#



**TEXAS HEALTH AND HUMAN SERVICES COMMISSION**

**OPEN ENROLLMENT (OE)**

**for**

**Independent Review Organization Services**

**Medicaid and CHIP Services**

**Medical and UR Appeals**

 OE No. #HHS0015818

**NIGP Class/Item Nos: 948-07, 969-44**

tABLE OF cONTENTS

[SECTION 1: SCHEDULE OF EVENTS 4](#_Toc188366951)

[SECTION 2: OVERVIEW 5](#_Toc188366952)

[2.1 Introduction 5](#_Toc188366953)

[2.2 Legal Authority 5](#_Toc188366954)

[2.3 No Guarantee of Volume, Usage or Compensation 5](#_Toc188366955)

[SECTION 3: DEFINITIONS AND ACRONYMS 5](#_Toc188366956)

[SECTION 4: GENERAL INFORMATION 15](#_Toc188366957)

[4.1 Sole Point of Contact 15](#_Toc188366958)

[4.2 Changes, Modifications and Cancellation 16](#_Toc188366959)

[4.3 Offer Period 16](#_Toc188366960)

[4.4 Costs Incurred 16](#_Toc188366961)

[4.5 OE Questions or Clarifications 17](#_Toc188366962)

[SECTION 5. HUB SUBCONTRACTING PLAN (HSP) REQUIREMENTS 18](#_Toc188366963)

[SECTION 6. CONTRACT TERM 18](#_Toc188366964)

[6.1 Term of Contract 18](#_Toc188366965)

[6.2 Extension Option 18](#_Toc188366966)

[SECTION 7. MINIMUM QUALIFICATIONS 19](#_Toc188366967)

[7.1 Required Experience 19](#_Toc188366968)

[7.2 Licensure and Accreditation 19](#_Toc188366969)

[7.3 Additional Minimum Qualifications for Contractor and Personnel 20](#_Toc188366970)

[SECTION 8. STATEMENT OF WORK. 20](#_Toc188366971)

[8.1 Project Overview 20](#_Toc188366972)

[8.2 HHSC Responsibilities 20](#_Toc188366973)

[8.3 Statement of Services to be Provided 20](#_Toc188366975)

8.4 Performance Criteria………………………………………………………………………………………………………………………………………………….. 20

[8.5 Contractor Personnel Performance 21](#_Toc188366976)

[8.6 Notice of Criminal Activity 21](#_Toc188366977)

[8.7 Notice of Insolvency or Indebtedness 22](#_Toc188366978)

[8.8 Background Checks For Personnel 22](#_Toc188366979)

[8.9 Reporting Criteria 23](#_Toc188366980)

[8.10 Invoice Requirements and Payment 23](#_Toc188366981)

[8.11 Data Use Agreement (DUA) 24](#_Toc188366982)

[8.12 Terms and Conditions 24](#_Toc188366983)

[8.13 Standards of Conduct for Vendors 24](#_Toc188366984)

[Section 9. HHSC CONTRACT ADMINISTRATION 25](#_Toc188366985)

[SECTION 10. INSURANCE requirements 25](#_Toc188366986)

[10.1 Insurance Coverage 25](#_Toc188366987)

[10.2 Required Policy Clauses and Other Requirements 26](#_Toc188366988)

[10.3 Specific Insurance Coverage Required. 27](#_Toc188366989)

[10.4 Alternative Insurability. 29](#_Toc188366990)

[SECTION 11. CONFIDENTIAL OR PROPRIETARY INFORMATION 29](#_Toc188366991)

[11.1 Public Information Act 29](#_Toc188366992)

[11.2 Applicant Waiver – Intellectual Property 31](#_Toc188366993)

[SECTION 12. BINDING OFFER 32](#_Toc188366994)

[Section 13. required application documents 33](#_Toc188366995)

[SECTION 14. APPLICATION SUBMISSION 36](#_Toc188366996)

[In no event will HHSC be responsible or liable for any delay or error in submission or delivery. Applications must be RECEIVED by HHSC before the OE period closes as identified in Schedule of Events, Section 1, or subsequent Addenda. 36](#_Toc188366997)

[14.1 E-Mail Submission requirements 36](#_Toc188366998)

[14.2 Receipt of Application 37](#_Toc188366999)

[Section 15. SCREENING and Evaluation OF APPLICATIONS 37](#_Toc188367000)

[15.1 Initial Screening of Applications 38](#_Toc188367001)

[15.2 Informalities: 38](#_Toc188367002)

[15.3 Verification of Past Vendor Performance 38](#_Toc188367003)

[Section 16. AWARD PROCESS 39](#_Toc188367004)

[16.1 Contract Award and Execution 39](#_Toc188367005)

[16.2 Compliance for Participation in State Contracts 40](#_Toc188367006)

[16.3 Award To Governmental Entities 42](#_Toc188367007)

[Section 17. disclosure of interested parties 42](#_Toc188367008)

# SECTION 1: SCHEDULE OF EVENTS

|  |  |
| --- | --- |
| **Enrollment Period Opens****(Posted to HHS OE Opportunities webpage)** | February 01, 2025 |
| **Enrollment Period Closes****(Final date for RECEIPT of Applications)** | January 31, 2028 |
| **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 OE 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 OE 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 under that section. The e-mail subject line must contain OE number and title of this OE 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.

