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An Audit Report on
**Contracting at the Texas Workforce
Commission**

October 2021
Report No. 22-004



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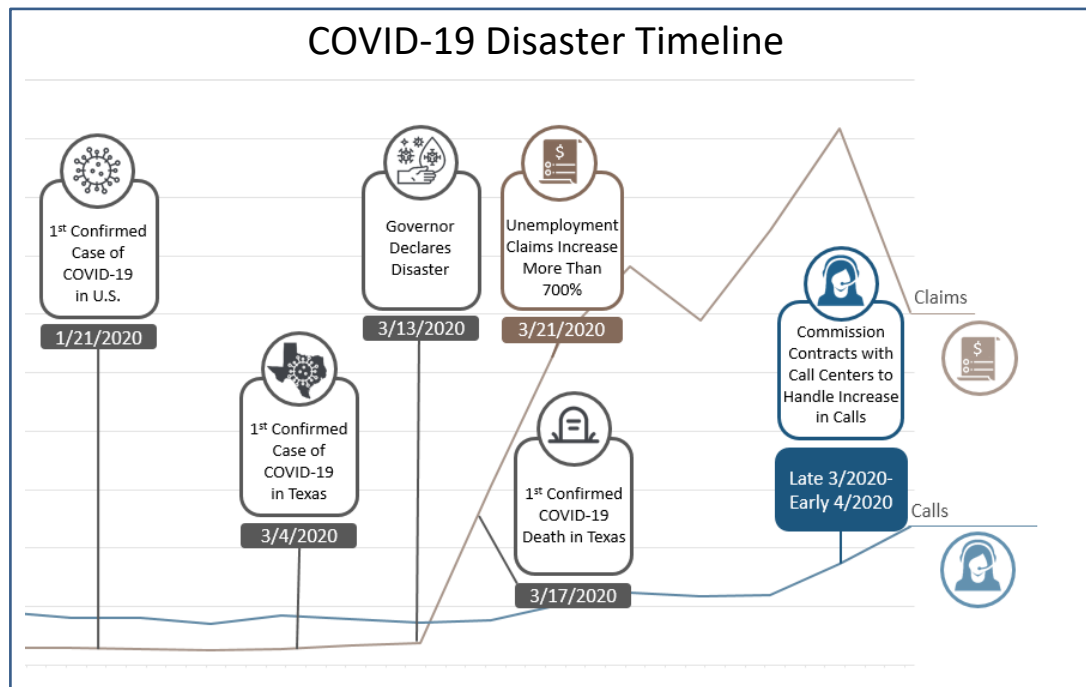
Overall Conclusion

The Texas Workforce Commission (Commission) oversees and determines eligibility for the State’s unemployment benefits program, which provides temporary income to workers who have lost their jobs through no fault of their own. As a result of the COVID-19 pandemic, the Commission experienced an unprecedented increase in claims for unemployment insurance benefits, and it contracted for expanded call center and identity verification services.

While the Commission was allowed to waive certain procurement and contracting requirements, it did not document its decision-making process for the requirements waived in contracting for the expanded call center and identity verification services. Being able to evaluate the decisions it made in executing and monitoring those contracts and developing documented processes could help the Commission respond to future events that create sudden and/or significant increases in unemployment claims.

Figure 1 shows a timeline of the COVID-19 pandemic and the increase in claims and calls that the Commission received.

Figure 1



Sources: Centers for Disease Control and Prevention; Texas Department of State Health Services; Proclamation of the Governor of the State of Texas, March 13, 2020; and the Commission.

This audit was conducted in accordance with Texas Government Code, Section 321.0132.

For more information regarding this report, please contact James Timberlake, Audit Manager, or Lisa Collier, First Assistant State Auditor, at (512) 936-9500.

Waiving requirements. Pursuant to the Governor’s disaster declaration, the Commission was not required to comply with all state statutes or administrative rules for contracting and procurement (see text box). To prevent a disruption of service for claimants, the Commission waived some procurement processes for the four call center contracts and one identity verification services contract audited. For example, it did not develop a solicitation, perform a risk assessment, or develop a monitoring plan. Figure 2 identifies the five steps performed during a procurement process and the steps the Commission waived.

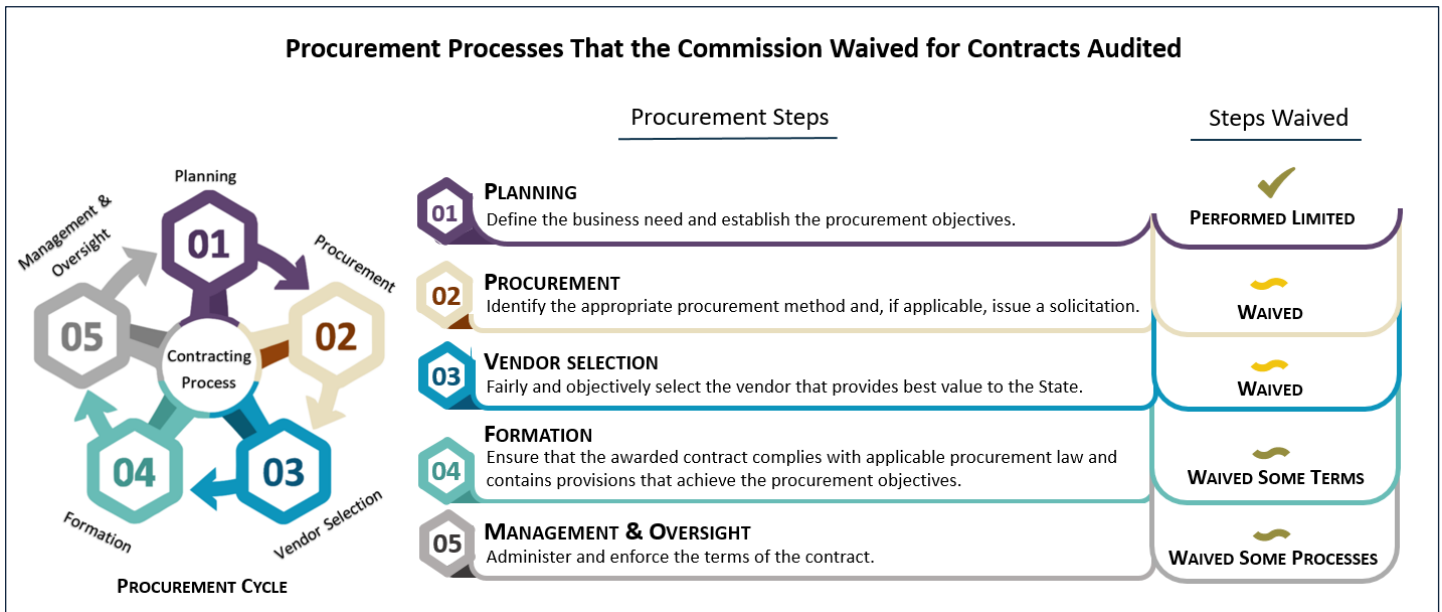
COVID-19 Disaster Declaration

On March 13, 2020, Governor Abbott issued a proclamation declaring a state of disaster due to the number of cases of the novel coronavirus (COVID-19) in Texas. That declaration was extended by the Governor every 30 days through September 2021.

Pursuant to Section 418.016 of the Texas Government Code, the declaration suspends the enforcement of any state statute or administrative rule regarding contracting or procurement that would impede any state agency’s emergency response necessary to cope with the declared disaster.

Source: *Proclamation of the Governor of the State of Texas, March 13, 2020.*

Figure 2



Sources: *State of Texas Procurement and Contract Management Guide, Version 1.3* and the Commission.

Lack of documented processes. The Commission did not have documented processes for procuring or executing contracts pursuant to a disaster declaration. As a result, it did not consistently document its decision-making process or rationale for the statutes or rules that it waived for the contracts audited.

The Commission should evaluate the actions taken to procure, execute, and monitor the contracts audited, including the decisions made about which processes and requirements to waive (see Figure 3 on the next page).

Developing and implementing a documented process for procuring contracts during an unexpected increase in unemployment claims and calls could help improve the Commission’s response to future disasters.

