

**TEXAS DEPARTMENT OF STATE HEALTH SERVICES**

**OPEN ENROLLMENT (OE)**

**for**

**Newborn Screening Interns and Residents in Training**

**OE No. HHS0011852**

**NIGP Class/Item No:**

**951/43**

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1. **SCHEDULE OF EVENTS**

|  |  |
| --- | --- |
| **Enrollment Period Opens****(Posted to HHS OE Opportunities webpage)** | ***February 21, 2022*** |
| **Enrollment Period Closes****(Final date for RECEIPT of Applications)** | ***December 1, 2026*** |
| **Anticipated Contract Start Date** | **The effective date of a Contract, if any, awarded to an Applicant will be determined at the sole discretion of DSHS.** |

Applications must be received by DSHS prior to the closing date as indicated in this Schedule of Events or as changed via an Addendum posted to the HHS Open Enrollment Opportunities webpage. Every Applicant is solely responsible for ensuring its Application is received before the submission period closes. DSHS is not responsible for lost, misdirected or late applications.

The dates in the Schedule of Events are tentative. DSHS reserves the right to modify these dates at any time by posting an Addendum to the HHS Open Enrollment Opportunities webpage.

By submitting an Application, the Applicant represents and warrants that any individual submitting the Application and any related documents on behalf of the Applicant is authorized to do so and to bind the Applicant under any resulting contract.

Withdrawal of Application:

Applications may be withdrawn from consideration or amended at any time prior to the “Enrollment Period Closes” date by emailing a request to the point of contact listed in Section 4. The email subject line should contain the OE number and title as indicated on the cover page.The Applicant is solely responsible for ensuring requests are received timely by DSHS. DSHS is not responsible for lost, misdirected or late emails.

1. **OVERVIEW**
	1. **Introduction**

The Texas Department of State Health Services (DSHS) is an agency within the Texas Health and Human Services (HHS) system.

DSHS is seeking applications to establish a contract or contracts with Texas university medical schools providing genetic internships.

To be considered for award, Applicants must submit a comprehensive Application which meets all the requirements of this OE and includes all requested documentation.

* 1. **Legal Authority**

This OE is authorized by *Texas Government Code* Sections 531.039 and 2155.144 and *Health and Safety Code* Section 12.051.

* 1. **No Guarantee of Volume, Usage or Compensation**

DSHS does not guarantee any volume, usage, or compensation to be paid to any Contractor under any Contract resulting from this Open Enrollment. Additionally, all contracts resulting from this Open Enrollment are subject to appropriations, the availability of funds, and termination.

1. **DEFINITIONS AND ACRONYMS**

Unless the context clearly indicates otherwise, throughout this Open Enrollment, the definition given to a term below applies whenever the term appears in this Open Enrollment, in any Application submitted in response to this Open Enrollment, and in any Contract awarded as a result of this Open Enrollment. All other terms have their ordinary and common meaning.

|  |  |
| --- | --- |
| Term | Definition  |
| **Addendum** | A written clarification or revision to this Open Enrollment. All Addenda will be posted to the HHS Open Enrollment Opportunities web page. |
| **Application** | All information and materials submitted by an Applicant in response to this Open Enrollment. |
| **Applicant** | Any person or entity that submits an Application in response to this Open Enrollment.  |
| **Contract** | Any contract or contracts awarded resulting from this Open Enrollment. |
| **Contractor****(Provider)** | Each Applicant, if any, awarded a Contract as a result of this Open Enrollment. May also be referred to as Provider. Unless the context clearly indicates otherwise, all terms and conditions of this Open Enrollment and resulting Contract that refer to Applicant apply with equal force to Contractor (Provider). |
| **HHS Agency** | The Health and Human Services Commission (HHSC) and the Texas Department of Health and Human Services (DSHS) may be identified separately as a ‘HHS Agency’ or collectively as the ‘HHS Agencies’ in this Open Enrollment or any resulting Contract(s) |
| **HHS Open Enrollment Opportunities**  | The HHS web page where Open Enrollments are posted: <https://apps.hhs.texas.gov/pcs/openenrollment.cfm> |
| **HUB** | A Historically Underutilized Business, as defined by Chapter 2161, Texas Government Code. |
| **HUB Subcontracting Plan or HSP** | The Historically Underutilized Business Subcontracting Plan (HSP) required by Chapter 2161 of the Texas Government Code for contracts with an expected value of $100,000 or more and where subcontracting opportunities have been determined to be probable. |
| **Open Enrollment (OE)** | This document, including all exhibits, attachments and addenda, as applicable, posted on the HHS Open Enrollment Opportunities webpage. |
| **Statement of Work** | The description of services and deliverables in this Open Enrollment that the Contractor (Provider) is required to provide under the Contract. |

1. **GENERAL INFORMATION**
	1. **Sole Point of Contact**

All questions, requests for clarification, or other communication about this OE shall be made in writing only to the DSHS sole point of contact listed below.

Attempts to ask questions by phone or in person will not be allowed or recognized as valid.

Michael Montgomery

Contract Manager

Email: michael.montgomery@dshs.texas.gov

**Applications should NOT be submitted to this address. See Section 12 for submission requirements.**

 **Do not contact other HHS Agency personnel regarding this OE.**

**This restriction, as to only communicating in writing with the DSHS sole point of contact identified above, does not preclude discussions between Applicant and agency personnel for the purposes of conducting business unrelated to this OE.**

**Failure of an Applicant or its representatives to comply with these requirements may result in disqualification of the submitted Application.**

* 1. **Changes, Modifications and Cancellation**

DSHS reserves the right to amend or cancel this OE at any time.

All Applications, including those submitted after cancellation of the OE, become the property of DSHS upon receipt.

DSHS reserves the right to change, amend, modify or cancel this OE at any time.

All Applications, including those submitted after cancellation of the OE, become the property of DSHS upon receipt.

* + 1. **Advertisement of Changes, Modifications or Cancellation**

If DSHS determines that the OE needs to be changed or modified, either an addendum will be posted on the OE Opportunities webpage or the OE will be canceled. The action to be taken will be determined at the sole discretion of DSHS. Furthermore, if the OE will be canceled, DSHS will determine, in its sole discretion, if a new OE will be posted.

No HHS Agency will be responsible or liable in any regard for the failure of any individual or entity to receive notification of any posting to the OE Opportunities webpage.

It is the responsibility of each Applicant to monitor the OE Opportunities webpage for any Addenda or additional information regarding this OE. Failure to monitor the OE Opportunities webpage will in no way release or relieve any Applicant or Contractor of its obligations to fulfill the requirements as posted.

* 1. **Offer Period**

By submitting an Application in response to this OE, Applicant agrees that its Application will remain a firm and binding offer to enter into a Contract under all terms and conditions of this OE for at least 240 days from the date applications are due, as stated in Exhibit A, HHS Solicitation Affirmations, unless withdrawn by the Applicant before the enrollment period closes.