# SECTION 2: OVERVIEW

## 2.1 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 Contracts for Independent Review Organizations (IROs) to assist HHSC Medical and UR Appeals (M&URA) and HHSC Operations Management (OM) Provider Resolution and Administrative Appeals (PRAA) with conducting appeal reviews.

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

## 2.2 Legal Authority

HHSC is authorized to enter into this Contract pursuant to Texas Government Code section 531.024164. HHSC is posting this OE pursuant to 1 TAC § 391.103(a) and 1 TAC § 391.601.2.3

## 2.3 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.

# SECTION 3: DEFINITIONS AND ACRONYMS

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

| **Term** | **Definition**  |
| --- | --- |
| **Acute Care Surveillance** | The Acute Care Surveillance (ACS) team within Surveillance Utilization Review identifies patterns of aberrant billing, performs Surveillance Utilization Reviews required by the federal Centers for Medicare and Medicaid Services and collects Medicaid overpayments.   |
| **Addendum** | A written clarification or revision to this Open Enrollment. All Addenda will be posted to the HHS Open Enrollment Opportunities web page. |
| **Administrative Appeal** | A request for review of, not a hearing on, claims denied by the claims administrator or claims processing entity for technical and non-medical reasons. |
| **Adverse Decision or Adverse Determination** | A decision issued as the result of a retrospective claim review, with findings indicating unsupported billing for one or more services, and usually implying an associated recoupment of funds already paid for that service. |
| **Appeal** | The formal process by which a provider requests a review of, not a hearing on, an adverse decision. To be considered an Appeal, a request must in writing, received timely and meet all requirements of the HHSC unit to which the request is being submitted. |
| **Applicant** | Any person or entity that submits an Application in response to this Open Enrollment. |
| **Application** | All information and materials submitted by an Applicant in response to this Open Enrollment. |
| **Business Day** | Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code § 662.021. |
| **Children’s Health Insurance Program (CHIP)** | A program funded jointly by state and federal governments to provide health care for children birth through 18 years and for certain pregnancies. Beneficiaries may have cost sharing in the form of monthly premiums and copays. |
| **Calendar Day** | The period that begins at midnight and ends 24 hours later at 11:59:59 p.m. To calculate a deadline to respond to a contract requirement, the day of the event that triggers the period is excluded (is considered day zero). Saturdays, Sundays, and all holidays are considered Calendar Days. |
| **Conflict of Interest** | A conflict of interest is a set of facts or circumstances in which either a Contractor or anyone acting on its behalf in connection with this OE has past, present, or current personal, professional, or financial interests or obligations that, in HHSC’s sole determination, would actually or apparently conflict or interfere with the Contractor’s contractual obligations to HHSC. A conflict of interest would include circumstances in which a party’s personal, professional, or financial interests or obligations may directly or indirectly: 1) Make it difficult or impossible to fulfill its contractual obligations to HHSC in a manner that is consistent with the best interests of the State of Texas, and/or 2) Impair, diminish, or interfere with that party’s ability to render impartial or objective assistance or advice to HHSC; and/or 3) Provide the party with an unfair competitive advantage in this HHSC OE. Conflicts may include, but are not limited to reviewers having:Any prior involvement related to the claim under appeal review, including but not limited to, treatment, claims submission, retrospective review and determination processes, appeal submission processes, or the appeal review processes.Any professional, personal, or financial affiliations with any parties that had any prior involvement related to the claim under appeal review, including but not limited to, treatment, claims submission, retrospective review and determination processes, the appeal submission processes, or the appeal review processes. Examples of parties with a Conflict of Interest include the RAC, the appellant, other IROs, or other third-party vendors involved in the Appeal process. |
| **Contract** | Any Contract(s) awarded resulting from this Open Enrollment. |
| **Contractor** | Each Applicant, if any, awarded a Contract as a result of this Open Enrollment. Unless the context clearly indicates otherwise, all terms and conditions of this OE and resulting Contract that refer to Applicant apply with equal force to the Contractor. |
| **Contract Manager** | The person within HHSC who oversees any contract awarded as a result of this OE, receives questions about the OE or Application process, and receives invoices for work performed. Serves as the Sole Point of Contact. |
| **Corrective Action Plan** | The detailed written plan that may be required by HHSC to correct or resolve a deficiency or event causing the assessment of a remedy or damage against IRO. |
| **Credentialing Body** | A recognized governmental, organizational, or business entity responsible for gathering and evaluating evidence of provider credentials and fitness, such as having a proper degree and current license, maintaining ongoing training, and having no disqualifying legal or professional problems. |
| **Date of Assignment** | The business day an appeal case is assigned by HHSC to a contracted IRO. This is considered day zero for any deadline calculations. |
| **Debarment** | An exclusion from contracting or subcontracting with state agencies on the basis of cause set forth in Title 34, Texas Administrative Code, § 20.585. |
| **Deliverables** | Goods or services contracted for delivery or performance. |
| **Determination: Overturn** | A decision that fully overturns the adverse decision under appeal, resulting in full repayment of recouped funds. RAC decisions cannot be overturned if any issues do not warrant a complete overturn, including issues that were not cited in the adverse determination letter, for example, codes or procedures that were not validated for inpatient payment. |
