

**REQUEST FOR PROPOSALS TO PERFORM  
INDIGENT DEFENSE RESEARCH AND  
PROFESSIONAL DEVELOPMENT SERVICES**

**REQUISITION #212-5-0475/ CLASS & ITEM 961-49, 961-56**

**Table of Contents**

**SECTION I. GENERAL** .....

1.1 Scope.....

1.2 Services Period .....

1.3 Compensation.....

1.4 Overview of OCA and TIDC .....

**SECTION II. STATEMENT OF WORK** .....

2.1 Qualifications Required .....

2.2 Scope of Work .....

2.3 Subcontractors .....

2.4 Performance Tracking .....

**SECTION III. PROPOSAL INFORMATION** .....

3.1 Schedule of Events.....

3.2 Revisions to Schedule .....

3.4 Proposal Requirements.....

3.5 Inquiries .....

3.6 Proposal Submission.....

3.7 Delivery of Proposals.....

3.8 Proposal Opening.....

3.9 Proposal Evaluation and Award .....

3.10 Reservation of Rights .....

**SECTION IV. GENERAL TERMS AND CONDITIONS** .....

4.1 Offer and Acceptance .....

4.2 Contract Documents .....

4.3 Standards of Services .....

4.4 Project Manager .....

4.5 Personnel.....

4.6 Invoices.....

4.7 Payments.....

4.8 Term and Termination .....

4.9	Open Records.....
4.10	Confidentiality .....
4.11	Insurance and Other Security.....
4.12	Indemnification .....
4.13	Dispute Resolution .....
4.14	Amendments.....
4.15	Applicable Law; Venue .....
4.16	Strict Compliance .....
4.17	Assignments .....
4.18	Partially-Completed Work.....
4.19	Federal, State and Local Requirements.....
4.20	Severability Clause.....
4.21	Applicable Law and Conforming Amendments .....
4.22	No Waiver .....
4.23	No Liability Upon Termination .....
4.24	Independent Contractor .....
4.25	Limitation on Authority.....
4.26	Intellectual Property Claims.....
4.27	Supporting Documents .....
4.28	Access to Records.....
4.29	Felony Criminal Convictions .....
4.30	Notices.....
4.31	Debts or Delinquencies to State.....
4.32	Contracts for Services .....
4.33	Work Made for Hire .....
4.34	Technology Access Clause .....
4.35	Policy Compliance .....
4.36	Force Majeure.....
4.37	Default .....
4.38	No Conflicts .....
4.39	False Statements / Breach of Representations.....

**ATTACHMENTS**

RESPONDENT QUESTIONNAIRE

HUB SUBCONTRACTING PLAN (HSP)

EXECUTION OF PROPOSAL

# REQUEST FOR PROPOSALS TO PERFORM INDIGENT DEFENSE RESEARCH AND PROFESSIONAL DEVELOPMENT SERVICES

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### SECTION I GENERAL

#### 1.1 SCOPE.

The Texas Indigent Defense Commission (TIDC), Office of Court Administration (OCA) seeks to contract with a person or entity that has the expertise and resources to research, solicit stakeholder and expert input, develop and produce a report on mentoring programs for providers of indigent defense services. This will include a model indigent defense attorney mentoring program implementation plan and curriculum in accordance with the specifications contained in this Request for Proposals (RFP). The project is funded through a grant from the Criminal Justice Division of the Office of the Texas Governor.

#### 1.2 SERVICES PERIOD.

The services requested shall begin on June 15, 2015 or the last signature date on the purchase order, whichever is later, and shall end no later than September 15, 2015.

#### 1.3 COMPENSATION.

Payment for services will follow acceptance of deliverables detailed below.

