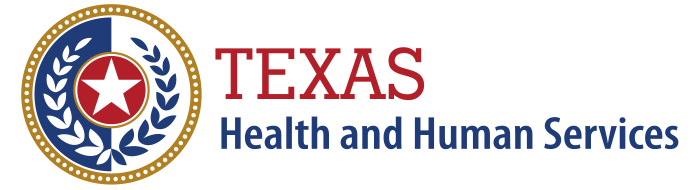
Guardianship Services

Procurement Number: HHS0013139



**TEXAS HEALTH AND HUMAN SERVICES COMMISSION**

**Cecile Erwin Young, Executive Commissioner**

**OPEN ENROLLMENT (OE)**

**for**

**GUARDIANSHIP SERVICES**

**Enrollment Number: HHS0013139**

**Enrollment Period Opens: January 18, 2023**

**Enrollment Period Ends: March 31, 2023**

**NGIP Codes:**

**952-15-Human Services**

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1. **SCHEDULE OF EVENTS**

|  |  |
| --- | --- |
| **Enrollment Period Opens**  **(Posted to HHS OE Opportunities webpage)** | **January 18, 2023** |
| **Enrollment Period Closes**  **(Final date for RECEIPT of Applications)** | **March 31, 2023** |
| **Anticipated Contract Start Date** | **The effective date of a Contract, if any, awarded to an Applicant will be determined at the sole discretion of HHSC.** |

Applications must be **received** by HHSC 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. HHSC is not responsible for lost, misdirected or late applications.

The dates in the Schedule of Events are tentative. HHSC 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Applications may be withdrawn from consideration or amended at any time prior to the “Enrollment Period Closes” date by emailing a request to the Point of Contact, Section 4. The e-mail 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 HHSC. HHSC is not responsible for lost, misdirected or late emails.

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

The Texas Health and Human Services Commission (HHSC) is an agency within the Texas Health and Human Services (HHS) system.

HHSC is seeking Applications to establish Contract(s) for guardianship services for aged and disabled individuals.

The purpose of the HHSC Office of Guardianship Services (“HHSC-OGS”) program is to provide Guardianship Services for aged and disabled individuals who are appropriate for and in need of HHSC guardianship services; having no less restrictive alternative or supports and services available and feasible to avoid guardianship; having no qualified alternate guardian; for whom guardianship provides an effective remedy to abuse, neglect or exploitation or effectively meets the individual’s needs; having private assets to meet expenses or government benefits sufficient to provide support; and who have been found incapacitated by a court of law.

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**

|  |
| --- |
| a. Texas Human Resources Code, §161.103 gives the Department of Aging Disability Services (“DADS”) the authority to contract with an agency or a political subdivision of the state for the provision of guardianship services.  b. To the extent funds are appropriated by the legislature or made available by DADS, the DADS Guardianship Services Program contracts with one or more contractors to file an application with the probate courts and to serve as guardian of the person or guardian of the estate or both. The contractor must be able and willing to serve as guardian at a cost equal to or less than the cost of providing comparable guardianship services by the DADS Guardianship Services Program.  c. To be eligible for guardianship services through a contractor, an individual must be eligible to be a ward of the DADS Guardianship Services Program.  d. Funding from DADS guardianship contracts is intended to offset the contractor's cost of providing guardianship services. A contractor must not use DADS funds for a ward's daily living expenses or bill a ward for any other services.  e. A contractor must comply with the requirements in this subchapter and in Subchapters D - E of this chapter (relating to Records Management, and Contract Monitoring and Compliance). If a contract with the DADS Guardianship Services Program is terminated or is not renewed, a contractor may continue providing services through an alternate source of funds or apply to the courts to resign as guardian and have a successor guardian appointed. In 2017, legal authority was transferred from DADS to HHSC. |
|  |
| **Source Note:**The provisions of this §361.51 adopted to be effective September 1, 2006, 31 TexReg 6797; amended to be effective February 9, 2015, 40 TexReg 609; transferred effective March 15, 2022, as published in the February 25, 2022 issue of the Texas Register, 47 TexReg 983 |

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

HHSC 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(s) 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). |
| **Final Report** | A comprehensive report detailing the current status of the ward. |
| **Guardian** | A person with legal authority to manage the cares and affairs of a ward. |
| **Guardianship of the Person** | In Texas, guardianship is a legal relationship in which the person who is the guardian acts as another person’s caretaker. This person is called a ward. A court may appoint a guardian for someone who cannot manage certain essential aspects of their life on their own. There are three different types of Texas guardianships: Guardianship of the Person; Guardianship of the Person and Estate; Guardianship of the Estate. For the purpose of this Open Enrollment, the Contractor is only referring cases of Guardianship of the Person. |
| **Guardianship Services** | The limited or full authority given to the guardian over a ward, depending on the extent of the incapacity, for an indefinite term. The ward retains only those legal and civil rights granted to the ward by a court. |
| **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> |
| **JBCC** | The Judicial Branch Certification Commission. |
| **JBCC Rules** | Rules created by the JBCC which outline the requirements for becoming a certified guardian under Texas law. These rules can be found at [jbcc-rules-2021.pdf (txcourts.gov)](https://www.txcourts.gov/media/1452752/jbcc-rules-2021.pdf). |
| **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 HHSC sole point of contact listed below.

