

**TEXAS HISTORICAL COMMISSION  
TERMS AND CONDITIONS  
UPDATED 3/10/2017**

**General Terms and Conditions**

**I. Term and Termination**

(a) Convenience

THC reserves the right, in its sole discretion, to terminate the Contract, in whole or part, provided fourteen (14) calendar days has been given by the THC to Contractor with written notice. Such notice may be provided by facsimile or certified mail return receipt requested and is effective upon Contractor's receipt. In the event of such termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon receipt of the notice of termination. THC shall be liable only for payments for any goods or services ordered by the Contractor prior to the Contractor's receipt of the notice of termination.

(b) Cause/Default

If the Contractor fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any terms or conditions of the Contract, THC may, upon written notice of default to the Contractor, terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies as provided in equity, by law or under the Contract. THC may exercise any other right, remedy, or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless THC notifies the Contractor in writing prior to the exercise of such remedy. The Contractor shall be liable for all costs and expenses, including court costs and attorneys' fees, incurred by THC with respect to the enforcement of any of the remedies listed herein.

(c) Payment

Bidder shall submit one (1) copy of an itemized invoice showing State order number and agency purchase order number. The State will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services and an uncontested invoice. Payment shall be made in accordance with Chapter 2251, Texas Government Code.

(d) Right upon Termination or Expiration

In the event that the Contract is terminated for any reason, or upon its expiration, the THC and Customers shall retain ownership of all associated work products and documentation obtained from the Contractor under the Contract.

**II. Confidentiality and Public Information**

Notwithstanding any provisions of this Contract to the contrary, Contractor understands that THC will comply with the Texas Public Information Act, Texas Government Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. THC agrees to notify Contractor in writing within a reasonable time from receipt of a request for information related to Contractor's work under this Contract. Contractor will cooperate with THC in the production of documents responsive to the request. THC will make a determination whether to submit a Public Information Act request to the Attorney General. Contractor will

notify THC's point of contact within twenty-four (24) hours of receipt of any third party requests for information that was provided by the State of Texas for use in performing the Contract. This Contract and all data and other information generated or otherwise obtained in this performance may be subject to the Texas Public Information Act. Contractor agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers.

### III. Insurance and Other Security

Contractor represents and warrants that it will, within seven (7) business days of executing this agreement, provide THC with current certificates of insurance or other proof acceptable to THC of the following insurance coverage:

**Workers' Compensation & Employers' Liability.** Contractor must maintain Workers' Compensation insurance coverage in accordance with statutory limits:

**Workers' Compensation: Statutory Limits**

**Employers' Liability: Each Accident \$1,000,000**

**Disease: Each Employee \$1,000,000**

**Disease: Policy Limit \$1,000,000**

Commercial General Liability. Personal injury and advertising injury with, at a minimum, the following limits:

Bodily Injury and Property Damage: Each occurrence limit \$1,000,000

Aggregate Limit: \$2,000,000

Medical Expense: \$5,000 each person

Personal Injury and Advertising Liability: \$1,000,000

Products / Completed Operations Aggregate Limit: \$2,000,000

Damage to Premises Rented to You: \$50,000

Contractor represents and warrants that all coverages are with companies licensed in Texas, with "A" rating from A.M. Best Co., and authorized to provide the required coverages. Respondent also represents and warrants that all of the above policies and bonds contain endorsements prohibiting cancellation exception upon at least thirty (30) days prior written notice to THC. Respondent must, within the time provided above, furnish proof to THC of such coverage in the form of a Certificate of Insurance from Respondent's insurance carrier or carriers indicating the above coverages. The Certificate shall be addressed to the Texas Historical Commission as the Certificate holder. Contractor represents and warrants that it shall maintain the above insurance coverage during the term of this Contract, and shall provide THC with an executed copy of the policies immediately upon request.

### IV. Indemnification

#### Acts or Omissions

**Contractor shall indemnify and hold harmless the State of Texas and THC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, SUBCONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Contractor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDENTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM**

**THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

Infringements

a) Contractor shall indemnify and hold harmless the State of Texas and THC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, SUBCONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade or service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND THE THC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THC WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND THC MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

b) Contractor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product or service without Contractor's written approval, (iii) any modifications made to the product or service by the Contractor pursuant to THC's specific instructions, (iv) any intellectual property right owned by or licensed to THC, or (v) any use of the product or service by THC that is not in conformity with the terms of any applicable license agreement.

c) If Contractor becomes aware of an actual or potential claim, or THC provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against THC, shall), at Contractor's sole option and expense; (i) procure for the THC the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that THC's use is non-infringing.

Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity

**1) CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES OF THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE THC AND/OR THE STATE OF TEXAS SHALL NOT BE LIABLE TO THE CONTRACTOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT OF ANOTHER GOVERNMENTAL ENTITY.**

**2) CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THC, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, SUBCONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDENTS IN ANY LAWSUIT AND**

**CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

#### **V. Dispute Resolution**

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

The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve a claim for breach of contract asserted by the Contractor under the Contract. If the Contractor's claim for breach of Contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Contractor shall submit a written notice, as required by Chapter 2260, to the Executive Director or his or her designee. The notice shall also be given to the individual identified in the Contract for receipt of notices. Compliance by the Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the THC if the Parties are unable to resolve their disputes as described above.

Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the Contract by the THC nor any other conduct of any representative of the THC relating to the Contract shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under the Contract, the THC and the Respondent shall first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the Parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by the THC and the Contractor within fifteen (15) days after written notice by one of them demanding mediation under this Section. The Contractor shall pay all costs of the mediation unless the THC, in its sole good faith discretion, approves its payment of all or part of such costs. By mutual agreement, the THC and the Contractor may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that the THC and the Contractor shall, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. The THC participation in, or the results of, any mediation or other non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by the THC of (1) any rights, privileges, defenses, remedies or immunities available to the THC as an agency of the State of Texas or otherwise available to the THC; (2) the THC termination rights; or (3) other termination provisions or expiration dates of the Contract.

Notwithstanding any other provision of the Contract to the contract, unless otherwise requested or approved in writing by the THC the Contractor shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes; however, the Contractor may suspend performance during the pendency of such claim or dispute if the Contractor has complied with all provisions of §2251.051, Tex. Government Code, and such suspension of performance is expressly applicable and authorized under that law.

## **VI. Representations, Warranties, and General Provisions**

### **6.1. Family Code**

Under Texas Family Code, Title 5, Subtitle D, Section 231.006(d), regarding child support, Respondent certifies that the individual or business entity named in the Proposal is not ineligible to receive the specified payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Respondent subject to Section 231.006 must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the Proposal. This information must be provided prior to award.

### **6.2. Eligibility**

Under Government Code, Section 2155.004 (relating to certain taxes), Contractor represents and warrants that Contractor is not ineligible to receive this Contract and acknowledges that this Contract may be terminated any payment withheld if this representation and warranty is inaccurate. Contractor represents and warrants that it is not delinquent in the payment of any franchise taxes owed the State of Texas. Also, Government Code, Section 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation or specifications for the Contract.

### **6.3. Liability for Taxes**

Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. THC shall not be liable for any taxes from this Contract.

### **6.4. Amendments**

Except as provided in Section 6.11 of this Contract, this Contract may be amended only upon written agreement between THC and Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void ab initio.

### **6.5. 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.

### **6.6. Strict Compliance**

Time is of the essence in the performance of this Contract. Contractor shall strictly comply with all of the deadlines, requirements, and Standards of Performance for this Contract.

### **6.7. Assignments**

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

### **6.8. Partially Completed Work**

No later than the first calendar day after the termination of this Contract, or at THC's request, Contractor shall deliver to THC 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 this Contract. Contractor shall not make or retain any copies of the work or any and all documentation or other products and results of the services without the prior written consent of the THC.

#### **6.9. 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 Workers' 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 the Contractor's omission or breach of this Section.

#### **6.10. Severability Clause**

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

#### **6.11. Applicable Law and Conforming Amendments**

Contractor must comply with all laws, regulations, requirements and guidelines applicable to a Contractor providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. THC reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for THC or Contractor's compliance with all applicable State and federal laws, and regulations.

#### **6.12. No Waiver**

Nothing in this Contract shall be construed as a waiver of the state's sovereign immunity. This 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 this 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. THC does not waive any privileges, rights, defenses, or immunities available to THC by entering into this Contract or by its conduct prior to or subsequent to entering into this Contract.

#### **6.13. No Liability upon Termination**

If this Contract is terminated for any reason, THC 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 Tex. Government Code, Chapter 2260.

#### **6.14. Independent Contractor**

Contractor or Contractor's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under any PO resulting from this RFP. Contractor or Contractor's employees, representatives, agents and any subcontractors shall not be employees of THC. Should Contractor subcontract any of the services required in this RFP, Contractor expressly understands and acknowledges that in entering into such subcontract(s), THC is in no manner liable to any subcontractor(s) of

Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this RFP.