#### 1.4 OVERVIEW OF TIDC and OCA.

OCA is a state agency in the judicial branch that provides administrative support and technical assistance to Texas courts and operates under the direction of the chief justice of the Supreme Court of Texas. The Texas Indigent Defense Commission was created by the Texas Legislature through the Fair Defense Act of 2001 as a permanent standing committee of the Texas Judicial Council. TIDC is administratively attached to OCA. The mission of the Texas Indigent Defense Commission is to provide financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the Constitution and state law. For purposes of this RFP, references to the term "OCA" includes the Texas Indigent Defense Commission unless the context clearly indicates otherwise.

### SECTION II STATEMENT OF WORK

#### 2.1 QUALIFICATIONS.

Qualified organizations and individuals are invited to submit proposals. Respondents should demonstrate the following:

- Minimum of 5 years of experience focused on indigent legal defense policy
- History of engagement in state and national efforts to improve indigent defense services
- Expertise in professional development for providers of legal defense services
- Understanding of challenges faced by systems relying on the appointment of private assigned counsel
- History of collaborating extensively with stakeholder communities including state and national bar associations and state and national indigent defense organizations.

## 2.2 **SCOPE OF WORK.**

The selected vendor shall provide indigent defense research and professional development services to TIDC, including researching, soliciting stakeholder and expert input, developing and producing a report on mentoring programs for providers of indigent defense services. This should include a model indigent defense attorney mentoring program implementation plan and curriculum. The publication will be a resource that can be used by any jurisdiction in Texas to improve the qualifications and professional preparedness of attorneys providing indigent defense.

1. Research
  - a. Research and document effective defense attorney mentoring programs in Texas and nationally.
  - b. Identify leading defense-oriented legal training programs and curricula.
  - c. Produce comprehensive bibliography of legal defense mentoring publications, relevant standards, policies and other resources. (Deliverable)
2. Gather Stakeholder Input
  - a. Recruit an expert advisory panel on indigent defense mentoring to solicit guidance and input on needs and provide advice and commentary on draft report. The advisory panel will include a minimum of six legal experts with experience in indigent defense policy, legal education or legal mentoring. The advisory panel will also include at least one Texas judge, one practicing criminal defense lawyer and one expert in Texas County Government.
  - b. Conduct and document summaries of at least 2 teleconferences with advisory panel. (Deliverable)
3. Report Production (Deliverable)
  - a. Prepare a report on how to implement an indigent defense mentoring program in Texas in all of the following contexts: assigned counsel programs, managed assigned counsel programs, public defender programs and specialty defender programs (mental illness, veterans, juveniles). In addition, the report will address how programs can be scaled up or down to meet the needs of large, mid-sized and small counties.
  - b. Report will present options for structuring mentoring programs with basic tools for identifying relevant costs of the program, identify best practices and pitfalls to avoid in implementation of mentoring programs, and include practical advice for starting a new program.
  - c. Report will include a model indigent defense mentoring program implementation plan and curriculum adaptable for any jurisdiction in Texas.
  - d. Report will address each of the following topics:
    - i. A step by step "how to" guide on establish a mentoring program.
    - ii. The value of mentoring in the context of indigent defense
    - iii. Areas of concern in the provision of indigent defense and how mentoring programs can address them.
    - iv. Highlights of successful mentoring programs currently in operation and review of the keys to their success.
    - v. Challenges faced in implementing indigent defense mentoring programs and how they can be effectively addressed.
    - vi. Review of key professional standards and how they should be used to guide and structure indigent defense mentoring programs.
    - vii. The role of courts, bar associations and other groups.
    - viii. Qualification and recruitment of mentors
    - ix. Identification of mentees
    - x. Roles and responsibilities of mentors and mentees
    - xi. Remuneration options for mentors and mentees
    - xii. The role and value of time tracking for effective public defense

**2.3 SUBCONTRACTORS.**

Subcontractors providing services under the Contract shall meet the same requirements and level of experience as required of Respondent. No subcontract under the Contract shall relieve Respondent of responsibility for ensuring the requested services are provided. Respondents planning to subcontract all or a portion of the work to be performed shall identify the proposed subcontractors. In accordance with Texas Government Code Section 2161.252, Respondents must submit a HUB Subcontracting Plan (HSP) for contracts of \$100,000 or more to be considered responsive. For contracts of less than \$100,000, Respondent shall submit an HSP for any potential HUB subcontracting opportunities.