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

James Hendon

OCS Program Manager

Email: james.hendon@hhs.texas.gov

**Applications should NOT be submitted to this address. See Section #14 for submission requirements.**

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

**This restriction, as to only communicating in writing with the HHSC 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**

HHSC 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 HHSC upon receipt.

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

If HHSC 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 HHSC. Furthermore, if the OE will be canceled, HHSC 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**

HHSC 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 HHSC 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**
     1. **Questions and Requests for Clarification**

Written questions and requests for clarification regarding this OE are permitted if submitted by e-mail to the Sole Point of Contact, Section 4.1.

Responses to questions and requests for clarification will not be posted. However, if HHSC 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 HHSC. Furthermore, if the OE will be canceled, HHSC 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(s) or Exhibit/Attachment

The requestor must provide the following contact information:

* Company Name
* Company Representative Name
* Phone Number
* E-Mail address
  + 1. **Ambiguity, Conflict, Discrepancy**

Applicants must notify the Sole Point of Contact, 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 Sole Point of Contact, 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 HHSC of such provision(s), 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.

**sECTION 5.CONTRACT TERM**

**5.1 Term of Contract**

HHSC 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 four (4) years after the effective date, unless terminated earlier pursuant to the terms and conditions of the Contract.

**5.2 Extension Option**

HHSC, 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 new contract(s), for purposes of transition, or as otherwise determined to serve the best interest of the State of Texas.

**Section 6. MINIMUM QUALIFICATIONS**

To be eligible to apply for a Contract and receive an award, Applicant(s), 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.

**6.1 Required Experience**

1. To be considered for contract award under this OE, an Applicant shall have a minimum five (5) years’ relevant experience performing the services as outlined in this OE or similar services.
2. All personnel assigned to perform the services must be certified by the JBCC and have a minimum 5 years’ relevant experience.
3. **References:** Applicants must provide a minimum of three (3) references reflecting positive performance for current or previous contracts for similar or same services during the two (2)-year period immediately preceding submission of the Application.

**6.2 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 if any, hold current, valid, and applicable licenses and/or certifications in good standing.

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

1. Certification:
2. To provide guardianship services in this State, staff employed by Guardianship programs working with HHSC wards must be certified by the JBCC. This includes:

A. an individual who is a private professional guardian;

B. an individual who will provide those services to a ward of a private professional guardian or to a ward of an attorney who is appointed guardian on the guardian's behalf;

C. an individual who will supervise the provision of those services to a ward of a guardianship program;

D. an individual who will provide or supervise the direct provision of those services to a ward on behalf of the Health and Human Services Commission Office of Guardianship; and

E. a person who at any time supervises direct providers of guardianship services, unless the person is an attorney or corporate fiduciary exempt under Section 155.001(6) of the Government Code.

1. To be eligible for certification, a person must:
   1. satisfy the requirements of JBCC rules :
      1. be at least 21 years of age;
      2. be a high school graduate or possess the GED equivalent;
      3. satisfy the requirements of (1), (2), **or** (3) below:
         1. have two years of relevant work experience related to guardianship or
         2. have met the following education or training requirements:
            1. minimum of a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board in a field related to guardianship; or
2. completion of a course curriculum or training specifically related to guardianship approved by the JBCC;
   * + 1. have one year of work experience related to guardianship and completion of a course curriculum or training specifically related to guardianship approved by the JBBC;
     1. successfully pass, after no more than four exam attempts, an examination approved by the JBBC that covers Texas law and procedure related to guardianship and any other examination required and approved by the JBBC testing knowledge of guardianship issues;
     2. attest under penalty of perjury whether he or she has ever been adjudged guilty of, or entered a plea of guilty or no contest in return for a grant of deferred adjudication with respect to, any felony or misdemeanor offense, which will be considered using the factors listed in JBCC Rules Section 3.5;
     3. attest under penalty of perjury whether he or she:
        1. has ever been relieved of responsibilities as a guardian or fiduciary by a court, employer, or client for actions involving fraud, moral turpitude, misrepresentation, material omission, misappropriation, theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty, or conversion;
        2. has ever been found civilly liable or settled a claim in an action, including but not limited to a surcharge action, that involved allegations of fraud, misrepresentation, material omission, misappropriation, theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty, or conversion on the applicant's part;
        3. has ever been denied certification or had his or her certification revoked or suspended in Texas or any other jurisdiction that requires certification, registration, or licensure to provide guardianship services; or
        4. has ever surrendered his or her certification in Texas or any other jurisdiction that requires certification, registration, or licensure to provide guardianship certification; and
     4. complete the online training available on the JBCC website under JBCC Rules Section 10.3.
   1. If any of the circumstances described in 2(A)(v) and (vi) above exist, the applicant must describe the circumstances with particularity and provide any related documentation requested by the JBCC.
   2. Examination
      1. An individual who has failed the exam four times is not eligible for certification unless the individual petitions the JBCC in writing for permission to take the exam again. The petition must set out in detail all facts that support the request, demonstrate that the individual has completed all other requirements for certification except for passing the exam, and demonstrate that no other impediments to certifications exist.
      2. The JBCC must consider the petition at its next regularly scheduled meeting and determine, without a formal hearing, whether permission to take the exam again will be granted or denied. The JBCC may impose conditions to granting permission, including requiring the petitioner to provide additional information or complete specified continuing education prior to taking the exam again. If an individual fails or refuses to strictly and completely comply with the conditions specified by the JBCC, permission to take the exam again will be denied.
      3. An individual may petition the JBCC only one time for permission to take the exam following four unsuccessful attempts. An individual who is granted permission to take the exam again and who fails the exam again is not eligible for certification. If the JBCC denies permission to take the exam again, the individual is not eligible for certification.
      4. The decision of the JBCC is final and is not subject to appeal, reconsideration, or any further action.
   3. Notwithstanding JBCC Rules Section 7.2(a), an individual who must be certified but does not meet the requirements for certification under JBCC Rules Section 7.2(b) may provide guardianship services in this State if the person obtains provisional certification pursuant to JBCC Rules Section 7.4.
   4. Notwithstanding any other provision of these rules:
      1. pursuant to Section 1104.253 of the Estates Code, a family member or friend of an incapacitated person is not required to be certified under these rules to serve as the person's guardian; and
3. an employee of the United States Department of Veterans Affairs appointed to serve as a guardian for an incapacitated person is not required to be certified under these rules to serve as the person's guardian.
   1. A certified guardian may use the designation "TxCG" to indicate that the guardian is certified by the JBCC. Provisionally certified guardians may not use such designation.

