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Request for Proposal (RFP)

For

**VOTER EDUCATION AND OUTREACH OPPORTUNITIES
FOR 2022 ELECTIONS**

RFP Number: 000797

RFP Closing Date: January 4, 2022

RFP Closing Time: 5:00 p.m. (CT)

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Request for Proposal # 000797

Voter Education and Outreach Opportunities for 2022 Elections

Office of the Secretary of State

The Office of the Secretary of State (“SOS”) is soliciting this Request for Proposal (“RFP”) for a contractor (“Contractor”) in accordance with Texas Government Code §2155.074 (Best Value Standard for Purchase of Goods or Services).

SECTION ONE

1.0 DEFINITIONS

As used in this Request for Proposal and its attachments, the following terms have the following meanings:

- A. *Amendment* means the Contract as revised in any respect by the mutual written agreement of SOS and Contractor, and includes (without limitation) both the original Contract and any subsequent amendments or modifications thereto and purchase order change notices.
- B. *Business Day* means a Calendar Day that is not a state holiday or weekend day, at any time before 11:59 PM (CT). State holidays are identified in a list available on the Comptroller’s website, <https://comptroller.texas.gov/about/holidays.php>.
- C. *Calendar* means, as to *Calendar Year*, each day in a year from January 1 until December 31, and, as to *Calendar Day*, a day in a particular Calendar Year, regardless of whether that day is a state holiday (as identified in a list available on the Comptroller’s website, <https://comptroller.texas.gov/about/holidays.php>) or weekend day, at any time before 11:59 PM (CT).
- D. *Contract* means signed Purchase Order, as modified by any properly executed Purchase Order Change Notices; Attachments to the signed Purchase Order, as modified by any properly executed Purchase Order Change Notices; Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences; Request for Proposal; Attachments, Appendices and Schedules to Request for Proposal not including the Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences; extensions of or to the standard contract form if agreed to by SOS in writing; and Contractor’s response, in whole or in part, to the Request for Proposal, if incorporated into the Contract pursuant to the Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences.
- E. *Contract Project* means the purpose intended to be achieved through the Contract (including any Amendments) as described therein and in this Request for Proposal.
- F. *Contractor* means, in addition to the proposed contractor, the party or parties to any Contract (including any Amendments) arising out of this Request for Proposal other than SOS, including its or their officers, directors, employees, agents, representatives, consultants, and subcontractors, and subcontractors’ officers, directors, employees, agents, representatives, and consultants.

- G. *Contractor Derivative Works* means Contractor Underlying Works (as herein defined) and all Derivative Works thereof that do not contain Work Product (as herein defined).
- H. *Contractor Underlying Works* means those Underlying Works (as herein defined) conceived, invented, created, or acquired by Contractor, rather than by a Third Party (as herein defined).
- I. *Deliverables* means those items and materials, including Documentation (as herein defined), reports, templates, and services, provided, prepared, and delivered in the course of performance of the Contract (including any Amendments) by Contractor.
- J. *Derivative Works* means a revision, modification, translation, abridgement, compilation, condensation, or expansion of the applicable underlying work or any other form in which work that may be recast, transformed, or adopted, and which, if prepared without the consent of the copyright owner, would be a copyright infringement.
- K. *Documentation* means all materials and media created by Contractor for use under the Contract (including any Amendments), including any updates and revisions as and when created.
- L. *Intellectual Property Rights* means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including, for example, any copyrights, moral rights, or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with or without the right to grant sublicenses.
- M. *Project Manager* means the respective person(s) representing SOS or Contractor, as indicated in the Contract, for the purposes of administering the Contract Project.
- N. *RFP* means this Request for Proposal.
- O. *Services* means all the services, functions, creation of Deliverables, Work Products (as herein defined), and any other activities necessary as performed by the Contractor in the fulfillment of its obligations to SOS (as herein defined) under the Contract (including any Amendments).
- P. *SOS* means the Office of Secretary of State.
- Q. *Third Party* means a person or entity other than SOS or Contractor.
- R. *Third Party Works* means all Underlying Works and all Derivative Works thereof that are created, invented, conceived, and fixed in a tangible medium of expression by a Third Party.
- S. *Underlying Works* means all works of authorship fixed in any tangible medium of expression that (i) had already been conceived, invented, created, or acquired by Contractor or a Third Party prior to the Effective Date of the Contract (including any Amendments) and that were not conceived, invented or created for SOS's use or benefit in connection with the Contract (including any Amendments); or (ii) are conceived, invented, created, or acquired by Contractor or a Third Party after the effective date, but only to the extent such works of authorship do not constitute Work Product. An Underlying Work includes all intermediate and partial versions thereof, as well as

documentation, formulae, processes, algorithms, designs, specifications, inventions, discoveries, concepts, improvements, materials, program materials, software, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, schematics, data, information, multimedia files, text web pages or websites, other written or machine readable expression of such works fixed in any tangible media, all other copyrightable works, apparatus, methods, techniques, other creations, and the like, whether or not patented or patentable or otherwise protectable by law.

- T. *Work Product* means any and all Deliverables developed, produced, or generated in connection with this Contract (including any Amendments), including any and all tangible or intangible items or things (including, without limitation, computer programs) and all intermediate and partial versions thereof, that have been or will be prepared, created, developed, invented, or conceived at any time following the effective date of the Contract (including any Amendments), including but not limited to: (a) any (i) works of authorship (such as, for example, all documentation, formulae, processes, algorithms, designs, specifications, inventions, discoveries, concepts, improvements, materials, program materials, software, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, schematics, data, information, multimedia files, text web pages or websites, other written or machine readable expression of such works fixed in any tangible media, all other copyrightable works, apparatus, methods, techniques, other creations, and the like, whether or not patented or patentable or otherwise protectable by law, (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services, or deliverables to be provided to SOS under the Contract (including any Amendments) or a statement of work, and (viii) all Intellectual Property Rights in any of the foregoing; (b) which are or were created, prepared, developed, invented, or conceived for the use or benefit of SOS in connection with any Contract (including any Amendments) arising out of this RFP (including any statement of work), or with funds appropriated by or for SOS or SOS's benefit, (i) by any Contractor (including, but not limited to Subcontractors) personnel or SOS personnel (where "personnel" includes employees, contractors, agents, and the like; and/or (ii) any person who was an employee of SOS and then became personnel to Contractor (including, but not limited to, any of its affiliates or subcontractors), where, although creation or reduction-to-practice is completed while the person is affiliated with Contractor or its personnel, any portion of same was created, invented, or conceived by such person while affiliated with SOS.

1.1 PROJECT BACKGROUND

Sections 63.001 and 63.0101 of the Texas Election Code require voters to provide certain forms of identification when voting in person. These provisions, among other things: require eligible Texas voters who possess one of seven approved forms of photo identification to present such identification at the polls; provide that voters who do not possess and cannot reasonably obtain one of the seven forms of approved photo identification to fill out a reasonable impediment declaration form and provide a supporting form of identification; and allow some voters to qualify for certain exemptions to presenting an acceptable form of photo identification or following the reasonable impediment declaration procedure.

Section 31.012(b) of the Texas Election Code provides that SOS “shall conduct a statewide effort to educate voters regarding the identification requirements for voting prescribed by Chapter 63 [of the Texas Election Code].” To that end, SOS worked to educate voters about the Texas Election Code’s identification requirements—some of which first went into effect in June 2013—through voter education campaigns covering prior election cycles, including general and primary elections from 2014 through 2020. In the General Appropriations Act adopted by the 87th Texas Legislature, SOS was appropriated funding for the 2022-2023 biennium to “educat[e] the public, including students, regarding the required documents for voting and the general voting process pursuant to Section 31.012, Election Code.”

SOS seeks to partner with a Contractor to implement a statewide voter education campaign with an emphasis on voter identification requirements. Specific tasks to be implemented may include, but are not limited to, those described in Section 1.5 of this RFP.

1.2 PURPOSE

To plan and implement a statewide campaign that will educate Texans about identification requirements for voting. The voter education campaign will utilize broadcast, print, and digital creative deliverables, as well as special events and other activities, that will reach Texans across the State through multiple channels. Specific tasks to be implemented may include, but are not limited to, those described in Section 1.5 of this RFP.

1.3 CONTRACT TERM

The term of any contract resulting from this RFP shall commence on the issuance of the Purchase Order and end at 11:59 PM (CT) on January 31, 2023, subject to any termination rights provided for in a definitive contract negotiated between SOS and Contractor.

1.4 FUNDING AND ELIGIBLE USES

SOS plans to finance the project with funds from a legislative appropriation for the 2022-2023 biennium for purposes of providing voter identification education. All obligations of SOS are subject to the availability of Texas legislative appropriations. SOS will not be in default for nonpayment under this contract if such funds are not available to SOS (in whole or in part) for payment of SOS’s obligations under this Contract (including any Amendments). In such event, SOS will promptly notify Contractor, and the contract shall terminate simultaneously with the termination of, or reduction in, appropriated funds for the voter identification education campaign. Upon termination of the contract, SOS will discontinue payment hereunder.

1.5 SCOPE OF WORK

A. General Scope and Requirements

The project will seek to educate Texas voters about the State’s voter identification requirements in the 2022 primary election (Phase I) and the 2022 general election (Phase II). It is expected that the project requirements for Phase I and Phase II will be substantially similar, except that Phase I will seek to educate and communicate with Texans for purposes of the March 1, 2022 primary election (and any subsequent primary runoff election on May 24, 2022), and Phase II will seek to educate and communicate with Texans for purposes of the November 8, 2022 general election. It is expected that the activities in Phase I will incorporate approximately 40% of the allocated budget, and the activities in Phase II will incorporate approximately 60% of the allocated budget.

Consistent with the broad goals set forth in Sections 1.1 and 1.2 of this RFP, and the foregoing provisions, specific tasks to be implemented in Phase I and/or Phase II (as agreed upon through the Task Activity Plan and Cost Estimate processes referenced in Sections 4.3 and 4.4 of this RFP) may include, but are not limited to, the following:

- (1) Develop overall concept, themes, and design of voter education materials for the 2022 primary and general elections, consistent with current branding/Vote Texas;
- (2) Provide creative consultation and production consultation with SOS on comprehensive statewide voter education campaign;
- (3) Research, plan, develop, and implement voter information/outreach strategies, messages, and materials for the general statewide voting population, and various subgroups, including the Spanish-speaking population and other minority communities, voters with disabilities, students, young and elderly voters, first-time voters, new Texas residents, and individuals who are eligible to vote but are not registered;
- (4) Research, plan, develop, and implement innovative strategies, messages, and materials to effectively educate the statewide voting population and targeted sub-groups regarding the State's applicable voter identification requirements and processes;
- (5) Plan, design and produce, or re-broadcast educational voter information/outreach materials in multiple formats, possibly including television, print, radio, electronic formats (such as Internet and smartphone applications), and in video formats that are research-based and appropriate for selected venues and media;
- (6) Update the VoteTexas.gov web site as requested by SOS in Phase I and Phase II, including by incorporating certain concepts, designs, and messaging developed in the 2022 voter education campaign. Updating SOS's main website (www.sos.state.tx.us, www.sos.texas.gov) is a responsibility of SOS;
- (7) Plan and implement creative special events and activities across the State of Texas to engage the public in meaningful ways and achieve desired results, taking into account, as necessary, certain conditions presented by the coronavirus pandemic and any other public health emergencies and/or natural disasters;
- (8) Develop and implement innovative, effective social media opportunities throughout Phase I and Phase II of the campaign, utilizing a variety of platforms, as a way to supplement traditional advertising methods to inform all Texans of the voting process and voter identification requirements;
- (9) Engage with community news organizations across the State of Texas, including organizations and outlets that primarily serve minority communities, in developing and implementing a statewide voter education plan;
- (10) Provide weekly update meetings, status reports, detailed activity reports for prior weeks and projections for short-term and long-term future plans, and possible oral presentations to SOS executive staff on a regular basis regarding the status of the 2022 voter education campaign;
- (11) Provide awareness tracking at various stages of the program. Benchmark tracking shall be provided prior to Phase I followed by awareness tracking after Phases I and II. SOS will review awareness tracking after both phases to determine effectiveness of the level of awareness of the program and dissemination of the messages to the public. Contractor may be required to improve and/or modify the

design or delivery of such messages based on request of SOS. Awareness tracking shall include the engagement of an independent subcontractor, approved by SOS, to conduct awareness tracking. The subcontractor shall provide SOS a copy of the raw data (in electronic form) from the evaluation, as well as a written narrative report. The effectiveness of the program will be analyzed in light of the following:

- (a) Quality and level of recall for the advertising;
 - (b) Level of awareness and understanding of voting processes and procedures, including how to comply with voter identification requirements;
 - (c) Ways in which voters' attitudes about the voting process have been demonstrably altered; and
 - (d) Key demographic characteristics of target markets/audiences;
- (12) Collaborate with SOS and Contractor's research firm to identify and meet research needs, including reviewing survey instruments, discussion guides, and other research tools, preparing concepts or storyboards to test with members of the target audience(s) and applying research findings to overall marketing, advertising, and public information strategies;
- (13) Provide media placement at a level established by mutual agreement between SOS and the Contractor;
- (14) Purchase media time or space for programs and messages appropriate to the identified target audience(s). Advertising media may include, but not be limited to:
- (a) Print, television, and radio advertisements;
 - (b) Outdoor (billboards);
 - (c) Public transit;
 - (d) Internet projects; and
 - (e) Free media time or space for public service announcements as appropriate;
- (15) Maintain records of all contractor-assisted and non-assisted placements, including all print, audio-visual, and Internet materials;
- (16) Provide reports on the types and amount of complimentary promotional assistance provided;
- (17) Evaluate marketing, advertising, and public information activities and campaigns for effectiveness using appropriate evaluation processes and measurements. This may include tracking awareness, attitudes, and practices of target audience(s) during various stages of campaigns and activities to determine effectiveness in achieving desired goals, objectives, and outcomes for the voter education campaign;
- (18) In addition to conducting long-term planning to ensure a successful project, the Contractor must effectively address unexpected or unforeseen issues, opportunities, and needs with regard to voter education issues as requested or identified by SOS, and have budget contingencies for such issues and needs, including, but not limited to, any legislative or judicially-mandated changes in voter identification requirements, any legislative or judicially-mandated changes in the scheduling of the 2022 primary election or the 2022 primary runoff election, any changed circumstances as a result of the coronavirus pandemic, and any other public health emergencies and/or natural disasters;
- (19) Develop and produce a final report that provides a comprehensive overview of the performance of the Contractor's representation services, including but not limited to, a review of all project activities,

- major accomplishments, performance summary (including all performance measures), industry awards received, final public awareness tracking, final media placement tracking, and recommendations for a possible future voter outreach program.
- (20) Additionally, the Contractor shall: (a) adhere to the SOS Terms and Conditions identified in this RFP including (without limitation) any portion of the Contract (including any Amendments); (b) provide all labor, materials, and equipment necessary to meet requirements of the specified services throughout the term of the Contract (including any Amendments); (c) promptly (and no later than 24 hours after Contractor becomes aware of such events) notify SOS in writing of events that have, or may have, a significant impact on Contractor production, including: (i) problems, delays or adverse conditions that could prevent the Contractor from meeting time or work schedules; or (ii) favorable developments that could enable the Contractor to meet time or work schedules sooner than anticipated; and (d) provide project briefings to SOS upon request.
- (21) As provided in Sections 4.3 and 4.4 herein, the Contractor shall develop a cost-efficient Task Activity Plan that is responsive to SOS's education needs for the voter outreach project. SOS and the Contractor shall determine projected timelines. Every effort must be made to produce public information materials well ahead of the determined deadlines. Proofs of collateral and other promotional materials shall be submitted to SOS in a timely manner so that editing is implemented, approval given, and deadlines met. Each proof of collateral and other promotional material provided to SOS shall include in the transmittal document the date and time by which the item must be provided to the relevant distributor in order to meet a particular production date (which shall also be identified), and that deadline shall not be less than 24 hours before the material is provided to SOS, unless otherwise agreed to in writing by SOS due to unforeseen circumstances or opportunities that may be more time-sensitive. Each activity shall include measurable objectives and estimated costs. If any particular line-item's cost will exceed the cost estimate, the Contractor must submit a revised cost estimate and obtain SOS approval for the increase. All purchases and expenditures made by the Contractor shall be competitively bid, in accordance with current SOS guidelines for procurement of goods and services, and submitted to SOS on Cost Estimate Approval forms. The Contractor is encouraged to utilize certified HUBs listed in the state's Centralized Master Bidders List or other available HUB lists whenever possible, for all purchases, when the quality and cost is equal to or better than other bids.

B. General Personnel Requirements

The Contractor shall have a Project Manager whose primary responsibility shall be the day-to-day operation of the service in accordance with the requirements of the Contract arising out of this RFP:

- (1) Contractor shall utilize permanent staff members;
- (2) Contractor's personnel shall effectively communicate orally and in writing; and

- (3) Contractor's personnel shall meet the requirements specified herein in Section 2.2(D) of this RFP (Experience and Capability).

C. Additional Service Requirements

The Contractor shall:

- (1) Have the ability to begin work on this project immediately upon date of award of the Purchase Order or on an agreed-upon date between SOS and the Contractor;
- (2) Recommend and develop strategies to most effectively achieve desired results through the creation of marketing, advertising, and public information campaigns;
- (3) Provide professional advertising and marketing services to assist SOS in managing communication issues as they arise;
- (4) Develop targeted information campaigns. Applicable marketing advertising and public information services may include, but not be limited to, determining appropriate goals, objectives, and strategies for achieving desired outcomes, such as identifying concepts, messages, target audiences, evaluation processes and measurements, media markets, and all other activities associated with the recommended strategies; and
- (5) Coordinate its activities—when appropriate and as directed by SOS—with county election officials, other SOS-contracted firms, other state agencies, election advisory committees, and local, regional, and statewide election associations and organizations involved with or affected by services provided under this contract.

D. SOS Responsibilities

- (1) SOS will provide management oversight and written advance approval of all work projects performed by the Contractor and its subcontractors, including, but not limited to, release or implementation of any material developed. SOS will provide specific outline of duties with billing instructions per activity before the activity is undertaken;
- (2) SOS will schedule meetings with the Contractor to monitor progress of work on at least a weekly basis (in person or by videoconference or teleconference), at which it is expected that the Contractor's Project Manager and the Contractor's other key personnel will attend;
- (3) SOS will provide advance written approval or disapproval of Contractor's key personnel assigned to the contract, including any personnel changes; and
- (4) SOS will evaluate all Contractor services and work products for quality and compliance with the applicable contract requirements. Measures of quality may include, but are not necessarily limited to, fitness for use that meets or exceeds SOS expectations, and the characteristics of the product or service that bear on its ability to meet the stated/implied needs of SOS.

SECTION TWO

GENERAL INSTRUCTIONS AND STANDARD PROPOSAL REQUIREMENTS

2.1 STANDARD PROPOSAL REQUIREMENTS

The sole point of contact for all inquiries or any requests for additional information concerning this RFP is SOS's Purchasing Department. All correspondence regarding this RFP must be submitted to SOS's Purchasing Department by email at purchasing@sos.texas.gov and the subject line must reference "RFP # 000797".

Proposals that address only part of the requirements contained in this RFP may be considered non-responsive. SOS reserves the right to reject any and all proposals and to negotiate portions thereof. The selected proposal may not necessarily be funded for the amounts indicated in any advertised scenario. The budget submitted by the Contractor is subject to negotiation by SOS. SOS reserves the right to select the proposal containing the best value to the State of Texas considering the outcomes desired as described herein. The Contractor shall furnish such additional information that SOS may reasonably require. SOS may, in order to obtain an acceptable definitive contract with the selected Contractor, modify the terms of this RFP through negotiations with respect to such definitive contract before the execution of such contract on terms that are mutually agreeable to both SOS and the selected Contractor.

Responses to this RFP shall include all information as requested in this RFP. Each Contractor is responsible for its own thorough understanding of the RFP, including all attachments related thereto. In addition, each Contractor is solely responsible for its response and all documentation submitted. Contractors are cautioned to pay particular attention to the clarity and completeness of their response. The clarity and completeness of a response will be considered by SOS's evaluation committee.

Any terms and conditions attached to a solicitation will not be considered unless specifically referred to in this solicitation and may result in disqualification.

2.2 SUBSTANTIVE CONTENT

A. Understanding of the Project and Methodology

Contractors must demonstrate how they will achieve the mandatory objectives set forth in Section One, and must specifically commit that the offer to provide services pursuant to this RFP, embodied in the response to this RFP, is valid for a period of thirty-four (34) days from and including December 14, 2021, or until a selection has been made by SOS, whichever occurs later.

B. Exceptions

If a Contractor takes any exceptions to any specifications and/or terms and conditions contained in this RFP, these exceptions must be specifically and clearly identified by section in the Contractor's response and the Contractor's proposed alternative must also be provided in its response. A Contractor cannot take a "blanket exception" to the entire solicitation.

AT THE SOLE DISCRETION OF SOS, AN EXCEPTION IN WHOLE OR IN PART MAY RESULT IN THE DISQUALIFICATION OF SUCH PROPOSAL.

C. Proposed Task Activity Plan and Pricing Schedule

Contractors must plan for the project to start no earlier than January 14, 2022 at midnight (CT) and end no later than January 31, 2023 at 11:59 PM (CT). The Contractor must submit a proposed Task Activity Plan and Pricing Schedule, which includes a cost proposal it believes is necessary to accomplish the project objectives of this RFP, specifying to the degree possible the tasks that are to be undertaken or delivered (as applicable).

Timelines showing beginning and ending dates for each major task are to be included. Tasks must be sufficiently designed and outlined in the proposed Task Activity Plan and Pricing Schedule that will provide evidence of satisfactory delivery of services and products. Time frames must be logical and appropriate to complete all tasks within the beginning and ending dates of the contract, with a recognition of the following dates: early voting for the primary election begins on February 14, 2022; the primary election is on March 1, 2022; early voting for the general election begins on October 24, 2022; and the general election is on November 8, 2022. The proposed Task Activity Plan and Pricing Schedule should also take into account that the dates of the 2022 primary election and 2022 primary runoff election are subject to change due to legislation or court order(s) as a result of redistricting.

Using the Task Activity Plan and Pricing Schedule, the Contractor shall enter their proposed costs for the products and services to be provided under the Contract, itemized by each task suggested by the Contractor to accomplish project objectives. Any information provided by the Contractor in the Task Activity Plan and Pricing Schedule constitutes an estimate only to be used for the purpose of comparing responses.

The form to be used for the proposed Task Activity Plan and Pricing Schedule is included as Appendix D, but may be expanded as determined by the Contractor.

Failure to meet this condition shall result in disqualification of proposal, and the proposal shall receive no further consideration.

D. Experience and Capability

The Contractor is likely to be a full-service advertising agency, providing account service, media buying, and creative services in-house.

