.
- G. Engine lubrication shall be provided by an engine-driven positive displacement lubricating oil pump. The lubrication system shall include a full flow oil filter equipped with replaceable cartridge type filter element, oil level indicator, oil pressure gauge, low oil pressure shutdown, and oil cooler.
- H. The engine shall be provided with one or more dry type replaceable element air cleaners.
- I. The engine shall be equipped with a 24 volt electric starting system of sufficient capacity to crank the engine at a speed which will allow full propane starting of the engine. Batteries shall be furnished having sufficient capacity for cranking the engine for at least 40 seconds at firing speed. A battery rack and necessary cable and hardware shall be furnished and installed within the generator set housing. A fully automatic float type battery charger shall be provided to maintain the starting batteries at full charge. The charger shall be equipped with a DC voltmeter to monitor battery voltage and a DC ammeter to monitor the charge rate. The charger shall be designed such that it will not be damaged during engine cranking. A battery box heater shall be provided to facilitate cold weather starting of the engine. The heater shall be suitable for operation on 120 volt, single phase.
- J. Liquid Radiator Cooling:
1. The engine shall be furnished with a liquid radiator cooled cooling system having sufficient capacity for cooling the engine when the diesel generator set is delivering full rated load at the ambient temperature and altitude specified. Fan shall be pusher type, belt driven.
  2. The radiator and engine cooling systems shall be filled with a solution of 50% ethylene glycol.
  3. A thermostatically controlled engine coolant heater shall be provided to ensure proper cold weather starting of the engine. The coolant heater shall be sized in accordance with the engine manufacturer's recommendations. The heater shall be suitable for operation on 120 volts, 1 phase. A lube oil pressure switch shall be included for automatic cut-out of the heater on engine start, heater to be internally wired & connected to integral generator auxiliary panel "GP".
  4. A thermostatically controlled oil heater shall be provided to insure proper cold weather starting of the engine. The oil heater shall be sized in accordance with the engine manufacturer's recommendations. The heater shall be suitable for operation on 120 volts, 1 phase. The heater shall automatically cut-out on engine start, heater tube internally wired & connected to integral generator auxiliary panel "GP".
- K. Exhaust System:
1. Provide critical type silencer properly sized according to the silencer manufacturer's recommendation for the engine used. Mounting shall be as shown on drawings. A

flexible exhaust fitting and necessary reducers shall be provided for mounting between the engine exhaust and the exhaust pipe. Exhaust shall terminate up through weatherproof sound attenuated enclosure with rain flapper cap.

2. Exhaust piping shall be sized in accordance with manufacturer's requirements for the length and configuration of exhaust as shown on the drawings. Exhaust piping may be larger than that shown on the drawings, but shall in no case be smaller than that shown.

- L. The engine and generator shall be equipped with suitable base for mounting the engine-generator unit on a concrete foundation. Spring type vibration isolators shall be provided.

### **2.03 ENGINE-GENERATOR SET CONTROLS**

- A. An engine-generator control panel shall be provided and mounted on the engine-generator set. The control panel shall include the following:
  1. DC engine controls including run-stop-remote switch, remote start-stop terminals, oil pressure gauge, coolant temperature gauge, charge rate ammeter and solid-state engine monitoring system with individual fault lamps, four shut downs, and individual external alarm terminals with pre-shutdown alarm circuit for high coolant temperature and low oil pressure in compliance with NFPA 76A.
  2. AC output controls including AC voltmeter, AC ammeter, meter switch, voltmeter-ammeter phase selector with an off position, voltage adjusting rheostat, frequency meter, running time meter, exciter circuit breaker, fine speed control potentiometer, and phase angle indicator.
- B. A main line circuit breaker sized as shown on the drawings shall be provided and mounted on the engine-generator set. A junction box with adequate space to terminate the load cables, sized as shown on the drawings, shall be provided and mounted on the engine-generator set.
- C. Provide circuit breakers or as indicated.