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, 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 HHSC’s request.

**6.3 Additional Minimum Qualifications for Contractor and Contractor Personnel**

The Contractor must employ an adequate number of qualified case managers to provide guardianship services to the individuals referred by HHSC-OGS. The case managers who serve as guardians for individuals or supervise those who serve as guardians for individuals must be certified by the Judicial Branch Certification Commission, as required in *Texas Government Code* §155.102.

**Section 7. STATEMENT OF WORK**

**7.1 Project Overview**

For the purposes of this Contract, Guardianship Services means giving the guardian limited or full authority over a ward, depending on the extent of the incapacity, for an indefinite term. The ward retains only those legal and civil rights not removed by the court order.

7.1.1 HHSC-OGC will transfer its position as guardian to the Contractor (Provider) as follows:

1. HHSC-OGS will file an application to resign as guardian;

2. HHSC-OGS will file a Final Report of the Person;

3. HHSC-OGS will transfer case related information as appropriate and within the scope of statute to the Contractor;

4. HHSC-OGS will monitor contract performance and compliance, at least annually; and

5. Prior to making a referral to a qualified Contractor, HHSC-OGS will review the circumstances of the individual to determine if they appear to be appropriate for referral to the Contractor. For each referral, HHSC will provide to the Contractor a copy of the:

a. Contractor referral documentation: which includes the contact information for the referred individual, the names of known family members, known financial resources and benefits, other interested parties, type of guardianship needed, and other relevant, available information;

b. Certificate of medical examination or determination of intellectual disability from a physician or psychologist;

c. HHSC-OGS guardianship assessment; and

d. Other documents determined to be helpful and appropriate.

7.1.2 HHSC-OGS will only refer Guardian of the Person referrals.

**7.2 Contractor (Provider) Responsibilities**

For the full term of the Contract, including the original Contract term and all periods of renewal and all additional extensions, the Contractor agrees to:

7.2.1 Accept all referrals from HHSC-OGS unless the OCS Unit Manager agrees to

rescind.

7.2.2 Apply with a court to be appointed as successor Guardian.

7.2.3 Serve the referred individuals only in the service areas identified in the Contract

unless the HHSC-OGS OCS Unit Manager approves alternate service area. The

Contractor must continue to serve the individual in the approved alternate service area.

7.2.4 Not transfer an individual to an area not served by the Contractor without the express written permission of HHSC-OGS.

7.2.5 Not resign as Guardian without the expressed written permission of HHSC-OGS.

7.2.6 At the discretion of HHSC – OGS, a ward currently being served by one HHSC-OGS contracted service provider may be successored to another HHSC-OGS contracted service provider due to necessary relocation of the individual being served. The following requirements must be met before successor action taken:

a. Move must be approved by HHSC – OGS in advance;

b. Contracted service provider has the option to decline; and

c. Contracted service provider must have an open slot available.

7.2.7 A Contractor must develop, implement and adhere to the requirements outlined in the scope of work, any specific contract provisions, and the Guardianship Provider

Handbook. The handbook is available online and can currently be accessed

at: <https://www.hhs.texas.gov/handbooks/guardianship-provider-handbook/section-1000-a-referral-guardianship-contractors-procedures>.

7.2.8 The disaster plan must be maintained and updated annually unless significant changes are made. Plan will be reviewed annually during the Contractor’s annual Contract monitoring review. The plan must include, at a minimum, nine core functions from the following list:

a. Emergency evacuation transportation;

b. Adequate sheltering arrangements;

c. Supplies;

d. Staffing;

e. Emergency equipment;

f. Identification of residents (and, for adult day care facilities, transfer of records);

g. Responding to HHSC-OGS inquiries; and

h. Post-disaster activities (including emergency power, food, water, and transportation.

This plan should be implemented during natural disasters or any other

emergency situation, where the health, safety, and security of each individual is

at risk. If plan is not adhered to during an emergency, HHSC may put Contractor

on referral hold until further review and/or termination.

7.2.9 Contractor will not use subcontractors to perform any part of work covered under this Contract.

**7.3 Statement of Services to be Provided**

Contractor must:

7.3.1Ensure the duties set forth in the court order are followed.