- (1) Contractors shall provide:
 - (a) Brief profiles on individuals who will be part of Contractor's key personnel on the project, including, but not limited to, the individual's name, title, education, years of experience, role and responsibility on the project, and hourly pricing for personnel staff who will work on the project.
 - i. The Contractor's Project Manager shall have a minimum of five (5) years full-service marketing experience or comparable experience; and
 - ii. Key personnel shall have a minimum of three (3) years of experience in their respective service area(s);
 - (b) Information demonstrating that the Contractor is an established company engaged in the business of developing and/or providing advertising programs for a minimum of five (5) years;
 - (c) An example of a similar project of equal size completed in the last five (5) years that includes information regarding:

- i. Goals and objectives of the project, campaign, or initiative;
 - ii. Market-research approach of the project, to include target audience, stakeholder groups, messaging, campaign strategies, and other related information;
 - iii. Project work plan with milestones and deliverables;
 - iv. Purchase of air time appropriate for target audience(s), including any "added value";
 - v. Project budget, including whether the project was accomplished within budget and, if not, explain why;
 - vi. Tools, methods, and processes used to evaluate the effectiveness of the project, campaign, or initiative; and
 - vii. Approach used to plan and implement innovative and effective advertising strategies to achieve the desired results;
 - (d) A list of clients that includes decision-making personnel from at least two (2) previous projects of a similar size and complexity to this project. The project submitted to fulfill the request in the preceding paragraph may be one of these two project clients. Provide client contacts who have/had hands-on, day-to-day knowledge of that project and your performance. Describe the services provided to those clients. The services shall have been provided by the Contractor to the reference company or entity within five (5) years preceding the issuance date of this RFP. By providing a client list, the Contractor agrees that SOS may contact any or all of the clients for reference regarding activities, performance, and services provided; and
 - (e) The Contractor must provide a brief company history, including the founding date, the number of years it has been in business as currently constituted, and a brief description of its marketing, education, and outreach philosophy.
- (2) Consistent with the broad-based goals set forth in Section One of this RFP, Contractors should demonstrate how they meet the following qualifications:
- (a) Demonstrated experience in designing, managing, and implementing statewide advertising campaigns, including, but not limited to, media buying, direct mail capabilities, online services, and TV/radio/print advertising;
 - (b) The ability to conduct outreach to various subgroups within the general voting population;
 - (c) Considerable in-house capabilities for production of collateral materials and literature;
 - (d) Education and outreach strategy, as well as creative consultation, production consultation, and statewide rollout strategy and associated training capabilities; and
 - (e) Experience in planning, creating and designing collateral materials and strategies to inform a statewide audience and various audiences such as those identified in Section One.

- (3) The Contractor shall submit the most recent three (3) years audited financial statements, or if audited financial statements are unavailable, un-audited financial statements shall be submitted and certified as true, correct, complete, and accurate by the chief financial officer or treasurer of the Contractor's company.
- (4) The Contractor shall be in good financial standing, not in any form of bankruptcy or insolvency, current in payment of all taxes and fees such as (but not limited to) state franchise fees, current in the payment of all its material debts, and not currently involved in any type of litigation; and
- (5) The Contractor shall provide the name, address, phone number, and e-mail address of the person who SOS should contact with any questions regarding the response submission.

E. Historically Underutilized Business (HUB) Identification

HUBs are encouraged to submit a proposal for the services requested in this RFP. Contractors are encouraged to become HUB-certified. Contractors that are not certified, and who wish to become certified, should complete a HUB certification application, available at <https://comptroller.texas.gov/purchasing/vendor/hub/forms.php>. Contractors should also relay this information to any potential subcontractors who wish to become a certified HUB. Contractors that are certified as a HUB with the Texas Comptroller of Public Accounts should attach a copy of the certificate to the proposal.

F. Historically Underutilized Business (HUB) Subcontracting Plan

Subcontracting opportunities are possible for the Contract arising out of this RFP, and Contractors are encouraged to subcontract with HUBs. HUBs are defined in Section 2161.001 of the Texas Government Code. Contractors may choose to subcontract all, or any portion, of the services with HUBs.

All Contractors are required to submit a HUB Subcontracting Plan ("HSP") with their response to this RFP.

Contractors that fail to submit a HSP will be rejected for noncompliance with the advertised RFP specifications.

In preparing the HSP, the Contractor must comply with the Comptroller of Public Accounts' regulations relating to developing and submitting a subcontracting plan, as set forth in Title 34, Section 20.285 of the Texas Administrative Code. Section 20.285 further describes the means by which the Contractor may demonstrate the "good faith effort" required for completion of the HSP. Pursuant to Title 34, Section 20.284 of the Texas Administrative Code, the applicable statewide HUB goal for this procurement is 26.0% (other services contracts).

The HSP will be incorporated into a contract arising out of this RFP between SOS and the selected Contractor.

To assist the Contractor in making a good-faith effort, SOS has identified the following opportunities as potential subcontracting opportunities under this RFP:

- Class: 915 Communications and Media Related Services
 - 915-04 Advertising Services, Outdoor Billboard, etc.
 - 915-14 Broadcasting Services, Radio

915-15	Broadcasting Services, Television
915-42	Film, Slide and Tape Production Services
915-48	Graphic Arts Services, Not Printing
915-58	Mailing Services: Addressing, Collating, Packaging, Sorting and Delivery
915-71	Newspaper and Publication Advertising, Non-Legal
915-73	Public Information Services, Including Press Releases
915-72	Photography Services, Not Including Aerial Photography
915-74	Radio Commercial Production Services
915-78	Television Commercial Production Services
915-82	Video Production Services
915-96	Web Page Design, Management and Maintenance Services

- Class: 961 Miscellaneous Services

961-75	Translation Services, All Languages
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- Class: 965 Printing: Preparations, Etching, Photoengraving, Preparation of Mats, Negatives and Plates and Printing Services

965-15	Artwork, Camera Ready
965-46	Graphic Design Services for Printing

- Class: 966 Printing and Typesetting Services

966-59	Offset Printing, General, Large Production Runs on Large or Web Press (Qty. Over 100,000), One or More Colors, No 4 Color Processes or Close Registration Required, May Exceed 11 x 17 In. and Have Large Solids
966-60	Offset Printing, Large Production Runs (Qty. Up to 100,000); 4 Color Process or Close Registration Required: Color Brochures, Maps, etc.
966-61	Offset Printing, Large Production Runs (Qty. over 100,000); 4 Color Process or Close Registration Required: Color Brochures, Maps, etc.
966-86	Specialty Printing: Die Cutting, Laser, Plastic, Thermography, etc.

A partial list of potential HUBs can be found at <https://mycpa.cpa.state.tx.us/tpasscmlsearch/tpasscmlsearch.do>. Search “HUBs only” or “HUBs on CMBL”. Enter the Class Code and the Item number. These Contractors are registered on the Comptroller of Public Accounts’ Centralized Master Bidders List (“CMBL”) or other related listing. SOS does not endorse, recommend, or attest to the capabilities of any company or individual on these lists.

HSP forms can be accessed at <https://comptroller.texas.gov/purchasing/docs/hub-forms/hsp-allfms.pdf>. The form is also attached as Appendix B. In addition, a list of Minority/Women Trade Organizations/Development Centers is included in Appendix B.

G. Conflict of Interest Disclosure Statement

The Conflict of Interest Disclosure Statement, which is found in Appendix E of this RFP, must be prepared, signed by a Contractor, and returned with the proposal.

In its proposal, a Contractor must represent and warrant to SOS that it and each of its subcontractors have the requisite resources, qualifications, and independence to provide their services free from outside direction, control, or influence, and subject only to the accomplishment of SOS's objectives. Contractors that cannot make this representation and warranty should not respond to this RFP.

A Contractor must disclose any existing or potential conflicts of interest or possible issues that might create appearances of impropriety relative to the submission of a proposal from Contractor and its possible selection as a selected vendor, or its performance or the performance of its proposed subcontractor(s) of the Contract (including any Amendments).

As part of this disclosure requirement, each Contractor must include in its proposal all past and present contractual, business, financial, or personal relationships between Contractor and SOS and between Contractor's proposed subcontractors, if any, and SOS.

By submitting a proposal, Contractor represents and warrants that neither it nor its employees and subcontractors have an actual or potential conflict of interest in entering a Contract (including any Amendments) with SOS. Contractor also represents and warrants that entering a Contract with SOS will not create the appearance of impropriety. In its proposal, Contractor must disclose any existing or potential conflict of interest that it might have in contracting with SOS. The requirement to disclose any actual or potential conflict of interest will continue during the term of the contract, and will survive until the end of the recordkeeping requirement, which is set forth in the "Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences" instrument found in Appendix A of this RFP. SOS will decide, in its sole discretion, whether an actual or perceived conflict should result in proposal disqualification or contract termination.

In addition to the disclosures required above, Contractor must also disclose any of its personnel who are current or former officers or employees of SOS or who are related, within the third degree by consanguinity (as defined by Texas Government Code, Section 573.023), or within the second degree of affinity (as defined by Texas Government Code, Section 573.025), to any current or former officers or employees of SOS.

Contractors must comply with all applicable Texas and federal laws and regulations relating to the hiring of former state employees (e.g., Texas Government Code, Chapters 572 and 573). Such "revolving door" provisions generally restrict former agency heads from communicating with or appearing before the agency on certain matters for two (2) years after leaving the agency. The revolving door provisions also restrict some former employees from representing clients on matters that the employee participated in during state service or matters that were in the employee's official responsibility. Contractor, by signing this solicitation, certifies that it has complied with all applicable laws and regulations regarding former state employees.

H. Additional Response Instructions

- (1) A Contractor must sign and, where relevant, fill in the requested information on the "Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences" instrument, which is found in Appendix A of this RFP.

- (2) A Contractor must complete and sign the Conflict of Interest Disclosure Statement, which is found in Appendix E of this RFP, and return a completed form with the submitted proposal.
- (3) By signing, Contractor or the Contractor's legally authorized agent affirms that all statements within the offer are true and correct. Discovery of any false statement in the proposal is a material breach and shall void the submitted proposal or any resulting contracts.
- (4) Receipt of any addenda made to this RFP must be acknowledged by returning a signed copy of each addendum with the submitted proposal.

2.3 RECEIPT OF OFFERS

To be eligible to be considered for funding, without exception, **proposals must be received in the SOS Purchasing Department on or before January 4, 2022 at 5:00 p.m. (CT)** in Austin, Texas. Contact information for the SOS Purchasing Department is as follows:

By U.S. Mail:

Office of Secretary of State
Purchasing Department
P.O. Box 12887
Austin, TX 78711-2887

By Express Mail, Courier or Hand Delivery (8:00 a.m. to 5:00 p.m.):

Office of Secretary of State
Purchasing Department
James E. Rudder Building, Suite 405
1019 Brazos Street
Austin, TX 78701-2413

In establishing the time and date of receipt, SOS will rely solely on the time/date stamp/signature of the Purchasing Department. SOS will not accept a United States Postal Service postmark and/or round validation stamp, mail receipt with the date of mailing stamped by the United States Postal Service, a dated shipping label, invoice or receipt from a commercial carrier, or any other documentation as proof of receipt of any proposal. Contractors are advised that SOS assumes no responsibility, due to any circumstances, for the receipt of an offer after the due date of **January 4, 2022**, as set forth above.

Proposals cannot be altered or amended once the deadline for submission of proposals has expired unless specifically requested by SOS as part of the negotiation process to incorporate into the Contract (including any Amendments). Any alterations to a submitted proposal made by a Contractor before the deadline for submission must be initialed by the Contractor or its authorized agent. No proposal may be withdrawn after the deadline for submission of proposal without written approval from SOS.

2.4 SUBMITTAL OF PROPOSALS TO AGENCY

SOS accepts hard copy submissions of a proposal. One (1) original copy of the proposal marked "ORIGINAL" and five (5) copies of the proposal must be submitted by the deadline provided in Section 2.3. Failure to meet this condition shall result in disqualification of the

proposal, and the proposal shall receive no further consideration. Photocopying is not available at SOS.

Offers submitted by trackable mail, Federal Express, or by any other courier delivery service must provide the Contractor's name, the RFP number (000797) and Description ("Voter Education and Outreach Opportunities For 2022 Elections"), and the RFP closing date and time. These elements must be prominently displayed and visible on the packaging used for delivery of the offer. If multiple packages are used, the Contractor must indicate on each package "___ of ___."

As noted above, Contractor may send offers to SOS at the following addresses:

By U.S. Mail:

Office of Secretary of State
Purchasing Department
P.O. Box 12887
Austin, TX 78711-2887

By Express Mail, Courier or Hand Delivery (8:00 a.m. to 5:00 p.m.):

Office of Secretary of State
Purchasing Department
James E. Rudder Building, Suite 405
1019 Brazos Street
Austin, TX 78701-2413

Proposals must be submitted entirely on 8 ½" X 11" white paper with a cover sheet substantially in the format included in Appendix C. Offers must be legible and type no smaller than 9 point font. Bios or resumes may be included as attachments but are not to be provided in lieu of the information requested in Section 2.2(D) of this RFP. Offers must be stapled or clipped in some manner.

Offers must be submitted in a manner that does not carry any benefit, keepsake, or value for members of the SOS evaluation team.

In addition, proposals must also be submitted on a compact disk or USB flash drive in MS Word, Excel, and/or Adobe Acrobat. All appendices and attachments must be included on the disk or memory stick. Label the disk or USB flash drive with Contractor's name. Only one electronic copy is required. Discrepancies between the hard copy of any response to this RFP and electronic formats of same will be resolved in favor of the hard copy response.

E-mail or facsimile transmissions of responses to this RFP will not be accepted under any circumstances.

Refer to the Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences (Appendix A to this RFP) regarding designations of material as purportedly proprietary or otherwise confidential in electronic copies or hard copies.

2.5 RESPONSE CHECKLIST

This checklist is intended to assist Contractors in ensuring that all requisite information is included in their response. Contractors must refer to the appropriate section of the RFP for detailed information on the following. Offer content must be presented in the order shown below.

- RFP Cover Page Sec. 2.4;
Appendix C
- Understanding of the Project and Methodology Sec. 2.2(A)
- Exceptions Sec. 2.2(B)
- Signed and Completed Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences Appendix A
- Proposal electronic copy Sec. 2.4
- HUB Subcontracting Plan Appendix B
- Proposed Task Activity Plan and Pricing Schedule Sec. 2.2(C);
Appendix D
- Experience and Capability Sec. 2.2(D)
- Conflict of Interest Disclosure Statement Sec. 2.2(G);
Appendix E

Failure to return all information on the checklist may disqualify the proposal.

2.6 SOS PURCHASING DEPARTMENT

SOS Purchasing Department is open Monday through Friday, 8:00 a.m. to 5:00 p.m. (CT), excluding state holidays. State holidays are identified in a list available on the Comptroller's website, <https://comptroller.texas.gov/about/holidays.php>. SOS Purchasing Department is located in the James E. Rudder Building, Suite 405, 1019 Brazos Street, Austin, TX 78701.

2.7 SCHEDULE / CRITICAL DATES

DATE	EVENT
December 14, 2021	Expected issuance of RFP and publication in the Electronic State Business Daily portion of the Texas Marketplace
December 21, 2021	Questions from Contractors due to SOS Purchasing Department by 5:00 PM (CT)
December 28, 2021	SOS responses to questions from Contractors answered and posted to Electronic State Business Daily
January 4, 2022	Proposal due in SOS Purchasing Department by 5:00 PM (CT) in Austin, TX
January 5-10, 2022	Proposals evaluated by SOS evaluation team
January 11-12, 2022	Oral presentations performed and evaluated by evaluation team (if applicable)
January 14, 2022	Contract award and Project Start date
January 31, 2023	Project Completion

IT SHOULD BE NOTED THAT THE SECRETARY OF STATE MAY VARY ALL OF THESE DATES AS CONDITIONS REQUIRE.

2.8 QUESTIONS RECEIVED PRIOR TO PROPOSAL DUE DATE/TIME AND REQUESTS FOR ADDITIONAL INFORMATION

The sole point of contact for all inquiries or any requests for additional information concerning this RFP is SOS's Purchasing Department. All correspondence regarding this RFP must be submitted to SOS's Purchasing Department by email at purchasing@sos.texas.gov and the subject line must reference "RFP # 000797".

In order to assure that no prospective Contractor may obtain a competitive advantage because of acquisition of information unknown to other prospective Contractors, any additional information that is different from, or in addition to, information provided in the RFP will be provided only in response to written inquiries via e-mail as set forth herein. All such inquiries and the written answers prior to the deadline for submission of the proposal will be posted as an addendum to the RFP on the Electronic State Business Daily (ESBD) at <http://www.txsmartbuy.com/esbd>. SOS will not respond to questions received after the deadline for submitting questions.

It is the responsibility of interested parties to periodically check the ESBD for updates to the procurement prior to submitting a bid. A Contractor's failure to periodically check the ESBD will in no way release the selected Contractor from "addenda or additional information" resulting in additional costs to meet the requirements of the RFP.

Except as otherwise provided in this RFP, upon issuance of this RFP, other employees and representatives of SOS will not answer questions or otherwise discuss the contents of the RFP with any potential Contractor 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.

Contractors must notify SOS of any ambiguity, conflict, discrepancy, exclusionary specification, omission, defective specification, or other error in the RFP by the deadline for submitting questions and comments. If a Contractor fails to notify SOS of these issues, it will submit a proposal at its own risk, and if awarded a contract: (1) will have waived any claim of error, ambiguity, or mistake of fact in the RFP or resulting contract; (2) must not contest SOS's interpretation of such provision(s); and (3) must not be entitled to additional compensation, relief, or time by reason of the ambiguity, conflict, discrepancy, etc. or its correction.

2.9 STATE NOT RESPONSIBLE FOR PREPARATION COSTS

SOS will not be liable for any costs incurred in the preparation and submittal of a proposal, or costs associated with performing requested oral presentations. Contractors understand that issuance of this RFP in no way constitutes a commitment by SOS to award a contract or to pay any costs incurred by a Contractor in the preparation of a response to this RFP. SOS is not liable for any costs incurred by a Contractor prior to issuance of or entering into a contract. Costs of developing offers, preparing for or participating in site visits, or any other similar expenses incurred by a Contractor are entirely the responsibility of the Contractor. Neither SOS nor the State of Texas will reimburse such expenses.

SECTION THREE

3.1 REVIEW OF PROPOSALS

SOS shall award a contract to a Contractor whose proposal is considered to provide the best value to the State of Texas, which includes the purchase price and the extent to which the goods or services meet specifications.

SOS will conduct a fair, comprehensive, and impartial evaluation of all proposals received in response to this RFP using an evaluation committee. The committee will include employees of SOS and other persons invited by the Texas Secretary of State and/or the Deputy Secretary of State to participate. SOS's General Counsel, other in-house legal counsel, and outside legal counsel may assist by advising the evaluation committee or sitting on the committee at the request of the Secretary of State and/or the Deputy Secretary of State.

SOS reserves the right to award contract(s) without any negotiations and reserves the right not to make awards. Each Contractor is strongly encouraged to provide its best price in its proposal because SOS makes absolutely no guarantee that there will be any opportunity to negotiate or provide alternative pricing at any point during the RFP process.

By submitting a proposal, Contractor grants SOS the right to obtain information from any lawful source regarding the Contractor and its directors', officers', and employees': (1) past business history, practices, and conduct; (2) ability to supply the goods and services; and (3) ability to comply with contract requirements. By submitting a proposal, Contractor generally releases from liability and waives all claims against any party providing SOS information about the Contractor. SOS may take such information into consideration in evaluating proposals.

Information obtained from the Texas Comptroller's Vendor Performance Tracking System may be used in evaluating offers to determine the best value for the State of Texas.

Only those proposals that are deemed to be in administrative compliance will be evaluated for responsiveness to the state's needs.

Each member of the SOS evaluation committee will conduct an independent review of each proposal submitted. All persons involved in this RFP process will sign a non-disclosure statement. The evaluation committee will make a recommendation based on the selection criteria identified herein concerning its belief which Contractors merit further consideration.

SOS may request clarification of information or representations in a proposal before completing the initial evaluation. Refer to Section 2.8 of this RFP for information regarding Contractor responses to inquiries and requests.

Proposals will be selected based on the ability of each Contractor to carry out all of the requirements contained in this RFP.

SOS will perform an initial screening of all proposals received. Only complete responses that contain all required submittal documents and satisfy the minimum qualifications will be considered. Failure to meet the minimum qualifications and/or submit the required documents will result in a response being declared non-responsive/disqualified. Unsigned proposals and proposals that do not include all required forms and sections will be disqualified. SOS reserves the right to waive minor informalities in a proposal and award a contract that is in the best interest of the State of Texas.

Initial screening will check for compliance with various content requirements and minimum qualification requirements defined in the RFP. SOS also reserves the right to request

clarification from a Contractor who fails to meet any initial compliance requirements prior to rejecting a proposal for material deviation from requirements or non-responsiveness.

SOS may determine that certain proposals are within the range of competition for admission to discussions. The range of competition consists of the proposals that receive the highest or most satisfactory evaluation score. SOS may, in the interest of administrative efficiency, place reasonable limits on the number of proposals admitted to the range of competition.

SOS may, but is not required to, request a Contractor to prepare one or more revised proposals. The evaluation committee will determine if Best and Final Offers are necessary. Award of a contract may be made without Best and Final Offers. SOS may, at its discretion, elect to have Contractors 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 SOS and will be extended in writing. If SOS so chooses, it may request further revisions or another round of proposals, even if it has identified a prior request as being for Best and Final Offers.

SOS may, but is not required to, conduct discussions with all, some, or none of the Contractors admitted to the field of competition for the purpose of obtaining the best value for SOS and the state of Texas. It may conduct discussions for the purpose of:

- Obtaining clarification of proposal ambiguities;
- Requesting modifications to a proposal; and/or
- Obtaining a best and final offer.

SOS may make an award prior to the completion of discussions with all proposals admitted to the range of competition if SOS determines that the award represents the best value to SOS and the State of Texas.

SOS staff shall determine the number of Contractors with which it will start contract negotiations. To the extent SOS determines it is in the best interest of SOS and the State of Texas to negotiate with different Contractors after receipt of offers, in its discretion, SOS shall terminate contract negotiations when SOS determines that the best value for the State has been obtained.

SOS shall make the decision to award any contracts, if it is in the best interest of SOS and the State of Texas to do so. SOS's decision is final. Any award for this RFP shall be posted on the Electronic State Business Daily upon execution of a contract with one or more Contractors. All responses and working papers pursuant to this RFP are not subject to disclosure under the Public Information Act until the contract has been executed.

SOS reserves the right to make modifications to the requirements set forth in this RFP up until contract award. SOS reserves the right to cancel this RFP, to make a partial award, or to make no award if it determines that such action is in the best interest of SOS or the State of Texas. Once SOS determines the top-scoring Contractor(s), SOS may meet with such Contractors to negotiate and to execute a final written contract. SOS reserves the right to negotiate any portion of a Contractor's proposal and any portion of this RFP. If SOS is not able to negotiate a satisfactory contract with a specific Contractor, SOS will terminate negotiations with that Contractor. SOS may undertake simultaneous negotiations with multiple Contractors in the order of ranking.

SOS reserves the right to reject any or all RFP responses and to waive informalities and minor irregularities in the RFP responses, and request clarification as needed, as deemed in the best interest of the State of Texas and SOS. SOS may, in order to obtain an acceptable contractual agreement with a Contractor, with the consent of the Contractor, modify through negotiations and issuance of an addendum before accepting and reaching a final contract award.

Negotiations may continue in this fashion until SOS awards a contract, SOS rejects all Contractors, or SOS terminates this RFP.

3.2 SELECTION CRITERIA

STEP 1 INITIAL EVALUATION: The SOS evaluation committee will evaluate and score each response based on established criteria. Contractors shall not contact members of the evaluation team. Responses will be evaluated according to the Contractor's ability to best satisfy SOS requirements. The evaluative criteria are as follows:

Evaluation Criteria – Written Response	Weight
Quality of response submission, including demonstrating an understanding of and ability to plan and implement the project scope and requirements	50%
Contractor qualifications	30%
Pricing elements	20%
Total:	100%

STEP 2 ORAL PRESENTATION: The Contractors that receive favorable evaluations during the first round of evaluation may be asked to send a representative to Austin, Texas, at a time and place to be arranged, for oral presentation of proposals. However, SOS shall be under no obligation to request such oral presentations. Contractors must be prepared to be available for such a presentation(s), if requested, as noted in the schedule identified in Section 2.7 of this RFP. Proposals may be re-evaluated and be considered along with the oral presentations, if any, before SOS makes a final award.

The Contractor and key proposed personnel should be prepared to address any questions that may be asked by SOS.

Each Contractor invited to make an oral presentation will be allowed one hour for the presentation, and an additional one half-hour will be provided for questions from SOS. A schedule will be provided to Contractors making an oral presentation giving the exact time of each stage of presentation.

The order of participation in oral presentations will be determined at random. Oral presentations must substantially represent material included in the original written proposal, with emphasis placed on the creative response aspects of the proposed solution.

Members of the evaluation committee, the Secretary of State, and other individuals selected by SOS may be present during the oral presentations. Oral presentations will be held at the Office of Secretary of State in Austin, Texas or, if permitted by SOS, via videoconference. Up to a total of four (4) individuals representing a Contractor will be allowed during a presentation.