Figure 3

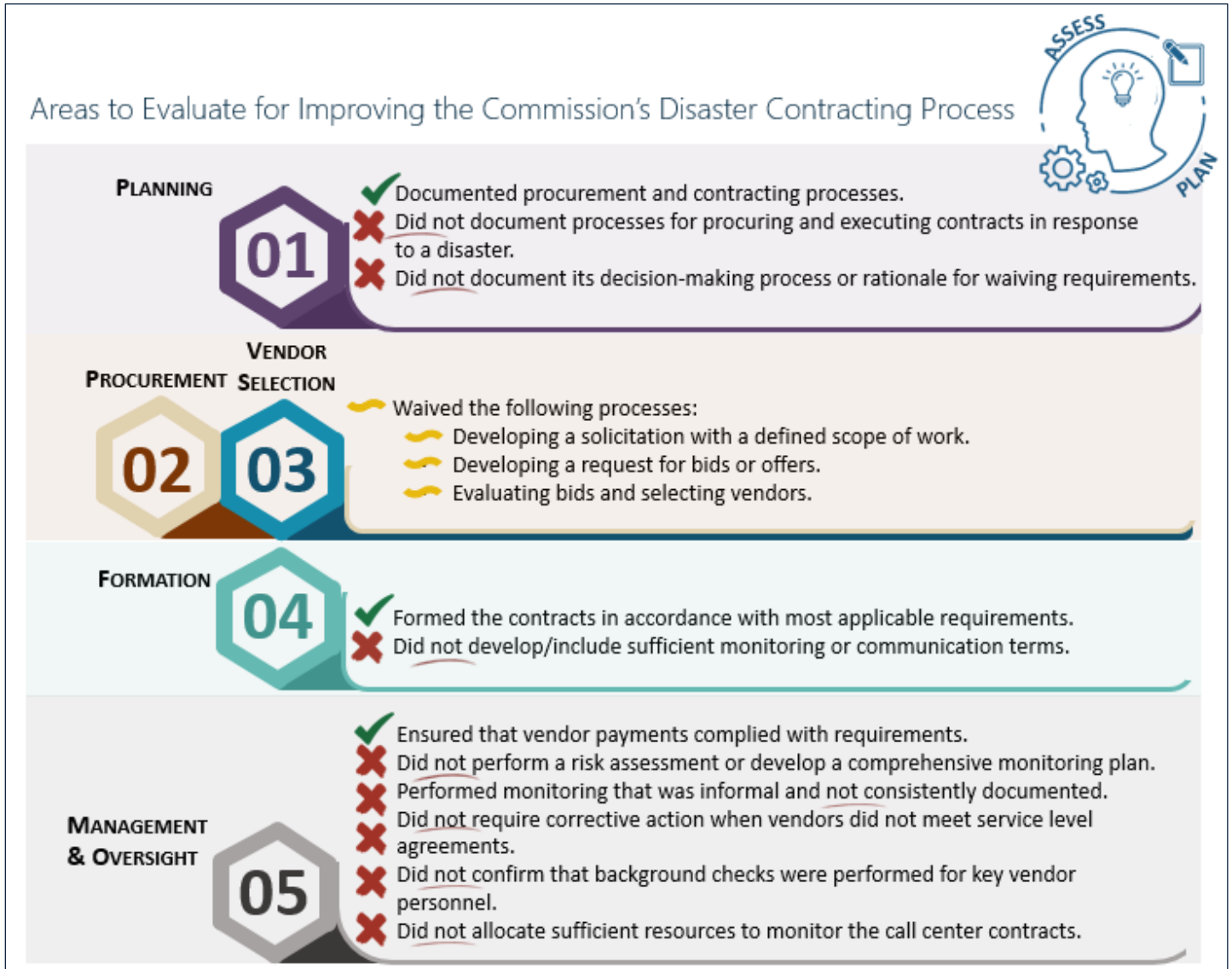


Table 1 on the next page presents a summary of the findings in this report and the related issue ratings. (See Appendix 2 for more information about the issue rating classifications and descriptions.)

Table 1

Summary of Chapters/Subchapters and Related Issue Ratings		
Chapter/ Subchapter	Title	Issue Rating ^a
1	The Commission Should Develop and Implement a Process for Procuring and Executing Contracts in Response to a Disaster	High
2-A	The Commission’s Call Center Contracts Included the Required Terms and Conditions; However, the Contracts Did Not Include Sufficient Terms for Monitoring and Communication With Vendors	Medium
2-B	The Commission Did Not Have a Monitoring Plan for Call Center Contracts	Medium
3	The Commission’s ID.me, Inc. Contract Included the Required Terms and Conditions	Low

^a A chapter/subchapter is rated **Priority** if the issues identified present risks or effects that if not addressed could critically affect the audited entity’s ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern and reduce risks to the audited entity.

A chapter/subchapter is rated **High** if the issues identified present risks or effects that if not addressed could substantially affect the audited entity’s ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.

A chapter/subchapter is rated **Medium** if the issues identified present risks or effects that if not addressed could moderately affect the audited entity’s ability to effectively administer the program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

A chapter/subchapter is rated **Low** if the audit identified strengths that support the audited entity’s ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity’s ability to effectively administer the program(s)/function(s) audited.

Auditors communicated another, less significant issue separately in writing to Commission management.

Summary of Management’s Response

At the end of certain chapters in this report, auditors made recommendations to address the issues identified during this audit. The Commission agreed with the recommendations and identified corrective actions to address those recommendations. However, the Commission expressed concern about the feasibility of creating and maintaining a certain level of documentation during a disaster declaration.

Pursuant to Section 418.016 of the Texas Government Code, the disaster declaration suspends the enforcement of any state statute or administrative rule regarding contracting or procurement that would impede any state agency’s emergency response necessary to cope with the declared disaster. The Commission did not provide any documentation or assertions identifying the responsible official(s) that waived certain requirements or how those requirements impeded its response to the declared disaster.

After review and consideration of management responses, the State Auditor’s Office stands by its conclusions based on the evidence provided during the audit.

The Commission's detailed management responses are presented immediately following each set of recommendations in the Detailed Results section of this report. The Commission also provided an attachment to its management responses; that attachment is presented in Appendix 4.

Audit Objectives and Scope

The objective of this audit was to determine whether the Commission has administered certain contract management functions in accordance with applicable requirements.

The scope of this audit included (1) contracts related to unemployment insurance that were active at any point between September 1, 2019, and March 1, 2021, and (2) contract activities during any period up to and including March 31, 2021, related to those contracts. The scope also included a review of significant internal control components related to contract formation and oversight.

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Detailed Results

Chapter 1

The Commission Should Develop and Implement a Process for Procuring and Executing Contracts in Response to a Disaster

**Chapter 1
Rating:**
High ¹

To prevent a disruption in services due to increased unemployment insurance claims, the Texas Workforce Commission (Commission) contracted with certain providers to expand call center and identity verification services. Those contracts were executed pursuant to the Governor’s disaster declaration; therefore, they were not required to comply with all state statutes or administrative rules for contracting and procurement.

However, the Commission did not have a process to document its decision-making process or rationale for waiving certain statutes or rules. For example, the Commission did not include certain clauses designed to safeguard its data, such as the prohibition against accessing the network from outside the United States. In addition, the Commission did not enforce contract provisions requiring background checks for vendors’ key personnel. While those actions were allowed by the disaster declaration, they did increase risk to the Commission’s data and operations. In addition, not documenting its reasons for waiving certain requirements limits the Commission’s ability to evaluate the effectiveness of those decisions.

Planning for Disaster-related Procurements

The Commission has an established *Texas Workforce Commission Procurement and Contract Management Handbook*, and it has policies and procedures for procurement and contracting. However, that handbook does not include procedures for procuring and executing contracts in response to a disaster, such as the sudden and significant increases in unemployment insurance claims experienced during the COVID-19 pandemic.

In conjunction with efforts to reduce the spread of COVID-19, including restrictions on minimizing social gatherings and in-person contact except when necessary to provide or obtain essential services, the Commission experienced an increase in unemployment insurance claims of more than 700 percent in the week after the Governor declared the disaster and an increase of more than 1,700 percent during March 2020 (see Figure 4 on the next page).

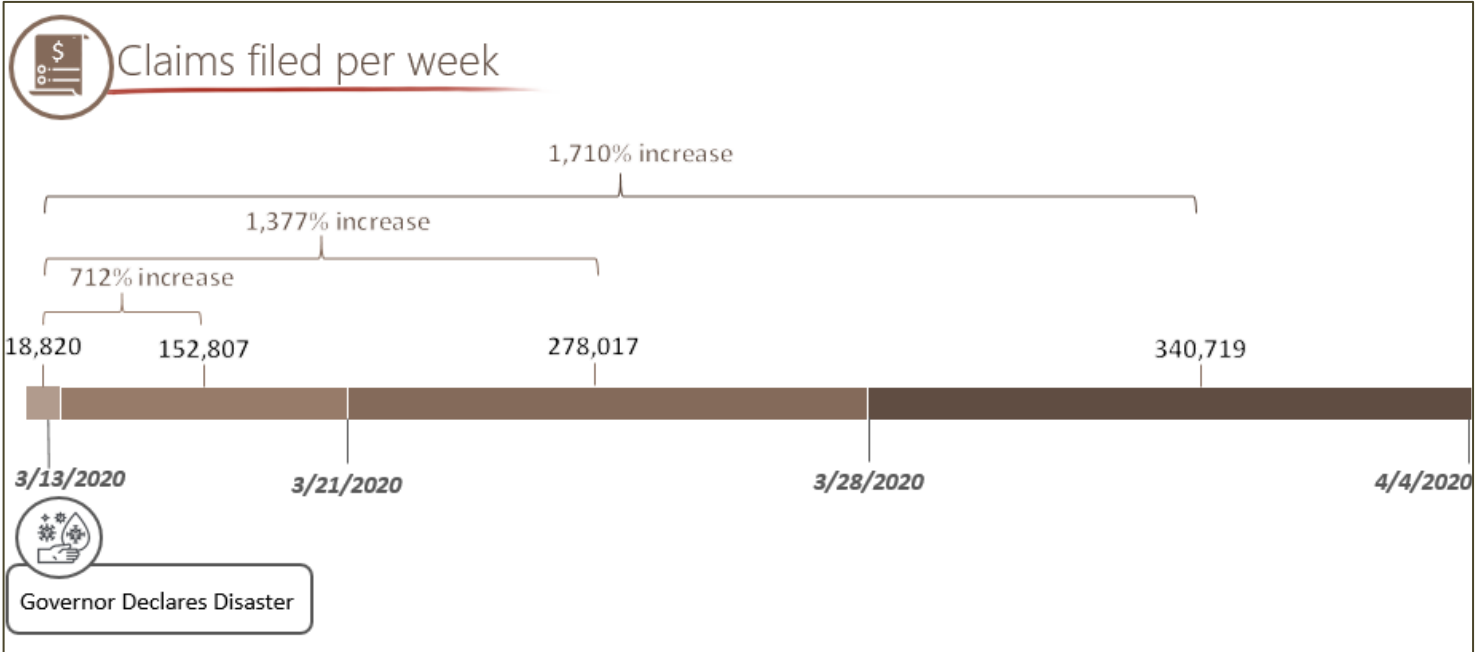


Source: *State of Texas Procurement and Contract Management Guide*, Version 1.3.

¹ The risk related to the issues discussed in Chapter 1 is rated as High because they present risks or effects that if not addressed could substantially affect the audited entity’s ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern and reduce risks to the audited entity.