**6.15. Limitation on Authority; No Other Obligations**

Contractor shall have no authority to act for or on behalf of THC 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 THC.

**6.16. Supporting Documents, Retention; Right to Audit; Independent Audits**

Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract funds were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and the State's property for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the "Work" as defined in paragraph 6.28 of this contract. Contractor and the 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 other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by THC and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor.

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 the Section shall constitute a material breach of this Contract and shall authorize the THC and the State of Texas to immediately assess appropriate damages for such failure. Pursuant to Government Code, §2262.154 the acceptance of funds by Contractor or any other entity or person directly under this Contract, or indirectly through a subcontract under this Contract, shall constitute acceptance of the authority of the State Auditor to conduct an audit or investigation in connection with those funds. Contractor acknowledges and understands that the acceptance of funds under this Contract shall constitute consent to an audit by the State Auditor, Comptroller or other agency of the State of Texas. 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.

**6.17. Deceptive Trade Practices; Unfair Business Practices**

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Tex. Bus. & Com. Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not be found to be liable for such practices in such proceedings.

**6.18. Equal Opportunity**

Contractor represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, and disability in the performance of this Contract.

#### **6.19. Antitrust**

Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the Proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

#### **6.20. No Conflicts**

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

#### **6.21. Financial Interests; Gifts**

Contractor represents and warrants that neither Contractor nor any person or entity that will participate financially in this Contract has received compensation from THC or any agency of the State of Texas for participation in preparation of specifications for this Contract. Contractor represents and warrants that it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to any public servant or employee in connection with this Contract.

#### **6.22. Felony Criminal Convictions**

Contractor represents and warrants that Contractor has not and Contractor's employees have not been convicted of a felony criminal offense, or that, if such conviction has occurred, Contractor has fully advised THC as to the facts and circumstances surrounding the conviction.

#### **6.23. Notices**

All written notices required under this Contract will be either by hand delivery to Contractor's office address located on the agency's PO and THC's office address at 1700 N. Congress Ave., Austin, TX 78701 or by US Mail, certified, return receipt requested, to THC, PO Box 12276, Austin, TX 78711-2276. Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this Section by written notification to the other party.

#### **6.24. False Statements; Breach of Representation**

By signature to this Contract, Contractor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Contractor signed its Proposal with a false statement or signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Contractor shall be in default under this Contract and THC may terminate or void this Contract for cause and pursue other remedies available to THC under this Contract and applicable law.

#### **6.25. Force Majeure**

Neither Contractor nor THC 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.

#### **6.26. Debts or Delinquencies to State**

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

#### **6.27. Buy Texas**

In accordance with the Government Code, Section 2155.4441, the State of Texas requires that during the performance of a contract for services, 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.

#### **6.28. Work Made for Hire**

For the purposes of this Contract, the term "Work" is defined as all 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 this Contract. All work performed pursuant to this Contract is made the exclusive property of THC. All right, title and interest in and to said property shall vest in THC upon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to this Contract. To the extent that title to any such work may not, by operation of law, vest in THC, or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to THC. THC 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. Contract must give THC and/or the State of Texas, as well as any person designated by THC and/or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to Contractor for the services rendered under this Contract.

#### **6.29. Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapter 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)**

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

2) Vendor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that

addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

### **6.30. Abandonment or Default**

If Contractor is found to be in default under any provision of this Contract, THC may cancel the Contract without notice and either re-solicit or award the contract to the next best responsive and responsible respondent. In the event of abandonment or default, Contractor will be responsible for paying damages to THC including but not limited to re-procurement cards, and any consequential damages to the State of Texas or THC resulting from Contractor's non-performance. 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.

### **6.31. Prohibited Use of Appropriate or other Funds under Control of State Agency; Lobbying**

The Contractor represents and warrants that ordering entities' payments to the Contractor and Contractor's receipt of appropriated or other funds under any of this or any resulting agreement are not prohibited by Government Code §556.005 or §556.008.

### **6.32. Certification Concerning Hurricane Relief**

Sections §2155.006 and §2261.053, Government Code, Prohibit state agencies from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004 Gov't Code, occurring after September 24, 2005. Under §2155.006, Gov't Code, the Respondent certifies that the individual or business entity named in its Proposal is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.

### **6.33. Immigration**

The Contractor represents and warrants that it shall comply with the requirements of the Immigration Act of 1990 and Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Immigration Reform and Control Act of 1986 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under this Contract.