The SOS evaluation committee will evaluate each oral presentation based on the following criteria:

Evaluation Criteria – Oral Presentation	Weight
Contractor's ability to demonstrate expertise and creativity in marketing, advertising, and public relations as outlined in the Contractor's written response	50%
Quality of Contractor's oral presentation	25%
Contractor's responsiveness to questions from SOS during the oral presentation	25%
Total:	100%

The SOS evaluation committee will score each oral presentation based on the above criteria and consider that scoring in addition to the scoring for each Contractor's written response in making a recommendation regarding the award of a Contract to one or more Contractors.

The recommendations of the evaluation team will be assembled and presented to the Secretary of State and/or the Deputy Secretary of State. The Secretary of State and/or the Deputy Secretary of State may then request additional oral presentations from such Contractor(s). Following such oral presentations, if applicable, the Secretary of State and/or the Deputy Secretary of State will:

1. Approve one proposal in whole or in part; or
2. Defer action on the proposals for purposes of further evaluation.

SOS reserves the right to utilize any or all presentation evaluation rounds in its final selection.

NEGOTIATIONS: Upon completion of oral presentation evaluations, SOS reserves the right to enter into negotiations with one or more Contractors.

STEP 3 BEST AND FINAL OFFER ("BAFO"): As noted above, SOS reserves the right to request a BAFO from the selected Contractor(s). The selected Contractor shall submit a final price and any added value. If more than one Contractor reaches this level, the negotiated terms, references, BAFO, and added values will be considered in the award. SOS will make the final determination on the best value to SOS and the State of Texas.

AWARD: SOS reserves the right to award a Contract to the Contractor that provides the best value to SOS and the State of Texas in performance of these services. SOS may award to a single Contractor or multiple Contractors, or use any combination that best serves the interest of SOS. SOS may, in its discretion, reject any and all proposals or portions thereof. Upon a Contractor's acceptance of the requirements contained in the RFP and SOS's selection of that Contractor, SOS will issue a Purchase Order for services specified. SOS will notify each proposed Contractor in writing via email of its selection or non-selection. Additional copies of proposals not selected will be destroyed unless the Contractor notifies SOS in writing within thirty (30) days of the date of such Contractor's receipt of the non-selection letter requesting that the proposals be returned. Any such returned proposals will be at such Contractor's expense.

SECTION FOUR

CERTAIN CONTRACTUAL REQUIREMENTS

4.0 CERTAIN CONTRACTUAL REQUIREMENTS AND GENERAL PROVISIONS

Any Contract (including any Amendments) awarded as a result of this RFP will contain the general terms and conditions listed herein. Subcontractors are also obliged to comply with these provisions.

4.1 CONTRACTOR'S PROPOSAL

The selected proposal may be incorporated into a contract prepared by SOS for signature by the contracting parties, as also provided in the Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences, which is attached as Appendix A to this RFP. No terms of a proposal shall become terms of any contract arising out of this RFP unless expressly stated to be so in writing by SOS.

4.2 CHANGES IN SPECIFICATIONS

SOS, at its sole discretion, may make changes within the general scope of the contract, including, but not limited to, changes in the service specifications or the manner of performance of the work.

4.3 TASK ACTIVITY APPROVAL BY SOS

The Contractor shall develop a Task Activity Plan for the voter outreach project. SOS and the Contractor shall determine projected timelines.

Every effort must be made to produce public information materials well ahead of the determined deadlines. Proofs of collateral and other promotional materials shall be submitted to SOS in a timely manner so that editing is implemented, approval given, and deadlines met. Each proof of collateral and other promotional material provided to SOS shall include in the transmittal document the date and time by which the item must be provided to the relevant distributor in order to meet a particular production date (which shall also be identified), and that deadline shall not be less than 24 hours before the material is provided to SOS, unless otherwise agreed to in writing by SOS due to unforeseen circumstances or opportunities that may be more time-sensitive.

SOS will expect the Contractor to develop a cost-efficient plan that is responsive to SOS's educational needs. In addition to identification and scheduling of projected activities, each activity shall include measurable objectives and estimated costs. Cost Estimate Approval forms may be amended as necessary and as mutually agreed to between SOS and the selected Contractor. COSTS NOT APPROVED IN WRITING BY SOS WILL NOT BE ELIGIBLE FOR REIMBURSEMENT OF ANY KIND AND WILL BE THE SOLE PAYMENT OR OBLIGATION OF THE CONTRACTOR.

4.4 EXPENDITURE APPROVAL BY SOS

The Contractor must make recommendations for savings wherever possible. Prior to the development and execution of any activity, the Contractor shall present the SOS Cost Estimate Approval forms with a total cost estimate for the activity. If any particular line-item's cost will exceed the cost estimate, the Contractor must submit a revised cost estimate and obtain SOS approval for the increase. SOS will not be responsible for any expenditure that exceeds the amount approved by SOS on any Cost Estimate Approval form.

Cost Estimate Approval forms shall be submitted to SOS not less than five (5) Business Days prior to a project, unless otherwise agreed to in writing by SOS. The SOS Project Manager will approve or deny a project in writing within three (3) Business Days of receipt.

All costs, including but not limited to, research, special project work, commissions, and shipping, must be completely detailed in any estimate submitted for approval. The estimate shall include any fee or commission for the Contractor or any subcontractor.

All purchases and expenditures made by the Contractor shall be competitively bid, in accordance with current SOS guidelines for procurement of goods and services, and submitted to SOS on Cost Estimate Approval forms. When SOS guidelines require competitive bids, typically for purchases over \$5,000, whenever possible, the Contractor shall provide appropriate bid documentation with the Cost Estimate Approval, along with the Contractor's recommendation, for SOS's approval. The Contractor is encouraged to utilize certified HUBs listed in the state's Centralized Master Bidders List or other available HUB lists whenever possible, for all purchases, when the quality and cost is equal to or better than other bids.

4.5 PAYMENT

All payments are made in accordance with Texas Government Code § 2251.001 et seq., commonly known as the Texas Prompt Payment Act. According to guidelines set forth by the Texas Comptroller of Public Accounts, the payment scheduling policy requires agencies to pay as close to the due date as possible in order to maximize fiscal benefits to the state. Payments are due thirty (30) Calendar Days after receipt of a correct invoice or receipt of service, whichever is later.

Unless otherwise indicated by SOS, payment is only by reimbursement upon satisfactory performance and delivery of goods and services.

Prior to authorizing payment to the Contractor, SOS shall evaluate Contractor's performance using the performance standards set forth in all documents constituting this Contract (including any Amendments). Payment is contingent upon submission of a properly prepared invoice/expenditure report. The contract number/purchase order number must be shown on all invoices. The invoice shall include a detailed report indicating timelines for all activities (with associated task numbers) and services provided which are included in the invoice. Contractor services shall indicate specific personnel, hours worked, and hourly rates as quoted, to the extent applicable. As noted above, the cost must have been pre-approved by SOS (in writing; hard copy or electronic). SOS Project Manager shall approve all activities invoiced before any payment will be processed. The information provided on each invoice/expenditure report must coincide with the tasks and cost categories outlined in the approved Task Activity Plan, as approved by SOS. No overtime or holiday rates will be paid by SOS. SOS will not be responsible for any expenditure for which a Purchase Order or Purchase Order Change Notice was not issued prior to services rendered.

Invoices may be submitted once every thirty (30) Calendar Days by email to SOSAccountsPayable@sos.texas.gov and purchasing@sos.texas.gov, with copies to the SOS Project Manager. Monthly invoices should be accompanied by the current Task Activity Plan.

The cost of services rendered or materials produced by organizations on SOS's behalf and not a part of the Contractor's organization (out-of-Contractor expenditures) shall be billed at actual cost (i.e., long-distance telephone calls, mailing, shipping, photocopying, and printing). Contractor must submit copies of invoices from all subcontractor's work or materials supplied at net cost.

Advance payments for services will be provided to Contractor only for media air time or space when the activity cost is \$75,000.00 or more. Upon Contractor's receipt of printed verification from supplier of the media air time or space, Contractor shall invoice SOS and SOS shall pay such invoice within three (3) Business Days from receipt. Other related fees such as Contractor's fees/commissions will be paid using the standard payment methods addressed in the Contract arising out of this RFP. Prepayments will be made using electronic transfer of state funds by the State Comptroller.

4.6 PRICE ADJUSTMENTS

During the term of the Contract (including any Amendments), prices may be adjusted when correlated with the index below at the request of the Contractor or at the sole discretion of SOS. Any such price adjustments will be evaluated through a change control process necessitating the approval of the SOS Project Manager, General Counsel, Purchasing Manager, and/or other employees of SOS.

The Contractor shall provide supporting documentation to justify any and all price increase requests. Any request submitted by the Contractor that fails to use the formula indicated below for calculating a price increase will not be considered a complete, properly-submitted price

increase request. Unless otherwise indicated, the index shall be the specified index as published by the U.S. Bureau of Labor Statistics (“BLS”), Washington, DC 20212.

Index to be used: CPI-Urban Wage Earners and Clerical Workers, U.S. Other Goods and Services.

BLS website: <https://www.bls.gov/data/>

When using the most recent monthly information from the index, the following applies:

A = Index from the month of the due date for the response, or the effective date/month of the last approved price increase

B = Current or latest baseline index posted at the time of vendor request or SOS decision to adjust price

The allowable percent change must be calculated as follows:

$$(B-A) \div A \times 100 = \text{Percent of allowable price increase}$$

The allowable percent change shall be rounded to the nearest one-hundredth of one percent and shall be the maximum unit price adjustment permitted, except that the vendor may offer price decreases in excess of the allowable percent change.

The Contractor may offer price decreases in excess of the allowable percent change at any time during the term of the Contract (including any Amendments).

4.7 INSURANCE

Contractor represents and warrants that it will obtain and maintain for the term of the Contract (including any Amendments) all insurance coverage required to ensure proper fulfillment of the Contract (including any Amendments) and its liabilities thereunder. All required bonds and insurance as specified in this RFP must be issued by companies or financial institutions that are financially rated A or better as rated by A.M. Best Company and duly licensed, admitted, and authorized to do business and provide the coverage in the State of Texas. Contractor shall insure any of its motor vehicles used to fulfill its duties under the Contract (including any Amendments) and ensure that its subcontractors do the same. Such insurance shall comply with Texas statutory requirements and also cover any cargo being delivered relating to the Contract (including any Amendments). SOS shall be named as the Obligee in each required bond and as an Additional Insured in each required insurance contract. Except as otherwise expressly provided herein, required coverage must remain in effect throughout the term of the Contract (including any Amendments) and provide full coverage for incidents discovered after termination of the Contract (including any Amendments). The Contractor must submit copies of each required insurance contract, and any renewals thereof, to SOS no later than January 1 of each year, except for the first year of the Contract (including any Amendments) in which the copies of the required insurance contracts must be submitted within fourteen (14) Calendar Days after the date of the initial purchase order, or as otherwise provided herein. Contractors must submit required bonds if, when, and as required by this RFP. Contractor and/or insurance carrier must notify SOS of any cancellation of a policy or renewal thirty (30) Calendar Days prior to any expiration, cancellation, and/or renewal date; failure to do so may be grounds for termination. Contractor represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least thirty (30) Calendar Days prior written notice to SOS.

A. Workers' Compensation & Employer's Liability

Contractor must maintain Workers' Compensation insurance coverage in accordance with statutory limits.

Workers Compensation: Statutory Limits

Employer's Liability: Each Accident \$1,000,000

Disease - Each Employee \$1,000,000

Disease - Policy Limit \$1,000,000

The Texas Department of Insurance provides information regarding the State of Texas's requirements for Workers Compensation coverage (<http://www.tdi.texas.gov/wc/act/index.html>).

B. Commercial General Liability

Contractor must maintain the following Commercial General Liability coverage:

Commercial General Liability (occurrence based)

Bodily Injury and Property Damage

Each occurrence limit: \$1,000,000

Aggregate limit: \$2,000,000

Medical Expense each person: \$5,000

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

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

Damage to Premises Rented: \$50,000

C. Other Insurance

Contractor must maintain the following Automobile Liability Coverage (all owned, hired and non-owned vehicles):

\$500,000 combined single limit (for each accident)

Contractor must maintain the following Umbrella/Excess Liability Coverage:

\$1,000,000 per occurrence

CONTRACTOR SHALL PROVIDE SOS WITH PROOF OF COVERAGE NO LATER THAN FOURTEEN (14) CALENDAR DAYS AFTER THE DATE OF THE INITIAL PURCHASE ORDER.

4.8 PERFORMANCE BOND

Contractor shall, at the time of execution of the Contract, be required to provide a performance bond in the amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000) during the term of any definitive contract.

The bond must be maintained in full force and effect for the term of such contract. The bond shall be forfeited to SOS if the Contractor fails to perform as required by such contract.

The performance bond must be received by SOS not later than fourteen (14) Calendar Days after execution of the definitive Contract.

4.9 TRAVEL EXPENSES

SOS may require weekly meetings at SOS headquarters and/or teleconferences to discuss status of implementation of the Task Activity Plan(s). Contractor will not be reimbursed for any travel expenses related to these status meetings.

Contractor is expected to use its best efforts to minimize expenditures of state funds when traveling to fulfill its obligations under any Contract arising out of this RFP. Contractor shall use its best efforts to secure the most advantageous airline, hotel, and ground transportation rates available. Photocopies of receipts are required for all travel reimbursements, including meals. No reimbursement will be made for tips, gratuities, alcohol, valet parking, room service, or any purchases not directly related to the purpose of the travel. Mileage reimbursement for use of a personal or company-owned vehicle will be at the rate established by the Texas Comptroller of Public Accounts. Contractor must adhere to the State's travel guidelines as promulgated by the Texas Comptroller of Public Accounts, where commercially reasonable, and obtain prior approval if unable to adhere to such travel guidelines resulting in higher costs (<https://fmx.cpa.state.tx.us/fmx/travel/texttravel/index.php>).

4.10 PERSONNEL CONTINUITY AND REPLACEMENT

Contractor shall assign only qualified personnel to this Contract (including any Amendments). All individuals identified in the Contract (including any Amendments) shall be considered Key Personnel and shall have the functions assigned to him or her as set forth in the Contract (including any Amendments). On the date of SOS's execution of the Purchase Order, SOS Project Manager shall authorize the key personnel identified by Contractor and agreed to by SOS to provide services under this Contract (including any Amendments). The Contractor agrees that the project manager and key personnel assigned to all projects shall remain available throughout the entirety of each project and throughout the term of the Contract (including any Amendments) arising out of this RFP as long as those individuals are employed by the Contractor.

SOS recognizes that events beyond the control of the Contractor such as the death, physical or mental incapacity, long-term illness, or the voluntary termination of employment of key personnel will require the Contractor to offer a replacement. Contractor shall not remove or reassign any of the Key Personnel until such time as the Key Personnel have completed all of their planned and assigned responsibilities in connection with the performance of the Contractor's obligations under the Contract (including any Amendments). Except in the case of voluntary termination, incapacitation of Key Personnel, or a for-cause termination, Contractor shall not remove, replace, or reassign Key Personnel without providing SOS with fourteen (14) Calendar Days prior written notice, and obtain written approval from SOS prior to any change in Key Personnel involved in providing services under this Contract (including any Amendments). If any one of Contractor's Key Personnel becomes incapacitated, voluntarily terminates his/her employment with Contractor, or is terminated for cause by Contractor, Contractor shall provide written notification to SOS immediately. Contractor shall be prepared to replace such key personnel within three (3) Business Days of the personnel's incapacitation or termination. Contractor shall obtain written approval from SOS prior to any change in key personnel involved in providing services under this Contract (including any Amendments).

Proposed replacement personnel shall meet minimum qualifications and have experience comparable to the person(s) being replaced. Upon SOS's request, before replacing any Key Personnel, Contractor shall introduce the individual to the appropriate representatives of SOS, and shall provide to SOS a resume and any other information about the individual reasonably requested by SOS. SOS reserves the right to interview the individual before determining whether or not to grant approval for the assignment of the individual. Replacement personnel shall be provided at no additional cost to SOS. Resume(s) and reference(s) must be provided to

SOS for the proposed replacement(s) upon request by SOS. SOS may reject any replacement if references or past working performance is questionable or unfavorable. SOS will be the sole judge of the qualifications of the proposed replacement personnel.

SOS shall not unreasonably withhold approval of Contractor's request to remove or reassign Key Personnel. Such approval or disapproval by SOS shall not affect Contractor's responsibility for performance of its obligations under the Contract (including any Amendments).

Notwithstanding anything contained herein to the contrary, if SOS believes that the performance or conduct of any person employed or retained by Contractor to perform the obligations of Contractor (including Key Personnel) under the Contract (including any Amendments) is unsatisfactory for any reason or is not in compliance with the provisions of the Contract (including any Amendments), SOS shall so notify Contractor in writing and Contractor shall promptly address the performance or conduct of such person in no less than three (3) Business Days of receipt of SOS's notice, or, at SOS's request, immediately replace such person.

In the event a replacement is necessary, Contractor agrees that personnel shall not begin work on the project without prior written approval from SOS. Contractor, in its reasonable discretion, reserves the right to substitute appropriate key personnel to accomplish its duties so long as the substituted personnel are equally qualified and skilled in the tasks necessary to accomplish the tasks and services required. Replacement personnel for any Key Personnel shall be "qualified," meaning that the proposed replacement personnel shall possess comparable experience and training as the Contractor personnel to be replaced. Except when Key Personnel becomes incapacitated, voluntarily terminates his/her employment with Contractor, or is terminated for cause by Contractor, any replacement personnel shall work with the replaced personnel during a mutually agreed transition period, the duration of which shall be determined based on the duties and responsibilities of the person to be replaced. All costs and expenses associated with educating and training the replacement personnel shall be borne by Contractor. SOS shall not be responsible for any relocation expenses arising from any relocation activities involved in Contractor complying with this Section or any other term or condition of the Contract (including any Amendments).

All Contractor employees providing services under the Contract (including any Amendments) or with access to State data may be subject to a criminal history background check, pursuant to Texas Government Code § 411.1405, and Section 5.11 of SOS's Policies and Procedures Manual, at SOS's sole discretion. SOS retains the right, in its sole discretion, to determine if any of Contractor's employees shall be excluded from the performance of the Services under the Contract (including any Amendments), based on the results of such criminal history background check.

Subcontractors providing services under the Contract (including any Amendments) shall meet the same requirements and level of experience as required of Contractor. No subcontract under the Contract (including any Amendments) shall relieve Contractor of responsibility for ensuring the requested services are provided. If Contractor uses a subcontractor for any or all of the work required, the following conditions shall apply:

- (a) Contractors planning to subcontract all or a portion of the work to be performed shall identify the proposed subcontractors.
- (b) Subcontracting may not be used to exceed the maximum costs as agreed to by SOS.
- (c) SOS retains the right to check subcontractor's background and approve or reject the use of submitted subcontractors.

- (d) Contractor shall be the sole contact for SOS. Contractor shall list a designated point of contact for all SOS inquiries.

4.11 DELIVERABLES

The Contractor shall submit:

- (a) Products and materials as determined and agreed on through the task activity plan process;
- (b) All documentation (i.e., reports, task activity plans, monthly reports, final reports) in a format approved by SOS. All documentation delivered shall be clear, concise, complete and in compliance with standards required by the SOS Project Manager;
- (c) The monthly progress reports (described in Section 4.26(A) of this RFP) not later than the tenth (10th) Calendar Day of the month for the prior month reporting period;
- (d) Media placement reports on or before the deadlines specified in Section 4.26(B) of this RFP; and
- (e) The final report (described in Section 4.26(C) of this RFP) summarizing the project activities, accomplishments, and recommendations for a possible future voter education and outreach program.

4.12 ACCEPTANCE OF FUNDS

Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of the Contractor or any other entity or person receiving funds from the State directly under this Contract (including any Amendments) or indirectly through a subcontract under this Contract (including any Amendments). The acceptance of funds by Contractor or any other entity or person directly under this Contract (including any Amendments) or indirectly through a subcontract under this Contract (including any Amendments) acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Contractor or other 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. Contractor will ensure that this clause concerning the authority of the state auditor to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate in any investigation or audit is included in any subcontract that the Contractor awards.

4.13 INDEPENDENT AUDITING STANDARDS AND CONFLICT OF INTERESTS

If an entity or its subsidiary has or is currently contracted with SOS to perform professional services or consulting (non-audit) services, it cannot be awarded a contract to provide financial audit, attestation, or performance audit services for two (2) years from finishing an engagement.

An entity or its subsidiary that performed financial audit, attestation, or performance audit services for SOS may not receive a contract award to perform professional services or consulting (non-audit) services for two (2) years from finishing an engagement.

4.14 TERMINATION

This Contract (including any Amendments) shall become effective on the date the Purchase Order is signed and shall end at 11:59 PM (CT) on January 31, 2023, unless otherwise sooner terminated as provided in this Contract (including any Amendments). Notwithstanding the termination or expiration of this Contract (including any Amendments), the provisions of this Contract (including any Amendments) regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice and fees verification, warranties, and default shall survive the termination or expiration dates of this Contract (including any Amendments).

Convenience

SOS may, in its sole discretion, terminate the Contract (including any Amendments) upon thirty (30) Calendar Days written notice to the Contractor. Such notice may be provided by facsimile or certified mail return receipt requested and is effective upon the Contractor's receipt. In the event of such termination, Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. SOS shall be liable only for payments for any goods or services ordered from the Contractor before the termination date which would be otherwise payable under the Contract (including any Amendments).

Cause/Default

If Contractor fails to provide the goods or services contracted for according to the provisions of the Contract (including any Amendments), or fails to comply with any terms or conditions of the Contract (including any Amendments), SOS may, upon written notice of default to the Contractor, immediately terminate all or any part of the Contract (including any Amendments). 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 (including any Amendments). SOS may exercise any other right, remedy, or privilege that may 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 (including any Amendments). The exercise of any of the foregoing remedies will not constitute a termination of the Contract (including any Amendments) unless SOS 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, incurred by SOS with respect to the enforcement of any of the remedies listed herein.

Rights upon Termination or Expiration

In the event that the Contract (including any Amendments) is terminated for any reason, or upon its expiration, SOS shall retain its ownership interests agreed to between SOS and Contractor.

Survival of Terms

As noted above, termination of the Contract (including any Amendments) for any reason shall not release Contractor from liability or obligation set forth in the Contract (including any Amendments) 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, warranties, and default.

No Liability of SOS or State of Texas upon Termination

If this Contract (including any Amendments) is terminated for any reason, SOS 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 Chapter 2260 of the Texas Government Code.

4.15 FUNDING OUT

As noted in Section 1.4 of this RFP, all obligations of SOS are subject to the availability of legislative appropriations, and to the availability of federal funds (if any) applicable to the Contract (including any Amendments). Contractor acknowledges that the ability of SOS to make payments under the Contract (including any Amendments) is contingent upon the continued availability of funds. Contractor further acknowledges that funds may not be specifically appropriated for the Contract (including any Amendments) and SOS's continual ability to make payments under the Contract (including any Amendments) is contingent upon the funding levels appropriated to SOS. SOS will use all reasonable efforts to ensure that such funds are available. Contractor agrees that if future levels of funding for SOS are not sufficient to continue operations without any operational reductions, SOS, in its discretion, may terminate the Contract (including any Amendments) or a pending order under the Contract (including any Amendments), either in whole or in part or that appropriate state officials eliminated to SOS. In the event of such termination, SOS will not be considered to be in default or breach under the Contract (including any Amendments), nor shall it be liable for any further payments ordinarily due under the Contract (including any Amendments), nor shall it be liable for any damages or any other amounts that are caused by or associated with such termination. SOS shall make best efforts to provide reasonable written advance notice to Contractor of any such Contract (including any Amendments) or order termination. In the event of such a termination, Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination, either on the particular order if an order is being terminated, or the Contract (including any Amendments), if the Contract (including any Amendments) is being terminated. SOS shall be liable for payments limited only to the portion of work SOS authorized in writing and which the Contractor has completed, delivered to SOS, and which has been accepted by SOS. All such work shall have been completed, per the requirements of the Contract (including any Amendments), prior to the effective date of termination.