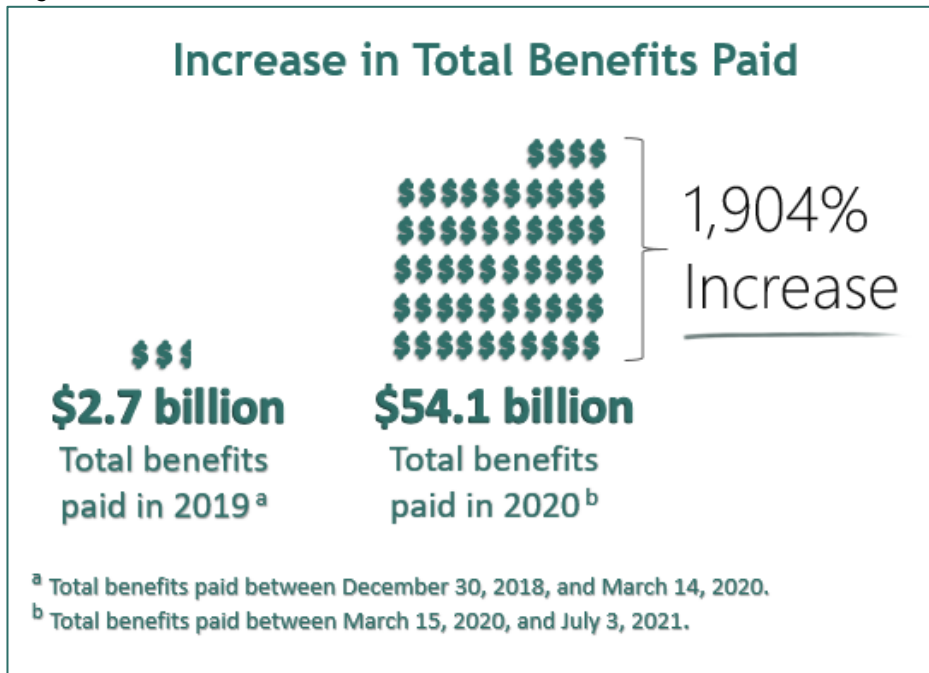
That unprecedented increase in unemployment insurance claims resulted in a more than 1,900 percent increase in benefits paid during the pandemic (see Figure 5).

Figure 4



Source: The Commission.

Figure 5



Source: The Commission.

Having a planned approach to procuring contracts during a disaster could help the Commission evaluate which risks are acceptable and when possible mitigate those risks. The Commission could help improve its response to a future disaster by developing and implementing a documented process based on the lessons learned from its procurement of contracts during the COVID-19 pandemic (see Figure 6).

Figure 6



Recommendations

The Commission should strengthen its disaster planning to establish guidelines and processes for contracting during disasters that create a significant and/or sudden surge in unemployment claims, including:

- Developing, implementing, and documenting a process for procuring and executing contracts under a disaster declaration.
- Documenting the statutes or rules waived under a disaster declaration and its rationale for waiving those statutes or rules.

Management's Response

TWC agrees to strengthen its disaster planning by revising, implementing, and documenting a process for procuring and executing contracts and for waiving statutes or rules under a disaster declaration.

The Comptroller's Procurement & Contract Management Handbook provides instructions for making procurements under the "Texas Disaster Act of 1975" due to Governor Abbott's statewide disaster declaration. Those instructions specify that the procurement file contains a copy of the disaster declaration, documentation to support the purchase, receipt of goods or services, and approval of the payment.

The CARES Act of 2020 provided emergency state staffing flexibility, which combined with the Governor's statewide disaster declaration, allowed TWC to move quickly to procure temporary call center services necessary to serve the unprecedented number of customers affected by the pandemic. This was the first time in at least 20 years, despite other disasters, that TWC was granted the broad authority to waive requirements that would be standard under normal business conditions to procure these types of services to support the unemployment program. The previous practice among states, including Texas, was to rely on customer support from other state unemployment agencies for disaster events. TWC was called upon to support other states' unemployment agencies or they supported TWC during disasters. However, with the pandemic, every other state also required immediate and urgent program support. The Disaster Declaration's broad flexibility prevented undue delay in securing resources to serve Texans in need. Texas was one of the first states to stand up contract call centers, and TWC was able to serve more claimants compared to other states who did not exercise disaster contracting and procurement, delaying their ability to serve their customers by several weeks and months.

The statutory Disaster Declaration processes were followed; however, as a best practice TWC will create Standard Operating Procedures (SOP) and checklists as guidance to document the process for procuring and executing contracts under disaster declaration business conditions and may or may not waive them depending on the situation and urgency of the disaster that occurs.

TWC will also create a Procurement Requirements Waiver form to document the approval of and rationale for waiver of procurement requirements by management and Office of General Counsel (OGC) and will update the Procurement and Contract checklist to include a framework for notating the waived procurement requirements.

Responsible Party: Procurement & Contract Services Director

Timeline for Implementation: October 15, 2021

Auditor Follow-up Comment

Pursuant to Section 418.016 of the Texas Government Code, the disaster declaration suspends the enforcement of any state statute or administrative rule regarding contracting or procurement that would impede any state agency's emergency response necessary to cope with the declared disaster. The Commission did not provide any documentation or assertions identifying

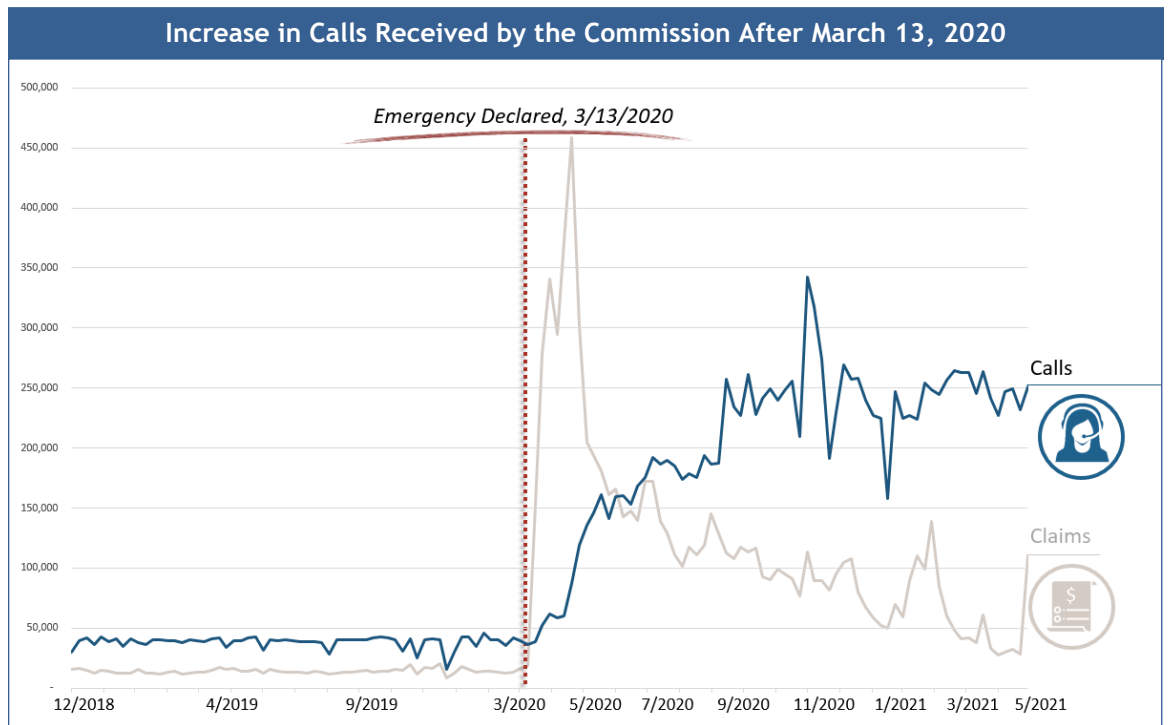
the responsible official(s) that waived certain requirements or how those requirements impeded its response to the declared disaster.

After review and consideration of the management responses, the State Auditor's Office stands by its conclusions based on the evidence provided during this audit.

The Commission Did Not Have Sufficient Contract Terms or a Plan for Monitoring the Call Center Contracts Procured Under the Disaster Declaration

As the number of unemployment insurance claims increased, calls from the public to the Commission also increased significantly (see Figure 7). The increase in the number of calls exceeded the capacity of the 600-person call center the Commission operated prior to the COVID-19 pandemic.

Figure 7



Source: The Commission.

In response, the Commission hired temporary staff, reassigned its own staff within the Commission, and had volunteers from the Legislature help address the increased demands. In addition, the Commission contracted with four external call centers to handle the calls. Those call centers did not process claims or disburse benefits to claimants. The Commission extended those contracts through December 2021, and it asserted that it was planning to terminate some of those contracts prior to that expiration date.

The Commission included the required terms and conditions, and most recommended terms, in those call center contracts. However, it did not include sufficient terms for contract monitoring and communication with the vendor. In addition, the Commission did not perform a risk assessment or implement a comprehensive monitoring plan for those contracts.

The Commission’s Call Center Contracts Included the Required Terms and Conditions; However, the Contracts Did Not Include Sufficient Terms for Monitoring and Communication With Vendors

The Commission’s formation of the call center contracts complied with most applicable requirements. However, it should strengthen its disaster contract formation processes to include sufficient terms for monitoring and communication.

**Chapter 2-A
Rating:**
Medium ²

The Commission formed the call center contracts in accordance with most applicable requirements. For the four contracts with the external call centers, the Commission used its standard terms and conditions template that included the required, and most of the recommended, contract terms and conditions in the *State of Texas Procurement and Contract Management Guide*. In addition, the Commission’s executive director and general counsel approved those contracts as necessary. Each contract also included required language stating that it was procured under the disaster declaration.



Source: *State of Texas Procurement and Contract Management Guide*, Version 1.3.