**2.4 PERFORMANCE TRACKING.**

OCA will monitor the performance of the Contract issued under this RFP. All services under the Contract shall be performed at an acceptable quality level and in a manner consistent with statutory requirements and acceptable industry standards, custom, and practice.

**SECTION III  
PROPOSAL INFORMATION**

**3.1 SCHEDULE OF EVENTS.**

It is TIDC's plan to proceed according to the schedule below for the solicitation process:

EVENT	DATE	TIME
Issue RFP	5/8/15	n/a
Deadline for submission of questions	5/17/15	3:00 p.m.
Deadline for answering questions	5/19/15	5:00 p.m.
Deadline for submission of proposals	<b>5/15/15</b>	3:00 p.m.
Proposal opening	5/22/15	3:30 p.m.
Oral presentations, if requested	TBD	Various
Expected Award of Contract	TBD	n/a
Expected Contract Start Date	06/22/2015	n/a
Submission of Final Report Deliverable	09/22/2015	5:00 p.m.

**3.2 REVISIONS TO SCHEDULE.**

TIDC reserves the right to change the dates in the Schedule of Events by posting them on OCA's Procurements Web page as an Addendum at <http://www.courts.state.tx.us/contract/procurements.asp> and the Electronic State Business Daily (ESBD) at <http://esbd.cpa.state.tx.us/>.

### 3.4 **PROPOSAL REQUIREMENTS.**

(a) **Requirement Submissions.** Respondents shall submit one electronic copy of the Proposal. The electronic copy must be formatted as searchable PDF files and stored on a standard USB drive, CD, or DVD. The electronic copy may not contain video or use embedded fonts. Submission pages must be numbered and contain an organized, paginated table of contents corresponding to the section of the Statement of Work. Respondent shall provide a detailed narrative response to show how the Respondent intends to meet the requirements of the project. If the Respondent responds with “comply” to a specification, then supporting information is required to explain how the Respondent will comply with each requirement. Respondents shall include all required information to be returned with its response as specified in the individual section numbers.

**Costs.** Respondents to this RFP are responsible for all costs of Proposal preparation.

**No copyrights.** OCA will not consider any Proposal that bears a copyright. Proposals may be subject to disclosure under Rule 12 of the Texas Rules of Judicial Administration. This disclosure may only occur after evaluation of all Proposals and an award has been made.

**Contents.** Listed below is a summary of information required to be included in a Proposal responding to this RFP. OCA reserves the right, in its sole judgment and discretion, to waive minor technicalities and errors in the best interest of the state.

1. **Respondent Information.** Include the following information related to the responding individual or business entity: full name of individual or formal name and all assumed names used by the business entity; structure of business entity (i.e. sole proprietorship, partnership, corporation, etc.); state in which business entity was formed or incorporated; physical address and mailing address; principal place of business; whether, and to what extent, Respondent has established a physical presence in the State of Texas including relevant timeframes; and name, title, address, telephone number, facsimile number, and e-mail address of Respondent’s primary contact.
2. **Project Plan for Contract Deliverables.** Provide a detailed project plan that includes key tasks and estimated schedule.
3. **Experience and Qualifications.** Complete and provide the **Respondent Questionnaire** included as an Attachment to this RFP. The questionnaire solicits information about Respondent’s contacts, references, previous contract terminations, experience, and personnel (including employees and subcontractors). In addition to the Respondent Questionnaire, Respondents must provide information about the experience and qualifications of employees and contractors who will furnish services under this Contract. Individual respondents should include a detailed resume and/or curriculum vita that includes previous publications.
4. **Writing sample.** Such as a report, white paper, journal article, or other publication produced by the respondent.
5. **Financial Solvency and Insurance Information.** Include Respondent’s most recent annual financial report or year-end financial statements, and proof of liability insurance and workers compensation coverage.
6. **Statement of Objectivity.** No TIDC Board member or OCA employee may have a direct interest in the proceeds of a contract resulting from this RFP or be related within the second degree of consanguinity or affinity to anyone having a direct interest in those proceeds. Include a statement of Respondent’s objectivity and independence. If