| **Determination: Partial Overturn** | A decision that overturns part of the adverse decision under appeal, resulting in only partial repayment of recouped funds. This is not limited to issues cited in the adverse determination letter. For example, a partial overturn could result from an appeal review decision with a DRG change due to further changes in diagnosis or procedure codes.  |
| **Determination: Partial Overturn for Outlier Cases** | For a cost-outlier this may be an overturn of some, but not all, denied services. For Day outliers, this may be an overturn of some, but not all, denied days.  |
| **Determination: Partial Overturn for RAC Cases (Not Permitted)** | Partial Overturn is not permitted for any RAC reviews. RAC decisions may not be overturned if any issues are identified in addition to those noted in the determination under appeal.  |
| **Determination:  Uphold** | A decision that affirms and upholds the adverse decision under appeal.   |
| **Determination: Uphold with additional recoupment** | A decision that affirms and upholds the adverse decision under appeal and identifies additional issues that indicate an overpayment still exists. For example, a review decision that finds additional DRG changes or determines lack of medical necessity for inpatient services, including determination of insufficient medical records to justify payment for services on the claim. |
| **Determination: Uphold with additional recoupment in Outlier Cases** | For Day outliers or Denied days claims, an Uphold with Additional Recoupment may result in denial of additional days. For cost outliers, this may result in denial of additional charges. |
| **Diagnosis Related Group (DRG)** | The classification of medical diagnoses as defined in the 3M All Patient Refined Diagnosis Related Group (APR-DRG) system or as otherwise specified by HHSC. Each DRG has four digits. The last digit of the Diagnosis-Related Group is the Severity of Illness (SOI). SOI indicates the seriousness of the condition on a scale of one to four: minor, moderate, major, or extreme. SOI may increase if secondary diagnoses are present, in addition to the primary diagnosis. (1TAC §355.8052)  |
| **Educational Case Conference** | A meeting between HHSC Medical and UR appeals and a hospital provider to inform the provider about the appeal review process and discuss the rationale for one or more review decisions. These meetings are not a further appeal opportunity and do not affect case outcome.  |
| **Emergency Medicaid Eligibility** | Texas Medicaid provides that certain undocumented aliens and legalized aliens who require treatment of an emergency medical condition or emergency behavioral health condition are eligible to receive that treatment. After the emergency condition requiring care is stabilized and is no longer an emergency, the coverage ends. If the alien continues to receive ongoing treatment after the emergency ceases, the ongoing treatment is not a benefit. Certification for emergency Medicaid occurs after the services have been provided. The coverage is retroactive and limited to the specific dates that the client was treated for the emergency medical condition. |
| **Enrollment Period** | The date range during which HHSC will accept Applications in response to this OE. |
| **Expedited Review** | An appeal review, requested by HHSC to be conducted within an accelerated timeframe due to a perceived urgency in making an appeal decision. The IRO must perform these appeal reviews and render a decision within five business days from the date of assignment. |
| **Fee-for-Service** | Traditional Medicaid for clients not assigned to a managed care organization. Claims are processed by an HHSC claims contractor. Services are reimbursed according to the HHSC fee schedule and consistent with HHSC policies. |
| **Fraud, Waste, or Abuse: Abuse** | A practice by a provider that is inconsistent with sound fiscal, business, or medical practices and that results in an unnecessary cost to the Medicaid program; the reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care; or a practice by a recipient that results in an unnecessary cost to the Medicaid program. |
| **Fraud, Waste, or Abuse: Fraud** | Any intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to that person or some other person. The term does not include unintentional technical, clerical, or administrative errors.  |
| **Fraud, Waste, or Abuse: Waste** | Practices that a reasonably prudent person would deem careless or that would allow inefficient use of resources, items, or services.    |
| **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) |
| **HHSC Medical and UR Appeals** | Unit within HHSC Office of Medical Director which conducts appeal reviews of various types. |
| **HHSC Office of Inspector General (OIG)** | The commission's office of inspector general is responsible for the prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded or services provided by the Department of Family and Protective Services, and the enforcement of state law relating to the provision of those services.  |
| **HHS Open Enrollment (OE) Opportunities** | The HHS webpage where Open Enrollments are posted: <https://apps.hhs.texas.gov/pcs/openenrollment.cfm> |
| **HHSC Operations Management (OM) Provider Resolution and Administrative Appeals (PRAA)** | This unit performs independent, provider-requested, second-level appeal reviews of non-clinical (also referred to as administrative) adverse determinations. These adverse determinations result initially from retrospective payment reviews of fee-for-service and managed care claims. Examples include OIG’s Acute Care Surveillance (ACS) reviews, Targeted Query (TQ) reviews, and RAC automated reviews. First level appeal review is conducted by OIG or an HHSC contractor.  |
| **HIPPA** | The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a federal law that included requirements for creating national standards to protect sensitive patient health information from being disclosed without the patient’s consent or knowledge. |
| **HITECH** | The Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of the American Recovery and Reinvestment Act of 2009, was intended to promote the adoption and meaningful use of health information technology.  Subtitle D of the HITECH Act addresses the privacy and security concerns associated with the electronic transmission of health information and strengthens civil and criminal enforcement of HIPAA rules.  |
| **Hospital Utilization Reviews (HUR)** | Office of Inspector General review of inpatient hospital services in accordance with 1 TAC §371.200 - §371.210. |