The Commission approved contract amendments and reported those amendments as required. The initial contract terms were for 90 days, with 3 additional 90-day renewal options. The Commission amended each call center contract to extend the performance period and increase the dollar amount of the contract, and it obtained the appropriate levels of review and signatures for those amendments. In addition, the Commission reported the contracts and subsequent amendments to the Legislative Budget Board as required.

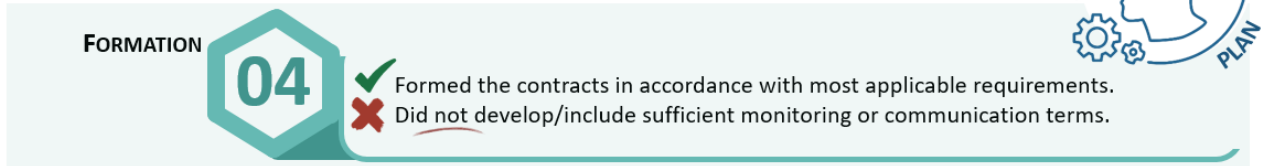
The Commission should (1) evaluate its actions during the formation of the four contracts audited and (2) apply those lessons learned when developing procedures to provide guidance for procuring contracts during a disaster.

In waiving the procurement process for the four call center contracts procured in response to the COVID-19 pandemic, the Commission did not develop a solicitation. A solicitation normally includes a defined scope of work for the services to be contracted; terms and conditions; expected deliverables and milestones; and anticipated monitoring activities. The Commission instead developed each contract separately, and the terms were inconsistent between those contracts. Specifically, the contracts did not include adequate terms related to monitoring and communication with vendors (see Figure 8 on the next page).

² The risk related to the issues discussed in Chapter 2-A is rated as Medium because they present risks or effects that if not addressed could moderately affect the audited entity’s ability to effectively administer the program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

Figure 8

Areas to Evaluate for Improving the Commission's Disaster Contracting Process



Contract Terms for Monitoring. In the scope of work included in the contracts for each call center, the Commission included service level agreements to measure vendor responsiveness to calls. However, none of the four contracts included terms that would allow for monitoring, such as the information that vendors should report for each service level agreement. In addition, the contracts did not include terms for sanctions or remedies that could be applied in the event of a contract breach or when a vendor did not meet the performance measures defined in the contract.

As more claimants were requesting assistance, the Commission requested additional services from the call center vendors. However, the Commission did not identify how it would monitor those additional services, and it did not amend its service level agreements to account for those additional services. The Commission also did not include terms that would require the vendors to report information related to those additional services.

Communication Protocols. For two of the four call center contracts audited, the contracts did not contain terms defining routine and required communication between the Commission and vendors or required deliverables, such as defining regularly required reviews or reports.

Payment Terms. The Commission's standard terms and conditions contained some language regarding payment for services, such as a stipulation that payments would be made within 30 days of receipt of invoice. However, two of the four call center contracts did not include terms identifying when or how frequently the vendor should submit invoices for payment. In addition, none of the four contracts identified what information should be included on the invoices or if any support should be provided for the invoiced items.

Not including sufficient monitoring, communication, and payment terms decreases the Commission's ability to identify noncompliance and to enforce the terms of a contract.

Recommendation

The Commission should include sufficient terms for monitoring, required vendor communication, and payments in its contracts executed under a disaster declaration.

Management's Response

TWC agrees that terms for monitoring, required vendor communication, and payments should be included in contracts executed under a disaster declaration. However, TWC found concern with the level of documentation formality SAO expected TWC to develop and maintain under extraordinary pandemic business conditions and the Disaster Declaration.

TWC maintains that the contracts reviewed by SAO did include TWC standard terms and conditions, which provided language that allowed TWC or other agencies to monitor these contracts. See Attachment 1³, TWC Terms & Conditions (03/3/2020) Negotiated Terms by and between TWC and Vendor, Section 2.15, Agency's Right to Audit, and Section 2.16, State Auditor In addition, the TWC Terms and Conditions also contain references to remedies, including a 30-day no cause termination provision, providing TWC a quick exit option.

Furthermore, TWC did communicate with contractors at least weekly, and sometimes daily, regarding the management of the contract and services they were providing. Under the disaster business conditions, agency and vendor staff would not have had time to develop formal agendas and vet meeting notes of daily and weekly meetings between the agency and vendors as suggested by SAO.

Payment terms were included in the contracts executed under the disaster declaration. Due to the severe demand on agency resources, key aspects of the invoices were reviewed for verification that were appropriate under the business conditions and Disaster Declaration. The contracts provided cost per hour for services. Section 7 of TWC's Terms & Conditions provided invoicing instructions and Section 8 provided payment instructions. The level of documentation formality suggested in the audit findings does not seem feasible given the disaster and staffing resource constraints.

Notwithstanding the foregoing controls that were in place, TWC will strengthen contract language to ensure reporting requirements and associated timeframes align with each Service Level Agreement and will conduct a Contractor Orientation with updated materials to outline

³ Presented in Appendix 4 in this audit report.

monitoring, reporting, communications, invoicing and payments for disaster contracts. TWC further will reexamine how the invoicing and payment processes can change when under disaster business conditions and add additional detail to the Post Award Contractor Orientation.

Responsible Party: Procurement & Contract Services Director

Timeline for Implementation: October 15, 2021

Auditor Follow-up Comment

Pursuant to Section 418.016 of the Texas Government Code, the disaster declaration suspends the enforcement of any state statute or administrative rule regarding contracting or procurement that would impede any state agency's emergency response necessary to cope with the declared disaster. The Commission did not provide any documentation or assertions identifying the responsible official(s) that waived certain requirements or how those requirements impeded its response to the declared disaster.

The State Auditor's Office acknowledged in this report that the Commission used its standard terms and conditions template, which included the required, and most of the recommended, contract terms and conditions in the *State of Texas Procurement and Contract Management Guide*. The information presented in Chapter 2-A was based on all contract terms and not limited to only those terms in the Commission's standard terms and conditions document. The information in this chapter identifies an area that the Commission should consider evaluating in preparing for future events that require it to enter into contracts under a disaster declaration. The recommendation does not suggest a level of formality beyond the contract document.

After review and consideration of the management responses, the State Auditor's Office stands by its conclusions based on the evidence provided during this audit.

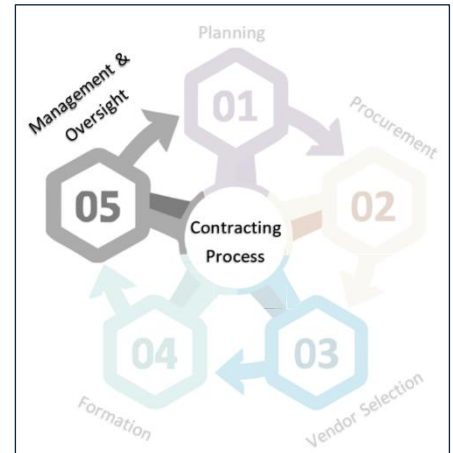
The Commission Did Not Have a Monitoring Plan for Call Center Contracts

**Chapter 2-B
Rating:**
Medium ⁴

The Commission performed some monitoring of the call center contracts and complied with vendor payment requirements. However, it should strengthen its disaster contract monitoring processes to include developing a comprehensive monitoring plan and ensuring adequate documentation of its monitoring activities.

The Commission ensured that call center payments complied with requirements. The Commission complied with Texas Government Code, Section 2251.021, which requires that vendor payments be made within 30 days from the invoice date. The Commission timely paid the 12 call center invoices tested, totaling \$19,335,468. The Commission also appropriately recorded and approved the invoices. In addition, the total payments for each contract did not exceed the total contract amount, including subsequent amendments.

However, the monitoring that the Commission performed for the call center contracts was informal and not consistently documented. To help it respond to future disasters, the Commission should (1) evaluate the monitoring procedures it performed and (2) apply lessons learned when developing procedures to provide guidance for procuring contracts during a disaster. Specifically, the Commission should evaluate its decisions related to developing a monitoring plan, monitoring vendors' compliance with service level agreements, confirming background checks, and allocating resources for monitoring (see Figure 9 on the next page).



Source: *State of Texas Procurement and Contract Management Guide*, Version 1.3.

⁴ The risk related to the issues discussed in Chapter 2-B is rated as Medium because they present risks or effects that if not addressed could moderately affect the audited entity's ability to effectively administer the program(s)/function(s) audited. Action is needed to address the noted concern and reduce risks to a more desirable level.

Figure 9

Areas to Evaluate for Improving the Commission's Disaster Contracting Process



**MANAGEMENT
& OVERSIGHT**

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- ✓ Ensured that vendor payments complied with requirements.
- ✗ Did not perform a risk assessment or develop a comprehensive monitoring plan.
- ✗ Performed monitoring that was informal and not consistently documented.
- ✗ Did not require corrective action when vendors did not meet service level agreements.
- ✗ Did not confirm that background checks were performed for key vendor personnel.
- ✗ Did not allocate sufficient resources to monitor the call center contracts.

Monitoring Plan

The Commission waived the performance of a risk assessment under the disaster declaration and, as a result, it did not develop a comprehensive monitoring plan for the call center contracts. Having a monitoring plan for contracts under a disaster declaration could help the Commission to determine (1) the contract requirements to be monitored, (2) how the requirements should be monitored, and (3) who should perform the monitoring (see text box for more information on monitoring plans).

Without a set monitoring plan to guide it, the Commission did not ensure that its monitoring was consistent across the contracts, or that it consistently documented its monitoring activities. For example:

- The Commission was in daily communication with call center vendors and received information related to the phone calls the customer service representatives addressed. However, the information received from vendors varied in format and data provided. Any meetings the Commission had with vendors were informal and did not have documented agendas or minutes. In addition, the Commission could not provide vendor service level agreement support for 4 (25 percent) of 16 monthly reports tested.

Contract Monitoring

The *State of Texas Procurement and Contract Management Guide* requires an agency to perform a risk assessment identifying the areas of the contract requiring monitoring. The agency should develop a monitoring plan to address those identified risks.