7.3.2 Ensure the Contractor, rather than the Contractor’s employee or volunteer, must be appointed by the court as Guardian of the Person.

7.3.3 Not request the guardianship be modified or ask the court to appoint its employee or volunteer as Guardian without the express written consent of HHSC-OGS.

7.3.4 Manage the ward according to the court order appointing the Contractor as Guardian of the Person. This responsibility includes:

a. Having physical possession of the ward;

b. Caring for, supervising, and protecting the ward;

c. Providing food, clothing and shelter paid for by the ward’s estate or

government benefits;

d. Consenting to medical, surgical, and psychiatric care, except for in-patient

psychiatric commitment;

e. Developing an annual service plan that ensures appropriate habilitation and

rehabilitation services, including therapy, counseling, education, and training to the extent permitted by the ward’s funds;

f. Encouraging the ward to participate in the development of the service plan to the extent he or she is capable;

g. Building an adequate support system for the ward, including family, friends, and other appropriate collaterals;

h. Having monthly status contacts with the ward, which must occur in the

ward's various environments;

i. Consulting with service providers periodically;

j. Documenting case actions in files maintained for each ward; and

k. Complying with the requirements of Texas Estates Code Chapter 1151, regarding Rights, powers, and duties under Guardianship of the Person that is available online and can currently be accessed at: <https://statutes.capitol.texas.gov/Docs/ES/htm/ES.1151.htm>.

7.3.5 Arrange for care and services for the ward based upon the ward's identified needs and with the goal of enhancing the ward's quality of life.

7.3.6 Ensure the ward has access to basic care and services to the extent the ward’s resources will allow, including:

a. A safe, clean environment;

b. Assistance in performing basic life functions;

c. Regular, nutritious meals;

d. Any needed medical, psychiatric, habilitative, or other services; and

e. Adequate supervision.

7.3.7 Ensure a service plan is developed by a certified Guardian to address the needs of each ward referred by HHSC-OGS and ensure the service plan is updated at least annually.

a. The certified Guardian must develop an initial service plan within 90 calendar days

from taking the oath of guardianship.

b. The certified Guardian must update the service plan annually.

c. The service plan must include the following:

1. Brief description of the current status of the ward; and

2. Description of the needs of the ward in each of the following areas:

A. Living arrangements and basic care;

B. Medical, dental, vision, mental health, and intellectual disability services;

C. Family, social, and recreational needs;

D. Financial and legal services;

E. Diet and clothing preferences and needs;

F. The plan or strategy for meeting the needs of the ward; and

G. Actions taken to date to accomplish the plan.

d. The Contractor must ensure the service plan is developed:

1. In a culturally competent manner to meet the ward’s needs within the ward’s cultural context; and

2. Using resources such as family systems, natural helping networks, and formal institutions within the ward’s community, churches, and social

organizations whenever possible and appropriate.

e. The Contractor must ensure services are provided by persons who can adequately

communicate with the ward.

f. The Contractor must address, and whenever possible, reflect the cultural differences in the ward’s diet and clothing.

g. The Contractor must ensure the religious needs of the ward are reflected in the

service plan.

h. Funeral planning for the ward must reflect the cultural and religious values of

the ward and the ward's family whenever possible.

7.3.8 The Contractor must perform the following case management responsibilities:

a. The Contractor must assign a certified Guardian to each ward served under the

contract with HHSC-OGS.

b. The Contractor must assign a person who is a certified Guardian as a back-up for the primary certified Guardian to ensure the ability to respond in a timely fashion in the event of an emergency.

c. The Contractor must ensure the certified Guardian performs all duties in accordance

with the responsibilities outlined in the order granting Guardianship. The certified Guardian:

1. Ensures each ward referred by HHSC-OGS has access to adequate care, protection, and services based upon identified needs and the service plan;

2. Makes medical decisions such as authorizing major surgery, addressing life- threatening illness, or approving treatment options;

3.Completes annual reports of the Guardian of the Person;

4. Resolves issues or problems impacting the ward;

5. Considers the ward's wishes and choices when decisions are being made

about the ward;

6. Maintains documentation of face-to-face visits;

7. Informs the appropriate HHSC and agency staff concerning major issues

involving the ward and documents all actions in the ward’s record;

8. Ensures cases are closed or transferred with documentation that is complete

and up-to-date;

9. Ensures transfers are pre-approved by HHSC; and

10. Ensures each ward is given a copy of the Texas Guardianship Bill of

Rights annually and has it explained to them in their native language and is

furnished contact information for various entities as established in the Bill of Rights.

7.3.9 The Contractor must assess and document the status of the ward monthly, beginning with the month of referral from HHSC-OGS and continuing throughout the duration of the Guardianship. A certified Guardian is the only one who can perform these monthly assessment duties. The monthly face-to-face status contact must be made in the ward's various environments such as home, day care workshop, etc. The monthly status contact documentation must address:

a. The location and the ward’s present appearance;

b. Date of the face-to-face meeting;

c. A review of needs and services;

d. The current status of the ward;

e. Any changes regarding service needs of the ward; and

f. Any efforts to resolve areas of concerns and issues.