Respondent is funded by or related to any entity or person regulated by TIDC or OCA, disclose the nature and degree of the relationship. OCA may conditionally accept an offer without this statement, but may not award a contract without it. Under Section 2155.004, Government Code, the Respondent certifies that the individual or business entity named in a Proposal is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

7. **Antitrust Certification** – Each respondent will certify on the attached form compliance with the antitrust laws codified in Chapter 15, Business & Commerce Code and that the respondent did not disclose to contents of the response to a competitor in the same line of business.
8. **Ineligibility for Certain Federal Offenses arising from Contracts for Disaster Relief** – Under Section 2155.006,, Government Code, the respondent certifies that the individual or business entity named in a Proposal is not ineligible to be awarded the contract and acknowledges that the contract, if awarded, may be terminated and payment withheld if this certification is inaccurate.
9. **Historically Underutilized Businesses (HUB) Subcontracting Plan (HSP).** In accordance with Texas Government Code Section 2161.252, Respondents shall submit an HSP (included as an attachment to this RFP) for contracts of \$100,000 or more. Failure to complete and return a required HSP with the submitted Proposal will result in rejection of the Proposal. For contracts of less than \$100,000, Respondent should submit an HSP if it plans to use HUB Subcontractors.
10. **Execution of Proposal.** OCA will reject proposals without an Execution of Proposal (included as an attachment to this RFP) signed by a person with authority to bind the Respondent to a contract.
11. **Compensation and Fees.** Respondents should include a cost proposal that includes total project cost and basis of cost calculations. OCA will provide payment upon receipt and review of all of the following deliverables to determine that they satisfy the requirements of the contract:

Research Deliverable 1	Comprehensive bibliography of legal defense mentoring publications, relevant standards, policies and other resources.
Gather Stakeholder Input Deliverable 2	List of recruited Advisory Panel members and summaries of at least 2 teleconferences with advisory panel.
Report Production Deliverable 3	Final report including model mentoring program implementation plan and curriculum as described in the scope of work section above.

### 3.5 **INQUIRIES.**

Any inquiries shall be submitted in writing to Edwin Colfax, Grant Program Manager of the Texas Indigent Defense Commission at [ecolfax@tidc.texas.gov](mailto:ecolfax@tidc.texas.gov), with a carbon copy (cc:) to Veronica M. Strong, CTPM at [vstrong@txcourts.gov](mailto:vstrong@txcourts.gov) by 3:00 p.m. Central on May 10, 2015 as specified in Section 3.1 above.

OCA will post written responses to inquiries on its Procurements Web page at <http://www.txcourts.gov/oca/contracting-procurements.aspx> and the ESBD (Electronic State Business Daily) at <http://esbd.cpa.state.tx.us/> no later than May 12, 2015 by 3:00p.m. If a Respondent does not have Internet access, a copy of all written responses may be obtained through the point of contact listed above.

Except as otherwise provided in this Section, upon issuance of this RFP, other employees and representatives of OCA and TIDC will not answer questions or otherwise discuss the contents of the RFP with any potential Respondent or its representatives. Failure to observe this restriction may result in disqualification of any subsequent response. This restriction does not preclude discussions unrelated to this RFP.

**3.6 PROPOSAL SUBMISSION.**

(a) All Proposals shall be received at OCA prior to May 15, 2015 at 3:00 p.m. CDT, as specified in the Schedule of Events in Section 3.1. Respondent should obtain a time-stamp on proposals received on the deadline date. OCA will reject late submittals.

(b) Proposals should be placed in a separate envelope or package and be clearly marked “**212-5-0523 RFP to Perform Indigent Defense Research and Professional Development Services,**” and “**Attention: Veronica M. Strong, CTPM.**” It is Respondent’s responsibility to appropriately mark and deliver the Proposal to OCA by the specified date.