The monitoring plan should have well-defined follow-up actions. Examples of monitoring methods include desk reviews, site visits, and spot audits.

The results of monitoring should be periodically reviewed by the contract manager to:

- Ensure that corrective actions have been taken,
- Identify common problem areas that might require training, and
- Improve contract requirements for future audits.

Sources: Texas Government Code, Section 2261.253(c), and the *State of Texas Procurement and Contract Management Guide*, Version 1.3.

- The Commission performed quality control reviews of calls to determine whether customer service representatives were appropriately answering calls received. The Commission provided information on the results of those quality assurance reviews to the vendors, but did not document a response from the vendors on how they corrected any deficiencies noted.
- The Commission determined that the reported call center hours on submitted invoices were reasonable based on estimates from daily vendor emails. However, it did not include documentation for training hours in that determination of reasonableness. In addition, one vendor billed before providing services, and the contract required it to adjust its invoice in the subsequent month to actual hours worked. However, this adjustment was not indicated on the subsequent invoice, and the Commission did not confirm that adjustments were made.

Service Level Agreements

Service level agreements were consistently not met by vendors, and corrective action was not requested or required by the Commission. Because the Commission based its initial service level agreements on an estimate of expected call volume, updating those agreements when it amended the contracts could have provided the vendors with reasonably attainable targets and could have incorporated additional services that were not included in the initial contract term. As of May 1, 2021:

- The average handle time of 10 minutes was not met for 15 (31 percent) of 48 months tested.
- The occupancy rate of 65 percent was not met for 35 (76 percent) of 46 months tested that had vendor-submitted data.
- The average speed of answer of 30 minutes was not met for 7 (15 percent) of 48 months tested.

The Commission asserted that it discussed those deficiencies with the vendors, but it did not document those discussions or require corrective actions by the vendor.

Background Checks

The Commission did not confirm that background checks for key personnel had been performed, as required by the contracts' standard terms and conditions. The Commission waived compliance with the background check provision after executing the contracts. Although this waiver was allowed under the disaster declaration, not ensuring that background checks are

performed increases the risk that sensitive or confidential data could be accessed by inappropriate personnel.

Allocating Resources

The Commission did not allocate sufficient resources for monitoring the call center contracts. The focus of the Unemployment Insurance Division was on processing claims and addressing customers; however, the Commission split the contract manager responsibilities, assigning the Unemployment Insurance Division a lead role in managing the contract. That division did not have certified contract management personnel within the division and had not previously managed such a large contract.

The contract manager assigned from the Procurement and Contract Management Division was only minimally involved in the oversight of those contracts and primarily performed administrative functions. The monitoring of those call center contracts could have been improved with more coordination between the contract manager and the Unemployment Insurance Division.

Recommendations

The Commission should strengthen its disaster planning to establish guidelines and processes for contract monitoring, including:

- Developing, implementing, and documenting a comprehensive monitoring plan that is based on a risk assessment of all contract requirements for contracts under a disaster declaration.
- Determining and documenting the role of program staff and the contract manager in the oversight of contracts to ensure adequate coordination and performance of monitoring activities.
- Identifying and documenting plans for corrective actions when contract terms are not met.
- Requiring and maintaining documented support to verify information on invoices submitted by vendors for payment.

Management's Response

TWC agrees to strengthen its disaster planning to establish risk-based SOPs, guidelines, and review processes for contract monitoring under a Disaster Declaration.

These specific contracts included a 30-day termination clause, which allowed TWC to terminate a contract if the vendor was not performing at an acceptable level. The short termination clause minimized risk to TWC by providing an option to end the contract if the vendor was not performing. TWC believes the 30-day termination clause provided adequate contract monitoring by the agency.

However, a monitoring plan for each disaster contract will be developed to outline the roles and responsibilities for Contract Administration and program staff to ensure separation of duties and avoid duplication of efforts while coordinating and performing monitoring activities. Throughout a disaster, if program staff identifies a potential non-compliance issue, a Contractor Performance Report will be submitted to the contract manager. In addition, TWC will develop a process for desk reviews for these contracts. If a corrective action plan is warranted from either a Contract Performance Report or Desk Review, additional remedies may be available up to and including termination for cause.

Section 2.27 of TWC's Terms & Conditions already requires that contractors submit criminal background checks. Following conversations with the call center contractors and with the closure of nonessential services in March 2020, including places where contractor personnel could obtain background checks and fingerprinting, TWC did not initially demand for copies of the background checks because of the impossibility of that being achieved by vendors. Instead, vendors were required to warrant that employees had not been convicted of a felony criminal offense. For the remaining active contractors, since there is sufficient time and resources to do so at this juncture, TWC will conduct a verification that background checks have been performed. For future disasters, depending on the circumstances, TWC may rely on the representation of a vendor up front that the checks are being performed or will be performed as soon as possible, or TWC may conduct verification.

When allocating resources to monitor the call center contracts, the program area assigned a senior management official, an Unemployment Insurance Deputy Division Director, who oversaw the procurement, monitoring, invoicing, and renewals, throughout the life of each of the contracts, and who was supported by the Contract Administration Director in the Procurement & Contract Services Department. TWC, however, will develop and document in

the monitoring plan for each contract the roles and responsibilities for Contract Administration versus program staff to ensure separation of duties and avoid duplication of efforts.

Finally, Section 7 of TWC's Terms & Conditions in the current call center contracts provided invoicing instructions and Section 8 provided payment instructions. Verification of invoicing was performed by TWC, with the review being focused on key aspects of the invoices due to the severe demand on agency resources. Call center vendors were required to provide a detailed invoice of the hours recorded by staff across the contracted functions. The program manager reviewed each invoice and compared it with the daily and monthly reports to verify they were within acceptable ranges of one another. The program manager then provided an approval for the invoice. Documentation reflecting the monitoring was provided to the auditors. The level of formality recommended in the audit findings was not feasible under the extreme disaster business conditions and the requirements for prompt payment of vendors; however, TWC will reexamine how the processes can change and add additional detail to the Post Award Contractor Orientation.

Responsible Party: Procurement & Contract Services Director and Unemployment Insurance Director

Timeline for Implementation: December 31, 2021

Auditor Follow-up Comment

Pursuant to Section 418.016 of the Texas Government Code, the disaster declaration suspends the enforcement of any state statute or administrative rule regarding contracting or procurement that would impede any state agency's emergency response necessary to cope with the declared disaster. The Commission did not provide any documentation or assertions identifying the responsible official(s) that waived certain requirements or how those requirements impeded its response to the declared disaster.

The State Auditor's Office acknowledges throughout the report the unprecedented circumstances under which the Commission entered into the call center contracts audited. The audit findings and recommendations identify areas for which the Commission should evaluate its decisions for the contracts audited to help it develop processes for future procurements made during a disaster declaration.

After review and consideration of the management responses, the State Auditor's Office stands by its conclusions based on the evidence provided during this audit.

The Commission's ID.me, Inc. Contract Included the Required Terms and Conditions

**Chapter 3
Rating:**

Low⁵

While the Commission had tools to validate certain claimant information provided in an unemployment insurance claim, it executed a contract under the disaster declaration with ID.me, Inc. to assist in the validation of claimant identities (see text box for more information about the ID.me, Inc. contract).

The Commission formed the contract with ID.me, Inc. in accordance with most applicable requirements. Specifically:

- The Commission used its standard terms and conditions templates that included the required and the relevant recommended contract terms and conditions in the *State of Texas Procurement and Contract Management Guide*.
- The Commission's executive director and general counsel approved the contract.
- The Commission included required contract language stating that the contract was procured under the disaster declaration.
- The Commission reported the contract to the Legislative Budget Board as required.
- The Commission's vendor payments complied with requirements. For example, the payments were made within 30 days from the invoice date, as required by Texas Government Code, Section 2251.021. In addition, the amount paid, totaling \$1.75 million, did not exceed the total contract amount, and the Commission accurately recorded and approved the invoice.

ID.me, Inc. Contract

Federal pandemic unemployment assistance programs allowed unemployment benefits to be provided to the self-employed and independent contractors, who would normally not qualify for those benefits. In part to help with the validation of those claimants' identities, the Commission executed a contract with ID.me, Inc., on October 30, 2020.

The contract was a service agreement for 500,000 verifications and a term of 25 months.

As of July 9, 2021, the Commission had requested the verification of 220,596 identities.

Source: The Commission.

⁵ The risk related to the issues discussed in Chapter 3 is rated as Low because the audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited or the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.

Appendices

Appendix 1

Objective, Scope, and Methodology

Objective

The objective of this audit was to determine whether the Texas Workforce Commission (Commission) has administered certain contract management functions in accordance with applicable requirements.

Scope

The scope of this audit covered (1) contracts related to unemployment insurance that were active at any point between September 1, 2019, and March 1, 2021, and (2) contract activities during any period up to and including March 31, 2021, related to those contracts. The scope also included a review of significant internal control components related to contract formation and oversight (see Appendix 3 for more information about internal control components).

Methodology

The audit methodology included reviewing relevant criteria and the Commission's monitoring processes; interviewing Commission staff; testing and analyzing vendor payments; and testing the Commission's monitoring of vendor compliance with service level agreements and contract terms.

Data Reliability and Completeness

Auditors obtained from the Commission a population of contracts that were active at any time from September 1, 2019, through March 31, 2021. Auditors (1) observed the Commission staff extract the contract population, (2) reviewed queries, and (3) analyzed the contract population for reasonableness and completeness. Auditors determined that the contract population was sufficiently reliable and complete for purposes of this audit.

To assess the reliability of the vendor payment data extracted from the Commission's Workforce, Reporting, Accounting and Purchasing System (WRAPS), auditors (1) observed the Commission staff extract the vendor payment data, (2) reviewed queries, and (3) analyzed the payment data for reasonableness and completeness. Auditors assessed the reliability of the vendor payment population by comparing the vendor payments in WRAPS to the information in the Uniform Statewide Accounting System (USAS). Auditors determined that the vendor payment data was sufficiently reliable and complete for purposes of this audit.