4.16 PARTIALLY COMPLETED WORK

No later than the first (1st) Calendar Day after the termination of this Contract (including any Amendments), or at SOS's request, Contractor shall deliver to SOS all completed or partially completed work and any and all documentation or other products and results of these Services which belong to SOS pursuant to SOS's ownership rights as agreed to between SOS and Contractor. 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 (including any Amendments). Contractor shall not make or retain any copies of the work or any and all documentation or other products and results of the Services which belong to SOS without the prior written consent of SOS.

4.17 TAXES

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

Pursuant to Section 2155.004 of the Texas Government Code, Contractor represents and warrants that Contractor is not ineligible to receive this Contract (including any Amendments) and acknowledges that this Contract (including any Amendments) may be terminated and 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.

Section 2155.004 of the Texas Government Code also 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 (including any Amendments).

4.18 IMMIGRATION AND THE U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM

By entering into this Contract (including any Amendments), the Contractor certifies and ensures that it utilizes and will continue to utilize for the term of this Contract (including any Amendments), the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

1. All persons employed to perform duties within Texas during the term of the Contract; and
2. All persons, including subcontractors, assigned by the Contractor to perform work pursuant to the Contract within the United States of America.

The Contractor shall provide, upon request of SOS, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed, within three (3) Business Days of SOS's request.

If this certification is falsely made, the Contract (including any Amendments) may be immediately terminated, at the discretion of the State and at no fault to the State, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the State must undertake to replace the terminated Contract.

The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verifications forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract (including any Amendments) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), enacted on September 30, 1996.

4.19 TERRORISM AND EXCLUDED PARTIES

SOS is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing contractors with the Federal General Services Administration's System for Award Management (SAM), <https://www.sam.gov>, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list. Contractor certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local government entity and Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov>.

Should any Contractor awarded a Contract as a result of this RFP become suspended or debarred from doing business with the federal government as identified by the General Services Administration, the Contractor's contract will be terminated without recourse.

4.20 ORDER OF PRECEDENCE

“Contract” means signed Purchase Order, as modified by any properly executed Purchase Order Change Notices; Attachments to the signed Purchase Order, as modified by any properly executed Purchase Order Change Notices; Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences; Request for Proposal; Attachments, Appendices and Schedules to Request for Proposal not including the Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences; extensions of or to the standard contract form if agreed to by SOS in writing; and Contractor’s response, in whole or in part, to the Request for Proposal, if incorporated into the Contract pursuant to the Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences. “Amendment” means any revision of the original terms in any respect by the mutual written agreement of SOS and Contractor, and encompasses (without limitation) the original Contract terms, and any subsequent amendments or modifications thereto, including purchase order change notices.

References to “Contract (including any Amendments)” in this document are intended to make clear that any Amendments do not modify the terms agreed to by the parties as reflected in the Contract, except as explicitly provided in the written Amendments themselves. Purchase Order Change Notices are included both in the definition of Contract itself and the definition of Amendments, and only modify the terms agreed to by the parties as explicitly provided therein.

In the event of conflicts or inconsistencies in the documents comprising the Contract as defined above and/or other documents, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: (1) signed Purchase Order, as modified by any properly executed Purchase Order Change Notices; (2) Attachments to the signed Purchase Order, as modified by any properly executed Purchase Order Change Notices; (3) Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences; (4) Request for Proposal; (5) Attachments, Appendices and Schedules to Requests for Proposal not including the Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences; (6) extensions of or to the standard contract form if agreed to by SOS in writing; and (7) Contractor’s response, in whole or in part, to the Request for Proposal, if incorporated into the Contract pursuant to the Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences.

Except as otherwise provided in this Contract (including any Amendments), this Contract (including any Amendments) may be amended only upon written agreement between SOS and Contractor; however, any amendment of this Contract (including any Amendments) that conflicts with the laws of the State of Texas shall be void ab initio.

4.21 1 T.A.C. CHAPTER 202 INFORMATION SECURITY STANDARDS

Contractor shall cooperate with SOS to ensure that SOS is compliant with 1 T.A.C. Chapter 202, including, but not limited to, security requirements related to erasure of state agency data. Contractor shall ensure that any goods or services provided by it do not interfere with SOS’s ability to comply with 1 T.A.C. Chapter 202.

4.22 1 T.A.C. CHAPTER 206 STATE WEBSITES

Contractor shall cooperate with SOS to ensure that SOS is compliant with 1 T.A.C. Chapter 206, including, but not limited to, website accessibility. Contractor shall ensure that any goods or services provided by it do not interfere with SOS’s ability to comply with 1 T.A.C. Chapter 206.

4.23 1 T.A.C. CHAPTER 213 ELECTRONIC AND INFORMATION RESOURCES

Effective September 1, 2006, state agencies and institutions of higher education shall procure products that comply with the State of Texas accessibility requirements for electronic and information resources, as specified in 1 T.A.C. Chapter 213, when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

Contractor shall provide the Texas Department of Information Resources (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) within thirty (30) Calendar Days of execution of the Purchase Order, or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<https://www.buyaccessible.gov>). A Contractor 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/>.

4.24 PERFORMANCE MONITORING

SOS will monitor the performance of the Contract (including any Amendments) issued under this RFP on a regular basis. All services under the Contract (including any Amendments) shall be performed at an acceptable quality level and in a manner consistent with acceptable industry standards, custom, and practice.

Unsatisfactory performance under the Contract includes, but is not limited to:

1. Failure to provide a Quality Assurance Plan in accordance with the specifications and timeframe designated in Section 4.25 of this RFP;
2. Failure to produce Deliverables in a timely manner pursuant to Section 4.11 of this RFP and as agreed to by SOS and Contractor, including the monthly progress reports specified in Section 4.26(A) of this RFP, the media placement reports specified in Section 4.26(B), and the final report specified in Section 4.26(C) of this RFP;
3. Unresponsiveness to communications from SOS Project Manager and/or other SOS employees assigned to the project;
4. Failure to attend or participate in weekly status meetings with SOS staff pursuant to Section 1.5(A)(10) of this RFP; and
5. Creation or delivery of low-quality educational materials and other Deliverables during the term of the Contract (including any Amendments).

Unsatisfactory performance by Contractor may result in a negative vendor performance report, termination of the Contract (including any Amendments), and/or the imposition of any other remedies specified in Section 4.27 of this RFP.

4.25 QUALITY ASSURANCE PLAN

The Contractor shall provide a comprehensive, continuous, and measurable quality assurance plan no later than twenty (20) Calendar Days after the date of execution of the Purchase Order. The plan shall include:

1. Strategies and processes to promote quality;
2. Procedures to periodically measure and report quality performance to SOS throughout the term of the Contract arising out of this RFP;
3. Performing internal audits of the Contractor's operations;
4. Employing external audit firms to conduct audits of the Contractor's

- operations when requested by SOS, provided that no expenditure for such audits shall be made without SOS's prior approval; and
5. Controls to assure quality and consistency throughout the term of the contract arising out of this RFP.

SOS shall review the quality assurance plan submitted by Contractor in accordance with Section 4.24 of this RFP. Measures of quality may include, but are not necessarily limited to, fitness for use that meets or exceeds SOS expectations, and the characteristics of the product or service that bear on its ability to meet the stated/implied needs of SOS.

4.26 REPORTS

The Contractor shall submit the following reports, as specified:

A. Monthly Reports

The report shall be delivered to SOS no later than the tenth (10th) Calendar Day of each month, except as otherwise provided below, and shall include the following:

1. Tracking Report: includes a log sheet that records all monthly media placements generated during the prior month's period including but not limited to number of media value generated, circulation, title of publication/program, title of article, media type, publication date, and description of activity that generated article/program;
2. Ongoing and Completed Projects Update: a description and evaluation of all ongoing projects and activities completed by the Contractor (including all necessary back-up) during the prior month's period, including but not limited to all services and work products (e.g., materials production/distribution, promotions, cooperative marketing ventures, etc.), including, if applicable, the status of any corrective action plan agreed to by SOS and Contractor relating to performance under the Contract (including any Amendments);
3. Budget Report: a monthly accounting of the prior month's expenditures, including all reimbursables by project/task, projected future expenditures, a cumulative total for the fiscal year and contract period, an available budget balance for the remainder of the contract period and fiscal year, and, if applicable, any liquidated damages assessed or collected in accordance with the Contract (including any Amendments);
4. Subcontracting Report: a report of all subcontracts awarded during the previous weeks, including HUBs and non-HUBs, the amount of each subcontract, subcontractor vendor identification numbers, the total dollar value of all subcontracts, and any payments made to such subcontractors during the reporting period. The state's HUB Progress Assessment Report form shall be used to report this subcontractor information;
5. Anticipated Work Schedule: identifies all projected activities and includes measurable objectives, an estimated budget, and per-project cost estimates for all activities to be performed by the Contractor during the next month. No work on any activities shall be performed without the prior written approval of SOS;
6. Complimentary Assistance Generated: total retail dollar value of all complimentary promotional assistance provided by SOS partners participating in cooperative marketing, promotional, and other activities under the contract;

7. Texas State Library Filings Report: a report and listing of all work products (e.g., brochures, films, recordings, reports, documents, etc.) produced under the contract that may be subject to filing with the Texas State Library per the Texas Administrative Code, Title 13, Chapter 3, and delivery of sufficient quantities of qualifying products to SOS; and
8. Contractor's Evaluations and Recommendations: Contractor's evaluation on all services (including all work projects and work products) performed under the Contractor's plan of action during the previous weeks and any recommendations for improvements, including plan revisions and additional services proposed for future implementation.

B. Media Reports

1. Detailed projected media placement report prior to each phase (to be provided no later than 11:59 PM (CT) on February 4, 2022 for Phase I, and no later than 11:59 PM (CT) on October 10, 2022 for Phase II).
2. Detailed actual media placement report after each phase (to be provided, as to Phase I, no later than 11:59 PM (CT) on July 27, 2022 for Phase I, and no later than 11:59 PM (CT) on January 31, 2023 for Phase II).

C. Final Report

On or before 11:59 PM (CT) on January 31, 2023, the Contractor shall submit to SOS a written report that provides a comprehensive overview of the performance of the Contractor's representation services, including but not limited to, a review of all project activities, major accomplishments, performance summary (including all performance measures), industry awards received, final public awareness tracking, final media placement tracking, and recommendations for a possible future voter outreach program.

4.27 PERFORMANCE MEASURES AND ASSOCIATED REMEDIES

A. Contractor's Nonperformance

If Contractor fails to comply with any requirement of the Contract (including any Amendments), SOS may immediately terminate or cancel all or any part of the Contract (including any Amendments), may obtain substitute requested services and/or items, may withhold acceptance and payments to Contractor, may revoke any prior acceptance, may require Contractor to refund amounts paid prior to revocation of acceptance, may impose liquidated damages as provided in this section, and may pursue any and all rights and remedies against Contractor under the Contract (including any Amendments) and any applicable law. In addition, SOS will report the defaulting Contractor to the Texas Comptroller of Public Accounts' Statewide Procurement Division for possible action against the defaulting Contractor.

B. Liquidated Damages

1. SOS and Contractor agree that failure by Contractor to meet the performance standards and timelines set forth will cause SOS to sustain actual damages in an amount that it is difficult to quantify. It is agreed that SOS may require Contractor to pay liquidated damages for failure to comply with the reporting requirements, the Task Activity Plan requirements, and the Cost Estimate requirements contained herein. **In addition, failure of the Contractor to have any (though**

not necessarily all) materials published or otherwise disseminated to the public on or before 11:59 PM (CT) on February 14, 2022 (for Phase I) or October 24, 2022 (for Phase II) may result in the imposition of liquidated damages at the discretion of SOS.

2. The parties understand that liquidated damages are not intended to be punitive but compensatory and that the amounts of liquidated damages to which SOS and Contractor agree will be enforceable. In addition to assessing liquidated damages. SOS may begin default proceedings if the Contractor has failed to comply with the awarded contract.
3. SOS reserves the right to provide the Contractor with a cure period prior to assessing liquidated damages. The assessment of liquidated damages is at SOS's discretion. Written notification of failure to meet a performance standard, documentation, work product, or deliverable related to this contract may be given by SOS's Project Manager at any time a failure occurs.
4. Contractor may not be liable for liquidated damages that result from events that are directly caused by the failure of SOS, any state agency, or any governmental entity to perform any required activity. Additionally, Contractor may not be liable for liquidated damages to the extent any delays or service interruptions are directly due to any of the following:
 - a. Action or inaction by SOS, its end-users, their employees, invitees, and third parties, including, but not limited to, changes in applications, protocols, or transmission parameters without prior coordination with the Contractor;
 - b. Breach of this Agreement by SOS; or any other cause beyond the control of the Contractor including, but not limited to Force Majeure (in accordance with the section of the Contract titled "Force Majeure") or failure or unavailability of SOS or equipment not provided by the Contractor (as long as the delay or service interruption is due to a problem with the equipment itself and is not due to the fact that Contractor recommended the wrong equipment or equipment that is not suited for this project).
5. SOS has the option to offset any liquidated damages from any payment due to the Contractor under the awarded Contract (including any amendments). Contractor has the burden of proof that the delay or other failure is attributable to someone or something other than Contractor. SOS has the right to offset any liquidated damages payable to SOS against any payments due to Contractor, as well as from any funds that are escrowed for this purpose. If sufficient payments or escrow funds are not available to offset such liquidated damages, then Contractor shall pay to SOS any remaining liquidated damages within fifteen (15) Calendar Days following receipt of written notice of the amount due.

C. Requirements Relating to the Imposition of Liquidated Damages

General Description	Requirement Description	Liquidated Damage (LD)
<p>Key Deliverables – Educational Materials</p>	<p>Contractor must meet completion dates for key deliverables, including that all educational materials must be disseminated to the public on and prior to November 8, 2022, and at least some educational materials shall be published or otherwise disseminated to the public at or before 11:59 PM (CT) October 24, 2022. Contractor must meet any key milestone dates agreed to through the approved Task Activity Plan and Cost Estimate processes, as provided in Sections 4.3 and 4.4.</p> <p>The relevant approved Task Activity Plan and approved cost estimates referenced in Section 4.3 and 4.4 will be used to measure compliance with this requirement, as reporting by the Contractor that a particular deliverable has been disseminated to the public. The Task Activity Plan can only be adjusted as provided in Section 4.3.</p>	<p>LD amount of \$3000/day for each Calendar Day beyond 11:59 PM (CT) on October 24, 2022 that no educational materials are published or otherwise disseminated to the public, until deliverable is approved by SOS. Educational materials published on or prior to 11:59 PM (CT) on May 24, 2022 do not qualify as “educational materials...published or otherwise disseminated to the public” for purposes of this requirement.</p>

General Description	Requirement Description	Liquidated Damage (LD)
Key Deliverables – Educational Materials	<p>Contractor must meet completion dates for key deliverables, including that at least some educational materials must be disseminated to the public on and prior to 11:59 PM (CT) on March 1, 2022, and at least some educational materials shall be published or otherwise disseminated to the public on or before 11:59 PM (CT) on February 14, 2022. Contractor must meet any key milestone dates agreed to through the approved Task Activity Plan and Cost Estimate processes, as provided in Sections 4.3 and 4.4.</p> <p>The relevant approved Task Activity Plan and approved cost estimates referenced in Section 4.3 and 4.4 will be used to measure compliance with this requirement, as reporting by the Contractor that a particular deliverable has been disseminated to the public. The Task Activity Plan can only be adjusted as provided in Section 4.3.</p>	<p>LD amount of \$1500/day for each Calendar Day beyond 11:59 PM (CT) on February 14, 2022 and on or prior to 11:59 PM (CT) on March 1, 2022, that no educational materials are published or otherwise disseminated to the public, until deliverable is approved by SOS.</p>
Key Deliverables – Reports	<p>Contractor must also meet reporting requirements specified in Section 4.26(A) on the dates specified in Section 4.26(A). The reporting requirements specified in Section 4.26(A) will be used to measure compliance with this requirement.</p>	<p>LD amount of \$100/day for each Calendar Day beyond the tenth (10th) Calendar Day of each respective month that a respective monthly report referenced in Section 4.26(A) is not provided.</p>
Key Deliverables – Reports	<p>Contractor must also meet reporting requirements specified in Section 4.26(B) on the dates specified in Section 4.26(B). The reporting requirements specified in Section 4.26(B) will be used to measure compliance with this requirement.</p>	<p>LD amount of \$250/day for each Calendar Day beyond the dates and times specified in Section 4.26(B) for provision of the respective report.</p>
Key Deliverables – Quality Assurance Plan	<p>Contractor must also provide the Quality Assurance Plan referenced in Section 4.25 no later than twenty (20) Calendar Days after the date of execution of the Purchase Order.</p>	<p>LD amount of \$100/day for each Calendar Day beyond the twentieth (20th) Calendar Day after the date of execution of the Purchase Order.</p>

APPENDIX A

EXECUTION OF OFFER, AFFIRMATION OF TERMS AND CONDITIONS, AND PROPOSAL PREFERENCES

By signing this "Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences" instrument, the Contractor (as defined in Section 1.0 of this RFP) or Contractor's legally authorized agent affirms that all statements within the proposal are true and correct. Contractor understands and acknowledges that discovery of any false statement in the proposal is a material breach and shall void the submitted proposal or any resulting contract(s) and that Contractor may also be removed from all contractor or vendor lists maintained by the State of Texas. By signature hereon affixed, Contractor hereby acknowledges and certifies that Contractor shall be subject to the following specific affirmations, general provisions, and special provisions if the Contractor is awarded a contract resulting from this RFP:

1. Contractor expressly makes the following specific affirmations in response to the RFP:
 - a. Contractor understands that any proposal or bond signed by an agent or attorney-in-fact shall be accompanied by evidence of authority.
 - b. Contractor understands that any proposal may be withdrawn in writing prior to the date and time set for receipt of proposals. Any proposal not so withdrawn shall constitute an irrevocable offer, for a period of thirty-four (34) days from and including December 14, 2021, or until a selection has been made by SOS, whichever occurs later, to provide the commodity or service in the manner set forth in the specifications herein, in the RFP, or in any contract that may result from the RFP.
 - c. Contractor has fully complied with all of the terms and conditions for the submission of a proposal as expressly stated throughout this RFP.
 - d. Contractor has not given or offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or services to a public servant in connection with the submitted proposal or bid. Violation of this requirement may result in termination of the Contract (including any Amendments) at the discretion of SOS.
 - e. In accordance with Section 2155.005 of the Texas Government Code, Contractor warrants that neither Contractor nor the firm, corporation, partnership, limited liability company, institution, or other business entity represented by Contractor, or anyone acting for such firm, corporation, partnership, limited liability company, institution, or other business entity has violated the antitrust laws of this State under Chapter 15 of the Texas Business and Commerce Code or the federal antitrust laws, nor communicated directly or indirectly the submitted proposal or bid to any competitor or any other person engaged in the same line of business during the procurement process for this Contract (including any Amendments).
 - f. Under Section 2155.004 of the Texas Government Code, a state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. If the Contractor is not eligible, then any contract resulting from this RFP shall be immediately terminated. Pursuant to Section 2155.004 of the Texas Government Code, Contractor

has not received compensation for participation in the preparation of the specifications or request for proposals on which the bid or contract is based. Contractor certifies that the individual or business entity named in its proposal, bid, or Contract (including any Amendments) is not ineligible to receive the specified contract and acknowledges that any contract awarded from this RFP may be terminated, and payment withheld, if this certification is inaccurate.

- g. Pursuant to Section 669.003 of the Texas Government Code (relating to contracting with executive head of a state agency), SOS may not enter into a contract with a person who employs a current or former executive head of SOS until four (4) years has passed since that person was the executive head of SOS. Contractor certifies that it (A)(1) is not the executive head of the agency contracting herein; (2) was not at any time during the past four (4) years the executive head of the agency contracting herein; and (3) does not employ a current or former executive head of a state agency, or has provided the information referenced below; or (B) Contractor and the agency contracting herein have complied with the requirements of the above-referenced statute concerning any necessary approval and notice to the Legislative Budget Board.

Contractor acknowledges that this Contract (including any Amendments) may be terminated at any time, and payments withheld, if this certification is false.

As noted above, if Contractor does employ a person who was the executive head of SOS, Contractor must provide the following information:

- Name of Former Executive:
- Name of State Agency:
- Date of Separation from State Agency:
- Position with Contractor:
- Date of Employment with Contractor:

Any current or former employee of SOS who is employed by Contractor will be required to sign a non-disclosure agreement and shall be identified by Contractor in the response to the RFP.

- h. Pursuant to Section 2252.903 of the Texas Government Code, if SOS determines a payment law prohibits the Comptroller from issuing a warrant or initiating an electronic funds transfer, Contractor agrees that any payments due under a contract resulting from this RFP shall be directly applied towards eliminating any debt or delinquency including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support, until the debt is paid in full.
- i. Pursuant to Section 231.006(c) of the Texas Family Code, Contractor certifies that the individual or business entity named in the Contract (including any Amendments) is not ineligible to receive the specified grant, loan, or payment and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate. Any Contractor 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 contract award. Enter Name & Social Security Numbers for each person.

Name:	Social Security Number:
Name:	Social Security Number:
Name:	Social Security Number:

- j. Pursuant to Section 2252.901 of the Texas Government Code, Contractor certifies that it is not a former employee of SOS or that Contractor has not been an employee of SOS for twelve (12) months prior to the beginning date of any contract awarded from this RFP.

As noted in Subsection (g) above, any current or former employee of SOS who is employed by Contractor will be required to sign a non-disclosure agreement and shall be identified by Contractor in the response to the RFP.

- k. Contractor must make full disclosure of intent to employ any subcontractor who is a former employee/retiree of SOS. Within the first twelve (12) months of leaving employment at SOS, a former employee/retiree selected by the Contractor for a subcontract shall not perform services on a project or fill a position that the former employee/retiree worked on while employed at SOS.

Any current or former employee of SOS who is employed by any subcontractor will be required to sign a non-disclosure agreement within three (3) Business Days of the Contractor learning that the individual is a current or former employee of SOS.

- l. Contractor agrees to purchase and maintain at its expense insurance as required for the work, products, or services being performed or furnished pursuant to any Contract arising out of this RFP. Such insurance will protect SOS (including its employees) from all claims from bodily injury, death, or property damage that may arise out of or result from the performance of any Contract (including any Amendments) resulting from this RFP or in any way related to such Contract (including any Amendments), whether such Contract (including any Amendments) or work, products, goods, or services are performed or furnished by Contractor, any subcontractor or supplier, or by anyone directly or indirectly employed by or associated with the foregoing parties to perform or furnish any of such work, products, goods, or services. SOS reserves the right to terminate any contract or stop work in progress for substantial failure to submit the required evidence of insurance or cancellation of an active policy as agreed upon by SOS and Contractor in the Contract (including any Amendments).

- m. Contractor agrees that all subcontractors performing work under a Contract (including any Amendments) arising out of this RFP will also obtain insurance that will protect SOS and its employees from any risk associated with the work or services performed or products or goods furnished under any such Contract (including any Amendments). The Contractor will maintain written evidence of such coverage by its subcontractors.

- n. No public disclosures or news releases pertaining to this RFP shall be made without prior written approval of SOS, except as otherwise required

under Section 552 of the Texas Government Code or other applicable law.