7.3.10 The Contractor must also:

a. Ensure the ward referred by HHSC-OGS receives income and benefits to

which he or she is entitled;

b. Establish and monitor financial accounts, including trust accounts;

c. Arrange for payment of bills;

d. If the Contractor is the U.S. Social Security Administration (“SSA”)

representative payee or U.S. Department of Veterans Affairs (“VA”) fiduciary,

keep a register current for checking and savings accounts and include such

items as bank drafts, automatic payments, amount of check, interest earned,

payee, and other appropriate financial entries, as information becomes

available;

e. If the Contractor selects a SSA representative payee or VA fiduciary other than

the Contractor, ensures the payee or fiduciary is appropriate and able to serve,

monitors the service including trust accounts, changes the payee or fiduciary as

needed, reports issues to HHSC-OGS and SSA or VA, law enforcement or

other agencies as applicable, and

f. Establish an audit trail and maintain accurate and complete records for, but not

limited to, the Internal Revenue Service, United States Social Security

Administration, and U.S. Department of Veterans Affairs, to ensure the

Contractor accounts for financial activity.

7.3.11 The Contractor is required to complete the Report of a Death/Service Termination form (Ward Status Update to report the death or the termination of a guardianship of an individual referred by HHSC-OGS). The Contractor is required to email the report form to the attention of the HHSC designed contract Representative or designee by the next working day after learning of the death.

The 60-day time frame allowing the Contractor to complete case activities and be discharged as Guardian begins on the date of death. When a guardianship is terminated, HHSC-OGS will remove the ward’s name from the billing system on the date indicated on the reporting form. If an overpayment occurs due to a delay in the Contractor reporting a death, the overpayment may be recovered in a variety of ways at the discretion of HHSC-OGS up to and including a possible vendor hold. It is of the utmost importance for deaths to be reported promptly by the Contractor.

7.3.12 Develop and submit for approval, a quality assurance plan to monitor internal and external systems of operations. This quality assurance plan must describe the Contractor’s internal and external systems for ongoing monitoring of policies and procedures to ensure the following:

a. Consistency and quality of care provided to wards referred by the HHSC OGS; and

b. Compliance with:

1. The Texas Estates Code, as appropriate;

2. Judicial Branch Certification Commission Minimum Standards of Guardianship;

3. Other requirements imposed by the courts; and

4. Other program policies, rules, standards, and Guardianship Provider Handbook.

The Contractor must review its quality assurance plan annually for improvement in the

program’s operations and revise the plan in accordance with best practices and acceptable standards. Revised and updated plan must be submitted to HHSC-OGS for approval.

7.3.13 The Contractor must report allegations of abuse, neglect, or exploitation of a ward referred by HHSC-OGS to the appropriate investigative authority and to the HHSC-OGS designee. The report must be made immediately, but not more than 24 hours after learning of the allegation, to the appropriate investigative authority.

The report to the HHSC-OGS designee must indicate the specific suspected abuse, neglect, or exploitation reported to the investigating authority and what actions have been taken to ensure the health and safety of the ward.

If the alleged perpetrator is the Contractor’s employee, the Contractor must:

a. Remove the employee from contact with HHSC-OGS ward until all allegations have been investigated and resolved;

b. Take appropriate action if an allegation of abuse, neglect, or exploitation is found to be valid;

c. Document the findings; and

d. Re-orient the employee before he or she works again with HHSC-OGS wards if the appeal process determines the employee was not the perpetrator.

7.3.14 The Contractor must ensure documentation requirements are met. These records must meet the following requirements:

a. The Contractor must maintain financial and contract-related records:

1. According to recognized fiscal and accounting practices; and

2. In accordance with HHSC-OGS rules and contract requirements.

b. The Contractor must document interactions with a ward referred by HHSC-OGS as soon as possible after the interactions. The documentation must:

1. Be dated the day it is written;

2. Indicate the date of the interaction; and

2. Be signed by or otherwise identify the ward having contact.

c. The Contractor must have data readily accessible, and there must be reasonable means to retrieve the data in case of electrical outage or equipment failure.

d. The Contractor must not pre-print or pre-enter any record of time on a form used to document all required elements of the services delivered, as provided in the program rules.

e. Records must include:

1. Identifying information for the ward including: (1) name, (2) address, (3) date of birth, (4) phone number, (5) guardianship status, (6) sex, (7) race, (8) citizenship, (9) marital status, (10) social security number, (11) Medicaid number, (12) a list of allies, and (13) involved family members;

2. Copies of all legal documents related to the ward, preferably file-stamped copies of documents that are file-stamped by the court in the local area when submitted;

3. Copies of all financial records, including trust fund statements, receipts of disbursements, bank accounts and investment statements, and other similar financial records;

4. Documentation of all case actions, including monthly status updates; the documentation presents a sequential record of events occurring in the ward’s life; documentation discuss all of the following main areas: physical, mental, legal, social, environmental and medical;

5. Case actions, including the monthly status update, which must be documented within ten (10) working days after the activity;

6. Significant incidents regarding progress, illnesses, and accidents that may be used as part of the service plan for the individual;

7. Termination records and transfer summaries;

8. Copies of information documenting that the Contractor is performing its duties as representative payee, which are identified in Section 2.8 above; and

9. Ward status updates identifying abuse, neglect, or exploitation incidents referred to the appropriate investigative authority.

f. The Contractor must maintain personnel records on every employee and volunteer.

g. The Contractor must maintain a complaint log that includes, at a minimum, the name of the reporter, date of the complaint, the type of complaint, and the outcome.