Sampling Methodology

Auditors selected a nonstatistical sample of 5 contracts, from a population of 62 contracts, for testing based on risk. This sample design was chosen to address specific risk factors such as disaster procurements for more than \$1 million identified in the population. The sample items were generally not representative of the population; therefore, it would not be appropriate to project those test results to the population. The five contracts selected for testing were one contract for identification verification services with ID.me, Inc., and four contracts for call centers with the following vendors:

- Accenture State Healthcare Services, LLC.
- AT&T Corp.
- Texas Guaranteed Student Loan Corp, DBA⁶ Trellis Company.
- Tele Network, Inc., DBA OneSupport.

Auditors selected a nonstatistical sample of 13 vendor payments (totaling \$21,085,468), from a population of 51 payments (totaling \$101,772,818), primarily through random selection. In some cases, auditors selected additional vendor payments for testing based on risk. This sampling design was chosen to ensure that the sample would include at least one payment from each contract and contain payments made throughout the audit scope. The test results as reported do not identify which items were randomly selected or selected using professional judgment; therefore, it would not be appropriate to project the test results to the population.

Information collected and reviewed included the following:

- A population of contracts.
- Contract documentation, including extensions and amendments.
- Statutes, rules, guidelines, COVID-19 emergency declaration, and procedures relevant to vendor payments, contract formation, and contract monitoring.
- Vendor expenditure data from the Commission's system of record (WRAPS) and USAS.
- Payment vouchers, purchase orders, invoices, contract agreements, and receiving documents.

⁶ Doing Business As.

- Communication between the Commission and vendors.
- User access data for WRAPS.

Procedures and tests conducted included the following:

- Interviewed Commission management and staff to identify the Commission's contracting processes, including internal controls and the information that supports those processes.
- Reviewed the Commission's contracting policies and procedures for compliance with applicable statutory requirements.
- Determined whether the Commission's contract manager authorized to manage the audited contracts met the certification requirements.
- Tested the Commission's monitoring of vendors' compliance with contract requirements, such as service level agreements.
- Tested contracts for required terms and appropriate reviews and approvals.
- Tested contract payments for accuracy, required approvals, and compliance with applicable requirements.
- Tested limited application controls for the Enterprise Contract and Procurement System (ECPS) module related to contracting and procurement in WRAPS. Additionally, auditors tested limited general controls for WRAPS.
- Tested whether the Commission reported contract information to the Legislative Budget Board accurately and within the required time frames.
- Tested the Commission's reporting of vendor performance for call center contracts.
- Determined whether the Commission (1) had a policy regarding corrective actions and (2) implemented corrective action during its monitoring of call center contracts.

Criteria used included the following:

- Title 34, Texas Administrative Code, Section 20.115.
- *Texas Workforce Commission Procurement and Contract Management Handbook*, September 2019.
- Contract terms in the audited contracts.

- *State of Texas Procurement and Contract Management Guide*, version 1.3.
- *Proclamation of the Governor of the State of Texas* dated March 13, 2020, and subsequent extensions of the disaster declaration.

Project Information

Audit fieldwork was conducted from March 2021 through September 2021. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The following members of the State Auditor’s staff performed the audit:

- Jennifer Brantley, MS, CPA (Project Manager)
- Jacqueline Thompson, CFE (Assistant Project Manager)
- Jennifer Fries, MS
- Anca Pinchas, CPA, CISA, CIDA
- Michelle Ann Duncan Feller, CPA, CIA (Quality Control Reviewer)
- James Timberlake, CIA, CFE (Audit Manager)

Issue Rating Classifications and Descriptions

Auditors used professional judgment and rated the audit findings identified in this report. Those issue ratings are summarized in the report chapters/sub-chapters. The issue ratings were determined based on the degree of risk or effect of the findings in relation to the audit objective(s).

In determining the ratings of audit findings, auditors considered factors such as financial impact; potential failure to meet program/function objectives; noncompliance with state statute(s), rules, regulations, and other requirements or criteria; and the inadequacy of the design and/or operating effectiveness of internal controls. In addition, evidence of potential fraud, waste, or abuse; significant control environment issues; and little to no corrective action for issues previously identified could increase the ratings for audit findings. Auditors also identified and considered other factors when appropriate.

Table 2 provides a description of the issue ratings presented in this report.

Table 2

Summary of Issue Ratings	
Issue Rating	Description of Rating
Low	The audit identified strengths that support the audited entity's ability to administer the program(s)/function(s) audited <u>or</u> the issues identified do not present significant risks or effects that would negatively affect the audited entity's ability to effectively administer the program(s)/function(s) audited.
Medium	Issues identified present risks or effects that if not addressed could <u>moderately affect</u> the audited entity's ability to effectively administer the program(s)/function(s) audited. Action is needed to address the noted concern(s) and reduce risks to a more desirable level.
High	Issues identified present risks or effects that if not addressed could <u>substantially affect</u> the audited entity's ability to effectively administer the program(s)/function(s) audited. Prompt action is essential to address the noted concern(s) and reduce risks to the audited entity.
Priority	Issues identified present risks or effects that if not addressed could <u>critically affect</u> the audited entity's ability to effectively administer the program(s)/function(s) audited. Immediate action is required to address the noted concern(s) and reduce risks to the audited entity.

Internal Control Components

Internal control is a process used by management to help an entity achieve its objectives. The U.S. Government Accountability Office's *Government Auditing Standards* require auditors to assess internal control when internal control is significant to the audit objectives. The Committee of Sponsoring Organizations of the Treadway Commission (COSO) established a framework for 5 integrated components and 17 principles of internal control, which are listed in Table 3.

Table 3

Internal Control Components and Principles		
Component	Component Description	Principles
Control Environment	The control environment sets the tone of an organization, influencing the control consciousness of its people. It is the foundation for all other components of internal control, providing discipline and structure.	<ul style="list-style-type: none"> ▪ The organization demonstrates a commitment to integrity and ethical values. ▪ The board of directors demonstrates independence from management and exercises oversight of the development and performance of internal control. ▪ Management establishes, with board oversight, structures, reporting lines, and appropriate authorities and responsibilities in the pursuit of objectives. ▪ The organization demonstrates a commitment to attract, develop, and retain competent individuals in alignment with objectives. ▪ The organization holds individuals accountable for their internal control responsibilities in the pursuit of objectives.
Risk Assessment	Risk assessment is the entity's identification and analysis of risks relevant to achievement of its objectives, forming a basis for determining how the risks should be managed.	<ul style="list-style-type: none"> ▪ The organization specifies objectives with sufficient clarity to enable the identification and assessment of risks relating to objectives. ▪ The organization identifies risks to the achievement of its objectives across the entity and analyzes risks as a basis for determining how the risks should be managed. ▪ The organization considers the potential for fraud in assessing risks to the achievement of objectives. ▪ The organization identifies and assesses changes that could significantly impact the system of internal control.
Control Activities	Control activities are the policies and procedures that help ensure that management's directives are carried out.	<ul style="list-style-type: none"> ▪ The organization selects and develops control activities that contribute to the mitigation of risks to the achievement of objectives to acceptable levels. ▪ The organization selects and develops general control activities over technology to support the achievement of objectives. ▪ The organization deploys control activities through policies that establish what is expected and procedures that put policies into action.

Internal Control Components and Principles		
Component	Component Description	Principles
Information and Communication	Information and communication are the identification, capture, and exchange of information in a form and time frame that enable people to carry out their responsibilities.	<ul style="list-style-type: none"> ▪ The organization obtains or generates and uses relevant, quality information to support the functioning of internal control. ▪ The organization internally communicates information, including objectives and responsibilities for internal control, necessary to support the functioning of internal control. ▪ The organization communicates with external parties regarding matters affecting the functioning of internal control.
Monitoring Activities	Monitoring is a process that assesses the quality of internal control performance over time.	<ul style="list-style-type: none"> ▪ The organization selects, develops, and performs ongoing and/or separate evaluations to ascertain whether the components of internal control are present and functioning. ▪ The organization evaluates and communicates internal control deficiencies in a timely manner to those parties responsible for taking corrective action, including senior management and the board of directors, as appropriate.

Source: Internal Control - Integrated Framework, Committee of Sponsoring Organizations of the Treadway Commission, May 2013.

Attachment to the Commission's Management Responses

Texas Workforce Commission (TWC) – Terms & Conditions (03/30/2020) Negotiated Terms and Conditions by and between TWC and OneSupport

By responding to the solicitation or fulfilling the awarded Purchase Order (PO), the Vendor agrees to the terms and conditions below, which apply to and become a part of every Texas Workforce Commission (TWC) purchase. Only mutual written exceptions will be valid. Where a purchase is made without the Invitation for Bids (IFB); Request for Offers (RFO) or Request for Proposals (RFP) process, IFB/RFO/RFP, equates to "Purchase Order" and "Bidder/ Offeror/Proposer" equates to "Vendor". Any specification in the solicitation that is in conflict with these standard terms and conditions takes precedence. All references to "days" shall be calendar days unless specified otherwise.