| **Independent Review Organization (IRO)**  | [Organizations certified by the Texas Department of Insurance (TDI) under Insurance Code Chapter 4202. For this OE solicitation, the purpose of an IRO is to independently review adverse decisions denying payment for certain health care services and made on the basis that the services are not medically necessary or appropriate or are experimental or investigational.](https://statutes.capitol.texas.gov/Docs/IN/htm/IN.4202.htm) |
| **Inter-Reviewer Reliability (IRR) Evaluation** | The process of evaluating the degree of agreement among two or more reviewers, coders, etc. when conducting reviews. |
| **Managed Care Organization (MCO)**  | An organization in the business of providing healthcare while managing cost, utilization, and quality. Medicaid managed care provides for the delivery of Medicaid health benefits and additional services through contracted arrangements. |
| **Medicaid** | A program funded jointly by the federal and state governments that provides health coverage for low-income children, families, seniors, and people with disabilities. In Texas, Medicaid is administered by HHSC, primarily through MCO contractors. |
| **Office of Medical Director (OMD)**  | An area within HHSC Medicaid and CHIP Services (MCS) that provides clinical leadership and direction to the Texas Medicaid program and liaisons with other state agencies and stakeholders. HHSC Medical and UR Appeals is a unit within OMD. |
| **Open Enrollment (OE)** | This document, including all exhibits, attachments, and addenda, as applicable, posted on the HHS Open Enrollment Opportunities webpage. |
| **Cost Outlier** | A payment adjustment for a claim with extraordinarily high costs above a fixed-loss cost threshold amount. Payment methodology as described in 1TAC 15 RULE §355.8052 Inpatient Hospital Reimbursement. |
| **Day Outlier** | A payment adjustment for a claim with an extended length of stay. Inpatient days must exceed the DRG day threshold for the specific DRG. Payment methodology as described in 1TAC §355.8052 Inpatient Hospital Reimbursement. |
| **Portal Access** | The authorization and ability to securely log into an electronic database system interface (portal) using a unique user identification and password. For the purposes of this contract, the portal is maintained by the RAC contractor HMS to provide access to appeal case information.  |
| **RAC Automated Review** | A computerized review of reimbursement data using scenarios to detect improper payment, without examination of medical documentation. |
| **RAC Complex Review** | Manual review of documentation, including medical records, to retrospectively determine the existence of improper payment. Providers are responsible for submitting documentation requested by the RAC contractor, as determined by various RAC scenarios. |
| **Readmission** | Admission to a hospital within 30 days of a previous admission to the same or related facility.  |
| **Recovery Audit Contractor (RAC)** | An independent organization contracted by HHSC to conduct automated and complex retrospective reviews of billed claims, as mandated by the federal Centers for Medicare & Medicaid Services (CMS). The current RAC contractor is HMS. |
| **Retrospective Review** | An examination of a claim billed to Medicaid to determine if the billed services were appropriate, medically necessary, billed appropriately, and supported by the medical record. The review is conducted at some time after the claim is billed.  |
| **School Related and Health Services (SHARS)** | A program that allows Texas local educational agencies (for instance, a school district) and shared service arrangements (for instance, combinations of school districts) to request reimbursement for Medicaid health-related services. The admission, review, and dismissal (ARD) committee determines SHARS services. Services must be medically necessary and reasonable to ensure that children with disabilities are able to participate in the educational program.  |
| **Sole Point of Contact** | The person and program area within HHSC preforming most communication between HHSC and Contractors, administering the contract, and serving as an information resource for Contractors. |
| **Statement of Work (SOW)** | The description of services and deliverables attached to this Open Enrollment that the Contractor is required to provide under the Contract. |
| **Submission** | A set of paper or electronic documents sent to HHSC or its RAC Contractor by a provider. If the submission is found to be complete and timely, it may be referred to as an Appeal. |
| **Surveillance Utilization Review (SUR)** | A division of the Office of Inspector General which conducts retrospective reviews of hospitals, nursing facilities, and acute care services. |
| **Targeted Query (TQ)** | The Targeted Queries (TQ) team conducts reviews of Medicaid and other Texas public health care program providers using advanced algorithms that identify indicators of potential waste in data. The TQ model employs replicable data analysis techniques to detect, deter and prevent new and ongoing waste patterns and recover misspent Medicaid funds.  |
| **TEFRA (Tax Equity and Fiscal Responsibility Act of 1982) Payment Methodology** | A payment methodology used for inpatient stays in state-owned teaching hospitals and free-standing psychiatric hospitals. This methodology is based on a combination of per diem and cost basis. It differs from APR-DRG payment methodology used for other facilities. APR-DRG methodology is based on ICD-10 coding. For RAC reviews, TEFRA cases cannot be overturned unless all days and services on the claim were medically necessary for inpatient care. |
| **Texas Administrative Code (TAC)** | A compilation of all state agency rules in Texas containing 17 subject category titles to which related agencies are assigned.  |
| **Texas Medicaid Provider Procedures Manual (TMPPM)** | The policy and procedures manual published by or on behalf of HHSC that contains policies and procedures required of all health care providers who participate in the Texas Medicaid program. |
| **Third-party Guidelines** | A set of guidelines published and available commercially from companies (third parties), that may provide objective feedback and may help providers and hospital case managers determine appropriate patient status and Level of Care for hospital patients. These guidelines are not intended to make diagnoses and are not relied upon for appeal reviews. Examples include InterQual and MCG.  |