An Applicant may extend the time for which its Application will be honored and include the extended period in the Application.

* 1. **Costs Incurred**

DSHS accepts no obligations for costs incurred in preparing, submitting, and screening an Application, including, but not limited to, costs or expenses related to contract execution.

Applicants understand that issuance of this OE or retention of Applications in no way constitutes a commitment by DSHS to award a Contract. All Applications shall be prepared simply and economically, providing a straightforward, concise delineation of the Applicant’s capabilities to satisfy the requirements of this OE and submitted at the sole expense of the Applicant.

* 1. **OE Questions or Clarifications**

Questions and requests for clarification must include the following information:

1. the OE number
2. the question or request for clarification, providing the following information:
* OE language, topic, section heading
* Section, paragraph and page numbers or exhibit/attachment

The requestor must provide the following contact information:

* Company name
* Company representative name
* Phone number
* Email address
	+ 1. **Questions and Requests for Clarification**

Written questions and requests for clarification regarding this OE are permitted if submitted by email to the point of contact listed in Section 4.1.

Responses to questions and requests for clarification will not be posted. However, if DSHS determines, based on a question, request for clarification, or any other factor (including, but not limited to, notices of ambiguity, conflict, or discrepancy as referenced in Section 4.5.3 below), that the OE needs to be amended or clarified, either an Addendum will be posted on the OE Opportunities webpage or the OE will be canceled. The action to be taken will be determined at the sole discretion of DSHS. Furthermore, if the OE will be canceled, DSHS will determine, in its sole discretion, if a new OE will be posted.

* + 1. **Question and Clarification Format**

Questions and requests for clarification must include the following information:

1. the OE number
2. the question or request for clarification, providing the following information:
* OE language, topic, section heading
* Section, paragraph and page number or exhibit/attachment

The requestor must provide the following contact information:

* Company name
* Company representative name
* Phone number
* Email address
	+ 1. **Ambiguity, Conflict, Discrepancy**

Applicants must notify the point of contact listed in Section 4.1 of any ambiguity, conflict, discrepancy, exclusionary specification, omission or other error in the OE. Notices must be submitted in the same manner for submitting questions.

Each Applicant submits its Application at its own risk.

If an Applicant fails to properly and timely notify the point of contact listed in Section 4.1 of any ambiguity, conflict, discrepancy, exclusionary specification, omission or other error in the OE, the Applicant, whether awarded a contract or not:

1. shall have waived any claim of error or ambiguity in the OE and any resulting contract,
2. shall not contest the interpretation by DSHS of such provision or provisions, and
3. shall not be entitled to additional compensation, relief, or time by reason of ambiguity, conflict, discrepancy, exclusionary specification, omission, or other error or its later correction.

1. **HUB SUBCONTRACTING PLAN (HSP) REQUIREMENTS**

It is the policy of HHS to promote and encourage contracting and subcontracting opportunities for State of Texas-certified Historically Underutilized Businesses (HUBs) in all contracts in compliance with [Chapter 2161 of the Texas Government Code](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2161.htm) and [Title 34, Part 1, Chapter 20, Subchapter D, Division 1 of the Texas Administrative Code](https://texreg.sos.state.tx.us/public/readtac%24ext.ViewTAC?tac_view=5&ti=34&pt=1&ch=20&sch=D&div=1&rl=Y).

Applicants who may be eligible are encouraged to become HUB certified and may access more information including the State of Texas HUB Application at the CPA website at: <https://comptroller.texas.gov/purchasing/vendor/hub/>.

HHS has determined subcontracting opportunities are not probable under this OE; therefore, a HUB Subcontracting Plan **is** **not required** **to be submitted with the Application**.

1. **CONTRACT TERM**
	1. **Term of Contract**

DSHS may award one or more Contracts under this OE.

Any Contract resulting from this OE will be effective on the signature date of the latter of the Parties to sign the agreement and will expire on August 31, 2027, unless terminated earlier pursuant to the terms and conditions of the Contract.

* 1. **Extension Option**

DSHS, at its sole option and subject to availability of funding, may extend the Contract beyond the initial term for up to one year as necessary to ensure continuity of service, to process a new OE to award a new contract or contracts, for purposes of transition, or as otherwise determined to serve the best interest of the State of Texas.

1. **MINIMUM QUALIFICATIONS**

To be eligible to apply for a Contract and receive an award, an Applicant must be eligible, qualified and meet all requirements of this OE. Applicant requirements apply with equal force to Contractors and Providers awarded contracts under this OE.

**7.1 Required Experience/Eligibility**

1. To be considered for contract award under this OE, an Applicant shall have a minimum three years’ relevant experience performing the services as outlined in this OE or similar services.
2. Institution Qualifications:
	* + Must be a Texas university.
		+ Must have a medical school.
		+ Must have a board-certified physician in a clinical specialty of medical genetics and genomics as a member of the institution faculty.
		+ Must be able to offer medical students clinical rotations as indicated in practicum goals in Section 8.2.
3. Participant Qualifications:
* Must be a medical student; or
* Have a confirmed acceptance to medical school; and
* Be scheduled to start school the semester immediately following the conclusion of the genetic internship program.
	1. **Licensure and Accreditation**

Applicant and all personnel and technicians assigned to provide services under the Contract must have all permits, licenses, and certifications required by applicable law.

Assigned personnel and technicians, who may include department directors or equivalent positions, providing services that, by law, require a professional license or certification, must hold a current, valid, and applicable Texas license and/or certification in good standing.

Contractor is responsible for ensuring all Contractor staff and subcontractors, if any, hold current, valid, and applicable licenses and/or certifications in good standing.

A copy of each license and certification listed below – both for the Applicant and all assigned personnel, as applicable -- must be submitted with your Application.

1. License: Physicians License
2. Certification: Clinical Specialty in Genetics and Genomics

Each Contractor is required to maintain all required permits, licenses, and certifications for the business during the term of the Contract. The Contractor and Contractor’s personnel and subcontractors, if any, must also maintain their individual required permits, licenses, and certifications during the term of the Contract. All required permits, licenses, and/or certifications must be included with submitted Applications. During annual contract reviews, Contractor shall provide updated licenses and/or certifications at DSHS’s request.

1. **STATEMENT OF WORK**
	1. **Project Overview**

The Newborn Screening Unit, a department within the DSHS Community Health Improvement Division and Maternal and Child Health Section, will provide funding to one or more universities to recruit and establish up to three paid practicums. The practicums are available to medical students (referred to as “participants”) to inspire work in the field specialty of medical genetics and its importance in public health. Each three-month practicum term will commence June 1st and conclude on August 31st of the same year.

* 1. **Practicum goals include exposing participants to the following**:
		1. Clinical genetics history taking and constructing of a pedigree;
		2. Elements of work-up to reach a diagnosis;
		3. Evaluation of biochemical testing, molecular testing, and micro-

 array testing;

* + 1. Genetic counseling of pregnant women with normal or abnormal screenings; and
		2. Interpretation of newborn screening results and next steps in the

 continuum of care.