*****NOTE TO VENDORS: Any terms and conditions attached to a Vendor's solicitation response will not be considered unless the Vendor specifically refers to them on the face of the first page of its response.**

*****WARNING: Such terms and conditions may result in disqualification of the submitted Vendor's response (e.g., responses with a requirement to apply the laws of a State other than Texas.)**

1. SOLICITATION RESPONSE REQUIREMENTS

- 1.1. **Written Specifications:** TWC will not be bound by any oral statement or representation contrary to the written specifications contained in the solicitation.
 - 1.2. **Incomplete Responses:** Late, illegible, incomplete and/or unsigned responses may be deemed non-responsive and may not be considered.
 - 1.3. **Freight:** Prices quoted are to include freight prepaid, F.O.B. Destination (Free on Board). Enter unit price on quantity and unit of measure specified - extend and show total. In case of errors in extension, unit prices shall govern.
 - 1.4. **Firm Pricing:** Prices submitted are expected to be firm for TWC acceptance for ninety (90) days from the solicitation deadline. "Discount from list" offers are not acceptable unless specifically requested. Cash discounts will not be considered in determining the low offer. All cash discounts submitted will be taken if earned. Prices must remain firm for the duration of the term of the PO/contract.
 - 1.5. **Ties:** In the case of tie bids, the award will be made in accordance with the preferences listed under 34 Texas Administrative Code (TAC) § 20.306.
 - 1.6. **Preferences:** In making an award, TWC shall apply the preferences listed at 34 TAC § 20.306. For purchase or lease of computer equipment TWC shall apply a preference for manufacturers that have a computer recycling program as described in 1 TAC § 217.11.
 - 1.7. **Bid Alteration/Withdrawal:** A submitted response to a solicitation cannot be altered or amended after the solicitation deadline, except by formal negotiation via the RFO/RFP processes. Any alteration made before the solicitation deadline is to be initiated by Vendor or the Vendor's authorized agent. Vendors are not allowed to withdraw their submitted response after the solicitation deadline without approval by TWC.
 - 1.8. **Rejection of Bids:** In accordance with Texas Government Code § 2156.008, TWC reserves the right to reject a bid in which there is a material failure to comply with specification requirements. TWC may reject all bids or parts of bids if the rejection serves the State's best interest.
 - 1.9. **Tax Exempt:** Purchases made for State use are exempt from the State Sales tax and Federal Excise tax. Do not include tax in bid. Excise Tax Exemption Certificates are available upon request.
 - 1.10. **Other Entities:** TWC requests that the Vendor extend the same contract prices and conditions to Local Workforce Development Boards (LWDB) and Child Care Management Services (CCMS) entities contractually linked with TWC, if awarded the contract.
 - 1.11. **Identify All Parties:** TWC requires all business partners, equipment, support or maintenance providers who will perform under an awarded contract to be identified prior to contract award for TWC approval. Substitutions of providers shall be submitted in writing for TWC approval during the term of the agreement.
 - 1.12. **No Travel:** TWC will not reimburse a Vendor for travel and expenses unless specifically provided for in the contract documents. In that event, such reimbursement will not exceed the state travel reimbursement rates and limits established by the then current General Appropriations Act.
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2. GENERAL CONDITIONS

- 2.1. **Certain Construction Liability Claims.** TWC will comply with the provisions of Texas Government Code, Chapter 2272 in the event that a claim for damages arises to which that chapter applies.
- 2.2. **Damage to Grounds and Buildings:** Vendor shall be financially responsible for any or all damage done by its employees, agents and subcontractors to the TWC grounds and buildings. Vendor is responsible for the removal of all debris resulting from work performed under the contract.
- 2.3. **Disclosure of Information:** TWC, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers and records which are directly pertinent to this procurement.
- 2.4. **Texas Public Information Act:**
 - 2.4.1. Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Texas Government Code, Chapter 552 (the "Public Information Act").
 - 2.4.2. All information submitted in response to the solicitation is subject to public disclosure pursuant to the Public Information Act. In the event of a request for information pertaining to the solicitation, TWC will comply with the provisions of the Public Information Act to protect the interests of the State of Texas. The Public Information Act allows the public to have access to information in the possession of a governmental body. Therefore, the Vendor must clearly identify any confidential or proprietary information on the page on which it appears in the solicitation response and reference the specific exception to disclosure in the Public Information Act that applies. Proprietary information identified by the Vendor in advance will be kept confidential to the extent permitted by state law. Any information not clearly identified as confidential or proprietary shall be deemed to be subject to disclosure pursuant to the Public Information Act.
 - 2.4.3. All information, documentation and other material in connection with the solicitation or any resulting contract will be retained by TWC for the period specified in the Records Retention Schedule created under Texas Government Code, Chapter 441. The information will not be returned to the Vendor who submitted it during the retention period time.
 - 2.4.4. Vendor is required to make any public information created or exchanged with the State pursuant to any contract with TWC, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to TWC.
- 2.5. **Award of Contract:**
 - 2.5.1. Responding to a solicitation is an offer to contract with the State based upon the terms, conditions, and specifications contained in the solicitation. Submitted responses do not become contracts unless and until they are accepted and an award is made by TWC Procurement and Hub-Services and a PO or a fully executed contract is issued to the Vendor.
 - 2.5.2. TWC reserves the right to negotiate price and terms with any and all Vendors, to accept or reject all or any part of a Vendor's response, waive minor technicalities, to request Best and Final Offers from all or any Vendors, and make an award that represents Best Value to the agency or the State.
 - 2.5.3. Subsequent to award, TWC may, at its sole option, request the Vendor to negotiate contract amendments or renewals as is determined to be in the best interest of the agency or the State.
 - 2.5.4. TWC reserves the right to use a third party to negotiate price related to any Information Technology solicitation or contract.
 - 2.5.5. TWC reserves the right to make an award on the basis of low line item bid, low total of line items, or in any other combination that will serve the best interest of the State and to reject any and all bid items in the sole discretion of the State.
- 2.6. **Vendor Assignments:** No assignment is permitted the Vendor without prior written consent of TWC. Any written request for assignment must be accompanied by written acceptance of the assignment by the assignee. Except where otherwise agreed in writing by TWC, assignment will not release Vendor from its obligations pursuant to the contract. TWC will comply with the provisions of Texas Government Code § 2262.056, when applicable, by providing notice to the Legislative Budget Board of a proposed assignment prior to approval of the assignment.
- 2.7. **TWC Assignments:** TWC may sub-lease or assign equipment and related services provided via the contract to other entities which contract with TWC to provide agency support or services.

2.8. INDEMNIFICATION

- 2.8.1. **ACTS OR OMISSIONS: VENDOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, TWC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DE SIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY NEGLIGENT OR GROSSLY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF THE VENDOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND TWC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**
- 2.8.2. **EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY REQUIRED BY THE CONSTITUTION OR GOVERNING STATUTES APPLICABLE TO THE CONTRACT, VENDOR'S LIABILITY UNDER THIS INDEMNITY SHALL BE THAT PROPORTION DIRECTLY ATTRIBUTABLE TO THE NEGLIGENT OR GROSSLY NEGLIGENT ACTS OR OMISSIONS, OR WILLFUL MISCONDUCT OF VENDOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT APPLICABLE TO THE CLAIM.**
- 2.8.3. **Infringements:**
- 2.8.3.1. **VENDOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, TWC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND TWC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEYGENERAL.**
- 2.8.3.2. **Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (1) use of the product or service for a purpose or in a manner for which the product or service was not designed, (2) any modification made to the product without Vendor's written approval, (3) any modifications made to the product by the Vendor pursuant to TWC's specific instructions, (4) any intellectual property right owned by or licensed to TWC, or (5) any use of the product or service by TWC that is not in conformity with the terms of any applicable license agreement.**
- 2.8.3.3. **If Vendor becomes aware of an actual or potential claim, or TWC provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against TWC, shall), at Vendor's sole option and expense; (1) procure for TWC the right to continue to use the affected portion of the product or service, or (2) modify or replace the affected portion of the product or service with functionality equivalent or superior product or service so that TWC's use is non-infringing.**
- 2.8.4. **Taxes/Workers' Compensation/Unemployment Insurance – Including Indemnity:**
- 2.8.4.1. **VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE STATE OF TEXAS AND/OR TWC SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS 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 CUSTOMER.**

2.8.4.2. VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, TWC, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND TWC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- 2.9. **Vendor Performance:** In accordance with Texas Government Code §§ 2155.074, 2155.075, 2156.007, 2157.003 and 2157.125, Vendor performance may be used as a factor in the award.
- 2.10. **Force Majeure:** TWC may grant relief from performance of an awarded contract or PO, or extend a performance period, if the Vendor is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault of the Vendor. If the Vendor requests the relief, the burden of proof for the need of such relief shall rest upon the Vendor, who must file a written request for such release or extension. If TWC grants such relief due to circumstances known by the agency, the agency must document such reasons in the contract file.
- 2.11. **Dispute Resolution Procedures:**
- 2.11.1. **Procurement Disputes:** In accordance with Texas Government Code, Chapter 2155.076, TWC has established protest procedures for resolving vendor protests relating to the solicitation, evaluation or award of a contract for goods and/or services. Such protests must be made via certified mail and received in the Director of Business Operations' office within ten (10) business days from the date of the announcement of the award. The written protest must include: the number of the solicitation being protested; the grounds for the protest, including a description of any alleged acts or omissions by TWC that form the basis for the protest; any written information which the protestor believes is relevant to the award; and the basis for the protestor's interest in the Procurement, TWC will make available to the protestor all requested documents not exempted from disclosure under Texas and federal law. TWC will provide copies of these documents upon payment of the fees adopted by TWC for record duplication. The protestor will be provided an opportunity for an informal meeting with the Director or his designee, to discuss the protest, however, TWC may limit the amount of time allocated for the meeting. The Director will issue the final written decision to the protestor
- 2.11.2. **Contract Disputes:** Disputes arising under this Contract shall be resolved in accordance with the dispute resolution process provided in Chapter 2260 of the Texas Government Code.
- 2.12. **Debt to the State:** Vendor agrees that any payments due under this contract will be applied towards any debt including, but not limited to, delinquent taxes and child support that is owed to the State of Texas.
- 2.13. **Hold-Over Contract Extension:** In the event contract renewal negotiations are not completed prior to the contract expiration date, both parties agree that services shall be provided by the Vendor and accepted by TWC, subject to all original terms and conditions of the contract, for a period not to exceed ninety (90) days following the original contract expiration date. During the hold over extension period, service costs shall be provided at the pro-rated rates, as applicable, in effect immediately prior to expiration of the original contract period and all other terms and conditions shall remain in effect. TWC may terminate such hold over extension period by providing written notice of cancellation not less than ten (10) business days prior to the cancellation date.
- 2.14. **Records Retention:** Vendor shall maintain and retain all records relating to the performance of the contract including supporting fiscal documents relevant to showing that any payments under this Contract were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Vendor shall maintain all such documents and other records relating to this Contract and the State's property for a period of seven (7) years after the contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later. If Vendor chooses not to preserve contracting information for the retention period required by this section, Vendor agrees to provide at no cost to TWC all contracting information related to the Contract that is in the custody or possession of Vendor or any of its subcontractors.
- 2.15. **Agency's Right to Audit:** Vendor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to this Contract, including but not limited to work papers, reports, books, records, and supporting documents. Vendor and the subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Vendor must retain all work and other supporting documents pertaining to this Contract, for the purposes of inspecting, monitoring, auditing, or evaluating by TWC and any authorized agency of the State of Texas, including an investigation of audit by the State Auditor.