7.3.15 The Contractor must ensure each new employee and volunteer receives an orientation, initial training, and ongoing training. The training must comply with the requirements in the HHSC Guardianship Services Program rules in

26 TAC Chapter 361 Section C

<https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=26&pt=1&ch=361&sch=C&rl=Y>

7.3.16 The Contractor must ensure a volunteer who serves as a Guardian for HHSC-OGS wards must be certified by the JBCC. Volunteers who are not certified Guardians may only be used to provide life enhancement services to HHSC-OGS ward. All volunteers who serve HHSC-OGS ward must be trained, supervised, and monitored by a certified Guardian.

a. Contractors designating volunteers to perform guardianship duties must:

1. Ensure the volunteer is a certified Guardian;

2. Ensure the volunteer does not assume responsibility for a HHSC-OGS

individual until documentation and observation indicate the volunteer is qualified to work with the ward;

3. Ensure documentation of activities is thorough and complete and is reviewed and signed by the volunteer’s supervisor;

4. Ensure the volunteer completes and documents monthly status contacts; and

5. Ensure the volunteer protects the health and safety of the ward.

b. Contractors designating volunteers to perform life enrichment services to HHSC-OGS wards must ensure the following:

1. The assigned supervisor does not allow the volunteer to provide guardianship services to the ward and only approves the provision of life enhancement services;

2. The volunteer’s work is reviewed through documentation that is co-signed by the supervisor and by observation of the volunteer’s assigned wards and of the activities performed;

3. Contacts with the ward are documented;

4. A monthly supervision session with the volunteer occurs and is documented; and

5. The volunteer protects the health and safety of the ward.

7.3.17 The Contractor must ensure that the records and related information of wards referred by HHSC-OGS are maintained in a confidential manner. The Contractor must comply with the confidentiality requirements set forth in the HHSC-OGS rules, 26 *Texas Administrative Code*, Part 1, Chapter 361, Subchapter D.

**7.4 Performance Criteria**

HHSC 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.

**7.4.1 Specific Performance Standards**

Contractor shall comply with all obligations and duties under the Contract.

**7.4.2 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. HHSC, 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 HHSC, within 10 calendar days of HHSC’s request for removal, confirmation of the removal and assurance of continued, compliant Contract performance.

**7.4.3 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 HHSC Sole 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 HHSC 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 HHSC 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.

HHSC, 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.

**7.4.3 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 HHSC Sole 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 HHSC contract manager, as applicable, within five days of the date Contractor learns of such financial circumstances after Contract award.

**SECTION** **8 Background Checks For Personnel**

HHSC-OGS will conduct background checks for any prospective employees or volunteers who may have access to a ward, or the benefits of a ward referred from HHSC-OGS.

8.1 The Contractor must submit a request for a background check through HHSC-OGS, for any prospective employees or volunteers who may have access to a ward or the benefits of a ward referred from HHSC-OGS. A Contractor must not make an offer of employment to a prospective employee or to allow a prospective employee or volunteer to have access to a HHSC-OGS ward or the benefits of the ward until HHSC notifies the Contractor of the person’s eligibility for employment or eligibility to serve as a case manager or volunteer with HHSC-OGS wards.

8.2 On an annual basis, the Contractor must request a background check through HHSC-OGS for an employee or volunteer with access to a ward or the benefits of a ward referred by the HHSC Office of Guardianship Services.

8.3 On a monthly basis, the Contractor must search the Federal and State List of Excluded Individuals/Entities (“LEIE”) for the names of any individuals the Contractor pays to perform services under the Contract with HHSC-OGS. This includes the names of volunteers who perform services under the Contract with HHSC-OGS and who are reimbursed for expenses associated with providing those services.

If the Contractor finds the name of any individual the Contractor pays to perform services under the Contract on the Federal or State LEIE, the Contractor must stop paying the individual to perform services under the contract and immediately report the identity of the individual to HHSC Office of Inspector General (“HHSC-OIG”). The Contractor must also maintain documentation of the monthly searches and its actions in response to the results of the monthly searches. Detailed information is provided in Section 3700 of the HHSC Guardianship Services Program Handbook regarding making reports to HHSC-OIG and maintaining documentation.

The HHSC Guardianship Services Program Handbook is available on the HHSC website currently accessible: <https://www.hhs.texas.gov/handbooks/guardianship-provider-handbook/section-1000-a-referral-guardianship-contractors-procedures>

The Federal LEIE is publicly available on the U.S. Department of Health and Human Services Office of Inspector General Website maintained at: [LEIE Downloadable Databases | Office of Inspector General | U.S. Department of Health and Human Services (hhs.gov)](https://www.oig.hhs.gov/exclusions/exclusions_list.asp).

**The background checks must be completed prior to any Contractor personnel arriving on state property, if applicable, and/or beginning the required Contract services.**

Supporting documentation for the background checks is subject to review upon request by HHSC. Failure to produce the requested documentation, as with any violation of the Contract, may constitute grounds for termination of the Contract and/or Purchase Order for cause.

The background checks shall include, but not be limited to:

* Social Security Number verification; and
* Statewide criminal and sex offender records for all Texas counties and out-of-state counties based on the current and previous addresses of the key personnel for the last seven years.

**SECTION 9 Invoice Requirements and Payment**

**9.1 Invoice Requirements**

Contractor shall submit to HHSC detailed and accurate invoice(s) which include the information below. Each invoice must be submitted monthly by e-mail/ in the format prescribed by HHSC, not later than 15 calendar days after completion of service following month in which service was completed.