* 1. **Institution and Faculty Mentor Activities and Deliverables:**
		1. Recruit interns.
		2. Provide clinical supervision, mentorship, curriculum development

and instruction to participants.

* + 1. Provide the required supplemental forms to DSHS when participants are selected, prior to practicum initiation.
		2. Provide the topic of the internship and learning objectives to DSHS when established.
		3. Travel to underserved areas to perform outreach activities and learn about clinical genetic work-ups and treatment.
			- 1. Genetics counseling of pregnant women with normal and abnormal screening.
				2. Interpretation of newborn screening results and next steps in the continuum of care.
		4. Document and prepare a genetic case study from the practicum focusing on its relevance to public health at the end of the semester.
		5. Submit the PowerPoint presentation prior to the day scheduled for the genetic internship event.
		6. Travel to the DSHS central office located in Austin, Texas to

present a genetic case study presentation. The presentation may be conducted virtually due to the COVID-19 pandemic.

* 1. **Participant activities and deliverables:**
		1. Attend and participate in clinical rotations to include:
		2. Clinical genetics history taking and constructing a pedigree.
		3. Learning the elements of work-up to reach a diagnosis.
		4. Evaluation of biochemical testing, molecular testing, and micro-array testing.
		5. Travel to underserved areas to perform outreach activities and learn about clinical genetic work-ups and treatment.
		6. Genetics counseling of pregnant women with normal and abnormal screening.
		7. Interpretation of newborn screening results and next steps in the continuum of care.
		8. Document and prepare a genetic case study from the practicum focusing on its relevance to public health at the end of the semester.
		9. Submit the PowerPoint presentation prior to the day scheduled for the genetic internship event.
		10. Travel to DSHS central office located in Austin, Texas to present the genetic case study presentation. The presentation may be conducted virtually due to the COVID-19 pandemic.
	2. **Supplemental Institution Duties and Responsibilities:**
		1. Participants are to follow the COVID-19 safety policies of the medical school and clinics that they will be visiting to perform their project responsibilities.
	3. **Performance Criteria**

DSHS will look solely to the Contractor(s) for the performance of all contractual obligations resulting from an award based on this OE.

No Contractor will be relieved of its obligations for any nonperformance by its subcontractors. Contractor must ensure that its subcontractors abide by all requirements, terms, and conditions of this Contract. Unless the context clearly indicates otherwise, every requirement and every prohibition set forth in this OE and any resulting contract that applies to a Contractor applies with equal force to its employees, agents, representatives, and subcontractors.

* 1. **Contractor Personnel Performance**
		1. Contractor shall not employ or contract with or permit the employment of unfit or unqualified persons or persons not skilled in the tasks assigned to them.
		2. The Contractor shall at all times employ sufficient personnel to carry out functions and services in the manner and time prescribed by the Contract.
		3. The Contractor shall be responsible for the acts and omissions of the Contractor’s employees, agents (including, but not limited to, lobbyists) and subcontractors and shall enforce strict discipline among the Contractor’s employees, agents (including, but not limited to, lobbyists) and subcontractors performing the services under the Contract.
		4. DSHS, at its sole discretion, may request in writing the immediate removal of any Contractor personnel or subcontractor personnel from the services being provided under the Contract. Upon such request, Contractor shall immediately remove the subject personnel and submit in writing to DSHS, within 10 calendar days of DSHS’s request for removal, confirmation of the removal and assurance of continued, compliant Contract performance.
	2. **Notice of Criminal Activity**

At the time of submission, Applicants shall provide confirmation that the Applicant, any person with ownership or controlling interest in Applicant, and Applicant’s agents, employees, subcontractors and volunteers who will be providing the required services:

* + 1. have not engaged in any activity that does or could constitute a criminal offense equal to or greater than a Class A misdemeanor or grounds for disciplinary action by a state or federal regulatory authority; and
		2. have not been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to involvement in any financial matter, federal or state program, or sex crime.

This is a continuing disclosure requirement; prior to Contract award, if any, Applicants must notify the person listed as the DSHS point of contact within five days of the date Applicant learns of actions set forth in subsections (a) and (b) above. Additionally, this is a continuing disclosure requirement for each Contractor, during the term of the Contract, to immediately report, in writing, to the DSHS contract manager when Contractor learns of or has any reason to believe it or any person with ownership or controlling interest in Contractor, or any of Contractor’s agents, employees, subcontractors or volunteers has: engaged in any activity that does or could constitute a criminal offense equal to or greater than a Class A misdemeanor or grounds for disciplinary action by a state or federal regulatory authority; or been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to the involvement in any financial matter, federal or state program, or sex crime.

Contractor shall not permit any person who engaged, or was alleged to have engaged, in any activity subject to reporting under this section to perform direct client services or have direct contact with clients, unless otherwise directed in writing by the DSHS contract manager.

Personnel with sex offender, child or adult abuse, or fraud offenses shall not be allowed to provide Contract services and shall not be allowed access to HHS Agency property, facilities, or documents.

Key personnel with misdemeanor offenses must receive prior approval by the HHS Agency before being allowed to work under this contract.

DSHS, at its sole discretion, may terminate any Contract if Contractor, its agents, employees, subcontractors, or volunteers are arrested, indicted, or convicted of any criminal activity.

* 1. **Notice of Insolvency or Indebtedness**

At the time of submission, Applicants shall provide with the Application detailed written descriptions of any insolvency, incapacity, and outstanding unpaid obligations of Applicant owed to the Internal Revenue Service (IRS) or the State of Texas, or any agency or political subdivision of the State of Texas. This is a continuing disclosure requirement; prior to Contract award, if any, Applicants must notify the person listed as the DSHS point of contact within five days of the date Applicant learns of such financial circumstances after submission of the Application. Additionally, Contractors are under a continuing obligation to notify the DSHS contract manager, as applicable, within five days of the date Contractor learns of such financial circumstances after Contract award.

* 1. **Invoice Requirements and Payment**
		1. **Invoice Requirements**

Contractor shall submit to DSHS detailed and accurate invoice(s) which include the information below. Each invoice must be submitted by email, in the format prescribed by DSHS, not later than 30 calendar days after completion of each milestone.

The email addresses for submitting an invoice are: Invoices@dshs.texas.gov and CMSInvoices@dshs.texas.gov

The invoice shall include, at a minimum:

1. Contractor’s name;
2. Remit to address;
3. Federal ID or Texas CPA Payee ID;
4. Accounts receivable telephone number;
5. Contract and/or Purchase Order number;
6. Identification of services provided;
7. Service date(s); and
8. Travel expenses for reimbursement.

Receipts for travel expenses must be submitted with the invoice for reimbursement as outlined in Section 7.6.3.

No payment will be made under this Contract without submission of detailed, accurate invoices submitted as outlined.