(c) Telephone, facsimile, or e-mail proposals will not be accepted.

**3.7 DELIVERY OF PROPOSALS.**

Proposals shall be submitted to OCA by one of the following methods:

U.S. Postal Service	Overnight/Express Mail	Hand Delivery
Office of Court Administration Attn: Veronica M. Strong, CTPM PO Box 12066 Austin, TX 78711-2066	Office of Court Administration Attn: Veronica M. Strong, CTPM 205 W. 14 <sup>th</sup> Street, Suite 600 Austin, TX 78701	Office of Court Administration Attn: Veronica M. Strong, CTPM 205 W. 14 <sup>th</sup> Street, Suite 600 Austin, TX 78701  Hours: 8:00 a.m. to 5:00 p.m. CDT

**3.8 PROPOSAL OPENING.**

Proposals will be opened at the Office of Court Administration, 205 W. 14<sup>th</sup> Street, Austin, Texas. All submitted Proposals become the property of OCA after submission. Submitted proposals shall constitute an offer to contract for a period of ninety (90) days or until OCA makes a selection, whichever occurs earlier.

**3.9 PROPOSAL EVALUATION AND AWARD.**

OCA may award a contract to a Respondent whose Proposal is considered to provide the best value to the State of Texas, as defined by Texas Government Code Section 2155.074.

A committee will be established to evaluate the Proposals. The committee may include one or more employees of OCA and TIDC, and other person(s) invited by OCA and TIDC to participate.

The evaluation committee will determine best value by applying the following criteria and assigned weighted values:

- (1) Experience and qualifications of respondent 40%;
- (2) Project plan 20%;
- (3) Prior publications (Writing Sample) 30%
- (4) References 10%.

The evaluation committee will determine whether Best and Final Offers are necessary. Award of a contract may be made based upon the best value for the State and the lowest Offers may not be determined to be the Best and Final Offers. OCA may, at its discretion, elect to have Respondents provide oral presentations and respond to inquiries from the evaluation committee related to their Proposals. A request for a Best and Final Offer is at the sole discretion of OCA and will be extended in writing.

In evaluating Proposals to determine the best value for the State, OCA may consider information related to past contract performance of a Proposal, including, but not limited to, the Comptroller of Public Account's Vendor Performance Tracking System (available at [http://www.window.state.tx.us/procurement/prog/vendor\\_performance](http://www.window.state.tx.us/procurement/prog/vendor_performance)).

**3.10 RESERVATION OF RIGHTS.**

OCA reserves the right to reject any and all proposals or to re-solicit or cancel this RFP, if such action is deemed in the best interests of the State of Texas and OCA.

**SECTION IV  
GENERAL TERMS AND CONDITIONS**

**4.1 OFFER AND ACCEPTANCE.**

A proposal submitted in response to this RFP is an offer to contract based upon the terms, conditions, and specifications contained herein. The offer is accepted by OCA and becomes a contract when a purchase order is executed. The selected Respondent shall be referred to as the Contractor.

**4.2 CONTRACT DOCUMENTS.**

The contract documents will consist of the following:

- (a) The executed purchase order
- (b) Any written Addenda or Amendments;
- (c) The RFP, (including the General Terms and Conditions, attachments, appendices, and exhibits);
- (d) Respondents response
- (d) Any Best and Final Offer (BAFO) submitted by the Contractor; and

The contract documents are incorporated in the Contract for all purposes and contain the entire agreement between the Contractor and OCA. In the event of a conflict between the documents listed in this paragraph, the documents will control in the order of precedence listed above beginning with (a), then (b), then (c), then (d), then (e). In the event and to the extend any provisions in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded the earlier provisions. Any modification, alteration, or waiver of any term, covenant, or condition of the Contract and any attachments shall be in writing and executed by OCA and the Contractor.