- o. Contractor represents and warrants that it has no actual or potential conflicts of interest in providing the requested items or service to SOS under this RFP and any resulting contract, if any, and that Contractor's provision of the requested items or service under this RFP and any resulting contract, if any, would not reasonably create an appearance of impropriety.
- p. Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, 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, principals, or managers who have served as officers, principals, or managers of other entities that have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers, principals, or managers have not been found to be liable for such practices in such proceedings. Contractor, whether a state agency or not a state agency, certifies that no funds provided under this Contract (including any Amendments) shall be used to purchase supplies, equipment, or services from any businesses found to be guilty of unfair business practices within twelve (12) months from the determination of guilt.
- q. Contractor hereby certifies its compliance with Subchapter Y, Chapter 361, Texas Health and Safety Code and the Texas Commission on Environmental Quality rules in 30 T.A.C. Chapter 328.
- r. To the best of Contractor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Contractor, which if determined adversely to Contractor will have a material adverse effect on the ability of Contractor to fulfill its obligations under the Contract (including any Amendments).
- s. SOS is subject to the provisions of the Texas Public Information Act. If a request for disclosure of this Contract (including any Amendments) or any information related to the goods or services provided under this Contract (including any Amendments) or information provided to SOS under this Contract (including any Amendments) that constitutes a record under the Act is received by SOS, the information must qualify for an exception provided by the Texas Public Information Act in order to be withheld from public disclosure. Contractor authorizes SOS to submit any information contained in the Contract (including any Amendments), provided under the Contract (including any Amendments), or otherwise requested to be disclosed, including information Contractor has labeled as confidential information, to the Office of the Attorney General for a determination as to whether any such information may be excepted from public disclosure under the Act. If SOS does not have a good-faith belief that information may be subject to an exception to disclosure, SOS is not obligating itself by this Contract (including any Amendments) to submit the information to the Attorney General. It shall be the responsibility of Contractor to make any legal argument to the Attorney General or appropriate court of law regarding the exception of the information in question from disclosure. Contractor waives any claim against and releases from liability SOS, its

officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract (including any Amendments) or otherwise created, assembled, maintained, or held by the Contractor and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act.

- t. The Contractor warrants and covenants that it has obtained or will obtain before performance of any part of any Contract (including any Amendments) arising out of this RFP all permits, approvals, and licenses, necessary for its lawful performance of its obligations under any such contract, without costs to SOS. The Contractor shall maintain such permits, approvals, and licenses during the term of the Contract (including any Amendments) without additional expense to SOS. The Contractor further understates and agrees that it shall comply with any and all applicable federal, state, county, local and municipal laws, ordinances, resolutions, codes, decisions, orders, rules, and regulations.
- u. SOS is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing contractors with the Federal General Services Administration's System for Award Management (SAM), <https://www.sam.gov>, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list. Contractor certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local government entity and Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <https://www.sam.gov>.
- v. Under Sections 2155.006 and 2261.053 of the Texas Government Code, a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster (as defined by Section 418.004, Government Code) occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster (as defined by Section 418.004, Government Code) occurring after September 24, 2005. Under Section 2155.006, Government Code, Contractor certifies that the individual or business entity named in its proposal or the Contract (including any Amendments) is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. In addition, under Section 2261.053, Government Code, Contractor certifies that the individual or business entity named in its proposal or the Contract

(including any Amendments) is not ineligible to receive the specified contract and acknowledges that this Contract (including any Amendments) may be terminated and payment withheld if this certification is inaccurate.

- w. Pursuant to Section 2262.154 of the Texas Government Code, and as also indicated in Section 4.12 of this RFP, the state auditor may conduct an audit or investigation of the Contractor or any other entity or person receiving funds from the State directly under this Contract (including any Amendments) or indirectly through a subcontract under this Contract (including any Amendments). The acceptance of funds by the Contractor or any other entity or person directly under this Contract (including any Amendments) or indirectly through a subcontract under this Contract (including any Amendments) acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Contractor or other 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. Contractor will ensure that this clause concerning the authority of the state auditor to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate in any investigation or audit is included in any subcontract that the Contractor awards.
- x. Section 2261.252 of the Texas Government Code prohibits a state agency from entering into a contract for the purchase of goods or services with a private Contractor with whom any of the following agency employees or officials have a financial interest: (1) a member of the agency's governing body; (2) the governing official, executive director, general counsel, chief procurement officer, or procurement director of the agency; or (3) a family member related to an employee or official described by Subdivision (1) or (2) within the second degree by affinity or consanguinity. A "financial interest" exists if the employee or official (1) owns or controls, directly or indirectly, an ownership interest of at least one percent in the person, including the right to share in profits, proceeds, or capital gains; or (2) could reasonably foresee that a contract with the person could result in a financial benefit to the employee or official. A "financial interest" prohibited by Section 2261.252 does not include a retirement plan, a blind trust, insurance coverage, or an ownership interest of less than one percent in a corporation. Contractor, by submitting a proposal, certifies that it is not aware of any such financial interests in it by any of the above-referenced agency employees or officials, where applicable.
- y. Contractor, by submitting a proposal, certifies that (1) it has not had a contract terminated or been denied the renewal of any contract for non-compliance with policies or regulations of any state or federally funded program within the past five (5) years, nor is it currently prohibited from contracting with a governmental agency; or (2) if Contractor does have such a terminated contract, Contractor has identified the contract and provided an explanation for the termination.
- z. Contractor represents and warrants that Contractor has not, and Contractor's officers, principals, managers or employees have not, been convicted of a felony criminal offense, or that, if such a conviction has

occurred, Contractor has fully advised SOS as to the facts and circumstances surrounding the conviction.

- aa. Contractor shall promptly (and no later than 24 hours) notify SOS in the event that any representations and warranties provided in this Contract (including any Amendments) are no longer true and correct. Contractor acknowledges that all of its representations and warranties contained in any part of its proposal and the Contract (including any Amendments) are material and such representations are relied upon by SOS in selecting Contractor for the award of the Contract (including any Amendments). Further, Contractor warrants and represents that all of its statements and representations made to SOS prior to being awarded the Contract (including any Amendments), and those made during the negotiation of this Contract (including any Amendments), are, or will be, material, true, and correct.
2. Contractor has read, understands, and agrees to be bound to the terms and conditions stated in SOS's "General Provisions" if a contract is awarded to Contractor pursuant to this RFP. The General Provisions, which will be included in the contractual terms for any Contract awarded under this RFP and are included in this instrument, are stated as follows:
 - a. **Entire Agreement:** The Contract (including any Amendments) shall constitute the entire agreement between SOS and the Contractor. No statement, promise, condition, understanding, inducement, or representation, oral or written, express or implied, which is not contained in the Contract (including any Amendments), shall be binding or valid. The Contract (including any Amendments) may only be modified or amended upon mutual written agreement of SOS and Contractor.
 - b. **Contingency:** The Contract (including any Amendments) is executed by SOS contingent upon the availability of appropriated funds by legislative act. Notwithstanding any other provision in the Contract (including any Amendments) or any other document, the Contract (including any Amendments) is void upon the insufficiency (in SOS's discretion) or unavailability of appropriated funds. In addition, the Contract (including any Amendments) may be terminated by SOS at any time for any reason upon written notice to Contractor. Expenditures and/or activities for which Contractor may claim reimbursement shall not be accrued or claimed subsequent to the effective date of any such termination. SOS shall be liable for payments limited only to the portion of work SOS authorized in writing and which the Contractor has completed, delivered to SOS, and which has been accepted by SOS. All such work shall have been completed, per the requirements of the Contract (including any Amendments), prior to the effective date of termination.
 - c. **INDEMNIFICATION AND DAMAGE TO PROPERTY OR INJURIES TO PERSONS:** THE REQUIREMENTS OF THIS SECTION SHALL NOT ONLY FORM A PART OF THE CONTRACT (INCLUDING ANY AMENDMENTS) ARISING OUT OF THIS RFP BUT ARE HEREBY MADE A PART OF ANY SUBCONTRACTS, PURCHASE ORDER CHANGE NOTICES, OR OTHER DOCUMENTS THAT MAY BECOME A PART OF THE CONTRACT (INCLUDING ANY AMENDMENTS) AT ANY TIME. WITHOUT IMPLYING ANYTHING REGARDING ANY OTHER PART OF THE CONTRACT, THE OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE CONTRACT ARISING OUT OF THIS RFP. WITHOUT LIMITING ANY

RIGHTS AFFORDED SOS ELSEWHERE IN THE CONTRACT (INCLUDING ANY AMENDMENTS), THE PARTIES HEREBY EXPRESSLY ACKNOWLEDGE ANY VIOLATION OF THIS SECTION BY CONTRACTOR IS A MATERIAL BREACH OF THE CONTRACT (INCLUDING ANY AMENDMENTS) ARISING OUT OF THIS RFP.

DAMAGE TO PROPERTY: CONTRACTOR SHALL BE LIABLE FOR ALL DAMAGES CAUSED BY THE ACTIONS OR OMISSIONS OF CONTRACTOR, INCLUDING OF CONTRACTOR'S EMPLOYEES OR AGENTS, AND CONTRACTOR'S SUBCONTRACTOR(S), ORDER FULFILLERS, OR SUPPLIERS AND THEIR EMPLOYEES AND AGENTS, INCLUDING ANY DELIVERY OR CARTAGE COMPANY, AND INCLUDING ANY SUPPLIERS OF SUBCONTRACTORS (THE "CONTRACTOR PARTIES"), IN CONNECTION WITH ANY PERFORMANCE PURSUANT TO THE CONTRACT. SOS AND THE STATE PARTIES (AS DEFINED BELOW) SHALL HAVE NO LIABILITY FOR PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES EVEN IF IT IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CONTRACTOR SHALL NOTIFY SOS PROJECT MANAGER IN WRITING OF ANY SUCH DAMAGE WITHIN ONE (1) CALENDAR DAY.

INJURIES TO PERSONS: CONTRACTOR IS RESPONSIBLE FOR INJURY TO PERSONS CAUSED BY THE ACTS OR OMISSIONS OF THE CONTRACTOR PARTIES IN CONNECTION WITH ANY PERFORMANCE PURSUANT TO THIS CONTRACT (INCLUDING ANY AMENDMENTS) IRRESPECTIVE OF THE SOLE OR CONCURRENT NEGLIGENCE OR FAULT OF ANY KIND OF THE STATE OF TEXAS AND SOS AND/OR THEIR OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES (THE "STATE PARTIES"). THE STATE PARTIES (INCLUDING SOS) SHALL HAVE NO LIABILITY FOR PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES EVEN IF IT IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CONTRACTOR SHALL NOTIFY SOS PROJECT MANAGER IN WRITING OF ANY SUCH INJURIES WITHIN ONE (1) CALENDAR DAY.

DAMAGE TO SOS PROPERTY: IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY PROPERTY OWNED BY OR LOANED BY SOS WHILE IN THE CUSTODY OR CONTROL OF THE CONTRACTOR PARTIES IRRESPECTIVE OF THE SOLE OR CONCURRENT NEGLIGENCE OR FAULT OF ANY KIND OF THE STATE PARTIES, CONTRACTOR SHALL INDEMNIFY SOS AND PAY TO SOS THE FULL VALUE OF OR THE FULL COST OF REPAIR OR REPLACEMENT OF SUCH PROPERTY, WHICHEVER IS THE GREATER, WITHIN THIRTY (30) CALENDAR DAYS OF CONTRACTOR'S RECEIPT OF WRITTEN NOTICE OF SOS'S DETERMINATION OF THE AMOUNT DUE. THIS APPLIES WHETHER THE PROPERTY IS DEVELOPED OR PURCHASED BY CONTRACTOR PURSUANT TO THIS CONTRACT OR IS PROVIDED BY SOS TO CONTRACTOR FOR USE IN THE CONTRACT PROJECT. IF CONTRACTOR FAILS TO MAKE TIMELY PAYMENT, SOS MAY OBTAIN SUCH MONEY FROM CONTRACTOR BY ANY MEANS PERMITTED BY LAW, INCLUDING BUT NOT LIMITED TO, OFFSET OR COUNTERCLAIM AGAINST ANY MONEY OTHERWISE DUE TO CONTRACTOR BY SOS. CONTRACTOR SHALL NOTIFY SOS PROJECT MANAGER IN WRITING OF ANY SUCH DAMAGE WITHIN ONE (1) CALENDAR DAY.

INDEMNIFICATION: CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD STATE PARTIES HARMLESS FROM ANY CLAIMS, INCLUDING, WITHOUT LIMITATION, CLAIMS FOR INVASION OF PRIVACY, INFRINGEMENT OF THE RIGHT OF PUBLICITY, LIBEL, UNFAIR COMPETITION, FALSE ADVERTISING, INTENTIONAL OR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS, COPYRIGHT OR TRADEMARK INFRINGEMENT, AND/OR CLAIMS FOR ATTORNEY'S FEES, RESULTING FROM THE USE OF PERSONALITY RIGHTS IRRESPECTIVE OF THE SOLE OR CONCURRENT NEGLIGENCE OR FAULT OF ANY KIND OF THE STATE PARTIES. "PERSONALITY RIGHTS" MEANS PERSONA OR PERSONALITY RIGHTS INCLUDING (WITHOUT LIMITATION) NAME, BIOGRAPHICAL INFORMATION, PICTURE, PORTRAIT, LIKENESS, PERFORMANCE, VOICE, AND/OR IDENTITY. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS 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 SOS AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE STATE PARTIES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY'S FEES, AND EXPENSES ARISING OUT OF OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE CONTRACTOR PARTIES RELATING TO THE CONTRACT (INCLUDING ANY AMENDMENTS), INCLUDING THE EXECUTION OR PERFORMANCE OF THE CONTRACT (INCLUDING ANY AMENDMENTS) IRRESPECTIVE OF THE SOLE OR CONCURRENT NEGLIGENCE OR FAULT OF ANY KIND OF THE STATE PARTIES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS 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 SOS AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE STATE PARTIES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY'S FEES, AND EXPENSES FOR CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE ACTIONS OR OMISSIONS OF THE CONTRACTOR PARTIES RELATING TO THE CONTRACT (INCLUDING ANY AMENDMENTS), INCLUDING THE EXECUTION OR PERFORMANCE OF THE CONTRACT (INCLUDING ANY AMENDMENTS) IRRESPECTIVE OF THE SOLE OR CONCURRENT NEGLIGENCE OR FAULT OF ANY KIND OF THE STATE PARTIES. CONTRACTOR AND SOS AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF

THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

IF CONTRACTOR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR SOS PROVIDES CONTRACTOR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, CONTRACTOR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST SOS, SHALL), AT CONTRACTOR'S SOLE OPTION AND EXPENSE: (I) PROCURE FOR SOS 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 SOS'S USE IS NON-INFRINGEMENT.

CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT (INCLUDING ANY AMENDMENTS), THE CONTRACTOR PARTIES SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF THEIR EMPLOYEES' TAXES OF WHATEVER KIND, RELATING TO THE CONTRACT (INCLUDING ANY AMENDMENTS), INCLUDING THE EXECUTION OR PERFORMANCE OF THE CONTRACT (INCLUDING ANY AMENDMENTS). CONTRACTOR AGREES THAT THE CONTRACTOR PARTIES WILL COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE STATE PARTIES SHALL NOT BE LIABLE TO CONTRACTOR PARTIES FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY.

CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE STATE PARTIES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY'S FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE, AND/OR WORKERS' COMPENSATION RELATING TO THE PERFORMANCE OF THE CONTRACTOR PARTIES UNDER THE CONTRACT (INCLUDING ANY AMENDMENTS) IRRESPECTIVE OF THE SOLE OR CONCURRENT NEGLIGENCE OR FAULT OF ANY KIND OF THE STATE PARTIES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS 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 SOS AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

WHETHER SPECIFICALLY INCLUDED IN THE INDIVIDUAL PARAGRAPHS OF THIS SECTION OR NOT, THE INDEMNITY OBLIGATIONS SET FORTH IN THIS SECTION C ARE IRRESPECTIVE

OF THE SOLE OR CONCURRENT NEGLIGENCE OR FAULT OF ANY KIND OF THE STATE PARTIES.

CONTRACTOR IS REQUIRED TO MAKE ANY INFORMATION CREATED OR EXCHANGED WITH A STATE GOVERNMENTAL ENTITY (AS DEFINED BY TEXAS GOVERNMENT CODE § 2252.907(D)) PURSUANT TO THIS CONTRACT (INCLUDING ANY AMENDMENTS), AND NOT OTHERWISE EXCEPTED FROM DISCLOSURE UNDER THE TEXAS PUBLIC INFORMATION ACT, AVAILABLE IN AT LEAST ONE OF THE FOLLOWING FORMATS THAT IS ACCESSIBLE BY THE PUBLIC AT NO ADDITIONAL CHARGE TO THE STATE OF TEXAS, OR SOS: PORTABLE DOCUMENT FORMAT (PDF) COMPATIBLE WITH THE LATEST VERSION OF ADOBE ACROBAT®; MICROSOFT WORD®; MICROSOFT EXCEL®; OR HARD COPY (PAPER).

3. **Limitation of Liability:** For any claim or cause of action arising under or related to the Contract (including any Amendments), none of the contracting parties will be liable to the other for indirect, punitive, special, or consequential damages, even if it is advised of the possibility of such damages.

a. **SOS'S LIABILITY TO CONTRACTOR UNDER THE CONTRACT (INCLUDING ANY AMENDMENTS) WILL NOT EXCEED THE CONTRACTOR PORTION OF TOTAL REVENUE GENERATED UNDER THE CONTRACT IN THE TWELVE (12) MONTHS PRECEDING THE FILING OF A LAWSUIT.**

b. Exceptions to Limitations of Liability. This Section will not apply with respect to:

- (1) Losses occasioned by the fraud, willful misconduct, or gross negligence of a party to the Contract (including any Amendments).
- (2) Losses that are the subject of indemnification under this Contract (including any Amendments).
- (3) Losses occasioned by the wrongful termination of this Contract (including any Amendments) by Contractor.
- (4) Losses occasioned by Contractor's refusal to provide Services (including disentanglement assistance services, as agreed to be provided between SOS and Contractor in the Contract (including any Amendments)). For purposes of this provision, "refusal" means the intentional cessation by Contractor, in a manner impermissible under this Contract (including any Amendments), of the performance of all or a material portion of the Services then required to be provided by Contract (including any Amendments) under this Contract (including any Amendments)
- (5) Losses occasioned by any breach of a party's representations or warranties under this Contract (including any Amendments).
- (6) Losses occasioned by any breach of a party's obligations regarding confidential or private information, including personal identifying information or sensitive personal information as defined in Texas Business and Commerce Code, Chapter 521.

- c. Items Not Considered Damages. The following will not be considered damages subject to, and will not be counted toward, the liability exclusion or cap specified herein:
 - (1) Where applicable, service level credits assessed against Contractor pursuant to this Contract (including any Amendments).
 - (2) Amounts withheld by SOS in accordance with this Contract (including any Amendments) due to incorrect charges or services not provided.
 - (3) Amounts paid by SOS but subsequently recovered from Contractor due to incorrect charges or services not provided.
 - (4) Invoiced charges and other amounts that are due and owing to Contractor for services under this Contract (including any Amendments).
 - d. Notwithstanding anything in this Contract (including any Amendments) to the contrary, Contractor shall not be responsible for, shall have no liability with respect to, and shall suffer no penalty (including, without limitation, the imposition of liquidated damages or other monetary remedy) due to the use or other issues regarding any software supplied by SOS or its other contractors (other than Contractor (including its agents or its subcontractors) under this Contract (including any Amendments)).
4. **Limitation of Authority:** Contractor shall have no authority to act for or on behalf of SOS except as expressly provided for in this Contract (including any Amendments); 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 SOS.
5. **State Exculpation:** Contractor acknowledges and agrees that SOS shall not be responsible for, or liable to Contractor for, any increased costs or expenses that may be incurred by Contractor, or for any other damages that may be suffered by Contractor, as a result of any act or omission of any other contractor to SOS.
6. **Product and/or Services Substitutions:** Substitutions are not permitted without the written permission of SOS.
7. **Secure Erasure of Hard Disk Managed Services Products and/or Services:** Contractor agrees that all managed service products and/or services equipped with hard disk drives (e.g., computers, telephones, printers, fax machines, scanners, multifunction devices) shall have the capability to securely erase data written to the hard drive prior to final disposition of such managed service products and/or services, either at the end of the managed service product and/or services' useful life or at the end of the SOS's managed service product and/or services' useful life or the end of the related SOS Managed Services Agreement for such products and/or services, in accordance with 1 T.A.C. Chapter 202.
8. **Observance of Rules, Regulations, and Laws**
- a. Contractor agrees that its employees, agents, representatives, and subcontractors will observe and comply with all rules and regulations affecting SOS and state facilities, including but not limited to, parking, security, safety, use of SOS or state-owned equipment, and drug and alcohol free workplace rules. In the event that Contractor (including any employee, agent, or representative) has failed to comply with such rules or regulations, SOS shall have the right to require Contractor to remove

the non-complying employee, agent representative, or subcontractor from any involvement in the Contract (including any Amendments).

- b. Contractor must comply with all applicable state and federal laws, rules, and regulations, and local resolutions and ordinances in providing services to SOS under the Contract (including any Amendments). Without limiting the generality of the foregoing, Contractor must be able to demonstrate compliance with Section 1706 of the Federal Tax Reform Act of 1986, amending Section 530 of the Revenue Act of 1978, dealing with the issuance of W-2s to common law employees.
9. **Assignment and Subcontracting:** Contractor shall not assign, delegate, or subcontract any of its rights or responsibilities under the Contract (including any Amendments) without prior formal written amendment, or, if agreed to by both SOS and Contractor, a written instrument evidencing SOS's consent to the assignment, delegation, subcontract, or other transfer.
10. **Encumbrances/Obligations:** All encumbrances, accounts payable, and expenditures shall occur or accrue on or between the beginning and ending dates of the Contract (including any Amendments). All goods or products must have been received and all services or work rendered during the Contract (including any Amendments) period in order for Contractor to recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.
11. **Contractor's Proposal:** Terms in Contractor's proposal furnished to SOS in response to the RFP may be incorporated in this Contract (including any Amendments) by reference, subject to SOS's sole written approval. In accordance with Section 4.20 of the RFP, the other documents or terms composing the Contract (including any Amendments) not including the terms in Contractor's proposal shall prevail, however, in all cases of conflict with the terms of any portion of Contractor's proposal incorporated into the Contract (including any Amendments) no matter what form such incorporation takes (i.e., whether such proposal is a written part of the Contract (including any Amendments), or is attached as a separate document).
12. **Requirements, Terms, Conditions, and Assurances:** The terms, conditions, and assurances, which are stated in the RFP, in response to which Contractor submitted a proposal, are incorporated herein by reference for all purposes, although, as provided in Section 4.20 of the RFP, this Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences shall prevail in the event of conflict with the preceding portion (main portion) of the RFP to which it is attached.
13. **Records Retention:** Contractor shall maintain its records and accounts, including all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract (including any Amendments), in a manner that shall assure a full accounting of all funds received and expended by Contractor in connection with the Contract Project. Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that the funds from any payments under this Contract (including any Amendments) were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Texas Comptroller of Public Accounts and the State Auditor.

These records and accounts shall be retained by Contractor and made available for programmatic or financial audit by SOS and by others authorized by law or regulation to make such an audit for a period of not less than seven (7) years from the date of completion of the Contract Project or the date of the receipt by SOS of Contractor's final claim for payment or final expenditure report in connection with this Contract (including

any Amendments), until a resolution of all billing questions, or until SOS or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever is latest. If an audit has been announced, the records shall be retained until such audit has been completed.

Contractor shall grant access to all books, records, and documents pertinent to the Contract (including any Amendments) to SOS, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds (if any) being spent under the Contract (including any Amendments).

As indicated above, Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with the state funds. Contractor further agrees to cooperate fully with the State Auditor's Office or its successor, in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the State's authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate in any investigation or audit is included in any subcontract that the Contractor awards.

Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the Work Product. 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 documents pertaining to this Contract (including any Amendments), for purposes of inspecting, monitoring, auditing, or evaluating by SOS 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 documents pertaining to this Contract (including any Amendments) as requested. Contractor's failure to comply with this Section shall constitute a material breach of this Contract (including any Amendments) and shall authorize SOS and the State of Texas to immediately assess appropriate damages for such failure. As indicated above, pursuant to Section 2262.154 of the Texas Government Code, the acceptance of funds by Contractor or any other entity or person directly under this Contract (including any Amendments), or indirectly or directly through a subcontract under this Contract (including any Amendments), 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 (including any Amendments) 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 in any investigation or audit is included in any subcontract that the Contractor 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.