* + 1. **Payment**

Contracts issued under this OE will be paid using fixed cost. Participant will submit signed time sheets to the University office designated by institution program. The designated institution office will remit monthly.

Institution shall submit a monthly invoice with approved/signed time sheets and travel receipts to the DSHS address designated below for approved Participant work in addition to the administrative fees.

Participant billable hours and travel expenses must be approved by the faculty mentor, as evidenced by his or her signature on an approved time sheet.

All travel expenses will be invoiced and reimbursed under this agreement with appropriate receipts and/or expense report for itemized travel costs. Institution to submit travel receipts to DSHS, with the invoice, and supporting documentation at the end of the term.

* + 1. **Supplemental HHS Duties and Responsibilities**

 **Payment/Billing Terms**

There will be a three-month practicum term each summer that the Contract is in effect. Compensation for each practicum term will be as follows:

Practicum Term: June 1 - August 31

Participants: Up to 3

Intern Stipend per Participant: $25 per hour, not to exceed $8,000 per term.

Number of Hours per Participant: 40 hours per week; not to exceed 320 hours (8 weeks total). Hours must be completed by **August 31.**

Mentors: Up to 3

Faculty Mentor Compensation\* $2,000.00 per participant; not to exceed $6,000.00 per term

Travel\*\* $4,825.00 for total travel expenses of faculty mentors and participants

Administrative Rate\*\*\* 3.25%; not to exceed $1,175.00

Total Payments: Up to $36,000.00 for the term

Faculty Mentor Compensation\*: Institution will pay up to three faculty mentors $2,000.00 per Participant to develop curriculum, provide instruction, clinical supervision and mentorship for up to three Participants totaling an amount not to exceed $6,000.00.

Travel\*\*: Reimbursement will be provided for up to three mentors and up to three participants for approved travel related expenses totaling an amount of $1,206.25 for each person not to exceed $4,825.00 during the practicum. Travel expenses may include gas, mileage, airfare, overnight hotel stay, meals and other allowable travel expenses for participant/mentor activities outlined in the Payment/Billing Terms. COVID 19 restrictions may affect these terms.

Administrative Rate\*\*\*: University or University Program will bill a 3.25% fee for administrative services related to processing payment of DSHS funds for University to reimburse the Participants and mentors for approved hours work and travel expenses. Administrative fees will not exceed $1,175.00 over the course of the practicum term.

Total Compensation: The maximum amount billable to DSHS is $36,000.00, including the aforementioned 3.25% administrative fee, a maximum of $8,000.00 for participant compensation (320 participant work hours billed at $25 per hour), up to $6,000.00 for faculty mentor compensation, and approved travel expenses totaling no more than $4,825.00 for up to three mentors and up to three participants.

**Table 1: Project Milestones and Payment Amounts**

The Contractor must complete the following milestones for each three-month Practicum Term.

|  |  |  |
| --- | --- | --- |
| Milestone | Evidenced By |  |
| **Milestone #1 –**   | Institution’s attendance to DSHS kick off meeting.  |   |
| **Milestone #2 –**    | Travel to underserved areas to perform outreach activities and learn about clinical genetic work-ups and treatment.  |   |
| **Milestone #3 -** First Invoice due at the end of week four. | Attend and participate in clinical rotations. Development of Participant learning objectives and project plan for Practicum. DSHS Receipt of University’s detailed invoice, B13 voucher, and Participants time sheet for the month. |   |
| **Milestone #4 –**  | DSHS receipt of Participant’s Abstract and Presentation.  |   |
| **Milestone #5 –** | University Mentor and Participant(s) attendance at DSHS Genetic Internship Presentation Meeting.  |   |
| **Milestone #6**End of Term (Final Invoice Due within 30 days of August 31) | DSHS Receipt of University’s final detailed invoice, B13 voucher, and Participants time sheet for the month(s).  |  |
| **Total Contract Amount** | **$36,000** |

* 1. **Privacy, Security and Breach Notification**

By submitting an Application and, if applicable, signing a contract resulting from this OE, Applicant agrees to comply with the following HHS Privacy, Security and Breach Notification Terms:

**8.11.1 Definitions**

“Breach” means the acquisition, access, use, or disclosure of Confidential Information in an unauthorized manner which compromises the security or privacy of the Confidential Information.

“DSHS 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 the Contractor electronically or through any other means that consists of or includes any or all of the following:

(a) Protected Health Information in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information (as these terms are defined in 45 C.F.R. §160.103);

(b) Sensitive Personal Information defined by Texas Business and Commerce Code Chapter 521;

(c) Federal Tax Information (as defined in Internal Revenue Service Publication 1075);

(d) Personal Identifying Information (as defined in Texas Business and Commerce Code Chapter 521);

(e) Social Security Administration Data (defined as information received from a Social Security Administration federal agency system of records), including, without limitation, Medicare or Medicaid information (defined as information relating to an applicant or recipient of Medicare or Medicaid benefits);

(f) Substance Use Disorder Treatment Records (as defined in 42 C.F.R. Part 2).

(g) Education Records (as defined in the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99)

(h) 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.

* + 1. **DSHS Confidential Information**

Any DSHS Confidential Information received by the Contractor under this Contract may be disclosed only in accordance with applicable law and as authorized in this Contract. By signing this Contract, the Contractor certifies that the Contractor is, and intends to remain for the term of this Contract, in compliance with all applicable state and federal laws and regulations with respect to privacy, security, and breach notification, including without limitation the following:

1. Title 5 United States Code (USC) Part I, Chapter 5, Subchapter II, Section552a, Records Maintained on Individuals, The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988;

(b) Title 26 USC, Internal Revenue Code;

(c) Title 42 USC Chapter 7, Subchapter XI, Part C, Administrative Simplification, the relevant portions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Pub Law 111-5, Title XIII, the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of 2009;

(d) Title 42 USC Chapter 7, the relevant portions of the Social Security Act;

(e) Title 42 USC Chapter I, Subchapter A, Part 2, Confidentiality of Substance Use Disorder Patient Records;

(f) Title 45 Code of Federal Regulations (CFR) Chapter A, Subchapter C, Part 160, General Administrative Requirements

(g) Title 45 CFR Chapter A Subchapter C, Parts 160, 162 and 164, Security and Privacy;

(h) Title 45 CFR Subtitle A, Subchapter D, Parts 170 (Health Information Technology Standards) and 171 (Information Blocking);

(i) 20 U.S.C. § 1232g; 34 CFR Part 99, Family Educational Rights and Privacy Act (FERPA);

(j) Internal Revenue Service Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies, Safeguards for Protecting Federal Tax Returns and Return Information;

(k) Office of Management and Budget Memorandum 17-12, Preparing for and Responding to a Breach of Personally Identifiable Information;

(l) Texas Business and Commerce Code Title 11, Subtitle B, Chapter 521 Unauthorized Use of Identifying Information;

(m) Texas Government Code, Title, 5, Subtitle A, Chapter 552, Public Information, as applicable;

(n) Texas Health and Safety Code, Title 2, Subtitle D, Chapter 81, Communicable Diseases, Public Health Disasters and Emergencies;

(o) Texas Health and Safety Code, Title 2, Subchapter H, Chapter 161, Public Health Provisions, Subchapter A, Immunizations;

(p) Texas Health and Safety Code Title 2, Subtitle I, Chapter 181, Medical Records Privacy;

(q) Texas Health and Safety Code Title 7, Subtitle E, Chapter 611, Mental Health Records;

(r) Texas Human Resources Code, Title 2, Subtitle A, Chapter 12, Section 12.003, Disclosure of Information Prohibited;

(s) Texas Occupations Code, Title 3, Health Professions, as applicable;

(t) Constitutional and common law privacy; and

(u) Any other applicable law controlling the release of information created or obtained in the course of providing the services described in this Contract.