### **6.34. Drug Free Work Place**

The Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the Contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

### **6.35. General Security Policy**

Awarded Respondent shall provide notice to THC Project Manager within twenty- four (24) hours of Successful Respondent's discovery or reasonable belief that there has been unauthorized use, exposure, access, disclosure, compromise, modification, or loss of construction materials ("Security Incident"). Within twenty-four (24) hours of the notification of a Security Incident, Successful Respondent shall provide a written report to THC Project Manager detailing the circumstances of the incident, which includes at a minimum, if available:

- a. A description of the nature of the Security Incident;
- b. The type of theft or damage involved;
- c. Who may have caused the theft or damage;
- d. What steps Successful Respondent has taken or will take to investigate the Security Incident;
- e. What steps Successful Respondent has taken or will take to mitigate any negative effect of the Security Incident; and
- f. A point of contact for additional information.

Each day thereafter until the investigation is complete, Awarded Respondent shall provide THC Project Manager with a written report regarding the status of the investigation and the following additional information as it becomes available:

- a. Who is known or suspected to have gained unauthorized access to the site;
- b. Whether there is any knowledge the site has been abused or compromised;
- c. What additional steps Successful Respondent has taken or will take to investigate the Security Incident;
- d. What steps Successful Respondent has taken or will take to mitigate any negative effect of the Security Incident; and
- e. What corrective action Successful Respondent has taken or will take to prevent future similar unauthorized use or disclosure.

Successful Respondent shall confer with THC Project Manager regarding the proper course of the investigation and risk mitigation. THC reserves the right to conduct an independent investigation of any Security Incident, and should THC choose to do so, Awarded Respondent shall cooperate fully by making resources, personnel, and systems access available to THC and THC authorized representative(s). If THC, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice shall be reimbursed to THC by Awarded Respondent. If Awarded Respondent does not reimburse such costs within thirty (30) days of THC's written request, then THC shall have the right to collect such costs."

### **6.36. Substitutions**

Substitutions are not permitted without written approval of THC.

### **6.37. Testing and Inspection**

THC may test and inspect goods and services purchased under the Contract to ensure compliance with the specifications of this RFP and the Contract. The THC may also test and inspect goods and services before they are purchased under the Contract. Authorized THC personnel shall have access to the Respondent's place of business for the purpose of inspecting the goods. To the extent practical, the THC inspections will not disrupt the Respondent's daily operations. Tests shall be performed on samples submitted with the Proposal or on samples taken from regular shipments. All costs of testing and inspection shall be borne by the Respondent. In the event the goods tested fail to meet or exceed all conditions and requirements of the RFP and Contract, the goods will be rejected in whole or in part, at the State's option, and returned to the Respondent or held for disposition at the Respondent's expense. Latent defects may result in cancellation of the Contract at no expense to the state.

If material fails to meet specifications, the Respondent will be notified by fax/mail or e-mail. The Respondent will have ten (10) working days after receipt of the notification to remove the rejected material from state property. Material will be removed at the Respondent's expense. Material not removed in the allotted time period will be disposed by the Customer. The Respondent will be charged for all disposable expenses conducted by the Customers.

### **6.38. Survival of Terms**

Termination of the Contract for any reason shall not release the Contractor from liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice and fees verification.

### **6.39. U.S. Department of Homeland Security's E-Verify System**

By entering into this Contract, the Contractor certifies and ensures that all employees and other persons (including subcontractors) assigned by the Respondent to perform work pursuant to the Contract are eligible to work in the United States of America. The Contractor should utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of its employees and those of its subcontractors to work in the United States of America.

### **6.40. Funding**

The Parties acknowledge and agree that nothing in this agreement will be interpreted to create a future obligation or liability in excess of funds currently appropriated to the agency by the Legislature of the State of Texas. In the event appropriated funds are not available to continue payments for work under this contract, the THC shall notify the Contractor as soon as reasonably possible, and THC may terminate the contract at that time or such other date as loss of appropriated funds may require. To the extent funds are available the Contractor shall be paid for work completed prior to the date of notice of termination. The THC shall not be liable for any damages or any other amounts which are caused by or associated with such termination.

### **6.41. Contracts Involving Exchange or Creation of Public Information**

Contractor is required to make any information created or exchanged with the State pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format this is accessible by the public at no additional charge to the state. Copies of documents not maintained in digital format must be provided to the Commission within thirty (30) days. Copies of documents maintained in digital format must be provided to the Commission in .pdf format within thirty (30) days. In case of an Open Records Request, the Commission may request that documents be made available to the Commission within five (5) days.