14. **Intellectual Property Ownership:** Contractor warrants that (i) it has the authority to grant the rights herein granted; (ii) it has not assigned or transferred any right, title, or interest to the Work Product or Intellectual Property Rights that would conflict with its obligations under the Contract or any Amendment, and Contractor will not enter into any such agreements; and (iii) the Work Product will be original, or be based on materials owned exclusively by SOS, and will not infringe any Intellectual Property Rights of any other person or entity. These warranties will survive the termination of the Contract or any Amendment. Contractor warrants and represents to SOS that individuals or characters appearing or depicted in any Work Product have provided their written

consent for the use of their Personality Rights and have been compensated for such Personality Rights, if appropriate. If such permission has been obtained for a limited time, Contractor will be responsible for any costs associated with claims resulting from the use of the Personality Rights after the expiration of those time limits.

15. **Ownership:** As between Contractor and SOS, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by SOS, and not Contractor. Contractor specifically agrees that the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation, be owned exclusively by SOS. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Contractor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to SOS all right, title, and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and SOS shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Contractor acknowledges that Contractor and SOS do not intend Contractor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. SOS shall have access, during normal business hours and upon reasonable prior notice to Contractor, to all Contractor materials, premises, and computer files containing the Work Product. Contractor and SOS, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Intellectual Property Rights held by a third party, except as may be incorporated in the Work Product by Contractor.
16. **Further Actions:** Contractor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by SOS to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to SOS to the fullest extent possible, including but not limited to the execution, acknowledgement, and delivery of such further documents in a form determined by SOS. In the event SOS shall be unable to obtain Contractor’s signature due to the dissolution of Contractor or Contractor’s unreasonable failure to respond to SOS’s repeated requests for such signature on any document reasonably necessary for any purpose set forth in the Contract, Contractor hereby irrevocably designates and appoints SOS and its duly authorized officers and agents as Contractor’s agent and Contractor’s attorney-in-fact to act for and in Contractor’s behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Contractor, provided however that no such grant of right to SOS is applicable if Contractor fails to execute any document due to a good-faith dispute by Contractor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. SOS shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Contractor shall cooperate, at SOS’s sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.
17. **Waiver of Moral Rights:** Contractor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product that Contractor may now have or which may accrue to Contractor’s benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits that arise under any other applicable law now in force or hereafter enacted. Contractor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term “Moral Rights” shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation, or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

18. **Confidentiality:** All documents, information, and materials forwarded to Contractor by SOS for use in and preparation of the Work Product shall be deemed the confidential information of SOS, and subject to any proprietary rights SOS has in the materials as provided in the Contract (including any Amendments). Contractor shall not use, disclose, or permit any person to use or obtain Work Product belonging to SOS, or any portion thereof, in any manner without the prior written approval of SOS.
19. **Injunctive Relief:** The Contract (including any Amendments) arising out of the RFP is intended to protect any and all proprietary rights of SOS, pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to SOS's business. Therefore, Contractor acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of the Contract (including any Amendments), upon a request by SOS, without requiring proof of irreparable injury as same should be presumed.
20. **Return of Materials Pertaining to Work Product:** Upon the request of SOS, but in any event upon termination or expiration of this Contract or any statement of work, Contractor shall surrender to SOS all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Contractor or furnished by SOS to Contractor, including all materials embodying the Work Product, any SOS confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Contractor by SOS or by anyone else that pertains to the Work Product.
21. **Contractor License to Use:** SOS hereby grants to Contractor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the products, services, or deliverables to SOS under the Contract arising out of the RFP. Except as provided in this Section, neither Contractor nor any of its subcontractors shall have the right to use the Work Product in connection with the provision of services to their other customers without the prior written consent of SOS, which consent may be withheld in SOS's sole discretion.
22. **Third-Party Underlying and Derivative Works:** To the extent that any of Contractor's Intellectual Property Rights or the Intellectual Property Rights of a third party are embodied or reflected in the Work Product, or are necessary for Contractor to fulfill its obligations under the Contract, Contractor hereby grants to SOS, or shall obtain from the applicable third party for SOS's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for SOS's internal business purposes only, to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Intellectual Property Rights and any derivative works thereof embodied in or delivered to SOS in conjunction with the Work Product; and (ii) authorize others to do any or all of the foregoing. Contractor agrees to notify SOS on delivery of the Work Product or any products, services, or deliverables under the Contract if such materials include Intellectual Property Rights of a third party. On request, Contractor shall provide SOS with documentation indicating a third party's written approval for Contractor to use any Intellectual Property Rights of a third party that may be embodied or reflected in the Work Product.
23. **Agreement with Subcontracts:** Contractor agrees that it shall have written agreement(s) that are consistent with the provisions in the Contract (including any Amendments) related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors, or subcontractors providing products,

services, or deliverables or Work Product pursuant to the Contract, prior to their providing such products, services, or deliverables or Work Product, and that it shall maintain such written agreements at all times during performance of this Contract (including any Amendments), which are sufficient to support all performance and grants of rights by Contractor. Copies of such agreements shall be provided to SOS promptly upon request.

24. **Changes to Existing Deliverables:** SOS anticipates that, during the life of any Contract (including any Amendments) resulting from this RFP, implementation of federal and state mandates and other SOS or state initiatives may require additions or changes to the deliverables or to the normal recurring activities performed under a contract resulting from this RFP, but within its original scope. All such changes will be negotiated between SOS and the Contractor. The pricing associated with such changes will be negotiated between the Contractor and SOS after SOS determines that the Contractor has submitted all the detailed cost information (including detailed supporting metrics) required by SOS.

The provision for Change Orders does not include any corrections of deficiencies for any activities or deliverables for which the Contractor is already responsible under the terms of any Contract (including any Amendments). Such corrections and deliverables are the responsibility of the Contractor without additional charge to SOS. Any costs associated with an investigation to determine the source of a problem requiring correction is also the responsibility of the Contractor.

25. **Sanctions for Failure to Perform or for Noncompliance:** If Contractor, in SOS's sole determination, fails or refuses for any reason to comply with or perform any of its obligations under the Contract (including any Amendments), SOS may impose such sanctions as it may deem appropriate. This includes but is not limited to the withholding of payments to Contractor until Contractor complies; the cancellation, termination, or suspension of the Contract (including any Amendments) in whole or in part; and the seeking of other remedies as may be provided by the Contract (including any Amendments) or by law. Any cancellation, termination, or suspension of the Contract (including any Amendments), if imposed, shall become effective as provided in the Termination clause in the Contract (including any Amendments).
26. **Cancellation, etc.:** If the Contract (including any Amendments) is cancelled, terminated, or suspended by SOS prior to its expiration date, the reasonable monetary value of services properly performed by Contractor pursuant to the Contract (including any Amendments) or any Amendment prior to such cancellation, termination, or suspension shall be determined by SOS and paid to Contractor as soon as reasonably possible.

Termination: As indicated in Sections 1.3 and 4.14 of the RFP, the Contract (including any Amendments) shall terminate at 11:59 PM (CT) on January 31, 2023 unless otherwise extended as provided in accordance with the terms and conditions of the Contract (including any Amendments). However, SOS reserves the right to terminate the Contract (including any Amendments) at any time for convenience, in whole or in part, by providing thirty (30) Calendar Days advance written notice of intent to terminate. In the event of such a termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon effective date of termination. SOS shall be liable for payments limited only to the portion of work authorized by SOS in writing and completed prior to the effective date of termination and for no other amounts to Contractor or any other party; provided, however, that SOS shall not be liable for any work performed that is not acceptable to SOS and/or does not meet the requirements of the Contract (including any Amendments). All Work Product or products, services, or deliverables (1) produced by the Contractor and (2) to which Contractor and SOS have agreed are owned by SOS, shall become the property of SOS and shall be tendered upon request.

As noted in Sections 1.4 and 4.15 of the RFP, payments under this Contract (including any Amendments) are subject to the availability of appropriated funds. Contractor acknowledges and agrees that payments for services provided under this Contract (including any Amendments) are contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, legislative or executive budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruptions of current appropriations, the Funding Out provisions in Sections 1.4 and 4.15 of this RFP shall apply.

27. **License to Customer:** Contractor grants to SOS, a perpetual, irrevocable, royalty-free license, solely for SOS's internal business purposes, to use, copy, modify, display, perform (by any means), transmit, and prepare derivative works of any Intellectual Property Rights of Contractor embodied in or delivered to SOS in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carry out SOS's internal business use of the Work Product. Except for the preceding license, all rights in Intellectual Property Rights of Contractor remain in Contractor.
28. **Contractor Development Rights:** To the extent not inconsistent with SOS's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Contractor from developing for itself, or for others, materials that are competitive with those produced as a result of the products, services, or deliverables provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of SOS therein are infringed by such competitive materials. To the extent that Contractor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of SOS therein in order to offer competitive goods or services to third parties, Contractor and SOS agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such; but SOS shall not be required to consummate such an agreement.
29. **Refunds Due to SOS:** If SOS determines that SOS is due a refund of money paid to Contractor pursuant to this Contract (including any Amendments), Contractor shall pay the money due to SOS within thirty (30) Calendar Days of Contractor's receipt of written notice that such money is due to SOS. If Contractor fails to make timely payment, SOS may obtain such money from Contractor by any means permitted by law, including but not limited to offset, counterclaim, cancellation, termination, suspension, total withholding, and/or disapproval of all or any subsequent applications for said funds.
30. **Capital Outlay:** If Contractor makes capital outlay purchases (furniture and/or equipment) to accomplish the Contract Project, title will remain with Contractor for the period of the Contract. SOS reserves the right to obtain title to capital outlay items due to noncompliance with the terms of the Contract (including any Amendments) during the Contract/Amendment period or as needed after the ending date of the Contract (including any Amendments) at SOS's sole discretion. This provision applies to any and all furniture and/or equipment regardless of unit price and how the item is classified in Contractor's accounting record.
31. **State of Texas Laws:** In the conduct of the Contract Project, Contractor shall be subject to SOS rules pertaining to the Contract (including any Amendments) and the Contract Project, and to the laws of the State of Texas governing the Contract (including any Amendments) and the Contract Project. The Contract (including any Amendments) constitutes the entire agreement between SOS and Contractor for the accomplishment of the Contract Project. This Contract (including any Amendments) shall be interpreted according to the laws of the State of Texas except as may be otherwise provided for in the Contract (including any Amendments).

32. **Payment:** Payment for service(s) described in this Contract (including any Amendments) is contingent upon satisfactory completion of the service(s). Satisfaction will be determined by SOS's Project Manager, in his/her sole discretion but in accordance with reasonable standards and upon advice of his/her superiors at SOS, if necessary. The Project Managers of this Contract (including any Amendments) for SOS and Contractor shall be the following persons or their successors in office:

SOS Project Manager
Sam Taylor, Assistant Secretary
of State for Communications
Office of Secretary of State
State Capitol, Suite 1E.8
1100 Congress
Austin, Texas 78701
smtaylor@sos.texas.gov
512-463-6116 (phone)
512-475-2761 (fax)

CONTRACTOR Project Manager
Name:
Title:
Company:
Address:

City, State, Zip:
Email:
Phone:
Fax:

33. **Notices:** All notices, reports, and correspondence required by the Contract (including any Amendments) shall be in writing and delivered by hand, by an overnight delivery service or by e-mail or facsimile to the following representatives of SOS and Contractor or their successors in office:

SOS
Rose Sears
Purchasing Department
Office of Secretary of State
1019 Brazos, Suite 405
P.O. Box 12887
Austin, Texas 78711
purchasing@sos.texas.gov
512-463-5606 (phone)
512-475-2819 (fax)

CONTRACTOR Project Manager
Name:
Title:
Company:
Address:

City, State, Zip:
Email:
Phone:
Fax:

With copy to:
Sam Taylor
Assistant Secretary of State
for Communications
Office of Secretary of State
State Capitol, Suite 1E.8
1100 Congress
Austin, Texas 78701
smtaylor@sos.texas.gov
512-463-6116 (phone)
512-475-2761 (fax)

**And a copy to the SOS
Contract Developer:**
Adam Bitter
General Counsel
Office of Secretary of State
State Capitol, Suite 1E.8
1100 Congress
Austin, Texas 78701
generalcounsel@sos.texas.gov
512-463-5770 (phone)
512-475-2761 (fax)

34. **Time and Effort Recordkeeping:** For those personnel whose salaries are prorated between or among different funding sources, time and effort records will be maintained by Contractor that will confirm the services provided within each funding source. Contractor must adjust payroll records and expenditures based on this documentation. This requirement applies to all projects, regardless of funding source, unless otherwise specified. For federally funded projects, time and effort records must be in accordance with the requirements in the applicable OMB cost principles.
35. **Forms, Assurances, and Reports:** Contractor shall timely make and file with the proper authorities all forms, assurances, and reports required by federal laws and regulations. SOS shall be responsible for reporting to the proper authorities any failure by Contractor to comply with the foregoing laws and regulations that come to SOS's actual attention, and SOS may deny payment or recover payments made by SOS to Contractor in the event of Contractor's failure to so comply.
36. **Signature Authority; Final Expression; Superseding Document:** Contractor certifies that the person signing the Contract (including any Amendments) has been properly delegated this authority. The Contract (including any Amendments) (which all must be mutually asserted to by the parties in writing) represents the final and complete expression of the terms of agreement between the parties. The Contract (including any Amendments) supersedes any previous understandings or negotiations between the parties. Any representations, oral statements, promises, or warranties that differ from the Contract (including any Amendments) shall have no force or effect. The Contract (including any Amendments) may be modified, amended, or extended only by formal writing or Purchase Order Change Notice properly executed by both SOS and Contractor.
37. **Security of Premises, Equipment, Data and Personnel:** Contractor may, from time to time during the performance of the Contract (including any Amendments), have access to the personnel, premises, equipment, and other property, including data, files, and /or materials (collectively referred to as "Data") belonging to SOS. Contractor shall use best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data, and other property of SOS, in accordance with the instruction of SOS. Contractor shall be responsible for damage to SOS's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. If Contractor fails to comply with SOS's security requirements, then SOS may immediately terminate the Contract (including any Amendments).
38. **Performance of Services and Warranties**
- a. **Rolling Estoppel:** 1) SOS assumes the obligation for its Key Personnel identified in the Contract (including any Amendments). SOS will be conclusively deemed to have fulfilled its obligations, unless it receives a written deficiency report from the Contractor within five (5) Business Days of the occurrence of the alleged deficiencies. The report must contain specific deficiencies in SOS's fulfillment of its obligations. Deficiencies must be described in terms of how they have impacted the specific performance requirement of the Contractor. Contractor is estopped from claiming that a situation has arisen that might otherwise justify changes in the schedule, the standards of performance under the Contract (including any Amendments), or the cost, if the Contractor knew of that problem and failed to include it in the applicable report. 2) In the event the Contractor identifies a situation wherein SOS is impairing the Contractor's ability to perform for any reason, the Contractor's deficiency report must contain the Contractor's suggested solution to the situation. The suggestion must be in sufficient detail so that SOS can make a prompt decision as to the

best method of dealing with the problem and continuing the Services in an unimpeded fashion. 3) If the problem is one that allows the Contractor (within the terms of the Contract (including any Amendments)) to ask for changes in the schedule, the standards of performance, the cost, or all of these elements, the report must comply with any change request procedures defined in the Contract (including any Amendments).

- b. **Services Warranty:** The Contractor warrants and represents that it will: i) perform the Services in a good and workmanlike manner; ii) use adequate numbers of qualified individual with suitable training, education, experience, and skill to perform the Services; iii) use efficiently all resources or services necessary to provide the Services that are required under the Contract (including any Amendments); iv) perform the Services in the most cost-effective manner consistent with the required level of quality and performance as set forth in the Contract (including any Amendments); v) perform the Services in a manner that does not infringe the proprietary rights of any third party; and vi) perform the Services in a manner that complies with all applicable laws and regulations. In addition, the Contractor warrants and represents that it has duly authorized the execution, delivery, and performance of the Contract (including any Amendments).
- c. **Software Development Warranty:** The Contractor warrants that any software products developed in accordance with the Contract (including any Amendments) shall operate as specified for ninety (90) Calendar Days after written acceptance by SOS. During the warranty period, Contractor shall be responsible for correcting or replacing, to the satisfaction of SOS, any defects in the software at no cost to SOS.

39. Non-Disclosures

- a. Contractor acknowledges that it may, in the performance of the Contract (including any Amendments), come into the possession of proprietary or confidential information owned by or in the possession of SOS. Except as otherwise provided for herein, Contractor shall not use any such information for its own benefit or make such information available to any person, firm, corporation, or other organization, whether or not directly or indirectly affiliated with Contractor, unless expressly approved by SOS in writing in advance of such disclosure, and required by law or regulation.
- b. All business data collected and/or reviewed by the Contractor pursuant to the Contract (including any Amendments) is deemed to be the property of SOS or the State. The Contractor shall keep confidential all information concerning the business of SOS and the State of Texas, the makeup of their systems and methods of automation, their financial affairs, their relations with citizens and their employees, as well as information that may be classified as confidential by SOS or the State.
- c. Contractor may provide confidential information to SOS in the course of performance under the Contract (including any Amendments). SOS will take reasonable precautions in protecting such information provided that it is clearly identified as proprietary or confidential on the page on which it appears. Information, documentation, and other material provided to SOS may be subject to public disclosure pursuant to Chapter 552, Texas Government Code (Texas Public Information Act). Contractor acknowledges that SOS is a state agency subject to the Public Information Act. Contractor also acknowledges that in the event of a

request for information pertaining to the Contract (including any Amendments), SOS will comply with the provisions of the Public Information Act to protect the interests of the State, and with all opinions of the Texas Office of the Attorney General concerning this Act.

- d. The obligation of the parties regarding the confidential information shall terminate as to any particular portion of the confidential information if and when: (i) it is in the public domain at the time of its communication; (ii) it is developed independently by the receiving party without use of any confidential information; (iii) it enters the public domain through no fault of the receiving party subsequent to the time of the disclosing party's communication to the receiving party; (iv) it is in the receiving party's possession free of any obligation of confidence at the time of the disclosing party's communication; (v) it is communicated by the disclosing party to a third party free of any obligation of confidence; (vi) the receiving party has the disclosing party's written permission; or (vii) it is required to be disclosed under Chapter 552, Texas Government Code.
 - e. All of Contractor's employees providing services under the Contract (including any Amendments) or with access to State data may be required to sign a non-disclosure agreement at SOS's sole discretion. SOS retains the right, in its sole discretion, to determine if any of Contractor's employees shall be excluded from the performance of the Services under the Contract (including any Amendments), if the signed non-disclosure agreement is not on file with SOS prior to the start of the work.
40. **Unfair Business Practices:** By signing this Contract or any Amendment, Contractor, if other than a state agency, certifies that Contractor, within the preceding twelve (12) months, has not been found guilty, in a judicial or state agency administrative proceeding, of unfair business practices. Contractor, if other than a state agency, also certifies that none of its officers, principals, or managers has, within the preceding twelve (12) months, served as an officer, principal, or manager in another company that has been found, in a judicial or state agency administrative proceeding, to be guilty of unfair business practices. Contractor, whether a state agency or not a state agency, certifies that no funds provided under this Contract or any Amendment shall be used to purchase supplies, equipment, or services from any businesses found to be guilty of unfair business practices within twelve (12) months from the determination of guilt.
41. **Family Code Applicability:** By signing this Contract (including any Amendments), Contractor, if other than a state agency, certifies that under Section 231.006 of the Texas Family Code, the Contractor is not ineligible to receive payment under this Contract (including any Amendments) and acknowledges that this Contract (including any Amendments) may be terminated and payment may be withheld if this certification is inaccurate. SOS reserves the right to terminate this Contract (including any Amendments) if Contractor is found to be ineligible to receive payment. If Contractor is found to be ineligible to receive payment and the Contract (including any Amendments) is terminated, Contractor is liable to SOS for attorney's fees, the costs necessary to complete the Contract (including any Amendments), including the cost of advertising and awarding a second contract, and any other damages or relief provided by law or equity.
42. **Dispute Resolution:** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by SOS and Contractor to attempt to resolve all disputes arising under this Contract (including any Amendments).

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 (including any Amendments). If the Contractor's claim for breach of Contract (including any Amendments) 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, Contractor shall submit written notice, as required by Chapter 2260, to the Deputy Secretary of State or to a designee. The notice shall also be given to the individual(s) identified in the Contract (including any Amendments) 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 (including any Amendments) by SOS 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 of the Texas Civil Practice and Remedies Code. Neither the execution of the Contract (including any Amendments) by SOS nor any other conduct of any representative of SOS relating to the Contract (including any Amendments) shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under the Contract (including any Amendments), SOS and the Contractor 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 SOS and the Contractor within fifteen (15) Business Days after written notice by one of them demanding mediation under this Section. The Contractor shall pay all costs of the mediation unless SOS, in its sole good-faith discretion, approves its payment of all or part of such costs. By mutual agreement, SOS and Contractor may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that SOS and Contractor shall, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. SOS's 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 SOS of (1) any rights, privileges, defenses, remedies, or immunities available to SOS as an agency of the State of Texas or otherwise available to SOS; (2) SOS's termination rights; or (3) other termination provisions or expiration dates of the Contract (including any Amendments).

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

43. **Protest Procedures:** Any actual or prospective Contractor who alleges to have been aggrieved in connection with this RFP, evaluation, or award of the Contract may formally protest, as provided in the SOS's rules at 1 Texas Administrative Code § 71.61.
44. **Interpretation:** In the event of conflicts or inconsistencies in the documents comprising the Contract as defined above and/or other documents, as noted in Section 4.20 of the RFP, such conflicts or inconsistencies shall be resolved by reference to the documents in the order of priority referenced in Section 4.20 of the RFP.

45. **Ineligible Entities:** Contractor certifies that its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that it is in compliance with the State of Texas statutes and rules relating to procurement and that the Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed in the General Services Administration's System for Award Management (SAM), <https://www.sam.gov>.

46. **Force Majeure:** SOS shall not be liable to the Contractor for any delay in, or failure of, performance of any requirement included in the Contract (including any Amendments) resulting from this RFP caused by force majeure. The existence of such causes of delay or failure shall extend SOS's period of performance until after the causes of delay or failure have been removed, provided that SOS 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 SOS and that by exercise of due foresight SOS could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, SOS is unable to overcome. SOS must inform Contractor in writing, with proof of receipt, within thirty (30) business days of the existence of such force majeure, or otherwise waive this right as a defense.

SOS may grant relief to Contractor from Contractor's performance of the Contract (including any Amendments) if the Contractor is prevented from compliance and performance by force majeure (as defined above). The burden of proof for the need for such relief shall rest upon the Contractor.

To obtain release based upon force majeure, the Contractor must file a written request with SOS within three (3) Business Days of the existence of such force majeure, or otherwise waive this right as a possible defense.

In the event the Contractor claims relief due to force majeure under the Contract (including any Amendments), the Contractor shall be required to use its best efforts to overcome obstacles to performance and the Contractor shall resume performance immediately after the obstacles have been removed. No extension of the time shall be granted to the extent that any delay or failure to perform was caused by the negligence or other fault of the Contractor.

47. **Independent Contractor:** Contractor, Contractor's employees, representatives, agents, and any subcontractors shall serve as an independent contractor in providing the products, services, or deliverables under the Contract (including any Amendments). Contractor, Contractor's employees, representatives, agents, and any subcontractors shall not be employees, officers, or agents of SOS or the State of Texas or any state agencies, departments, boards, commissions, or other affiliated entities, for any purpose. Neither SOS nor the State of Texas nor any state agencies, departments, boards, commissions, or other affiliated entities shall be responsible for withholding taxes from payments made under the Contract (including any Amendments). Contractor or Contractor's employees shall have no claim against SOS for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. Should Contractor subcontract any of the products, services, or deliverables required in this RFP, Contractor expressly understands and acknowledges that in entering into such subcontract(s), SOS 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 products, services, or deliverables rendered under all subcontracts are rendered in compliance with the Contract (including any Amendments) arising out of this RFP.