**4.3 STANDARDS OF SERVICES.**

Contractor shall provide all of the above services and all reasonably related services in accordance with applicable professional standards of a Contractor providing legal research and professional development services. Contractor represents and warrants that it has the requisite qualifications, experience, personnel and other resources to perform in the manner required by this Contract.

**4.4 PROJECT MANAGER.**

OCA will designate a Project Manager to serve as the point of contact between the OCA and Contractor. OCA's Project Manager shall supervise OCA's review of Contractor's technical work, deliverables, draft reports, schedules, and similar matters. The Project Manager has no express or implied authority to vary the terms of the Contract, amend the Contract in any way or waive strict performance of the terms or conditions of the Contract.

**4.5 PERSONNEL.**

Contractor shall assign only qualified personnel to this Contract, including subcontractors. No subcontract shall relieve Contractor of responsibility for ensuring the requested services are provided, and Contractor shall be the sole contact for OCA.

**4.6 TERM AND TERMINATION.**

The Contract shall become effective on the later of June 15, 2015 or the purchase order execution date, and shall expire no later than September 15, 2015, unless otherwise sooner terminated as provided in this RFP. Provisions herein regarding confidentiality, indemnification, transition, records, right to audit and independent audit, property rights, dispute resolution, invoice and fees verification, and default shall survive the termination or expiration dates of the Contract. By providing thirty (30) days' written notice to Contractor by certified mail, return receipt requested or by facsimile, OCA may terminate the contract within OCA's sole discretion.

**4.7 PUBLIC ACCESS TO RECORDS.**

Although OCA is not subject to the Texas Public Information Act, all RFP and contract documents and information, and any report, analysis or data generated as a result of the contract services may be subject to public disclosure under Rule 12 of the Texas Rules of Judicial Administration. OCA will notify Contractor of any request received by OCA for records that Contractor has identified as confidential in its response to this RFP.

**4.8 CONFIDENTIALITY.**

Contractor agrees to maintain and shall execute a confidentiality agreement safeguarding the confidentiality of information received from the State of Texas during the performance of this Contract, including but not limited to personal information such as social security numbers.

**4.9 INSURANCE AND OTHER SECURITY.**

Within five (5) business days of executing this agreement, Contractor shall provide OCA with current certificates of insurance or other proof acceptable to OCA of Standard Workers Compensation Insurance and Commercial General Liability Insurance. All such coverage shall be with companies licensed in the state of Texas.

**4.10 INDEMNIFICATION.**

Contractor shall defend, indemnify, and hold harmless the State of Texas and its officers and employees, TIDC, and OCA and its officers, employees and contractors from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of Contractor or any agent, employee, subcontractor, or supplier of Contractor in the execution or performance of the Contract. Contractor

shall coordinate its defense with the Texas Attorney General's office as requested by OCA.

This paragraph is not intended to and shall not be construed to require contractor to indemnify or hold harmless the State or OCA for any claims or liability resulting from the negligent acts or omissions of OCA or its employees.

**4.11 DISPUTE RESOLUTION.**

The dispute resolution process provided for in Texas Government Code Chapter 2260 shall be used by OCA and Contractor to attempt to resolve any dispute arising under the Contract.

**4.12 AMENDMENTS.**

The Contract may be amended only upon written agreement between OCA and Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void *ab initio*.

**4.13 APPLICABLE LAW; VENUE.**

This Contract shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit arising under this Contract is fixed in any court of competent jurisdiction of Travis County, Texas.

**4.14 STRICT COMPLIANCE.**

Time is of the essence in the performance of the Contract. Contractor shall strictly comply with all of the contract deadlines, requirements, and performance standards.

**4.15 ASSIGNMENTS.**

Without the prior written consent of OCA, Contractor may not assign this Contract, in whole or in part, and may not assign any right or duty required under it.

**4.16 PARTIALLY-COMPLETED WORK.**

Within one calendar day after termination of this Contract, or at OCA's request, Contractor shall deliver to OCA all completed, or partially completed, work and any and all documentation or other products and results of these services. Failure to timely deliver such work or any and all documentation or other products and results of the services shall be considered a material breach of the Contract.