The e-mail/ address for submitting an invoice is:

James.Hendon@hhs.texas.gov

James Hendon

Office of Guardianship Services

622 S. Oakes Street Ste .E-1 LC - 2155 MC - 2777

San Angelo, Texas 76903

The invoice shall include, at a minimum:

1. Contractor’s Name;
2. Accounts Receivable telephone number;
3. Service date(s); and
4. ward’s name

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

**9.2 Payment**

Contracts issued under this OE will be paid using cost reimbursement at $275 per month / per ward served during that month. Payment to be made the following month after service provided.

**9.3 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 HHSC, that is not accepted in writing by HHSC, or that conflicts with applicable law, this OE, any resulting Contract, or applicable terms and conditions will not constitute part of the Contract.

**9.4 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.

**Section 10 HHSC CONTRACT ADMINISTRATION**

HHSC 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.

**Section 11 INSURANCE requirements**

**11.1 Insurance Coverage**

For the duration of any Contract resulting from this OE, Applicant shall acquire insurance and bond with financially sound and reputable independent insurers, in the type and amount customarily carried within the industry. Failure to maintain insurance coverage or acceptable alternative methods of insurance shall be deemed a breach of Contract.

All required insurance contracts must:

1. be written on a primary and non-contributory basis with any other insurance coverages the Contractor currently has in place; and
2. include a Waiver of Subrogation Clause in favor of the State of Texas and its officers, directors, and employees for bodily injury (including death), property damage or any other loss.

Each insurance policy, other than workers’ compensation, employer’s liability and professional liability, must name the State of Texas and its officers, directors, and employees as additional insureds on the original policy and all renewals or replacements.

The insurance shall be evidenced by delivery to HHSC of certificates of insurance executed by the insurer or its authorized agency stating coverage, limits, expiration dates, and compliance with all required provisions. Upon request, HHSC shall be entitled to receive, without expense, certified copies of the policies and all endorsements. Except as otherwise provided herein, required coverage must remain in full force and effect throughout the term of the Contract and any extensions thereof, and provide adequate coverage for incidents discovered after termination of the Contract.

Contractor shall:

1. provide written notice to Health and Human Services Office of Guardianship by email at James.Hendon@hhs.texas.gov and by U.S. first class, certified mail to 622 S. Oakes Street Ste. E-1 LC- 2155 - MC 2777 San Angelo, Texas 76903 at least 30 calendar days prior to any cancellation, non-renewal, or material change of a required policy;
2. ensure all insurance policies and certificates of insurance for required coverage are written to include all products, services, and locations related to Contractor's performance under the Contract; and
3. deliver to Health and Human Services Office of Guardianship by email at James.Hendon@hhs.texas.gov and by U.S. first class, certified mail to 622 S. Oakes Street Ste. E-1 LC- 2155 - MC 2777 San Angelo, Texas 76903 all renewal policies at least ten (10) calendar days prior to any expiration of a required policy. All renewal policies and corresponding certificates of insurance must meet all terms set forth herein.

Contractor must submit original certificates of insurance for each required insurance contract, and any renewals thereof, within 15 days after contract execution. Renewal certificates shall be submitted prior to or at least days after expiration of the existing policy. Applicants must submit required bonds when and as provided in sections of this OE outlining bond requirements.

Contractor shall ensure that all Contract provisions concerning liability, duty, and standard of care, together with all indemnification provisions, shall be underwritten by contractual liability coverage sufficient to include the obligations under any contract awarded as a result of this OE. In addition, Contractor shall be responsible for ensuring all Subcontractors used in the performance of the Contract maintain the insurance required in this section (covering all goods and services provided by the Subcontractors) throughout the Contract term and all renewals.

**11.2 Alternative Insurability**

Notwithstanding the preceding, HHSC reserves the right to consider reasonable alternative methods of insuring the Contract in lieu of the insurance policies required. It will be the Applicant's responsibility to recommend to HHSC alternative methods of insuring the Contract. Any alternatives proposed by Applicant should be accompanied by a detailed explanation regarding Applicant's inability to obtain the required insurance and/or bonds. HHSC shall be the sole and final judge as to the adequacy of any substitute form of insurance coverage.

**SECTION 12 CONFIDENTIAL OR PROPRIETARY INFORMATION**

**12.1 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, HHSC, 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.

HHSC 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. HHSC 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>

**12.2 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, HHSC from any claim of infringement by HHSC regarding the intellectual property rights of the submitting party or any third party for any materials submitted to HHS by the submitting party.**

**SECTION 13 BINDING OFFER**

All Applications should be responsive to the OE as issued or amended through written and posted Addenda, not with any assumption that HHSC 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.**