48. **Compliance with Laws; Dealing with Public Servants:** Contractor must comply with all applicable laws at all times, including, without limitation, the following: (i) Texas Penal Code § 36.02, which prohibits bribery; (ii) Texas Penal Code § 36.09, which prohibits the offering or conferring of benefits to public servants; and (iii) Texas Government Code § 2155.003, which prohibits any employee of SOS from having an interest in, or in any manner being connected with, a contract or bid for a purchase of goods or services by an agency of the state, or accept or receive from any person to whom a contract has been awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation.

Contractor shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract (including any Amendments). Except where otherwise expressly required by applicable laws and regulations, SOS shall not be responsible for monitoring Contractor's compliance with any laws or regulations. If Contractor performs any work knowing or having reason to know that it is contrary to laws or regulations, Contractor shall bear all claims, costs, losses, and damages caused by, arising out of or resulting therefrom.

49. **No Waiver:** Nothing in this Contract (including any Amendments) is in any way intended, or shall be construed as, a waiver by SOS or the State of Texas of any immunities from suit or from liability that SOS or the State of Texas may have by operation of law, including sovereign immunity. The Contract (including any Amendments) shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to SOS or the State of Texas. The failure to enforce, or any delay in the enforcement of, any privileges, rights, defenses, remedies, or immunities available to SOS or State of Texas under this Contract (including any Amendments) or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppels. SOS does not waive any privileges, rights, defenses, or immunities available to SOS by entering into this Contract (including any Amendments) or by its conduct prior to or subsequent to entering into this Contract (including any Amendments). Failure of a party to require performance by another party under the Contract (including any Amendments) will not affect the right of such party to require performance in the future. No delay, failure, or waiver of either party's exercise or partial exercise of any right or remedy under the Contract (including any Amendments) shall operate to limit, impair, preclude, cancel, waive, or otherwise affect such right or remedy. A waiver by a party of any breach of any term of the Contract (including any Amendments) will not be construed as a waiver of any continuing or successive breach.

50. **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 affiliation, religious belief, sex, sexual orientation, age, or disability in the performance of this Contract (including any Amendments). Contractor shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246, Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Chapter 60, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.

51. **Felony Criminal Convictions:** Contractor represents and warrants that Contractor has not, and Contractor's officers, principals, managers, or employees have not, been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised SOS as to the facts and circumstances surrounding the conviction.

52. **Contractor Performance:** In accordance with Texas Government Code §§ 2155.074 and 2155.075, Contractor's performance and delivery will be measured and reported on

the Comptroller of Public Accounts' Vendor Performance Tracking System, and may be used as a factor in the award.

A Contractor's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of Section 2157.003 of the Texas Government Code. Contractors may fail this selection criterion for any of the following conditions:

1. A score of less than C or Legacy Unsatisfactory in the Vendor Performance Tracking System;
2. Currently under a Corrective Action Plan through the Comptroller;
3. Having repeated negative vendor performance reports for the same reason;
4. Having purchase orders that have been cancelled in the previous twelve (12) months for non-performance (i.e., late delivery, etc.).

Contractor performance information is located on the Comptroller's website at <http://www.txsmartbuy.com/vpts>.

SOS may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System, SOS may examine other sources of contractor performance, including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of SOS, and any negative findings, as determined by SOS, may result in non-award.

53. **Severability Clause:** In the event that any provision of this Contract (including any Amendments) is later determined to be illegal, invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Contract (including any Amendments) shall remain in full force and effect, and shall in no way be affected, impaired, invalidated, or rendered illegal. The illegal, invalid, void, or unenforceable provision will be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect. To the extent any term or condition in the Contract (including any Amendments) conflicts with the applicable Texas and/or United States law or regulation, such term or condition is void and unenforceable. By executing a contract that contains the conflicting term or condition, SOS makes no representations or warranties regarding the enforceability of such term or condition and SOS does not waive the applicable Texas and/or United States law or regulation that conflicts with the contractual term or condition.
54. **Liability for Taxes:** Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract (including any Amendments), including, but not limited to, any federal, State, or local income, sales, or excise taxes of Contractor or its employees. SOS shall not be liable for any taxes resulting from this Contract (including any Amendments). Contractor represents and warrants that it is not delinquent in the payment of any franchise taxes owed the State of Texas.
55. **Applicable Law; Venue:** This Contract (including any Amendments) shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of laws provisions. The venue of any suit arising under this Contract (including any Amendments) is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute that directly names or otherwise identifies its applicability to SOS.
56. **Electrical Items:** All electrical items provided by Contractor to SOS under the Contract (including any Amendments) must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC, or NEMA.

57. **Continued Appropriations:** Any contract resulting from this RFP is subject to termination or cancellation, without penalty to SOS, either in whole or in part, subject to the availability of state funds. SOS is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If SOS becomes subject to legislative change, revocation of statutory authority, legislative or executive budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruptions of current appropriations, the Funding Out provisions in Sections 1.4 and 4.15 of this RFP shall apply. As noted in that provision, in the event of termination or cancellation, SOS will not be liable to Contractor for any damages, claims, losses, or any other amounts that are caused or associated with such termination or cancellation.
58. **No Debt Against the State:** The award of the Contract (including any Amendments) arising out of this RFP does not guarantee that any level of services or funding will be authorized during the term of the Contract (including any Amendments). The Contract (including any Amendments) shall not be construed as creating any debt by or on behalf of the State of Texas, and all obligations of the State of Texas regarding the Contract (including any Amendments) are subject to the continued availability of funds.
59. **Purchase of Services:** SOS cannot and does not guarantee the purchase of any services during the period of performance of the Contract arising out of this RFP (including any optional contract renewal or extension periods). All quantities of services, products, and deliverables shall be purchased upon SOS's request, in "as needed" quantities, on an "as needed" basis, as determined by SOS.
60. **Purchase Order:** SOS shall issue written notice (e.g., purchase order, contract renewal or extension notice, etc.) authorizing the purchase of services specified in the Contract (including any Amendments) performance requirements, which, as noted above, constitutes part of the Contract (including any Amendments). No authorization for the purchase of any Services is provided until Contractor receives such written notice from SOS.
61. **Bidder Assignments:** Contractor hereby assigns to SOS any and all claims for overcharges associated with this contract arising under state and federal laws, including without limitation, the antitrust laws of the United States, 15 U.S.C. § 1, *et seq.*, and the antitrust laws of the State of Texas, Texas Business & Commerce Code § 15.01, *et seq.*
62. **Delivery:** All deliveries shall be made in accordance with the requirements of the Contract (including any Amendments). If Contractor foresees problems, delays, or adverse conditions that may prevent the Contractor from meeting delivery requirements, the Contractor shall give written notice within twenty-four (24) hours of learning of the delay to SOS, explaining the reason(s) for the delay and providing an alternate delivery for SOS approval. SOS has the right to extend delivery date(s) if reasons appear valid to SOS, in its sole discretion. Contractor shall keep SOS advised at all times of delivery status. Default in promised delivery (without accepted reasons) authorizes SOS to purchase service elsewhere and charge full increase, if any, in costs and handling to defaulting Contractor. No substitution or cancellation shall be permitted without prior written approval of SOS. Default in delivery may result in termination of the contract for reason of default.
63. **Acceptance of Work Performed & Default:** All work performed by the Contractor shall be accepted in writing by SOS (or designee) before payment will be approved. Acceptance shall be based upon Contractor's compliance with all requirements of the Contract (including any Amendments). SOS will not pay for work that is of poor quality and/or fails to fully comply with the requirements of the Contract (including any Amendments), all of which shall be determined at SOS's sole discretion. Should SOS determine the Contractor's work to be of poor quality and/or Contractor fails to perform

services that comply with the requirements of the Contract (including any Amendments), SOS may require the Contractor to promptly (and no later than 48 hours after the determination that the work is of poor quality and/or Contractor has failed to perform services that comply with the Contract (including any Amendments)) re-perform the service in conformity with the requirements of the Contract (including any Amendments), at no cost to SOS, or SOS may refuse to pay for Contractor's work. SOS may further require new performance or a refund in the event that poor quality or unacceptable work is discovered after payment has been made.

Failure to perform work in compliance with all requirements in the Contract (including any Amendments) arising out of this RFP may result in termination of the Contract (including any Amendments) for reason of default at SOS's sole discretion, in accordance with return of funds paid under the Contract (including any Amendments) and/or reduction of payment in an amount not to exceed fair market value of the unacceptable services. If Contractor defaults under this Contract (including any Amendments), SOS reserves the right to cancel the Contract (including any Amendments) without notice and either re-solicit or re-award a contract to another contractor. 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 and SOS shall have sole rights to determine whether the scope has been so changed. The period of suspension will be determined by SOS based on the seriousness of the default. In the event of abandonment or default, Contractor will be responsible for paying damages to SOS, including but not limited to re-procurement costs, and any consequential damages to the State of Texas or SOS resulting from Contractor's non-performance.

64. **Inspections:** Throughout the Contract (including any Amendments), all services, products, and deliverables shall be subject to inspection and test by authorized SOS representatives. SOS reserves the right, at all reasonable times, to have access to and inspect all services being provided by the Contractor and its subcontractors, including but not limited to all facilities, equipment, supplies, and pertinent records or written material relating to the requirements of the Contract (including any Amendments). Failure of the Contractor and its subcontractors to provide reasonable access to authorized SOS representatives who desire to perform such inspections or test, or failure of services to comply with the terms of the Contract (including any Amendments) arising out of this RFP shall be deemed unacceptable and may result in immediate termination of the Contract (including any Amendments) at SOS's sole discretion. In the event inspected or tested services are deemed unacceptable by SOS for failure to meet or exceed all requirements of the Contract (including any Amendments), the cost of the sample used and the cost of testing shall be borne by the Contractor.
65. **Creative Services:** The Contractor shall be responsible for coordinating the production of presentation, promotional and collateral materials, etc., including but not limited to collateral, photographs, mats, filming, editing, equipment rentals, display materials, brochures, etc., as required to meet the performance requirements of the Contract (including any Amendments).
66. **Accounting Systems:** The Contractor shall have an accounting system that accounts for costs in accordance with generally accepted accounting principles and is compatible with the State of Texas Uniform Statewide Accounting System. The Contractor's accounting system must include an accurate and organized file/records system for accounting and financial purposes for providing backup materials for billings.
67. **Political Activity:** None of the activities or performances rendered hereunder by the Contractor shall involve lobbying or political activity, including but not limited to any activity to further the election or defeat of any candidate for public office or passage or defeat or any measure or any activity undertaken to influence the passage, defeat, or

final contents of legislation. Contractor shall comply with the provisions of the Lobbying Disclosure Act, 2 U.S.C. § 1601 *et seq.* By submitting a proposal, Contractor certifies that it shall not use, and has not used, federally appropriated funds to pay any person or organization for influencing or attempting to influence any officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. It also certifies that the Contractor shall disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award by completing and submitting Standard Form LLL, Disclosure of Lobbying Activities. By submitting a proposal, Contractor certifies that it has complied with the restriction on lobbying expenditures in Section 556.0055 of the Texas Government Code.

68. **Sectarian Activity:** None of the activities or performances rendered hereunder by the Contractor shall involve sectarian or religious activity.
69. **Americans with Disabilities Act:** Contractor shall provide reasonable accessibility for persons with disabilities in compliance with the Americans with Disabilities Act, where applicable.
70. **Assignability:** Contractor may not assign the contract or assign, transfer, or delegate, in whole or in part, any of its interest in, or rights or obligations under, the contract without the prior written consent of SOS, and any attempted or purported assignment, transfer, or delegation thereof without such consent shall be null and void.
71. **Conflict of Interest:** Contractor shall, during the period of the Contract arising from this RFP, refrain from employment that results in a real or apparent conflict of interest. A conflict of interest shall be interpreted as any relationship or activity that, in the judgment of SOS, is detrimental to the interests of the State of Texas.

Under Section 2155.003 of the Texas Government Code, a SOS employee may not have an interest in, or in any manner be connected with, a contract or bid for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation.

A Contractor represents and warrants that its provision of services or other performance under a Contract (including any Amendments) arising out of this RFP will not constitute an actual or potential conflict of interest and represents and warrants that it will not reasonably create even the appearance of impropriety. A Contractor shall disclose any current or former employees who are current or former employees of the State of Texas, or any proposed personnel who are related to any current or former employees of SOS.

Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in the State of Texas Procurement and Contract Management Guide, which outlines the ethical standards required of public purchasers, employees, and contractors who interact with public purchasers in the conduct of state business. Entities who are interested in seeking business opportunities with the State must be mindful of these restrictions when interacting with public purchasers of SOS or purchasers of other state agencies.

In order to ensure there is no actual or perceived conflict of interest, the Contractor shall disclose any potential conflict to SOS, prior to entering into the Contract (including any Amendments) or activity that creates the potential conflict, for a determination by SOS

on whether a real or perceived conflict exists. SOS shall make the final determination as to what constitutes a conflict pursuant to this provision.

Contractors must disclose any potential or perceived conflicts of interest that could, directly or indirectly, be implicated by the performance of the requirements under this RFP prior to award and thereafter within five (5) Business Days upon becoming aware of any such conflicts that may arise.

72. **Ownership of Documents:** Without limiting, reducing, or restricting any protections provided to SOS elsewhere in this RFP or the Contract (including any Amendments) arising from this RFP, the provisions of this section shall apply. All work products, services, or deliverables performed under the Contract (including any Amendments) shall become the property of SOS and all property rights, including publication rights, to all products developed under the Contract (including any Amendments) shall be retained by SOS. The Contractor shall ensure duplication rights are secured to SOS from all contracts and subcontracts prior to delivery of products to SOS. SOS reserves the right to authorize others to use, publish, or reproduce products developed hereunder.
73. **Data and Publicity:** The Contractor shall not provide information generated or otherwise obtained in the performance of its responsibilities under the Contract (including any Amendments) to any parties other than SOS through its authorized agents except as otherwise expressly provided by the Contract (including any Amendments) or after obtaining the prior written approval of SOS.

The Contractor agrees to notify and obtain the written approval of SOS prior to releasing any information to the news media regarding the activities being conducted under the Contract (including any Amendments).

74. Public Information Act Disclosures

SOS IS A GOVERNMENTAL BODY SUBJECT TO THE TEXAS PUBLIC INFORMATION ACT (PIA), TEXAS GOVERNMENT CODE CHAPTER 552. NOTWITHSTANDING ANY PROVISIONS OF THIS CONTRACT (INCLUDING ANY AMENDMENTS) TO THE CONTRARY, CONTRACTOR UNDERSTANDS THAT SOS WILL COMPLY WITH THE PIA AS INTERPRETED BY JUDICIAL OPINIONS AND OPINIONS OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS. SOS 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 SOS IN THE PRODUCTION OF DOCUMENTS RESPONSIVE TO THE REQUEST.

SOS WILL MAKE A DETERMINATION WHETHER TO SUBMIT A PUBLIC INFORMATION ACT REQUEST TO THE ATTORNEY GENERAL. CONTRACTOR WILL NOTIFY SOS GENERAL COUNSEL 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 (INCLUDING ANY AMENDMENTS). THIS CONTRACT (INCLUDING ANY AMENDMENTS) AND ALL DATA AND OTHER INFORMATION GENERATED FROM OR OTHERWISE OBTAINED IN ITS PERFORMANCE MAY BE SUBJECT TO THE TEXAS PUBLIC INFORMATION ACT.

THE OFFER (AFTER CONTRACT AWARD) AND OTHER INFORMATION SUBMITTED TO SOS BY CONTRACTOR ARE SUBJECT TO RELEASE AS PUBLIC INFORMATION BY SOS. THE OFFER AND OTHER SUBMITTED INFORMATION IS PRESUMED SUBJECT TO DISCLOSURE UNLESS A SPECIFIC EXCEPTION TO DISCLOSURE UNDER THE PIA APPLIES. IF IT IS NECESSARY FOR A CONTRACTOR TO

INCLUDE PROPRIETARY OR OTHERWISE CONFIDENTIAL INFORMATION IN ITS OFFER OR OTHER SUBMITTED INFORMATION, A CONTRACTOR MUST CLEARLY LABEL THAT PROPRIETARY OR CONFIDENTIAL INFORMATION AND IDENTIFY THE LEGAL BASIS FOR CONFIDENTIALITY. MERELY MAKING A BLANKET CLAIM THAT THE ENTIRE PROPOSAL IS PROTECTED FROM DISCLOSURE BECAUSE IT CONTAINS SOME PROPRIETARY INFORMATION IS NOT ACCEPTABLE, AND WILL MAKE THE ENTIRE PROPOSAL SUBJECT TO RELEASE UNDER THE PIA. IN ORDER TO TRIGGER THE PROCESS OF SEEKING AN ATTORNEY GENERAL OPINION ON THE RELEASE OF PROPRIETARY OR CONFIDENTIAL INFORMATION, THE SPECIFIC PROVISIONS OF THE OFFER THAT ARE CONSIDERED BY THE CONTRACTOR TO BE PROPRIETARY OR CONFIDENTIAL MUST BE CLEARLY LABELED AS DESCRIBED ABOVE. ANY INFORMATION THAT IS NOT CLEARLY IDENTIFIED BY A CONTRACTOR AS PROPRIETARY OR CONFIDENTIAL WILL BE DEEMED SUBJECT TO DISCLOSURE PURSUANT TO THE PIA, AND SOS MAY RELEASE THAT INFORMATION WITHOUT CONSULTATION WITH CONTRACTOR. A CONTRACTOR ALSO ACKNOWLEDGES THAT SOS MAY RELEASE, WITH NO CONSULTATION WITH A CONTRACTOR EXCEPT AS MAY BE REQUIRED BY LAW, EVEN PORTIONS OF THE PROPOSAL A CONTRACTOR IDENTIFIES AS PROPRIETARY MATERIAL OR OTHERWISE CONFIDENTIAL, IF THE OPEN RECORDS DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS OR A GOVERNMENTAL OR JUDICIAL AUTHORITY ORDERS SOS TO RELEASE SUCH PORTIONS, OR THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS OR ANOTHER GOVERNMENTAL OR JUDICIAL AUTHORITY DETERMINES THAT OTHER STATE LAW, INCLUDING SECTION 2261.253 OF THE TEXAS GOVERNMENT CODE, REQUIRES SOS TO DO SO. EVEN AS TO PORTIONS OF THE PROPOSAL CONTRACTOR IDENTIFIES AS PROPRIETARY MATERIAL OR OTHERWISE CONFIDENTIAL, CONTRACTOR WILL IRREVOCABLY BE DEEMED TO HAVE WAIVED SUCH DESIGNATION, AND A CONTRACTOR AGREES TO FULLY INDEMNIFY THE STATE OF TEXAS AND SOS AGAINST ANY CLAIM OF INFRINGEMENT BY SOS REGARDING THE INTELLECTUAL PROPERTY RIGHTS OF A CONTRACTOR OR ANY THIRD PARTY FOR ANY MATERIALS APPEARING IN THE PROPOSAL.

CONTRACTOR IS REQUIRED TO MAKE ANY INFORMATION CREATED OR EXCHANGED WITH A STATE GOVERNMENTAL ENTITY (AS DEFINED BY TEXAS GOVERNMENT CODE § 2252.907(D)) PURSUANT TO THIS CONTRACT (INCLUDING ANY AMENDMENTS), AND NOT OTHERWISE EXCEPTED FROM DISCLOSURE UNDER THE TEXAS PUBLIC INFORMATION ACT, AVAILABLE IN AT LEAST ONE OF THE FOLLOWING FORMATS THAT IS ACCESSIBLE BY THE PUBLIC AT NO ADDITIONAL CHARGE TO THE STATE OF TEXAS, OR SOS: PORTABLE DOCUMENT FORMAT (PDF) COMPATIBLE WITH THE LATEST VERSION OF ADOBE ACROBAT®; MICROSOFT WORD®; MICROSOFT EXCEL®; OR HARD COPY (PAPER).

IF A CONTRACTOR'S OFFER CONTAINS ANY INFORMATION THAT THE CONTRACTOR CLAIMS IS CONFIDENTIAL AND NOT SUBJECT TO RELEASE UNDER THE PIA, THE CONTRACTOR MUST PREPARE AND DELIVER TO SOS FOUR CDS CONTAINING THE FOLLOWING INFORMATION:

1. TWO CDS CONTAINING COMPLETE COPIES OF ALL OF A CONTRACTOR'S SUBMISSIONS PURSUANT TO THIS RFP. A CONTRACTOR MUST MARK THESE "COMPLETE PROPOSAL DOCUMENTS, [CONTRACTOR'S NAME], SOS RFP # 000797 CONTAINS CONFIDENTIAL INFORMATION."
2. TWO CDS, EACH CONTAINING COPIES OF ALL OF A CONTRACTOR'S SUBMISSIONS WITH ALL INFORMATION CLAIMED

AS CONFIDENTIAL EXCISED, BLACKED OUT, OR OTHERWISE REDACTED, WHICH MUST BE READILY APPARENT (AND MUST ALSO CONTAIN THE SPECIFIC SECTIONS OF THE PUBLIC INFORMATION ACT THAT THE CONTRACTOR ASSERTS PRECLUDES DISCLOSURE). EACH OF THESE CDS MUST ALSO CONTAIN AN APPENDIX THAT CONTAINS CLEAR REFERENCES TO ALL REDACTED INFORMATION, INCLUDING A GENERAL DESCRIPTION OF THE REDACTED INFORMATION. A CONTRACTOR MUST MARK THESE CDS "FOR PUBLIC RELEASE: REDACTED VERSION OF [CONTRACTOR'S NAME], SOS RFP # 000797."

IN ADDITION, A CONTRACTOR'S DESIGNATIONS OF PORTIONS OF A PROPOSAL AS PROPRIETARY MATERIAL OR OTHERWISE CONFIDENTIAL FOR PUBLIC INFORMATION ACT PURPOSES (AND THE SPECIFIC SECTIONS OF THE PUBLIC INFORMATION ACT A CONTRACTOR ASSERTS PRECLUDE DISCLOSURE) MUST BE READILY APPARENT IN HARD COPIES OF OFFER.

IF A CONTRACTOR FAILS TO MAKE ITS DESIGNATIONS (AND THE SPECIFIC SECTIONS OF THE PUBLIC INFORMATION ACT THAT CONTRACTOR ASSERTS PRECLUDES DISCLOSURE) READILY APPARENT, AT SOS'S SOLE DISCRETION, CONTRACTOR FORFEITS THE RIGHT TO CLAIM MATERIAL IS PROPRIETARY OR OTHERWISE CONFIDENTIAL BY ITS SUBMISSION OF ITS OFFER.

75. **Agency Posting and Publication of Contracts:** Without prior written notice to a Contractor, the redacted proposal submitted under Paragraph 73, Public Information Act Disclosures, may be posted on SOS's website pursuant to Texas Government Code § 2261.253(a). Should the Attorney General or another governmental or judicial authority determine that Texas Government Code § 2261.253(a) requires un-redacted offers to be posted on SOS's website, such offer may be posted without prior written notice to Contractor.

In accordance with Section 322.020 of the Texas Government Code, the Legislative Budget Board (LBB) has implemented a database of state agency contracts (<http://www.lbb.state.tx.us>). To the extent any awarded contract falls within the scope of the requirements listed in Section 322.020, SOS will provide the following to the LBB for posting on the Internet: the text of the complete awarded Contract (including any Amendments), including the successful Contractor's Offer (with limited redaction and appendix) after contract award, if any. In submitting a proposal in response to this RFP, Contractor acknowledges that it understands and accepts this requirement. The information provided includes the proposal, unless the Contractor can demonstrate that all or part of the proposal is exempted from disclosure under the Texas Public Information Act.

76. **Contracting Information Responsibilities:** Contractor represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552 of the Government Code may apply to the Contract (including any Amendments) and the Contractor agrees that the Contract (including any Amendments) can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
77. **Disaster Recovery Plan:** Upon request of SOS, Contractor shall provide the descriptions of its business continuity and disaster recovery plans.
78. **Authorized Representative:** Contractor shall immediately identify the person authorized to receive direction from SOS, to manage the work being performed, and to act on behalf of the Contractor ("Authorized Representative"). The Contractor shall

ensure that its Authorized Representative, or his or her designee, is available at all times for consultation with SOS.