**4.17 FEDERAL, STATE, AND LOCAL REQUIREMENTS.**

Contractor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common-law employees. Contractor is responsible for both federal and State unemployment insurance coverage and standard worker's compensation insurance coverage. Contractor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Contractor or its employees for any unemployment or workers' compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this Section.

**4.18 SEVERABILITY CLAUSE.**

In the event that any provision of the Contract is later determined to be invalid, void, or unenforceable, then its remaining terms, provisions, covenants, and conditions shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

**4.19 APPLICABLE LAW AND CONFORMING AMENDMENTS.**

Contractor must comply with all current and amended laws, regulations, requirements and guidelines applicable to a Contractor providing services to the State of Texas

throughout the term of the Contract. OCA reserves the right, in its sole discretion, to unilaterally amend the Contract throughout its term to incorporate any modifications necessary for OCA's or Contractor's compliance with all applicable State and federal laws and regulations.

**4.20 NO WAIVER.**

Nothing in the Contract shall be construed as a waiver of the state's sovereign immunity. The Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under the Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. OCA and TIDC do not waive any privileges, rights, defenses, or immunities available to OCA by entering into the Contract or by its conduct prior to or subsequent to entering into the Contract.

**4.21 NO LIABILITY UPON TERMINATION.**

If the Contract is terminated for any reason, OCA, TIDC and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Contractor may be entitled to the remedies provided in Government Code Chapter 2260.

**4.22 INDEPENDENT CONTRACTOR.**

Contractor or Contractor's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing services under this Contract. Contractor or Contractor's employees, representatives, agents and any subcontractors shall not be employees or agents of the State of Texas and shall not be entitled to benefits of state employment such as retirement or leave benefits. Should Contractor subcontract any of the services required in this Contract, OCA and TIDC are in no manner liable to any subcontractor(s) of Contractor.

**4.23 LIMITATION ON AUTHORITY.**

Contractor shall have no authority to act for or on behalf of OCA, TIDC or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or OCA.

**4.24 INTELLECTUAL PROPERTY CLAIMS.**

Contractor shall indemnify, save and hold harmless the State of Texas and OCA from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from the State's, OCA's, or Contractor's use of any services, software, or other items provided to the State of Texas or OCA by Contractor or otherwise to which the State of Texas or OCA has access as a result of Contractor's performance under this Contract, provided that OCA shall notify Contractor of any such claim within a reasonable time of receiving notice of any such claim. If Contractor is notified of any claim subject to this section, Contractor shall notify OCA of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Contractor without OCA's prior written approval. Contractor shall reimburse the State of Texas and OCA for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. Contractor shall pay all reasonable costs of the State's and OCA's counsel and shall also pay costs of multiple counsel, if required to avoid conflicts of interest. Contractor represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits. In the event that Contractor loses the right to allow the state to use any technology under this indemnification, then Contractor shall repay the State all monies paid under this Contract.

**4.25 SUPPORTING DOCUMENTS.**

Contractor shall maintain and retain supporting fiscal and any other documents relevant to payments and expenditures under the Contract. Contractor shall maintain all such documents and other records relating to this Contract and the State's property for a period of four (4) years after the termination date of the Contract or the resolution of all billing questions, whichever is later. Contractor and any Subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Contractor must retain all work and supporting documents pertaining to the Contract for a period of four (4) years after its end date for purposes of inspecting, monitoring, auditing, or evaluation of OCA and any authorized agency of the State of Texas, including an investigation by the State Auditor.

**4.26 ACCESS TO RECORDS.**

Contractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. Contractor's failure to comply with this Section shall constitute a material breach of the Contract and shall authorize OCA and the State of Texas to immediately assess appropriate damages for such failure. The acceptance of funds by Contractor any other entity or person directly under the Contract, or indirectly through a subcontract under the Contract, shall constitute acceptance of the authority of the State Auditor, Comptroller or other agency of the State of Texas to conduct an audit or investigation in connection with those funds. Contractor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Furthermore, under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

**4.27 FELONY CRIMINAL CONVICTIONS.**

Contractor shall fully advise OCA as to the facts and circumstances surrounding conviction of a felony criminal offense of Contractor or any of its employees that are assigned to or associated with this project.