# SECTION 4: GENERAL INFORMATION

## 4.1 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.

Marticia Lee

Contract Manager (CM)

Email: Marticia.Lee@hhs.texas.gov

**To be considered for contract award, applications must only be submitted to this email 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.**

## 4.2 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.

**4.2.1** **Advertisement of Changes, Modifications or Cancellation**

If HHSC determines the OE needs to be changed or modified, either an Addendum will be posted on the HHS 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 HHS OE Opportunities webpage.

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

## 4.3 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, unless withdrawn by the Applicant before the Enrollment Period closes.

### An Applicant may extend the time for which its Application will be honored by including the extended period in the Application.

## 4.4 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 constitute a commitment by HHSC and convey no legal rights upon the applicant.

### 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.

## 4.5 OE Questions or Clarifications

**4.5.1** 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.

**4.5.2** **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, and 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

**4.5.3 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 as 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).
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. 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, an **HSP is not required to be submitted with the Application.**

# SECTION 6. CONTRACT TERM

## 6.1 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 3 years after the effective date, unless terminated earlier pursuant to the terms and conditions of the Contract.

## 6.2 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 7. 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.

## 7.1 Required Experience

To be considered for contract under this OE, an Applicant shall have a minimum of 2 years of relevant experience performing the services as outlined in this OE or similar services.

All personnel assigned to perform the services must be fully trained and have a minimum of 3 years of postgraduate direct patient care experience in the United States.

References: Applicants must provide a minimum of 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.

For each reference, the Applicant shall provide the following documentation with Application:

### a. Name, address, and phone number for each reference.

### b. Description of services performed.

### c. Dates services performed.

### d. Key staff assigned to the referenced contract/project who will be designated for work for any resulting Contract under this OE.

## 7.2 Licensure and Accreditation

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

Any contracting IRO and its subcontractors, if any, must be licensed in Texas. Any professional personnel, including physicians or nurses, directly involved in or supervising the appeal review process, who, by law, require a professional license or certification, must maintain current, valid, and applicable Texas licensure or certification in good standing.

Contractor is responsible for ensuring compliance with these requirements and shall provide updated required permits, licenses, and certifications at HHSC’s request.

## 7.3 Additional Minimum Qualifications for Contractor and Personnel

### Applicant must provide a description of the Applicant’s knowledge base and experience performing appeal reviews in Texas or in other states, including types of cases, healthcare entities, and payers involved. Topics addressed must include at least:

### a. Assessing medical records for completeness.

#### b. Determination of medical necessity for hospital admission or hospital level care beyond an observation period.

#### c. Determination of medical necessity for outpatient procedures performed on an inpatient basis.

#### d. Determination of appropriate coding for billed diagnoses and procedures and assignment of appropriate APR-DRG.

#### e. Knowledge of reimbursement methodology for healthcare entities, including DRG, per diem, or TEFRA basis.

#### f. Texas Medicaid policies and procedures.

#### g. Familiarity with, or a process for becoming familiar with the definition of emergency medical condition as discussed in the TMPPM and Form H-3808 in relation to members with Emergency Medicaid Eligibility.

#### h. How the Applicant will apply this knowledge, experience, and other qualifications to performing appeal reviews.

# SECTION 8. STATEMENT OF WORK.

The Statement of Work (SOW) is attached as Exhibit C.

## 8.1 Project Overview

##### An overview of the project is detailed in Exhibit C, Statement of Work.

## 8.2 HHSC Responsibilities

## HHSC responsibilities are detailed in Exhibit C, Statement of Work.

## 8.3 Statement of Services to be Provided

##### A detailed description of services to be provided is included in Exhibit C, Statement of Work.

##### 8.4 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.

##### A detailed description of performance standards and reporting requirements is included in Exhibit C, Statement of Work.

## 8.5 Contractor Personnel Performance

##### 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.

##### The Contractor shall at all times employ sufficient personnel to carry out functions and services in the manner and time prescribed by the Contract.

##### 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.

##### 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.

## 8.6 Notice of Criminal Activity

### At the time of submission, Applicants shall provide confirmation that 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:

#### a. 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

#### b. 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.

## 8.7 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 5 days of the date Contractor learns of such financial circumstances after Contract award.

## 8.8 Background Checks For Personnel

### The Contractor will conduct or will retain an independent third party to perform comprehensive, statewide Texas Department of Public Safety (DPS) criminal and sex offender background checks on all Contractor personnel, including permanent and temporary personnel and Subcontractor and Subcontractor personnel who will be assigned as key personnel to perform services under the Contract. The Contractor is responsible for all background check expenses.

### 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:

#### a. Social Security Number verification.

#### b. 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.

## 8.9 Reporting Criteria

### Exhibit C, Statement of Work details the IRO reporting requirements.

## 8.10 Invoice Requirements and Payment

8.10.1 Invoice Requirements

Contractor shall submit to HHSC detailed and accurate invoice(s) which include the information below. Each invoice must be submitted by e-mail, in the format prescribed by HHSC, not later than 45 calendar days after completion of [service].

The e-mail address for submitting an invoice is:

**hhsc\_ap@hhsc.state.tx.us** **and Marticia.Lee@hhs.texas.gov**

The invoice shall include, at a minimum:

* Contractor’s Name.
* Remit to Address.
* Federal ID or Texas CPA Payee ID.
* Accounts Receivable telephone number.
* Contract and/or Purchase Order Number.
* Service date(s).
* Identification and itemization of services provided, with Claim Numbers (ICNs) listed and subtotaled by review type and by agency area.
* Other relevant information supporting and explaining the payment requested, such as reviewer name, date of service, due date, specialty, and Appealing provider name.
* Supporting Documentation.

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

8.10.2 Payment

#### Contracts issued under this OE will be paid in accordance with Exhibit F, Fee Schedule.

#### No reimbursement for travel or meal expenses is permitted under any Contract resulting from this OE.

## 8.11 Data Use Agreement (DUA)

#### By submitting an Application, and if applicable, signing a contract resulting from this OE, Applicant agrees to the terms of the Data Use Agreement, Exhibit E. The Applicant must complete, sign, and return with its Application Exhibit E, Texas HHS System – Data Use Agreement – Attachment 2, Security and Privacy Initial Inquiry (SPI).

## 8.12 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 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.

## 8.13 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 9. HHSC CONTRACT ADMINISTRATION

HHSC will designate a Contract Manager (Sole Point of Contact) 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 10. INSURANCE requirements

## 10.1 Insurance Coverage

For the duration of any Contract resulting from this OE, Applicant shall acquire insurance 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.

Contractor shall maintain the required insurance in the types and amounts during the initial term and any renewal or extension period exercised. The insurance shall be evidenced by delivery to HHSC of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Upon request, HHSC, and/or its agents, shall be entitled to receive without expense, copies of the policies and all endorsements.

Contractor shall update all expired policies prior to submission for monthly payment. Failure to update policies shall be reason for withholding of payment until renewal is provided to HHSC.

Contractor shall provide and maintain all insurance coverage with the minimum amounts described throughout the life of the Contract.

Failure to maintain insurance coverage, as required, may be grounds for suspension of work for cause.

Contractor shall deliver to HHSC true and complete copies of certificates and corresponding policy endorsements upon award.

Failure of HHSC to demand such certificates or other evidence of Contractor’s full compliance with these insurance requirements or failure of HHSC to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor’s obligation to maintain such insurance.

The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor’s liability under the indemnities granted to HHSC in the Contract.

The insurance coverage and limits established below shall not be interpreted as any representation or warranty that the insurance coverage and limits necessarily will be adequate to protect Contractor.

Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company or similar rating company or otherwise acceptable to HHSC.

## 10.2 Required Policy Clauses and Other Requirements

This insurance shall not be canceled, materially changed, or non-renewed except after thirty (30) days written notice has been given to HHSC.

It is agreed that Contractor’s insurance shall be deemed primary with respect to any insurance or self-insurance carried by HHSC for liability arising out of operations under the Contract with HHSC. The Texas Health and Human Services Commission, its officials, directors, employees, representatives, and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured performed under Contract with HHSC. The additional insured status must cover completed operations as well. This is not applicable to workers’ compensation policies.

A waiver of subrogation in favor of the Texas Health and Human Services Commission shall be provided in all policies.

Without limiting any of the other obligations or liabilities of Contractor, Contractor shall require each Subcontractor performing work under the Contract, at Subcontractor’s own expense, to maintain during the term of the Contract, the same stipulated minimum insurance including the required provisions and additional policy conditions as shown above.

##### As an alternative, Contractor may include its Subcontractors as additional insureds on its own coverage as prescribed under these requirements. Contractor’s certificate of insurance shall note in such event that Subcontractors are included as additional insureds and that Contractor agrees to provide workers’ compensation for Subcontractors and their employees. Contractor shall obtain and monitor the certificates of insurance from each Subcontractor in order to assure compliance with the insurance requirements.

##### Contractor must retain the certificates of insurance for the duration of the Contract plus seven (7) years and shall have the responsibility of enforcing these insurance requirements among its Subcontractors. Owner shall be entitled, upon request and without expense, to receive copies of these certificates.

## 10.3 Specific Insurance Coverage Required.

10.3.1 Workers Compensation Insurance.

##### Insurance with limits as required by the Texas Workers’ Compensation Act, with the policy endorsed to provide a waiver of subrogation in favor of the Texas Health and Human Services Commission, employer’s liability insurance of not less than:

##### $1,000,000 each accident.

##### $1,000,000 disease each employee.

##### $1,000,000 disease policy limit.

##### Workers’ compensation insurance coverage must be provided for all workers at all tier levels and meet the statutory requirements of the Texas Labor Code.

10.3.2 Commercial General Liability Insurance.

##### Including premises, operations, independent Contractor’s liability, products and completed operations and contractual liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Contractor’s liability for bodily injury (including death) and property damage with a minimum limit of:

##### a. $1,000,000 per occurrence.

##### b. $2,000,000 general aggregate.

##### c. $5,000 Medical Expense each person.

##### d. $1,000,000 Personal Injury and Advertising Liability.

##### e. $2,000,000 products and completed operations aggregate.

##### f. $50,000 Damage to Premises Rented to You.

##### Coverage shall be on an “occurrence” basis.

##### 10.3.3 Comprehensive Automobile Liability Insurance.

##### Covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage of $1,000,000 per accident. No aggregate shall be permitted for this type of coverage.

10.3.4 Cyber/Privacy Liability Insurance.

##### Contractor shall provide Cyber/Privacy Liability Insurance in the amount of at least $1,000,000 Claim/$1,000,000 Aggregate.

##### Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include loss to electronic vandalism to electronic data, electronic data, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security.

##### The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

##### The policy must include coverage for a third party’s willful electronic alteration of data, introduction of viruses which impact electronic data, unauthorized use of electronic data, or denial of service to web site or email destinations.

##### If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, HHSC requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to HHSC.

10.3.5 Professional Liability Insurance.

##### Contractor shall obtain, pay for, and maintain professional liability errors and omissions insurance during the Contract term, insuring Contractor for an amount of not less than $1,000,000.

#####

10.3.6 Umbrella Liability Insurance.

##### Respondent shall obtain, pay for, and maintain umbrella liability insurance during the Contract term, insuring Respondent for an amount of not less than amount $2,000,000 that provides coverage at least as broad as and applies in excess and follows form of the primary liability coverages required hereinabove.

##### The policy shall provide “drop down” coverage where underlying primary insurance coverage limits are insufficient or exhausted.

10.3.7 Crime Insurance.

##### Crime insurance to cover losses from employee dishonesty with a minimum limit of $1,000,000.00 per occurrence. Coverage must include third party property, and the policy cannot include a conviction clause. HHSC must be listed as a loss payee.

10.3.8 Individual Medical Liability Insurance:

##### Each medical professional reviewing cases, supervising reviewers, or otherwise employed or contracting with the IRO shall carry medical liability insurance with minimum coverage limits of $500,000 per incident and $1,500,000 aggregate.

## 10.4 Alternative Insurability.

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

# SECTION 11. CONFIDENTIAL OR PROPRIETARY INFORMATION

## 11.1 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:

##### a. Mark Original Application:

(1) 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

(2) 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), and

##### b. Certify in Original Application:

##### Certify in the designated section of the HHS Solicitation Affirmations (attached as Exhibit A to this OE): Applicant’s confidential information assertion and the filing of its Public Information Act Copy; and

1. **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:

(1) 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);

(2) Each portion Applicant claims is exempt from public disclosure must be redacted; and

(3) 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>

## 11.2 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 12. 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 will be disqualified.**

# Section 13. 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 D – Federal Assurances and Certification**

 Completed and signed |
| **4. Exhibit E - DUA, –** **Attachment 2 (Security and Privacy Initial Inquiry) –** Completed and signed |
| **5. Minimum Qualifications – Reference Section 7.****Required Experience:**Provide documentation of demonstrated experience to confirm the Applicant and all personnel meet the minimum requirements. This applies to the Applicant’s business, Subcontractor(s) and both Applicant’s and Subcontractor’s personnel. **References – Reference Section 7.1:** Applicants must provide a minimum of 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. For each reference, the Applicant shall provide the following documentation with Application:* Name, address, and phone number for each reference.
* Dates services performed.
* Description of services performed.
* Key staff assigned to the referenced contract/project who will be designated for work for any resulting Contract under this OE.

**Licensure or Accreditation - Reference Section 7.2:**Provide current copies of all required Licensure and Accreditation for the Applicant and Applicant’s personnel as applicable**.** **Additional Minimum Qualifications - Reference Section 7.3:**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.  |
| **6. 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 or resumes for all staff, including contracted professionals who will be conducting appeal reviews. Profiles or resumes shall include the first name, middle name or initial, and last names for all key staff.  |
| **7. Executive Summary*** **Statement of Work – Reference Section 8 and Exhibit C:**

Provide the Applicant’s approach to meeting the requirements of the attached 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 the individual previously worked
* Dates of employment for each identified state agency
* Any additional information requested by HHS regarding identified individuals must be provided by Applicant.
 |
| **8. Notice of Criminal Activity – Reference Section 8.7:**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: * 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
* 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.
 |
| **9. Notice of Insolvency or Indebtedness – Reference Section 8.8:**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. |
| **10. 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
 |
| **11. Contractor Service Locations or Offices:**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
 |
| **12. Subcontractor Information:** Provide a list of all subcontractors which must include at a minimum:* Business Structure (Type of entity).
* DBA name, if applicable with associated Texas County(s).
* Addresses – Physical and Mailing, if different.
* Contact Information – Phone and e-mail.
* Texas Historically Underutilized Business (HUB) – If applicable, provide copy of Certificate.
 |
| **13. Insurance – Reference Section 10:**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.  |
| **14. Public Information Act Copy of Application, if applicable** |

# SECTION 14. APPLICATION SUBMISSION

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

 The complete Application must be submitted to:

 HHSC Medical and UR Appeals

 Email: Utilization\_Appeals@hhsc.state.tx.us

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 must be submitted by email.

## 14.1 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 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 break the Application into segments and send multiple e-mails to ensure all documentation 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.

## 14.2 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 15. SCREENING and Evaluation 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.

## 15.1 Initial Screening of Applications

An initial screening will be conducted by HHSC, in reference to this OE and the Statement of Work, to determine which Applications are complete and responsive and which Applicants meet minimum qualifications for further consideration of contract award.

HHSC reserves the right to:

a. Ask questions or request clarification from any Applicant at any time during the OE and screening process, and

b. Conduct studies and other investigations as necessary to evaluate any Application.

## 15.2 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: Certain items shall not constitute an informality, for example any disqualifying factor set forth in this OE, such as Exhibit A - HHS Solicitation

Affirmations, which must be signed and submitted with the Application.

## 15.3 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 grants HHSC the right to query entities about the Contractor’s previous performance and 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:

a. 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/>

b. Applicant is currently under a corrective action plan through HHSC.

c. Applicant has had repeated, negative vendor performance reports for the same reason.

d. Applicant has a record of repeated non-responsiveness to vendor performance issues.

e. 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:

a. Notices of termination.

b. Cure notices.

c. Assessments of liquidated damages.

d. Litigation.

e. Audit reports.

f. 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 16. AWARD PROCESS

## 16.1 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.

Applicants selected to be offered a Contract will be notified by email to their specified point of contact.

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.

## 16.2 Compliance for Participation in State Contracts

16.2.1 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.

##### 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>

##### 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>

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

##### 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>

a. Companies that boycott Israel.

b. Scrutinized Companies with Ties to Sudan.

c. Scrutinized Companies with Ties to Iran.

d. Designated Foreign Terrorist Organizations.

e. Scrutinized Companies with Ties to Foreign Terrorist Organizations.

**d. 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.hhsc.texas.gov/exclusions>

##### e. 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/>

16.2.2 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.

##### a. 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.

##### b. 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.

##### c. 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>

## 16.3 Award To Governmental Entities

If Applicant is a governmental entity, responding to this OE in its capacity as a governmental entity, certain terms and conditions may not be applicable including, but not limited to, any HSP requirement. Furthermore, to the extent permitted by law, if an Application is received from a governmental entity, HHSC reserves the right to enter into an interagency or interlocal agreement with the governmental entity.

#

# Section 17. 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](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 HHSC, HHSC is prohibited by law from executing a contract, even if the potential awardee is otherwise eligible for award.