### **2.04 PAINTS AND FINISHES**

- A. Unit shall be cleaned and painted in accordance with the manufacturer's standard system.

### **2.05 PERFORMANCE CURVES**

- A. Vendor shall furnish a set of performance curves showing the relationship of fuel consumption rate versus KVA output.
- B. The following curves for the engine are required as minimum:
  1. BHP vs RPM
  2. Torque vs RPM
  3. Fuel consumption rate vs BHP

### **2.06 AUTOMATIC TRANSFER SWITCH**

- A. Automatic transfer switch shall be a 4-pole closed transition type & have a minimum continuous full load current rating of as shown on drawings amps at 208 volts, 3 phase, 4 wire, 60 hz, AC normal and standby. The transfer switch shall be capable of switching all classes of load and shall be rated for continuous duty when installed in a non-ventilated enclosure constructed in accordance with Underwriters' Laboratories, Inc., Standard UL-508.
- B. The transfer switch shall be double throw, actuated by a single electrical operator momentarily energized; and connected to the transfer mechanism by a simple overcenter type linkage with a total transfer time not to exceed one-half second. The transfer switch shall be capable of transferring successfully in either direction with 70% of rated voltage applied to the switch terminals.
- C. The normal and standby power contacts shall be positively interlocked mechanically and electrically to prevent simultaneous closing. Main contacts shall be mechanically locked in position in both the normal and standby power positions without the use of hooks, latches, magnets, or springs; and shall be silver-tungsten alloy protected for arcing contacts, with magnetic blowouts on each pole. Interlocked molded case circuit breakers are not acceptable.
- D. The transfer switch shall be equipped with a manual operator that is designed to prevent injury to the operating personnel if the electrical operator should suddenly become energized during manual transfer. The manual operator shall provide the same contact-to-contact transfer speed as the electrical operator to prevent a flashover from switching the main contacts slowly.
- E. Engine starting contacts shall be provided to start the generating plant if phases of the normal source drops below 70% of rated voltage, after a non-adjustable time delay period of 3 seconds, to allow for momentary dips. The transfer switch shall transfer to standby power as soon as the voltage and frequency have reached 90% of rated voltage. After restoration of normal power on all phases to 90% of rated voltage, an adjustable time delay period of 0-30 minutes shall delay retransfer to normal power until it has had time to stabilize. If the standby power source should fail during the time delay period, the time delay shall be bypassed, and the switch shall return immediately to the normal source.
- F. Transfer to standby and retransfer to normal power sources shall be made within a nominal  $\pm 30^\circ$  phase angle window by use of a phase angle monitor. A phase angle indicator shall be provided to facilitate manual operation.
- G. A cool-down timer shall be provided to operate the engine-generator for an adjustable period of time of 0-5 minutes after the load has been retransferred to normal to allow it to cool before shutdown.
- H. The transfer switch shall include a test switch to simulate normal power failure, pilot lights on the cabinet door to indicate the switch closed on normal or standby power. All relays, timers, control wiring and accessories to be front accessible.
- I. The transfer switch complete with timers, relays and accessories shall be listed by Underwriters' Laboratories, Inc., Electrical Construction Materials Catalog, Standard UL 1008 Automatic Transfer Switches and approved for use on emergency systems.