**4.28 NOTICES.**

Any written notices required under this Contract will be by either hand delivery or by U.S. Mail, certified, return receipt requested, and is effective on receipt by the affected party. The address for Contractor will be the address on the Offer. The address for OCA will be that specified in Section III of this RFP. Either party may change its designated notice address by written notification to the other party.

**4.29 DEBTS OR DELINQUENCIES TO STATE.**

The Comptroller is prohibited from issuing any payment to a person or entity reported to have an indebtedness or delinquency to the State. To the extent that Contractor owes any debt or delinquent taxes to the State of Texas, any payments or other amounts Contractor is otherwise owed under this Contract shall be applied toward the debt or delinquent taxes until the debt or delinquent taxes is paid in full. Contractor agrees to comply with all applicable laws regarding satisfaction of debts or delinquencies to the State of Texas.

**4.30 CONTRACTS FOR SERVICES.**

In accordance with Government Code Section 2155.4441, the Contractor shall purchase products and materials produced in the State of Texas, when available at a price and time comparable to products and materials produced outside the State.

**4.31 WORK MADE FOR HIRE.**

“Work” is defined as all examination materials, reports, statistical analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research materials, intellectual property or other property developed, produced, or generated in connection with the Contract. All work performed pursuant to the Contract is made the exclusive property of OCA. All rights, title and interest in and to said property shall vest in OCA upon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to the Contract. To the extent that title to any such work may not, by operation of law, vest in OCA, or such work may not be considered a work made for hire, then all rights, title and interest therein are hereby irrevocably assigned to OCA. OCA shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor must give OCA and the State of Texas, and their designees, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to Contractor for services rendered under the Contract.

**4.32 TECHNOLOGY ACCESS CLAUSE.**

In the event that Contractor’s Work includes the provision of an automated information system as defined by Government Code Section 2157.001(1) , then state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Contractor shall provide OCA technology that is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: (1) providing equivalent access for effective use by both visual and nonvisual means; (2) presenting information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this Section, the phrase "equivalent access" means substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under the federal Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse

commands and other means of navigating graphical displays, and customizable display appearance.

**4.33 POLICY COMPLIANCE.**

Contractor's employees and agents (including subcontractors and their employees and agents) identified by OCA management as having sufficient presence on OCA premises shall be required to adhere to applicable OCA human resources, information services, and finance and operations policies and shall be required to attend one or more policy orientation sessions. Those employees and agents identified as having access to State of Texas information resources and information resources technologies may be subject to periodic criminal history record investigations.

**4.34 FORCE MAJEURE.**

Neither Contractor nor OCA shall be liable to the other for any delay in, or failure of performance, of any requirement included in any PO resulting from this RFP caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

**4.35 DEFAULT.**

If Contractor is in default on the Contract, OCA may cancel the Contract without notice and either re-solicit or award the contract to the next best responsive and responsible Respondent. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work is significantly changed. In the event of abandonment or default, Contractor shall pay damages to OCA including but not limited to re-procurement costs, and any consequential damages to the State of Texas or OCA resulting from Contractor's non-performance.

**4.36 NO CONFLICTS.**

Contractor represents and warrants that Contractor has no actual or potential conflicts of interest in providing services to the State of Texas under the Contract and that Contractor's provision of services under this Contract would not reasonably create an appearance of impropriety.

**4.37 FALSE STATEMENTS / BREACH OF REPRESENTATIONS.**

Any false statements by Contractor in the Contract documents or violation by Contractor of any of the representations, warranties, guarantees, certifications or affirmations included in the Contract shall constitute default by Contractor, and OCA may terminate or void the Contract for cause and pursue other remedies available to OCA under the Contract or applicable law.