The Contractor further certifies that the Contractor will comply with all amendments, regulations, and guidance relating to those laws, to the extent applicable.

**8.11.3 Cybersecurity Training**

All of Contractor’s authorized users, workforce and subcontractors with access to a state computer system or database will complete a cybersecurity training program certified under Texas Government Code, Title 10, Subtitle B, Chapter 2054, Section 2054.5192, Cybersecurity Training Required: Certain State Contractors, by the Texas Department of Information Resources.

**8.11.4 Business Associate Agreement**

Contractor will ensure that any subcontractor of Contractor who has access to DSHS Confidential Information will sign a HIPAA-compliant Business Associate Agreement with Contractor, and Contractor will submit a copy of that Business Associate Agreement to DSHS upon request.

**8.11.5 Contractor's Incident Notice, Reporting and Mitigation**

The Contractor’s obligation begins at discovery of any unauthorized disclosure of Confidential Information or any privacy or security incident that may compromise Confidential Information. “Incident” is defined as an attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. The Contractor’s obligation continues until all effects of the Incident are resolved to DSHS’s satisfaction, hereafter referred to as the "Incident Response Period".

**8.11.6 Notification to DSHS.**

(a) The Contractor must notify DSHS within the timeframes set forth in Section (c) below.

(b) The Contractor must require that its subcontractors and contractors take the necessary steps to assure that the Contractor can comply with all of the following Incident notice requirements.

(c) Incident Notice:

1. Initial Notice.

Within twenty-four (24) hours of discovery, or in a timeframe otherwise approved by DSHS in writing, the Contractor must preliminarily report on the occurrence of an Incident to the DSHS Privacy and Security Officers via email at: privacy@DSHS.state.tx.us and infosecurity@DSHS.state.tx.us.

This initial notice must, at a minimum, contain:

(i) all information reasonably available to Contractor about the Incident, (ii) confirmation that the Contractor has met any applicable federal Breach notification requirements, and (iii) a single point of contact for the Contractor for DSHS communications both during and outside of business hours during the Incident Response Period.

2. Formal Notice.

No later than three (3) Business Days after discovery of an Incident, or when the Contractor should have reasonably discovered the Incident, the Contractor must provide written formal notification to DSHS using the Potential Privacy/Security Incident Form which is available on the DSHS website at https://DSHSonnection.DSHS.texas.gov/rights-responsibilities/office-chief-counsel/privacy. The formal notification must include all available information about the Incident, and the Contractor's investigation of the Incident.

**8.11.7 Contractor Investigation, Response, and Mitigation.**

The Contractor must fully investigate and mitigate, to the extent practicable and as soon as possible or as indicated below, any Incident. At a minimum, the Contractor will:

(a) Immediately commence a full and complete investigation;

(b) Cooperate fully with DSHS in its response to the Incident;

(c) Complete or participate in an initial risk assessment;

(d) Provide a final risk assessment;

(e) Submit proposed corrective actions to DSHS for review and approval;

(f) Commit necessary and appropriate staff and resources to expeditiously respond;

(g) Report to DSHS as required by DSHS and all applicable federal and state laws for Incident response purposes and for purposes of DSHS’s compliance with report and notification requirements, to the satisfaction of DSHS;

(h) Fully cooperate with DSHS to respond to inquiries and/or proceedings by federal and state authorities about the Incident;

(i) Fully cooperate with DSHS’s efforts to seek appropriate injunctive relief or to otherwise prevent or curtail such Incidents;

(j) Recover, or assure destruction of, any Confidential Information impermissibly disclosed during or as a result of the Incident; and

(k) Provide DSHS with a final report on the Incident explaining the Incident’s resolution.

**8.11.8 Breach Notification to Individuals and Reporting to Authorities.**

(a) In addition to the notices required in this section, the Contractor must comply with all applicable legal and regulatory requirements in the time, manner, and content of any notification to individuals, regulators, or third-parties, or any notice required by other state or federal authorities, including without limitation, notifications required in Title 45 CFR Chapter A, Subchapter C Part 164, Subpart D Notification in the Case of Breach of Unsecured Protected Health Information and Texas Business and Commerce Code, Title 11, Subtitle B, Chapter 521, Section 521.053(b), Notification Required Following Breach of Security of Computerized Data, or as specified by DSHS following an Incident.

(b) The Contractor must assure that the time, manner, and content of any Breach notification required by this section meets all federal and state regulatory requirements.

(c) Breach notice letters must be in the Contractor's name and on the Contractor's letterhead and must contain contact information to obtain additional information, including the name and title of the Contractor's representative, an email address, and a toll-free telephone number.

(d) The Contractor must provide DSHS with copies of all distributed communications related to the Breach notification at the same time the Contractor distributes the communications.

(e) The Contractor must demonstrate to the satisfaction of DSHS that any Breach notification required by applicable law was timely made. If there are delays outside of the Contractor's control, the Contractor must provide written documentation to DSHS of the reasons for the delay.

* 1. **Terms and Conditions**

Submission of an Application in response to this OE constitutes acceptance of all Terms and Conditions attached to, referenced, or set forth in the OE. Applicant shall not submit additional or different terms and conditions.

Any term, condition, or other part of an Applicant’s submitted application that has been rejected by DSHS, that is not accepted in writing by DSHS, or that conflicts with applicable law, this OE, any resulting Contract, or applicable terms and conditions will not constitute part of the Contract.

* 1. **Standards of Conduct for Vendors**

Pursuant to 1 TAC 391.405(a), contractors, respondents, and vendors interested in working with HHS are required to implement standards of conduct to apply to all matters involving, or related to, those solicitations and contract(s) between themselves and HHS. These standards must adhere to ethics requirements adopted in rule, in addition to any ethics policy, or code of ethics approved by the HHSC Executive Commissioner and must be at least as restrictive as those applicable to HHS personnel in the applicable ethics law and policy provisions.

The standards of conduct must include the ten standards of ethical conduct set forth in Section I of the HHS Ethics Policy and requirements to comply with ethical standards set forth in federal and state law (including, but not limited to, 1 TAC Chapter 391, Subchapter D).

The standards of conduct, together with the responsibilities and restrictions incorporated herein, also apply to subcontractors of contractors, respondents and vendors.

Standards of conduct of any contractor, respondent or vendor may be reviewed and/or audited by the State Auditor and HHSC. Additionally, pursuant to 1 TAC 391.405(a), HHS may examine a respondent’s standards of conduct in the evaluation of a bid, offer, proposal, quote, or other applicable expression of interest in a proposed purchase of goods or services.

Any vendor or contractor that violates a provision of 1 TAC Chapter 391, Subchapter D may be barred from receiving future contracts or have an existing contract canceled. Additionally, HHSC may report the vendor's actions to the Comptroller of Public Accounts for statewide debarment, or law enforcement.

1. **DSHS CONTRACT ADMINISTRATION**

DSHS will designate a Contract Manager and provide the manager’s contact information to the Contractor.

After award of any Contract resulting from this OE, all communications related to the Contract will be processed through the designated Contract Manager. Additional requirements apply to legal notices which must be provided to the HHS Chief Counsel as well as the Contract Manager.

1. **CONFIDENTIAL OR PROPRIETARY INFORMATION**
	1. **Public Information Act**

**Applicant Requirements Regarding Disclosure**

Applications and contracts are subject to the Texas Public Information Act (PIA), Texas Government Code [Chapter 552](http://www.statutes.legis.state.tx.us/DocViewer.aspx?K2DocKey=odbc%3a%2f%2fTCAS%2fASUPUBLIC.dbo.vwTCAS%2fGV%2fS%2fGV.552%40TCAS2&QueryText=552&HighlightType=1), and may be disclosed to the public upon request. Other legal authority also requires HHSC to post certain contracts and Applications on HHSC’s website and to provide such information to the Legislative Budget Board for posting on its website.

Under the PIA, certain information is protected from public release. If Applicant asserts that information provided in its Application is exempt from disclosure under the PIA, Applicant must:

1. **Mark Original Application:**
2. Mark the original Application, on the top of the front page, the words “CONTAINS CONFIDENTIAL INFORMATION” in large, bold, capitalized letters (the size of, or equivalent to, 12-point Times New Roman font or larger); and
3. Identify, adjacent to each portion of the Application that Applicant claims

is exempt from public disclosure, the claimed exemption from disclosure (NOTE: no redactions are to be made in the original Application);

1. **Certify in Original Application - HHS Solicitation Affirmations (attached as Exhibit A to this OE):** certify, in the designated section of the HHS Solicitation Affirmations, Applicant’s confidential information assertion and the filing of its Public Information Act Copy; and
2. **Submit Public Information Act Copy of Application:**  submit a separate “Public Information Act Copy” of the original Application (in addition to the original and all copies otherwise required under the provisions of this OE). The Public Information Act Copy must meet the following requirements:
3. The copy must be clearly marked as "Public Information Act Copy" on the front page in large, bold, capitalized letters (the size of, or equivalent to, 12-point Times New Roman font or larger);
4. Each portion Applicant claims is exempt from public disclosure must be redacted; and
5. Applicant must identify, adjacent to each redaction, the claimed exemption from disclosure. Each identification provided as required in subsection (c) of this section must be identical to those set forth in the original Application as required in section a.(2), above. The only difference in required markings and information between the original Application and the “Public Information Act Copy” of the Application will be redactions - which can only be included in the “Public Information Act Copy.” There must be no redactions in the original Application.

**By submitting an Application to this OE, Applicant agrees that, if Applicant does not mark the original Application, provide the required certification in the HHS Solicitation Affirmations, and submit the Public Information Act Copy, Applicant’s Application will be considered to be public information that may be released to the public in any manner including, but not limited to, in accordance with the Public Information Act, posted on HHSC’s and/or DSHS’s public website, and posted on the Legislative Budget Board’s website.**

**If Applicants submit partial, but not complete, information suggesting inclusion of confidential information and failure to comply with the requirements set forth in this section, DSHS, in its sole discretion, reserves the right to (1) disqualify all Applicants that fail to fully comply with the requirements set forth in this section, or (2) to offer all Applicants that fail to fully comply with the requirements set forth in this section additional time to comply.**

Applicant should not submit a Public Information Act Copy indicating that the entire Application is exempt from disclosure. Merely making a blanket claim that the entire Application is protected from disclosure because it contains any amount of confidential, proprietary, trade secret, or privileged information is not acceptable, and may make the entire Application subject to release under the PIA.

Applications should not be marked or asserted as copyrighted material. If Applicant asserts a copyright to any portion of its Application, by submitting an Application, Applicant agrees to reproduction and posting on public websites by the State of Texas, including HHSC and all other state agencies, without cost or liability.

DSHS will strictly adhere to the requirements of the PIA regarding the disclosure of public information. As a result, by participating in this OE process, Applicant acknowledges that all information, documentation, and other materials submitted in the Application in response to this OE may be subject to public disclosure under the PIA. HHSC does not have authority to agree that any information submitted will not be subject to disclosure. Disclosure is governed by the PIA and by rulings of the Office of the Texas Attorney General. Applicants are advised to consult with their legal counsel concerning disclosure issues resulting from this process and to take precautions to safeguard trade secrets and proprietary or otherwise confidential information .DSHS assumes no obligation or responsibility relating to the disclosure or nondisclosure of information submitted by Applicants.

For more information concerning the types of information that may be withheld under the PIA or questions about the PIA, refer to the *Public Information Act Handbook* published by the Office of the Texas Attorney General, or contact the attorney general’s Open Government Hotline at (512) 478-OPEN (6736) or toll-free at (877) 673-6839 (877-OPEN TEX). The *Public Information Act Handbook* may be accessed at:

<https://www.texasattorneygeneral.gov/open-government/members-public>

* 1. **Applicant Waiver – Intellectual Property**

**Submission of any document to any HHS agency in response to this OE constitutes an irrevocable waiver, and agreement by the submitting party to fully indemnify the State of Texas, DSHS from any claim of infringement by DSHS regarding the intellectual property rights of the submitting party or any third party for any materials submitted to HHS by the submitting party.**

1. **BINDING OFFER**

All Applications should be responsive to the OE as issued or amended through written and posted Addenda, not with any assumption that DSHS will negotiate any or all terms, conditions, or provisions of the OE. Furthermore, all Applications constitute binding offers. **Any Application that includes any type of disclaimer or other statement indicating that the Application submitted in response to this OE does not constitute a binding offer may be disqualified.**

1. **required application documents**

|  |
| --- |
| **Documentation Required for Submission** **All documentation listed must be returned for a complete Application. Provide the documentation in the same sequence as outlined below by using the Item number(s) and title(s) as necessary.**  |
| 1. **Exhibit A – HHS Solicitation Affirmations**

Must be completed and signed. **Important Note: Applications received without the signed Exhibit A will be disqualified.**  |
| 1. **OE Addenda, if applicable - signed**
 |
| 1. **Exhibit B – Federal Assurances and Certification**

 Completed and signed |
| 1. **Privacy, Security and Breach Notification**
 |
| 1. **Minimum Qualifications – Reference Section #8**

**Required Experience:**Provide documentation of demonstrated experience to confirm the Applicant meets the minimum requirements. This applies to the Applicant’s business, Subcontractor(s) and both Applicant’s and Subcontractor’s personnel. **Licensure or Accreditation**Provide current copies of all required Licensure and Accreditation for the Applicant and Applicant’s personnel as applicable**.**  |
| 1. **Organizational Chart and Key Personnel**

Applicant must provide an organizational chart for the key staff members who will be responsible for the performance of the services requested under this OE. Include profiles and resumes for all staff. The profiles and/or resumes shall include the first, middle name or initial and last names for all key staff.  |
| 1. **Executive Summary**
* **Statement of Work – Section #8**

Provide the Applicant’s approach to meeting the requirements of the Statement of Work including any other requirements of this OE. * **Applicant Business Structure or Company Type:**

Provide the entity type (e.g., Private, Non-Profit, State Agency, Local Government, etc.). If Corporation, provide State of Incorporation and filing number.  Applicant shall provide information required pursuant to the HHS Solicitation Affirmations (Exhibit A), paragraph 36. * **Former Employees of a Texas State Agency:**

Applicant must provide the following information regarding individuals that formerly worked for any Texas state agency and now work for Applicant or any of Applicant’s subcontractors:NameAddressPhone NumberState agency for which previously workedDates of employment for each identified state agencyAny additional information requested by HHS regarding identified individuals must be provided by Applicant. |
| 1. **Notice of Criminal Activity – Reference Section #8.8**

Provide confirmation that the Applicant, any person with ownership or controlling interest, their agent, employee, subcontractor or volunteer who will be providing the required services are not: 1. Engaged in any activity that could constitute a criminal offense equal to or greater than a Class A misdemeanor or grounds for disciplinary action by a state or federal regulatory authority; or
2. Been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to involvement in any financial matter, federal or state program, or sex crime.
 |
| 1. **Notice of Insolvency or Indebtedness – Reference Section #8.9**

Provide with the Application detailed written descriptions of any insolvency, incapacity, and outstanding unpaid obligations of Applicant owed to the Internal Revenue Service (IRS) or the State of Texas, or any agency or political subdivision of the State of Texas. |
| 1. **Applicant Contact Information**

Titles of personnel for contact information: * Person Authorized to Sign Contract
* Primary Contact for Questions Regarding Application
* Financial Officer
* Accounts Payable
* Primary Contact for Contract Management
* Alternate Contact for Contract Management

Provide this information for each contact listed above: * Name and Title
* Mailing Address
* Phone Number
* Email Address
 |
| 1. **Public Information Act Copy of Application, if applicable**
 |

1. **Application SUBMISSION requirements**

The Application must be submitted in accordance with this section and Section 13.

The complete Application must be submitted to:

 Contract Management Section

Email:DSHS.NBSExchange.Open.Enrollment@dshs.texas.gov

Each Applicant is solely responsible for ensuring its Application is submitted in

accordance with all OE requirements and ensuring timely receipt by DSHS.

**In no event will DSHS** **be responsible or liable for any delay or error in**

**submission or delivery.**

The Application must be submitted by email.

* 1. **Email Submission**

Each Applicant is solely responsible for ensuring its Application is submitted in accordance with all OE requirements, including, but not limited to, the Section 13, Required Application Documents and ensuring timely email receipt by DSHS.

The Application, including all documentation outlined in Section 13, must be sent in its entirety in one or more emails.

**In no event will DSHS be responsible or liable for any delay or error in delivery. Applications must be RECEIVED by DSHS before the OE period closes as identified in Schedule of Events, Section 1, or subsequent Addenda.**

The email subject line should contain the OE number, title as indicated on the cover page and number of emails if more than one (e.g., Email 1 of #, etc.). The Applicant is solely responsible for ensuring that Applicant’s complete electronic Application is sent to, and actually RECEIVED by DSHS at the proper destination server before the submission deadline.

**IMPORTANT NOTE:** DSHS recommends a 10MB limit on each attachment. This may require Applicants to send multiple emails to DSHS at DSHS.NBSExchange.Open.Enrollment@dshs.texas.gov to ensure all documentation contained in an Application is received.

All documents should be submitted in Microsoft office® formats (Word® and Excel®, as applicable) or in a form that may be read by Microsoft office® software. Any documents with signatures shall be submitted as an Adobe® portable document format (pdf) file. DSHS is not responsible for documents that cannot be read or converted. Unreadable applications may be, in DSHS sole discretion, rejected as nonresponsive.

Please be aware Internet Service Providers may limit file sizes on outgoing emails; therefore, it is recommended Applications not contain graphics, pictures, letterheads, etc., which consume a lot of space. These typically include \*.tif/\*.tiff, \*.gif, & \*.bmp file extensions, but may use others, as well. DSHS firewall virus protection runs at all times, so during times of new active virus alerts, incoming traffic may be delayed while virus software scans emails with attachments. DSHS takes no responsibility for emailed Applications that are captured, blocked, filtered, quarantined or otherwise prevented from reaching the proper destination server by any DSHS anti-virus or other security software.

Applicants may email the Point of Contact, Section 4.1 to request confirmation of receipt.

* 1. **Receipt of Application**

All Applications become the property of DSHS upon receipt and will not be returned to Applicants.

DSHS will NOT be held responsible for any Application that is mishandled by the Applicant, any Applicant’s delivery or mail service or for Applications sent by email that are captured, blocked, filtered, quarantined or otherwise prevented from reaching the proper destination server by any DSHS anti-virus or other security software.

Applications received after the OE Period closes will not be considered.

1. **SCREENING OF APPLICATIONS**

Neither issuance of this OE nor retention of Applications constitutes a commitment on the part of DSHS to award a Contract. DSHS maintains the right to reject any or all Applications and to cancel this OE if DSHS, in its sole discretion, considers it to be in the best interests of DSHS to do so.

Submission and retention of Applications by DSHS confers no legal rights upon any Applicant.

DSHS reserves the right to select qualified Applicants to this OE with or without discussion of the Applications with Applicants. It is understood by Applicant that all Applications, contracts, and related documents are subject to the Texas Public Information Act.

* 1. **Initial Screening of Applications**

An initial screening of Applications will be conducted by DSHS to determine which Applications are deemed to be responsive and qualified for further consideration for award. This screening includes a review to determine that each Applicant meets the minimum requirements, qualifications and each Application includes all required documentation.

DSHSD reserves the right to:

1. Ask questions or request clarification from any Applicant at any time during the OE and screening process, and
2. Conduct studies and other investigations as necessary to evaluate any Application.

**Informalities:**

DSHS reserves the right to waive minor informalities in an Application. A "minor informality" is an omission or error that, in DSHS determination if waived or modified when screening Applications, would not give an Applicant an unfair advantage over other Applicants or result in a material change in the Application or OE requirements.