**SECTION 14 required application documents**

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| **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. **Minimum Qualifications – Reference Section #**   **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.  **References:**  Respondents must provide a minimum of three (3) references for contracts of similar size and scope of services within the last # years.  For each reference, provide the following documentation with Application:   * Name, address, and phone number for each reference; * Dates services performed and/or goods provided; * Description of services performed and/or goods provided; and * Key staff assigned to the referenced contract/project who will be designated for work for any resulting Contract under this OE   **JBCC Certification**  Provide current copies of all required JBCC Certification for the Applicant and Applicant’s personnel as applicable**.**  **Additional Minimum Qualifications:**  Provide documentation of qualifications 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. |
| 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 #**   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.     * **Court or Governmental Agency Proceedings, Investigations, or Other Actions**:   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:  Name  Address  Phone Number  State agency for which previously worked  Dates of employment for each identified state agency  Any additional information requested by HHS regarding identified individuals must be provided by Applicant. |
| 1. **Notice of Criminal Activity – Reference Section #**   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 #**   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 * E-mail Address |
| 1. **Contractor Service Locations – Reference Section #**   Provide a list of each service location and include the following at a minimum:   * Location Name * Physical Address * Phone Number * E-mail Address * Services Offered |
|  |
| 1. **Insurance – Reference Section #**   Applicant must provide proof of insurance or a statement of its intent to obtain and maintain for the term of the Contract (and any renewal periods or additional extensions) the minimum insurance coverage specified or, as applicable, any bonds required. Applicant should also describe other insurance coverage maintained in the ordinary course of business and provide proof of same in its Application.  [HHSC]may designate a deadline for submission of proof of required insurance. Failure to timely submit acceptable proof may result in [HHSC’s] revocation of the award.  **Alternative Insurability:**  Provide proposed alternative methods of insuring the Contract, if awarded, and a detailed explanation regarding Applicant's inability to obtain the required insurance and/or bonds. |
| 1. **Public Information Act Copy of Application, if applicable** |

**SECTION 15 Application SUBMISSION requirements**

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

The complete Application must be submitted to:

Health & Human Services: Office of Guardianship Services

Email:James.Hendon@hhs.texas.gov

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

accordance with all OE requirements and ensuring timely receipt by

HHSC.

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

**submission or delivery.**

The Application may be submitted either by hardcopy or e-mail.

**15.1 Hard Copy Submission – USPS Mail, Express Mail, Hand Delivery**

Each Applicant is solely responsible for ensuring its Application is submitted in accordance with all OE requirements, including, but not limited to, proper labeling, sufficient postage or delivery fees, and ensuring timely receipt by HHSC.

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

The Application, including all ORIGINAL documentation outlined in Section 13, must be delivered to HHSC in its entirety in one envelope or package.

Submit one (1) original hard copy and one (1) copy on portable media, such as compact disk or USB compatible with Microsoft Office 2000. Any disparities between the contents of the original hard copy and the copy will be interpreted in favor of HHSC.

Address for hand delivery, US Postal Service, other Carrier or overnight or Express Mail delivery:

**Include the appropriate mailing or delivery address:**

**Health and Human Services Commission**

**Attn: Office of Guardianship**

**622 S. Oakes Street Ste. E-1 LC- 2155 - MC 2777**

**San Angelo, Texas 76903**

Applications submitted by facsimile, or any other method not specified in this OE, will NOT be accepted or considered.

**15.2 E-Mail 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 e-mail receipt by HHSC.

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

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

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

The Application documentation must not be encrypted so as to prevent HHSC from opening the documents.

IMPORTANT NOTE: HHSC recommends a 10MB limit on each attachment. This may require Applicants to send multiple e-mails to HHSC at James.Hendon@hhs.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. HHSC is not responsible for documents that cannot be read or converted. Unreadable applications may be, in HHSC’S 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. HHSC’s 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. HHSC takes no responsibility for e-mailed Applications that are captured, blocked, filtered, quarantined or otherwise prevented from reaching the proper destination server by any HHSC anti-virus or other security software.

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

**15.2 Receipt of Application**

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

HHSC 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 e-mail that are captured, blocked, filtered, quarantined or otherwise prevented from reaching the proper destination server by any HHSC anti-virus or other security software.

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

**SECTION 16 SCREENING OF APPLICATIONS**

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

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

HHSC 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.

**16.1 Initial Screening of Applications**

An initial screening of Applications will be conducted by HHSC 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.

HHSC 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:**

HHSC reserves the right to waive minor informalities in an Application. A "minor informality" is an omission or error that, in HHSC’s 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.

HHSC, 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 e-mail address in Section 4.1 by the deadline set by HHSC. Failure to respond before the deadline may result in HHSC’s 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, and Exhibit #, HSP, which must be signed and submitted with the Application).

**16.2 Verification of Past Vendor Performance**

HHSC 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 HHSC.

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:

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

**SECTION 17 AWARD PROCESS**

**17.1 Contract Award and Execution**

HHSC, 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.

HHSC 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.

**17.2 Compliance for Participation in State Contracts**

**17.2.1 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:

[SAM.gov | Databank | Contract Data | Standard](https://sam.gov/reports/awards/standard)

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.
6. **HHS Office of Inspector General**

Must not be listed on the HHS Office of Inspector General Texas Exclusions List for people or businesses excluded from participating as provider: <https://oig.hhs.texas.gov/exclusions>

1. **U.S. Department of Health and Human Services**

Must not be listed on the U.S. Department of Health and Human Services Office of Inspector General’s List of Excluded Individuals/Entities (LEIE), excluded participation as provider, unless a valid waiver is currently in effect: <https://exclusions.oig.hhs.gov/>

**17.1.2 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, HHSC 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. **Texas Secretary of State**

Must be registered, if required by law, with the Texas Secretary of State as a public or private entity eligible to do business in Texas: <https://direct.sos.state.tx.us/acct/acct-login.asp>

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 HHSC, 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>

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