- J. When conducting temperature rise tests to paragraph 17 of UL-1008, the manufacturer shall include post-endurance temperature rise tests to verify the ability of the transfer switch to carry full rated current after completing the overload and endurance tests. In addition to the above, the transfer switch must have a short circuit withstand capability equal to the UL minimum requirements.
- K. To establish conformance with the above, the manufacturer must produce certified test reports from an independent testing laboratory to verify that identical samples have withstood the UL recommended three phase short circuit current at rated voltage, for a minimum of 3 cycles duration, without contact damage or contact welding and without the use of current limiting fuse protection. Oscillograph traces are to be supplied to verify that the test parameters have been met.
- L. The transfer switch shall be manufactured by the generator manufacturer with exerciser clock installed. Clock shall be connected to initiate engine start and transfer load to engine generator. The AIC rating shall be 65k.
- M. The transfer switch control panel shall contain the following generator controls:
  - 1. Remote run/stop switch, allowing remote starting and stopping of generator.
  - 2. Generator remote annunciator panel, Onan Type 300-0750 or equal by generator set manufacturer.
- N. The transfer switch shall be provided with the following accessories:
  - 1. Auxiliary contacts to open when normal fails.
  - 2. Auxiliary contacts to close when normal fails.
  - 3. NEMA 3R enclosure.
  - 4. Auxiliary contacts (2) N.O. & N.C. for use as shown on drawings intel contracts will operate with the transfer switch.

## **2.07 EMERGENCY STOP SWITCH**

- A. An emergency stop switch will be provided at each generator enclosure, mounted outside the enclosure.

## **2.08 ANNUNCIATOR REMOTE RELAY PANEL**

- A. 21 light remote panel
- B. Remote monitoring
- C. Generac or Approved Equal
- D. Surface Mounted

## **PART 3 - EXECUTION**

### **3.00 INSTALLATION**

- A. The engine-generator system installation shall comply with applicable provisions of NFPA 37 and NFPA 70.
- B. The engine-generator units shall be set at the locations shown on the drawings.
- C. Contractor shall furnish one complete set of replaceable filters or filter elements as spares.

### **3.01 INSTALLATION SUPERVISION**

- A. General: Provide manufacturer's instructions for installation of engine-generator system.
- B. Manufacturer of equipment shall provide supervision and assistance to the Contractor and perform all start-up procedures and provide written report to Owner and Engineer. Services shall be performed by personnel in the direct employ of the machine manufacturer.

### **3.02 ACCEPTANCE TEST**

- A. The minimum requirement consists of certified test logs taken at the manufacturer's plant consisting of rated load at 0.8 P.F. and transient test at 0.8 P.F. loading. The installing Contractor shall demonstrate functional capability at the installation site. The manufacturer shall assist the installing Contractor in providing this demonstration as required without additional charge. Fuel start-up and check-out shall be done by the manufacturer's representative. The manufacturer shall certify that the engine-generator set will meet the rated capability at the specified altitude and ambient temperature as installed.
- B. Operational and functional demonstration at rated capability shall be performed before acceptance. Manufacturer shall furnish suitable loading device, at the jobsite capable of dissipating rated KW for four (4) hours, and shall assist Installing Contractor in performing this load test. The supplier shall notify Engineer 10 days before onsite load test & will exercise the option to attend.
- C. Lubricants, coolants, etc., shall be provided by manufacturer. Fuel will be furnished by Owner.

### **3.03 DELIVERY**

- A. Manufacturer shall deliver engine-generator set to site for off-loading by the Electrical Contractor...

### **END OF SECTION**

**HHS Procurement and Contracting Services****SOLICITATION ADDENDUM****SOLICITATION ADDENDUM:#** 

for

**SOLICITATION:#** Date: PCS Purchaser/Contract Administrator: Phone: Fax: Date Due: & Due Time: **DESCRIPTION OF THE ADDENDUM:**

This Addendum is issued to reflect the following information, clarification or change:

See below for Q&amp;A responses.

Reference Project # 16-055-MSS Emergency Generator Replacement at Mexia SSLC

**Failure to acknowledge receipt of this addendum may result in response rejection. Respondents may acknowledge receipt by one of the following methods:**

1. Sign and return this addendum to HHSC-PCS with the solicitation response; or
2. Acknowledge receipt of this addendum on face of your response, or
3. If response has already been submitted by respondent, respondent may acknowledge receipt by signing and faxing the addendum to the fax number above prior to solicitation due date and time:

Authorized Signature:  Digitally signed by Michael Klepfer  
Date: 2017.03.23 07:57:03 -05'00' Date: Printed Name of Authorized Signature: Business Entity Name:



**PROJECT 16-055-MSS  
EMERGENCY GENERATOR REPLACEMENT  
MEXIA STATE SUPPORTED LIVING CENTER  
MEXIA, TEXAS  
FAI Project No. 201601900  
March 22, 2017**



**ADDENDUM NO. 2:**

**CONTRACTOR GENERAL QUESTIONS:**

- Item No. 1:** Section 26 32 13, Engine – Generator System: 2.06, Automatic Transfer Switch, A.; Omit word “Closed Transitions” in the first sentence and insert the words ‘Open Transition’.
- Item No. 2:** Section 26 32 13, 2.00, E: Cummins is acceptable manufacturer for Generators and ATS.
- Item No. 3:** General Question; There is no delivery schedule for generators: Delivery of generators shall be as per Contractor construction schedule as required to meet his project completion schedule. The facility has no location available to store generators. The Contractor shall schedule deliveries as required to match up with buildings ready for generator installation.
- Item No. 4:** Temporary power shall be required if generators change out cannot be completed in a normal 8 to 10 hour work day. If installation is going to take longer, Contractor shall provide a temporary generator to serve number of buildings that does not have Emergency Power connected.
- Item No. 5:** Sheet E2.03, Detail 2, Item 14: Detail 2 is a generic generator wiring schematic that is intended to represent typical wiring. “AUX” Auxiliary Panels would apply to be installed only on building where “AUX” panels are shown and scheduled to be installed.
- Item No. 6:** Sheet E2.03, Detail 2, Item 19: Item 19 is a generic light with a battery backup that would only apply if shown and scheduled on the drawing.
- Item No. 7:** Sheet E3.03, Detail 3, Item 14: The “AUX” panel should be identified as “Building 705, Emergency Distribution Panel” and should have the circuit breakers noted for feeding Building 701 thru 705 ATS switches. This new “AUX” panel replaces the existing panel noted on Plan 1, Sheet E3.02, Noted in Generator Yard as “New Panel”, repositioned to obtain Code Clearance.
- Item No. 8:** Sheet 3.03, Detail 3, Item 19: Item 19 is a generic light with a battery backup that would only apply if shown and scheduled on the drawings.
- Item No. 9:** Sheet E4.03, Detail 3, Item 14: Refer to Item No. 5 above for Addendum Item that pertains to this Item.



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- Item No. 10:** Sheet E4.03, Detail 3, Item 19: Refer to Item No. 8 above for Addendum Item that pertains to this Item.
- Item No. 11:** Sheet E4.03, Detail 3: The Contractors question states this detail shows 3 feeders feeding 3 ATS. The question was “are panels required to be installed for overcurrent protection?” Note: This detail does not show 3 feeders. Sheet E6.03, Detail 4 shows 3 feeders feeding Building 772,773 and 774. The circuit breakers are at the Generators. We believe the Contractors question was actually referring to Sheet E6.03, Detail 4.
- Item No. 12:** Sheet E5.03, Detail 3, Item 14: Refer to Item No. 5 above for Addendum Item that pertains to this Item.
- Item No. 13:** Sheet E5.03, Detail 3, Item 19: Refer to Item No. 8 above for Addendum Item that pertains to this Item.
- Item No. 14:** Sheet E6.03, Detail 3, Item 14: Refer to Item No. 5 above for Addendum Item that pertains to this Item.
- Item No. 15:** Sheet E6.03, Detail 3, Item 19: Refer to Item No. 8 above for Addendum Item that pertains to this Item.
- Item No. 16:** General question: The A/E does not know the name of the company that provides the Facility with propane. The company does check and fills the tanks on a regular schedule. The Propane Company can be notified by the Facility if extra propane is required during testing.



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