DSHS, at its sole discretion, may give an Applicant the opportunity to submit missing information or make corrections. The missing information or corrections must be submitted to the point of contact email address in Section 4.1 by the deadline set by DSHS. Failure to respond before the deadline may result in DSHS’ rejecting the Application and the Applicant not being considered for award.

Note: Any disqualifying factor set forth in this OE does not constitute an informality (e.g., Exhibit A, HHS Solicitation Affirmations, which must be signed and submitted with the Application).

* 1. **Verification of Past Vendor Performance**

DSHS reserves the right to conduct studies and other investigations as necessary to evaluate any Application. By submitting an Application, the Applicant generally releases from liability and waives all claims against any party providing information about the Applicant at the request of DSHS.

Applicants may be rejected as a result of unsatisfactory past performance under any contract(s) as reflected in vendor performance reports, reference checks, or other sources.

An Applicant’s past performance may be considered in the initial screening process and prior to making an award determination.

Reasons for which an Applicant may be denied a contract include but are not limited to: Applicant has an unfavorable report or grade on the CPA Vendor Performance Tracking System (VPTS).

VPTS may be accessed at:

<https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/>

OR,

1. Applicant is currently under a corrective action plan through DSHS, OR,
2. Applicant has had repeated, negative vendor performance reports for the same reason, OR,
3. Applicant has a record of repeated non-responsiveness to vendor performance issues, OR,
4. Applicant has contracts or purchase orders that have been cancelled in the previous 12 months for non-performance or sub-standard performance.

In addition, DSHS may examine other sources of vendor performance which may include information provided by any governmental entity, whether an agency or political subdivision of the State of Texas, another state, or the Federal government.

The performance information may include, but is not limited to:

* Notices of termination,
* Cure notices,
* Assessments of liquidated damages,
* Litigation,
* Audit reports, and
* Non-renewals of contracts.

Further, DSHS, at its sole discretion**,** may initiate investigations or examinations of vendor performance based upon media reports. Any negative findings, as determined by DSHS in its sole discretion**,** may result in DSHS removing the Applicant from further consideration for award.

1. **AWARD PROCESS**
	1. **Contract Award and Execution**

DSHS, at its sole discretion, reserves the right to cancel this OE at any time or decline to award any contracts as a result of this OE.

DSHS intends to award one or more contracts as a result of this OE.

All awards are contingent upon approval of the HHSC Executive Commissioner or the HHSC Executive Commissioner’s designee.

* 1. **Compliance for Participation in State Contracts**
		1. **Required Pre-Award Verifications**

In addition to the initial screening process, the following verification checks are required to be conducted for each Applicant to determine compliance for participating in State contracts.

The Applicant’s Legal Name and, if applicable, Assumed Business Name (D.B.A.) will be used to conduct these checks.

Applicants found to be barred, prohibited, or otherwise excluded from contract award will be disqualified from further consideration.

1. **State of Texas Debarment**

Must not be debarred from doing business with the State of Texas through the Comptroller of Public Accounts (CPA): <https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/debarred-vendors.php>

1. **System of Award Management (SAM) Exclusions List - Federal**

Must not be excluded from contract participation at the federal level. This verification is conducted through SAM, official website of the U.S. Government which may be accessed at this link: <https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf>

Note: If the link does not work, copy/paste the link into browser bar.

1. **Divestment Statute Lists**

Must not be listed on the Divestment Statute Lists provided by CPA which may be accessed at: <https://comptroller.texas.gov/purchasing/publications/divestment.php>

1. Companies that boycott Israel;
2. Scrutinized Companies with Ties to Sudan;
3. Scrutinized Companies with Ties to Iran;
4. Designated Foreign Terrorist Organizations; and
5. Scrutinized Companies with Ties to Foreign Terrorist Organizations.
	* 1. **Additional Required Pre-Award Verifications**

After the checks performed in Section 16.2.1, the following verifications will be conducted for each Applicant. The verifications will be based on the legal name and, if applicable, the Assumed Business Name (D.B.A.), and/or the Secretary of State (SOS) charter number, the Federal ID or Texas Payee ID numbers, or the CPA Franchise Tax number provided, as applicable, on Exhibit A, HHS Solicitation Affirmations.

The results of the checks below will be used to further consider an Applicant for award and may result in disqualification.

1. **Texas Franchise Tax Status**

The Texas franchise tax is a privilege tax imposed on each taxable entity formed or organized in Texas or doing business in Texas. Although not all entities are required to file or pay franchise taxes, DSHS will process a search of the Applicant through the CPA Franchise Tax system to verify the Applicant is in good standing.

Franchise tax checks may reveal as to applicable entities (1) debts or delinquencies owed to the state (implicating contracting limitations) and (2) forfeiture of the right to transact business in Texas.

1. **Texas Warrant Hold Status**

The check for warrant holds through the CPA is required to determine if an Applicant is on hold for any reason. [Texas Government Code Section 2252.903](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2252.htm#2252.903) requires agencies to verify the warrant hold status no earlier than the seventh day before and no later than the day of contract execution for transactions involving a written contract. In accordance with Section 3.3 of Exhibit B, Uniform Terms and Conditions, payments under any contract resulting from this OE will be applied directly toward eliminating the Applicant’s debt or delinquency regardless of when it arises.

1. **disclosure of interested parties**

Subject to certain specified exceptions, Section 2252.908 of the Tex. Gov’t Code Ann., Disclosure of Interested Parties, applies to a contract of a state agency that has a value of at least $1 million or that is for services that would require a person to register as a lobbyist under Chapter 305 or that requires an action or vote by the governing body of the agency before the contract may be signed. One of the requirements of Section 2252.908 is that a business entity (defined as “any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation”) must submit a Form 1295, Certificate of Interested Parties, to the state agency at the time the business entity submits the signed contract to the agency.

Applicant represents and warrants that, if selected for award of a contract as a result of this OE, Applicant will submit to DSHS, if applicable, a Certificate of Interested Parties at the time Applicant submits the signed contract. Form 1295 involves an electronic process through the Texas Ethics Commission (TEC).

Information regarding the on-line process for completing Form 1295 is available on the Texas Ethics Commission’s website: <https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm>

For further information:

Reference Section 2252.908 of the Texas Government Code which can be accessed at: <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2252.htm#2252.908>

Title 1, Chapter 46, Disclosure of Interested Parties of the Texas Administrative Code which can be accessed at: [https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac\_view=4&ti=1&pt=2&ch=46&rl=Y](https://texreg.sos.state.tx.us/public/readtac%24ext.ViewTAC?tac_view=4&ti=1&pt=2&ch=46&rl=Y)

If the potential awardee does not timely submit a completed, certified and signed TEC Form 1295 to DSHS, DSHS is prohibited by law from executing a contract, even if the potential awardee is otherwise eligible for award.