79. **Change of Name:** The Contractor shall promptly notify SOS of any change of name in which it holds the Contract (including any Amendments). An amendment shall be required upon a change of name which shall specifically state that no other terms or conditions of this Contract (including any Amendments) are thereby changed. The Contractor shall not assign this contract pursuant to this paragraph.
80. **Bankruptcy:** Should the Contractor become insolvent, or if the proceedings in bankruptcy should be instituted by or against the Contractor, or the Contractor otherwise becomes unable to pay its debts, the remaining or unexpired portion of the Contract (including any Amendments) shall, at the sole election of SOS, be terminated, as permitted by applicable law.
81. **Buy Texas:** In accordance with Section 2155.4441 of the Texas Government Code, Contractor agrees that during the performance of the Contract (and any Amendments), it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
82. **No Boycott of Israel:** If Contractor is required to make a certification pursuant to Section 2271.001 of the Texas Government Code, Contractor certifies that Contractor does not boycott Israel and will not boycott Israel during the term of the Contract (including any Amendments) resulting from this RFP. If Contractor does not make that certification, Contractor must indicate that in its response to this RFP and state why the certification is not required.
83. **Contractor and Subcontractor Responsibilities:** The Contractor and any subcontractor hired to provide electronic services shall provide SOS a signed affidavit and provide relevant documentation, within thirty (30) Calendar Days of execution of the Purchase Order, certifying that work will not be performed on or for businesses with web sites whose content is adult-oriented. Contractor and subcontractor shall also agree in writing that SOS may conduct random, unannounced on-site audits of it to ascertain whether it performs work on or for adult web sites. Further, Contractor and subcontractor performing work for SOS after the date of the Contract (including any Amendments) arising out of this RFP shall agree in writing to perform its services for SOS and its other clients in a legal and non-fraudulent manner. Contractor and subcontractor shall not conduct any marketing or promotional activity for SOS that places illegal gambling, drinking, prostitution, or drug use in a favorable light.
84. **Taxes:** Purchases made for state users are exempt from Texas State Sales Tax and Federal Excise Tax. An Excise Tax Exemption Certificate will be furnished upon written request to SOS.

85. Drug-Free Workplace

During the performance of any Contract (including any Amendments) arising out of this RFP, the Contractor agrees to provide a drug-free workplace for the Contractor's employees. Contractor represents and warrants that it shall comply with and implement the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§ 8101-8106); and the regulations issued by the Office of Management and Budget relating to government-wide requirements for a drug-free workplace (2 C.F.R. Part 182) to implement provisions of the Drug-Free Work Place Act of 1988, are incorporated by reference and the Contractor shall comply with the relevant provisions thereof, including any amendments that may hereafter be issued. Within thirty (30) Calendar Days after award of a contract, Contractor shall publish a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled

substance is prohibited in the contractor's workplace and specify the actions that will be taken against employees for violations of such prohibition. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a contractor in accordance with this section.

86. Proprietary Rights

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, TITLE AND OWNERSHIP OF ALL WORK, INVENTIONS, KNOW-HOW, TRADE SECRETS, DISCOVERIES, FORMULAS, IMPROVEMENTS, IDEAS, WRITINGS, COMPUTER PROGRAMS, SYSTEMS, DATA, EXPRESSIONS, PATENTS, TRADEMARKS, COPYRIGHTS, AND ALL OTHER INTELLECTUAL PROPERTY DEVELOPED BY CONTRACTOR UNDER THE CONTRACT ARISING OUT OF THIS RFP ARE AND SHALL BE THE PROPERTY OF SOS. CONTRACTOR SPECIFICALLY AGREES THAT ALL WORK PRODUCT SHALL BE CONSIDERED "WORKS MADE FOR HIRE" AND THAT THE SAME SHALL, UPON CREATION, BE OWNED EXCLUSIVELY BY SOS. TO THE EXTENT THAT WORK PRODUCT, UNDER APPLICABLE LAW, MAY NOT BE CONSIDERED WORKS MADE FOR HIRE, CONTRACTOR HEREBY AGREES THAT THE CONTRACT ARISING OUT OF THIS RFP EFFECTIVELY TRANSFERS, GRANTS, CONVEYS, ASSIGNS, AND RELINQUISHES EXCLUSIVELY TO SOS ALL RIGHT, TITLE, AND INTEREST IN AND TO ALL OWNERSHIP RIGHTS IN SUCH WORK PRODUCT, AND ALL INTELLECTUAL PROPERTY RIGHTS IN AND TO THE SAME, WITHOUT THE NECESSITY OF ANY FURTHER CONSIDERATION, AND SOS SHALL BE ENTITLED TO OBTAIN AND HOLD IN ITS OWN NAME ALL INTELLECTUAL PROPERTY RIGHTS IN AND TO THE SAME. CONTRACTOR ACKNOWLEDGES THAT CONTRACTOR AND SOS DO NOT INTEND CONTRACTOR TO BE A JOINT AUTHOR OF ANY SUCH WORK PRODUCT WITHIN THE MEANING OF THE COPYRIGHT ACT OF 1976. SOS SHALL HAVE ACCESS, DURING NORMAL BUSINESS HOURS AND UPON REASONABLE PRIOR NOTICE TO CONTRACTOR, TO ALL CONTRACTOR MATERIALS, PREMISES, AND COMPUTER FILES CONTAINING ALL WORK PRODUCT. CONTRACTOR AND SOS, AS APPROPRIATE, WILL COOPERATE WITH ONE ANOTHER AND EXECUTE SUCH OTHER DOCUMENTS AS MAY BE REASONABLY APPROPRIATE TO ACHIEVE THE OBJECTIVES HEREIN. NO LICENSE OR OTHER RIGHT IS GRANTED HEREUNDER TO ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, EXCEPT AS EXPRESSLY SET FORTH IN THIS RFP OR AS SUCH THIRD PARTY INTELLECTUAL PROPERTY RIGHTS MAY BE INCORPORATED IN THE WORK PRODUCT BY CONTRACTOR. TO THE EXTENT THAT CONTRACTOR CHANGES, MODIFIES, IMPROVES, ALTERS, OR REPAIRS SOFTWARE FOR WHICH CONTRACTOR IS ALREADY THE OWNER OF ALL INTELLECTUAL PROPERTY RIGHTS, SOS HEREBY GRANTS CONTRACTOR A PERPETUAL, ROYALTY-FREE LICENSE TO USE, COPY, MODIFY, OR LICENSE SUCH SOFTWARE AS CONTRACTOR DEEMS APPROPRIATE; PROVIDED THAT, SOS SHALL NOT BE IDENTIFIED IN CONNECTION WITH CONTRACTOR'S USE, LICENSING, OR DISTRIBUTION OF SUCH INTELLECTUAL PROPERTY. NOTHING IN THE FOREGOING IS INTENDED TO CONVEY ANY RIGHT, TITLE, OR INTEREST IN OR TO ANY TOOLS OR PROPRIETARY ITEMS OF CONTRACTOR, NOR LIMIT ANY RIGHT, TITLE, OR INTEREST IN OR TO ANY TOOLS OR PROPRIETARY ITEMS OF SOS THAT WERE IN EXISTENCE ON OR PRIOR TO THE DATE OF THIS AGREEMENT. SOS HEREBY GRANTS TO CONTRACTOR A NON-TRANSFERABLE, NON-EXCLUSIVE, ROYALTY-FREE, FULLY PAID-UP LICENSE TO USE ANY WORK PRODUCT SOLELY AS NECESSARY TO PROVIDE THE PRODUCTS OR SERVICES TO SOS CALLED FOR IN THIS RFP. EXCEPT AS PROVIDED IN THIS SECTION, NEITHER CONTRACTOR NOR ANY OF ITS SUBCONTRACTORS SHALL HAVE THE RIGHT TO USE THE WORK PRODUCT IN CONNECTION WITH THE PROVISION OF SERVICES TO ITS OTHER CUSTOMERS WITHOUT THE PRIOR WRITTEN CONSENT OF SOS, WHICH

CONSENT MAY BE WITHHELD IN SOS'S SOLE DISCRETION. TO THE EXTENT THAT ANY OF CONTRACTOR'S INTELLECTUAL PROPERTY RIGHTS OR THIRD PARTY INTELLECTUAL PROPERTY RIGHTS ARE EMBODIED OR REFLECTED IN THE WORK PRODUCT, OR ARE NECESSARY TO PROVIDE THE PRODUCTS AND SERVICES CALLED FOR BY THIS RFP, CONTRACTOR HEREBY GRANTS TO SOS, OR SHALL OBTAIN FROM THE APPLICABLE THIRD PARTY FOR SOS'S BENEFIT, THE IRREVOCABLE, PERPETUAL, NONEXCLUSIVE, WORLDWIDE, ROYALTY-FREE RIGHT AND LICENSE, FOR SOS'S INTERNAL BUSINESS PURPOSES ONLY, TO (I) USE, EXECUTE, REPRODUCE, DISPLAY, PERFORM, DISTRIBUTE COPIES OF, AND PREPARE DERIVATIVE WORKS BASED UPON SUCH CONTRACTOR INTELLECTUAL PROPERTY RIGHTS OR THIRD PARTY INTELLECTUAL PROPERTY RIGHTS AND ANY DERIVATIVE WORKS THEREOF EMBODIED IN OR DELIVERED TO SOS IN CONJUNCTION WITH THE WORK PRODUCT, AND (II) AUTHORIZE OTHERS TO DO ANY OR ALL OF THE FOREGOING. CONTRACTOR AGREES TO NOTIFY SOS ON DELIVERY OF THE WORK PRODUCT OR PRODUCTS OR SERVICES CALLED FOR BY THIS RFP IF SUCH MATERIALS INCLUDE ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS. ON REQUEST, CONTRACTOR SHALL PROVIDE SOS WITH DOCUMENTATION INDICATING A THIRD PARTY'S WRITTEN APPROVAL FOR SOS TO USE ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS THAT MAY BE EMBODIED OR REFLECTED IN THE WORK PRODUCT. CONTRACTOR AGREES THAT IT SHALL HAVE WRITTEN AGREEMENTS(S) THAT ARE CONSISTENT WITH THE PROVISIONS HEREOF RELATED TO WORK PRODUCT AND RELATED INTELLECTUAL PROPERTY RIGHTS WITH ANY EMPLOYEES, AGENTS, CONSULTANTS, CONTRACTORS, OR SUBCONTRACTORS PROVIDING PRODUCTS OR SERVICES TO FULFILL THE CONTRACT ARISING OUT OF THIS RFP OR WORK PRODUCT PURSUANT TO SUCH CONTRACT, PRIOR TO THEIR PROVIDING SUCH PRODUCTS OR SERVICES OR WORK PRODUCT, AND THAT IT SHALL MAINTAIN SUCH WRITTEN AGREEMENTS AT ALL TIMES DURING PERFORMANCE OF THE CONTRACT, WHICH ARE SUFFICIENT TO SUPPORT ALL PERFORMANCE AND GRANTS OF RIGHTS BY CONTRACTOR. COPIES OF SUCH AGREEMENTS SHALL BE PROVIDED TO SOS PROMPTLY UPON REQUEST. CONTRACTOR GRANTS TO SOS, A PERPETUAL, IRREVOCABLE, ROYALTY-FREE LICENSE, SOLELY FOR SOS'S INTERNAL BUSINESS PURPOSES, TO USE, COPY, MODIFY, DISPLAY, PERFORM (BY ANY MEANS), TRANSMIT, AND PREPARE DERIVATIVE WORKS OF ANY OF CONTRACTOR'S INTELLECTUAL PROPERTY RIGHTS EMBODIED IN OR DELIVERED TO SOS IN CONJUNCTION WITH THE WORK PRODUCT. THE FOREGOING LICENSE INCLUDES THE RIGHT TO SUBLICENSE TO THIRD PARTIES, SOLELY FOR THE PURPOSE OF ENGAGING SUCH THIRD PARTIES TO ASSIST OR CARRY OUT SOS'S INTERNAL BUSINESS USE OF THE WORK PRODUCT. EXCEPT FOR THE PRECEDING LICENSE OR AS OTHERWISE EXPRESSLY SET FORTH HEREIN, ALL RIGHTS IN CONTRACTOR'S INTELLECTUAL PROPERTY RIGHTS REMAIN IN CONTRACTOR. CONTRACTOR, UPON REQUEST AND WITHOUT FURTHER CONSIDERATIONS, SHALL PERFORM ANY ACTS THAT MAY BE DEEMED REASONABLY NECESSARY OR DESIRABLE BY SOS TO EVIDENCE MORE FULLY THE TRANSFER OF OWNERSHIP AND/OR REGISTRATION OF ALL INTELLECTUAL PROPERTY RIGHTS IN ALL WORK PRODUCT TO SOS TO THE FULLEST EXTENT POSSIBLE, INCLUDING BUT NOT LIMITED TO THE EXECUTION, ACKNOWLEDGEMENT, AND DELIVERY OF SUCH FURTHER DOCUMENTS IN A FORM DETERMINED BY SOS. IN THE EVENT SOS SHALL BE UNABLE TO OBTAIN CONTRACTOR'S SIGNATURE DUE TO THE DISSOLUTION OF CONTRACTOR OR CONTRACTOR'S UNREASONABLE FAILURE TO RESPOND TO SOS'S REPEATED REQUESTS FOR SUCH SIGNATURE ON ANY DOCUMENT REASONABLY NECESSARY FOR ANY PURPOSE SET FORTH IN THE FOREGOING SENTENCE, CONTRACTOR HEREBY IRREVOCABLY DESIGNATES AND APPOINTS SOS AND ITS DULY AUTHORIZED OFFICERS AND AGENTS AS CONTRACTOR'S AGENT AND CONTRACTOR'S ATTORNEY-IN-FACT TO ACT FOR

AND IN CONTRACTOR'S BEHALF AND STEAD TO EXECUTE AND FILE ANY SUCH DOCUMENT AND TO DO ALL OTHER LAWFULLY PERMITTED ACTS TO FURTHER ANY SUCH PURPOSE WITH THE SAME FORCE AND EFFECT AS IF EXECUTED AND DELIVERED BY CONTRACTOR, PROVIDED HOWEVER THAT NO SUCH GRANT OF RIGHT TO SOS IS APPLICABLE IF CONTRACTOR FAILS TO EXECUTE ANY DOCUMENT DUE TO A GOOD-FAITH DISPUTE BY CONTRACTOR WITH RESPECT TO SUCH DOCUMENT. IT IS UNDERSTOOD THAT SUCH POWER IS COUPLED WITH AN INTEREST AND IS THEREFORE IRREVOCABLE. SOS SHALL HAVE THE FULL AND SOLE POWER TO PROSECUTE SUCH APPLICATIONS AND TO TAKE ALL OTHER ACTION CONCERNING THE WORK PRODUCT, AND CONTRACTOR SHALL COOPERATE, AT SOS'S SOLE EXPENSE, IN THE PREPARATION OF PROSECUTION OF ALL SUCH APPLICATIONS AND IN ANY LEGAL ACTIONS AND PROCEEDINGS CONCERNING THE WORK PRODUCT. CONTRACTOR HEREBY IRREVOCABLY AND FOREVER WAIVES, AND AGREES NEVER TO ASSERT, ANY "MORAL RIGHTS" IN OR TO THE WORK PRODUCT THAT CONTRACTOR MAY NOW HAVE OR WHICH MAY ACCRUE TO CONTRACTOR'S BENEFIT UNDER U.S. OR FOREIGN COPYRIGHT OR OTHER LAWS AND ANY AND ALL OTHER RESIDUAL RIGHTS AND BENEFITS WHICH ARISE UNDER ANY OTHER APPLICABLE LAW NOW IN FORCE OR HEREAFTER ENACTED. CONTRACTOR ACKNOWLEDGES THE RECEIPT OF EQUITABLE COMPENSATION FOR ITS ASSIGNMENT AND WAIVER OF SUCH MORAL RIGHTS. THE TERM "MORAL RIGHTS" SHALL MEAN ANY AND ALL RIGHTS OF PATERNITY OR INTEGRITY OF THE WORK PRODUCT AND THE RIGHT TO OBJECT TO ANY MODIFICATION, TRANSLATION, OR USE OF THE WORK PRODUCT, AND ANY SIMILAR RIGHTS EXISTING UNDER THE JUDICIAL OR STATUTORY LAW OF ANY COUNTRY IN THE WORLD OR UNDER ANY TREATY, REGARDLESS OF WHETHER OR NOT SUCH RIGHT IS DENOMINATED OR REFERRED TO AS A MORAL RIGHT. THE CONTRACT ARISING OUT OF THIS RFP IS INTENDED TO PROTECT SOS'S PROPRIETARY RIGHTS PERTAINING TO THE WORK PRODUCT, AND THE INTELLECTUAL PROPERTY RIGHTS THEREIN, AND ANY MISUSE OF SUCH RIGHTS WOULD CAUSE SUBSTANTIAL AND IRREPARABLE HARM TO SOS'S OPERATIONS. THEREFORE, CONTRACTOR ACKNOWLEDGES AND STIPULATES THAT A COURT OF COMPETENT JURISDICTION MAY IMMEDIATELY ENJOIN ANY MATERIAL BREACH OF THE PROVISIONS OF THIS SECTION, UPON A REQUEST BY SOS, WITHOUT REQUIRING PROOF OF IRREPARABLE INJURY AS SAME SHOULD BE PRESUMED. UPON THE REQUEST OF SOS, BUT IN ANY EVENT UPON TERMINATION OR EXPIRATION OF THE CONTRACT ARISING OUT OF THIS RFP OR ANY PORTION THEREOF, CONTRACTOR SHALL SURRENDER TO SOS ALL DOCUMENTS AND THINGS PERTAINING TO THE WORK PRODUCT, INCLUDING BUT NOT LIMITED TO DRAFTS, MEMORANDA, NOTES, RECORDS, DRAWINGS, MANUALS, COMPUTER SOFTWARE, REPORTS, DATA, AND ALL OTHER DOCUMENTS OR MATERIALS (AND COPIES OF SAME) GENERATED OR DEVELOPED BY CONTRACTOR OR FURNISHED BY SOS TO CONTRACTOR, INCLUDING ALL MATERIALS EMBODYING THE WORK PRODUCT, ANY SOS CONFIDENTIAL INFORMATION, OR INTELLECTUAL PROPERTY RIGHTS IN SUCH WORK PRODUCT, REGARDLESS OF WHETHER COMPLETE OR INCOMPLETE. THIS SECTION IS INTENDED TO APPLY TO ALL WORK PRODUCT AS WELL AS TO ALL DOCUMENTS AND THINGS FURNISHED TO CONTRACTOR BY SOS OR BY ANYONE ELSE THAT PERTAINS TO THE WORK PRODUCT. THE REQUIREMENTS OF THIS PROPRIETARY RIGHTS SECTION SHALL NOT ONLY FORM A PART OF THE CONTRACT ARISING OUT OF THIS RFP BUT ARE HEREBY MADE A PART OF ANY SUBCONTRACTS, PURCHASE ORDER CHANGE NOTICES, OR OTHER DOCUMENTS THAT MAY BECOME A PART OF THE CONTRACT (INCLUDING ANY AMENDMENTS) AT ANY TIME. THE OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE CONTRACT (INCLUDING ANY AMENDMENTS) ARISING OUT OF THIS RFP. WITHOUT LIMITING ANY RIGHTS AFFORDED SOS ELSEWHERE IN THE CONTRACT (INCLUDING ANY AMENDMENTS), THE PARTIES

HEREBY EXPRESSLY ACKNOWLEDGE ANY VIOLATION OF THIS SECTION BY CONTRACTOR IS A MATERIAL BREACH OF THE CONTRACT (INCLUDING ANY AMENDMENTS) ARISING OUT OF THIS RFP.

87. **Texas Government Code Section 2252.152:** Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
88. **Texas Government Code Section 2252.908:** Section 2252.908 of the Texas Government Code provides, among other things, that for contracts in excess of \$1 million, a selected Contractor will fill out Form 1295, Certificate of Interested Parties, and file it with the Texas Ethics Commission at the time a selected Contractor submits the signed contract to the governmental entity or state agency. A sample of Form 1295 is available at <https://www.ethics.state.tx.us/data/forms/1295/1295.pdf>. Form 1295 must be filled out on the electronic form prescribed by the Texas Ethics Commission. Contractor certifies that it will submit Form 1295 concurrently with its submission of its signature effectuating the Contract, and in accordance with Title I, Chapter 46 of the Texas Administrative Code, should it be awarded the Contract.
89. **Human Trafficking Prohibition:** Under Section 2155.0061 of the Texas Government Code, Contractor certifies that the individual or business entity named in this Contract (including any Amendments) or its response to the RFP is not ineligible to receive the contract resulting from this RFP and acknowledges that this Contract (including any Amendments) may be terminated and payment withheld if this certification is inaccurate.
90. **Abortion Provider and Affiliate Transactions Prohibition:** Contractor represents and warrants that the Contract (including any Amendments) is not a taxpayer resource transaction prohibited by Section 2272.003 of the Texas Government Code and that payments made by SOS to Contractor and Contractor's receipt of appropriated funds under the Contract (including any Amendments) are not prohibited by Article IX, Section 6.24 of the General Appropriations Act.
91. **COVID-19 Vaccine Passport Prohibition:** Under Section 161.0085 of the Texas Health and Safety Code, Contractor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Contractor's business. Contractor acknowledges that such a vaccine or recovery requirement would make Contractor ineligible for a state-funded contract.
92. **Energy Company Boycotts:** If Contractor is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Contractor verifies that Contractor does not boycott energy companies and will not boycott energy companies during the term of the Contract (including any Amendments). If Contractor does not make that verification, Contractor must so indicate in its response to this RFP and state why the verification is not required.

89. The undersigned certifies that the Contractor is allowed to claim the Chapter 2155 Texas Government Code and Texas Administrative Code Title 34, §20.306 preferences that are checked below:

CHECK BELOW IF PREFERENCE CLAIMED
<input type="checkbox"/> Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
<input type="checkbox"/> Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
<input type="checkbox"/> Agricultural products grown in Texas
<input type="checkbox"/> Agricultural products offered by a Texas bidder
<input type="checkbox"/> Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
<input type="checkbox"/> Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran
<input type="checkbox"/> Texas Vegetation Native to the Region
<input type="checkbox"/> USA produced supplies, materials or equipment
<input type="checkbox"/> Products of persons with mental or physical disabilities
<input type="checkbox"/> Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
<input type="checkbox"/> Energy Efficient Products
<input type="checkbox"/> Rubberized asphalt paving material
<input type="checkbox"/> Recycled motor oil and lubricants
<input type="checkbox"/> Products produced at facilities located on formerly contaminated property
<input type="checkbox"/> Products and services from economically depressed or blighted areas
<input type="checkbox"/> Contractors that meet or exceed air quality standards
<input type="checkbox"/> Recycled or Reused Computer Equipment of Other Manufacturers
<input type="checkbox"/> Foods of Higher Nutritional Value

The undersigned is an authorized official for the Contractor and certifies that the proposal submitted with this "Execution of Offer, Affirmation of Terms and Conditions, and Proposal Preferences" instrument is in full compliance with the provisions expressly stated above. Furthermore, in compliance with this RFP and subject to all the conditions therein, the undersigned offers and agrees to furnish any or all commodities or services at the prices quoted in its proposal.

By signing this Proposal, Contractor certifies that if a Texas address is shown, that is, in fact, the legal business address of Contractor and Contractor qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part 1, Chapter 20.

CONTRACTOR/ CONTRACTOR NAME:
STREET ADDRESS:
CITY/STATE/ZIP:
TELEPHONE NO.:
EMAIL ADDRESS:
CONTRACTOR'S AUTHORIZED AGENT:
TITLE OF CONTRACTOR'S AUTHORIZED AGENT:
SIGNATURE OF AUTHORIZED AGENT: