



**TEXAS**  
**Health and Human Services**

**TEXAS HEALTH AND HUMAN SERVICES COMMISSION**

**OPEN ENROLLMENT (OE)**

**for**

**Business Supports, Coaching, and Administrative Services for  
Consumers Using the Consumer Directed Services Option  
Requesting Assistance Applying For and Administering Certain  
Grant Funds**

**OE No. HHS0012399**

**NIGP Class/Item No(s):  
#91858**

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## SECTION 1. SCHEDULE OF EVENTS

<b>Enrollment Period Opens (Posted to HHS OE Opportunities webpage)</b>	<b><i>July 15, 2022</i></b>
<b>Enrollment Period Closes (Final date for RECEIPT of Applications)</b>	<b><i>August 5, 2022</i></b>
<b>Anticipated Contract Start Date</b>	<b>The effective date of a Contract, if any, awarded to an Applicant will be determined at the sole discretion of HHSC</b>

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Applications may be withdrawn from consideration or amended at any time prior to the "Enrollment Period Closes" date by emailing a request to the Point of Contact, Section 4.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.

## SECTION 2. OVERVIEW

### 2.1. INTRODUCTION

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

HHSC is seeking Applications to establish Contract(s) for Business Supports and Services, Coaching, and Administrative Services for Consumers Using the Consumer Directed Services Option (CDS) Requesting Assistance Applying for and

Administering Certain Grant Funds. CDS Consumers may be eligible to receive grant funds from the Request for Applications (RFA) No. HS0011792 and those potential applicants may wish to receive financial management services and other administrative supports related to completion of the grant application, receipt of funds, expending funds, and various reporting or documentation requirements. Applicants would provide those supports to CDS Consumers upon their request related to RFA No. HHS0011792.

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 contracts under this Open Enrollment by Chapter 12 of the Texas Health and Safety Code as transferred to HHSC under Section 531.0201 of the Texas Government Code.

## **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 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.

<b>TERM</b>	<b>DEFINITION</b>
<b>Addendum</b>	A written clarification or revision to this Open Enrollment. All Addenda will be posted to the HHS Open Enrollment Opportunities web page.
<b>Application</b>	All information and materials submitted by an Applicant in response to this Open Enrollment.
<b>Applicant</b>	Any person or entity that submits an Application in response to this Open Enrollment.
<b>Contract</b>	Any Contract(s) awarded resulting from this Open Enrollment.

<b>TERM</b>	<b>DEFINITION</b>
<b>Consumer Directed Services (CDS) Attendant</b>	The employee chosen by the CDS Consumer or Designated Representative to assist the individual with personal care needs.
<b>CDS Consumer or CDS Recipient</b>	The individual receiving service under the CDS Option.
<b>CDS Employer</b>	A CDS Recipient or legally authorized representative who chooses to participate in the CDS Option and is responsible for hiring and retaining personal attendants to deliver program services.
<b>Consumer Directed Services or Consumer Directed Services Option (CDS)</b>	A service delivery option in which an individual or their legally authorized representative employs and retains service providers and directs the delivery of program services.
<b>Contractor (Provider)</b>	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).
<b>Designated Representative</b>	A willing adult appointed by the CDS Recipient to assist with or perform the CDS Recipient's required responsibilities to the extent approved by the CDS Recipient.
<b>Financial Management Services</b>	Services delivered by an FMSA to an employer or Designated Representative as described in 40 Texas Administrative Code, §41.309(a).
<b>Financial Management Services Agency (FMSA)</b>	A person or organization, as defined in 40 Texas Administrative Code §49.102, that contracts with HHSC to provide Financial Management Services.
<b>HHS Agency</b>	The Health and Human Services Commission (HHSC) and the Department of State Health 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)
<b>HHS Open Enrollment Opportunities</b>	The HHS web page where Open Enrollments are posted: <a href="https://apps.hhs.texas.gov/pcs/openenrollment.cfm">https://apps.hhs.texas.gov/pcs/openenrollment.cfm</a>
<b>HUB</b>	A Historically Underutilized Business, as defined by Chapter 2161, Texas Government Code.
<b>HUB Subcontracting Plan (HSP)</b>	The Historically Underutilized Business Subcontracting Plan (HSP) required by Chapter 2161 of the Texas Government Code for contracts with an expected value of \$100,000 or more and where subcontracting opportunities have been determined to be probable.

TERM	DEFINITION
<b>Legally Authorized Representative</b>	A person authorized or required by law to act on behalf of an individual, including a parent of a minor, guardian of a minor, managing conservator of a minor, or the guardian of an adult
<b>Open Enrollment (OE)</b>	This document, including all exhibits, attachments and addenda, as applicable, posted on the HHS Open Enrollment Opportunities webpage.
<b>Statement of Work</b>	The description of services and deliverables in this Open Enrollment that the Contractor (Provider) is required to provide under the Contract.

## **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.

Jessie Brennan  
Contract Manager, CTCM  
Provider Finance Department  
Email:Jessie.Brennan@hhs.texas.gov

**Applications should NOT be submitted to this email address. See Section #12 and #13 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 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.

#### **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, as stated in Exhibit B, 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.

#### **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 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.

#### **4.5. OPEN ENROLLMENT 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:

- a. the OE Number
- b. 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

#### **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 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:

- a. shall have waived any claim of error or ambiguity in the OE and any resulting contract,
- b. shall not contest the interpretation by HHSC of such provision(s), and
- c. 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](#) and [Title 34, Part 1, Chapter 20, Subchapter D, Division 1 of the Texas Administrative Code](#).

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

HHS has determined subcontracting opportunities are not probable under this OE; therefore, a **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 one year 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**

- a. To be considered for contract award under this OE, an Applicant shall be a financial management services agency (FMSA) as defined in §41.103, Texas Administrative Code, and have an active contract to provide services to a CDS Consumer using the CDS Option.
- b. The Applicant must have received a payment or reimbursement for services from the HHSC Medicaid or a Texas Medicaid managed care organization for financial management services between January 1, 2021 and June 30, 2022.

## **SECTION 8. STATEMENT OF WORK**

### **8.1. PROJECT OVERVIEW**

Since the first case of COVID-19 was discovered in the United States in January 2020, the pandemic has caused severe, intertwined public health and economic crises. In March 2021, as these crises continued, the American Rescue Plan Act of 2021 established the Coronavirus State and Local Fiscal Recovery Funds to provide State, local, and tribal governments with the resources needed to respond to the pandemic and its economic effects and to build a stronger, more equitable economy during the recovery.

Senate Bill 8, 87th Texas Legislature, 3rd Called Session, 2021, appropriated funding to HHSC to administer one-time funding awards for Critical Staffing Needs for Texas CDS Community Attendants resulting from frontline health care workers affected by COVID-19. These funds are appropriated to HHSC from money received by this State from the Coronavirus State Fiscal Recovery Fund (42 U.S.C. Section 802) established under the American Rescue Plan Act of 2021 (Pub. L. No. A117-2) and deposited to the credit of the Coronavirus Relief Fund No. A325. These funds are being distributed via RFA No. HHS0011792.

HHSC is aware that CDS Consumers may wish to receive support from an FMSA in applying for or administering any grant funds awarded to them under RFA No. HHS0011792, similar to the support received from an FMSA for Medicaid funds that are utilized by the CDS Consumer. This OE seeks FMSA services to support CDS Consumers, should they wish to receive assistance.

## **8.2. HHSC RESPONSIBILITIES**

HHSC will provide FMSAs that receive a contract under this Open Enrollment with a copy of RFA No. HHS0011792, including a copy of the application template for that RFA, as well as a copy of the reporting template that must be completed by CDS Recipients applying for funding under RFA No. HHS0011792. HHSC will post a list of all FMSAs that have enrolled via this OE on the HHSC website to notify potential applicants to RFA No. HHS0011792 of the availability of support services.

## **8.3. CONTRACTOR (PROVIDER) RESPONSIBILITIES**

Contractor will be responsible for assisting CDS Consumers in completing grant applications for RFA No. HHS0011792 and administering any funds received from the RFA. Contractor will be responsible for assisting the CDS Consumer with any reporting requirements related to RFA No. HHS0011792.

## **8.4. STATEMENT OF SERVICES TO BE PROVIDED**

Contractor will be responsible for:

- (1) assisting CDS Consumers who request assistance with actions related to RFA No. HHS0011792 including:
  - a. completing grant applications;
  - b. advising and assisting with information on how to appropriately categorize funding as medical expenses, or not, for income reporting purposes;
  - c. depositing or receiving funds to an appropriate account;
  - d. maintaining appropriate records and documentation;
  - e. expending the funds in accordance with the requirements of the grant;
  - f. categorizing the funds as employment supports, or not;
  - g. completing reporting requirements necessary for the grant; and
  - h. other administrative needs that a CDS Consumer may have related to the funds.
- (2) submitting invoices to HHSC with a listing of each CDS Consumer for which support services were provided.

## **8.5. 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.

### **8.5.1. SPECIFIC PERFORMANCE STANDARDS**

Contractor shall comply with all obligations and duties under the Contract. In addition, the Contractor shall adhere to the following performance standards:

- The FMSA must assist the CDS Consumer with payroll processing, Internal Revenue Service (IRS) reporting, and any documentation necessary for either state or federal requirements related to the CDS Consumer serving as the employer of record and related to the use of the grant funds.
- The FMSA must assist the CDS Consumer with deposit of the funds to an appropriate account from which the grant funds can be directed for use by the CDS Consumer to award bonuses or other payments in accordance with the grant.
- The FMSA must provide instruction and guidance to the CDS Consumer regarding the appropriate categorization of the grant funds as employer supports or other categories, as appropriate.
- The FMSA must provide instruction and guidance to the CDS Consumer regarding the appropriate categorization of the grant funds as it relates to medical expenditures and income, as appropriate; and
- The FMSA must provide documentation to HHSC that the CDS Consumer or the Designated Representative has received all supports and services that are required by the CDS Consumer to successfully administer the grant.

### **8.6. CONTRACTOR PERSONNEL PERFORMANCE**

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

- d. 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.

## **8.7. 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:

- 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.

## **8.8. 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 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.

## **8.9. INVOICE REQUIREMENTS AND PAYMENT**

### **8.9.1. 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 30 calendar days after: (1) completion of an application to RFA No. HHS0011792 by a consumer using the CDS; and (2) completion of the required reports related to RFA No. HHS0011792 by a consumer using the CDS option.

The e-mail address for submitting an invoice is:

[providerfinancedept@hhs.texas.gov](mailto:providerfinancedept@hhs.texas.gov)

The invoice shall include, at a minimum:

- a. Contractor's Name;
- b. Remit to Address;
- c. Federal ID or Texas CPA Payee ID;
- d. Accounts Receivable telephone number;
- e. Contract and/or Purchase Order Number;
- f. Identification of services provided;

- g. Identification of CDS Consumer information for whom services were provided; and
- h. Service date(s).

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

#### **8.9.2. PAYMENT**

Contracts issued under this OE will be paid using a per client served flat fee of (1) \$25 for each application that the FMSA assists with completion of and for whom the FMSA agrees to provide payroll processing and support services related to the utilization of the grant funds; and (2) \$25 for each grant report that the FMSA assists with completion of and for which the FMSA affirms that they have successfully completed payroll processing and support services to, as necessary for the client to successfully administer the grant.

#### **8.10. 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 C. The Applicant must complete, sign, and return with its Application Exhibit C, Attachment 2, (Texas HHS System - Data Use Agreement – Attachment 2, Security and Privacy Initial Inquiry (SPI)).

#### **8.11. 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.

#### **8.12. 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**

The HHSC Contract Manager assigned to administer the OE is listed under Section 4.1 Sole Point of Contact in this document. Contact information provided.

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. CONFIDENTIAL OR PROPRIETARY INFORMATION**

### **10.1. PUBLIC INFORMATION ACT**

#### **Applicant Requirements Regarding Disclosure**

Applications and contracts are subject to the Texas Public Information Act (PIA), Texas Government Code [Chapter 552](#), 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. **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
- b. **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 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>

## **10.2. 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 11. 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 12. REQUIRED APPLICATION DOCUMENTS**

<b>Documentation Required for Submission</b> <b>All documents listed must be returned for a complete Application. Items listed below must be submitted via the SurveyMonkey Application described in Section 13. In addition to submitting the documents below, Applicants must complete all questions in the SurveyMonkey Application and provide all requested information.</b>
<b>1. Exhibit A – HHS Solicitation Affirmations</b> Completed and signed. <b>Important Note: Applications received without the signed Exhibit A will be disqualified.</b>
<b>2. Exhibit B - Data Use Agreement (including Security and Privacy Initial Inquiry)</b> Completed and signed.
<b>3. Public Information Act Copy, if applicable</b>
<b>4. Open Enrollment Addenda, if applicable</b> Must be signed.

## **SECTION 13. APPLICATION SUBMISSION REQUIREMENTS**

The Application must be submitted in accordance with this section and Section 12. Applicant must respond to all questions asked in the Application, provide all requested information, and submit all required documents.

The complete Application must be completed here:

<https://www.surveymonkey.com/r/OEGrantFunds>

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 electronic submission via the web-based tool located at <https://www.surveymonkey.com/r/OEGrantFunds>

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

### **13.1. 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 14. 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.

### **14.1. 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:

- 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.

**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, Copy of Application, and Exhibit # HHS Solicitation and Contract Affirmations, which must be signed and submitted with the Application).

**14.2. 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:

- 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/>  
OR,
- b. Applicant is currently under a corrective action plan through HHSC, OR,
- c. Applicant has had repeated, negative vendor performance reports for the same reason, OR,
- d. Applicant has a record of repeated non-responsiveness to vendor performance issues, OR,
- 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:

- 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 15. AWARD PROCESS**

### **15.1. 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.

### **15.2. COMPLIANCE FOR PARTICIPATION IN STATE CONTRACTS**

### **15.2.1. 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.

#### **A. 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>

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

Must not be excluded from contract participation at the federal level. This verification is conducted through SAM, official website of the U.S. Government which may be accessed at this link:

<https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf>

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

#### **C. 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.

### **15.3. 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 16. DISCLOSURE OF INTERESTED PARTIES**

Subject to certain specified exceptions, Section 2252.908 of the Texas Government Code, 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](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$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.