- 2.16. **State Auditor:** Vendor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. Vendor's failure to comply with this Section shall constitute a material breach of Contract and shall authorize TWC and the State of Texas to immediately assess appropriate damages for such failure. Pursuant to Texas Government Code § 2262.154, the acceptance of funds by Vendor or any other entity or person directly under this Contract, or indirectly through a subcontract under this Contract shall constitute acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor acknowledges and understands that the acceptance of funds under this Contract shall constitute consent to an audit by the State Auditor, Comptroller or other agency of the State of Texas. Vendor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards. Furthermore, under the director of the legislative audit committee, an entity that is 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.
- 2.17. **Limitation on Liability: EXCEPT FOR INDEMNIFICATION CLAIMS TO THE EXTENT SET FORTH ABOVE, NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES UNDER CONTRACT, TORT, (INCLUDING NEGLIGENCE), OR OTHER LEGAL THEORY. EACH PARTY'S LIABILITY TO THE OTHER PARTY UNDER THE CONTRACT WILL NOT EXCEED THE TOTAL CHARGES TO BE PAID BY TWC TO VENDOR UNDER THE CONTRACT.**
- 2.18. **State Ownership:** The Parties agree that TWC will own all right, title and interest in and to the work products including deliverables, source and object code and documentation developed by the Vendor in connection with the contract.
- 2.18.1. All work products including deliverables, source and object code and documentation, in whole or in part, will be deemed works made for hire of TWC for purposes of copyright law and copyright will belong solely to TWC.
- 2.18.2. To the extent that any such work product or deliverable does not qualify as a work made for hire under applicable law, and to the extent that the deliverable or work product includes materials subject to copyright, patent, trade secret, or other proprietary right protection, Vendor agrees to assign, and hereby assigns, all right, title, and interest in and to the work products and deliverables, including without limitation all copyrights, inventions, patents, trade secrets, and other proprietary rights therein (including renewals thereof) to TWC.
- 2.18.3. Vendor will assist TWC or its nominees to obtain copyrights, trademarks, or patents for all such work products or deliverables in the United States and any other countries. Vendor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer to TWC all the right, title, and interest in and to such work products or deliverables. Vendor agrees to not assert any moral rights under applicable copyright law with regard to such work products and deliverables.
- 2.18.4. Vendor agrees to reproduce and include TWC's copyright and other proprietary notices and product identifications provided by Vendor on such copies, in whole or in part, or on any form of the work products or deliverables.
- 2.19. **License:** In accordance with 2 Code of Federal Regulations § 200.315, all appropriate State and Federal agencies will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate or otherwise use, and to authorize others to use for State or Federal purposes all materials, deliverables and work products, including software and modifications thereof, and associated documentation designed, developed, or installed with Federal Financial Participation under the contract, including but not limited to those materials covered by copyright, all source and object code, instructions, files, and documentation composing the system.
- 2.20. **Most Favored Customer:** If during the term of the contract, the Vendor enters into another contract with any customer for substantially similar services at prices more favorable than those provided to TWC, the contract may be amended to provide the more favorable prices to TWC.
- 2.21. **Governing Law and Venue:** The contract shall be executed in and governed, construed and interpreted under the laws of the state of Texas, without regard to the conflicts of law provisions. Vendor agrees that proper venue for a claim arising under the contract shall be brought in a court of competent jurisdiction in Travis County, Texas.
- 2.22. **Survival:** Expiration or termination of the contract for any reason does not release Vendor from any liability or obligation set forth in the contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.
- 2.23. **Severability:** If any provision of the contract is construed to be illegal or invalid, such provision shall be deemed stricken and deleted to the same extent and effect as if never incorporated into the contract, but all other provisions shall remain in full force and effect.
- 2.24. TWC and the Vendor must adhere to the directions in the President's Executive Order (EO) 13224, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism. This Executive Order prohibits any transaction or dealing by United States persons, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in the General Services Administration's Excluded Parties List System (EPLS) which may be viewed on the System for Award Management (SAM) site at <http://www.Sam.gov>

- 2.25. **No Waiver:** Nothing in this contract shall be construed as a waiver of the TWC's or the State's sovereign immunity. This contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the TWC 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 TWC or the State of Texas under this contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TWC does not waive any privileges, rights, defenses, or immunities available to TWC by entering into this contract or by its conduct prior to or subsequent to entering into this contract.
- 2.26. **Redacted Electronic Copy:** Texas Government § 322.020) and as per the following requirements, no later than two (2) business days after Vendor's receipt of notice from TWC, the Vendor must deliver to TWC two (2) electronic copies of its complete proposal. Vendor shall deliver these electronic copies to TWC via overnight delivery in compliance with all of the following requirements:
- 2.26.1. Two (2) compact discs (CDs), each containing a copy of Vendor's response to solicitation, in searchable Portable Document Format (PDF) format, which has excised, blacked out, or otherwise redacted information from its solicitation response that Vendor reasonably considers to be confidential and exempt from public disclosure under the Texas Public Information Act, Chapter 552 of the Texas Government Code (this should be a de minimis portion, if any, of Vendor's solicitation response, such as social security numbers). Each CD shall also contain an Appendix for Vendor's solicitation response which provides a cross reference for the location of all information redacted by Vendor and a general description of the redacted information. These two (2) identical CDs should be entitled "For Public Release: Redacted Version of [Name of Vendor]'s Proposal and Exhibits. Texas Workforce Commission's RFP/RFO/IFB solicitation No. _."
- 2.26.2. Per Texas Government Code § 322.020, the Texas Legislative Budget Board (LBB) has now implemented a major contracts database.
- 2.26.3. TWC shall upload to the LBB's contracts database the text of the complete contract (with limited redaction and appendix) no later than ten (10) days after date of contract award. By submitting a response to this solicitation, Vendors acknowledge that they understand and accept this requirement. See the LBB website at <<http://www.lbb.state.tx.us/>>.
- 2.26.4. **American Recovery and Reinvestment Act (ARRA or the Recovery Act)**
- 2.26.4.1. Buy American Requirements for Construction Material prohibits the use of funds appropriated for the Recovery Act for any project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.
- 2.26.4.2. Whistleblower Protection: Pursuant to Section 1553 of the American Recovery and Reinvestment Act, Vendors shall promptly refer to the U.S. Department of Labor, Office of Inspector General any credible evidence that a principal, employee, agent, contractor, sub-recipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds
- 2.27 **Background Check:** Vendors must submit criminal background checks on all key personnel assigned to the services related to this solicitation, as authorized by Texas law, and at Vendor expense. Key personnel are defined as personnel whose oversight and guidance is essential to the subject services. TWC may provide any finalist for a contract position a Contractor Criminal History Report Investigation Request form P33c which contractor must complete and submit back to TWC as required on the form. To obtain a facility access badge, contractor must provide TWC with either a completed form P-33c or a recent criminal background check within fifteen (15) days of contract award. TWC will not issue a Purchase Order until the criminal background check has been completed and passed.
- 2.28 **Privacy:** Vendor who has access to sensitive personally identifiable information ("Sensitive PII"), including anyone who views contracts, collects, uses, maintains, stores or destroys Sensitive PII of TWC employees, job seekers, employers, customers or partners, must safeguard that information.
- 2.28.1 Sensitive PII is anything that alone or in combination with available information can identify an individual, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience or unfairness to an individual.
- 2.28.2 Awarded Vendor must have a Non-Disclosure Agreement (NDA) on file with TWC prior to handling Sensitive PII.
- 2.28.3 In order to safeguard Sensitive PII, Awarded Vendor must:
- 2.28.3.1 Collect Sensitive PII only as authorized.
- 2.28.3.2 Limit the use of Sensitive PII.
- 2.28.3.3 Minimize the proliferation of Sensitive PII.
- 2.28.3.4 Secure Sensitive PII both physically (if physical PII is delivered to Vendor) and in electronic form.
- 2.28.3.5 Report suspected privacy incidents within twenty four (24) hours to the TWC Contract Manager or, email the TWC Information Security Office at CISO@twc.state.tx.us.
- 2.28.3.6 Not transmit or store Sensitive PII in a server or storage device that is located in a foreign country.
- 2.28.4 Awarded Vendor will not transmit Sensitive PII via email or store on CDs, DVDs, thumb drives and the like without prior review and encryption protocol approved by TWC.
- 2.28.5 Failure to follow these requirements will constitute a breach of contract.
- 2.29 **Change in Law:** Any alterations, additions, or deletions to the terms of this Contract which are required by changes in federal or state law or regulations are automatically incorporated into this Contract without written amendment hereto, and shall become effective on the date designated by such law or by regulation.

- 2.30 **Davis-Bacon Act:** Vendors on all prime construction contracts in excess of \$2,000 must comply with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144) as supplemented by the Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction.”)
- 2.31 Vendor will comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”).
- 2.32 **Contract Work Hours and Safety Standards Act** (40 U.S.C. §§ 3701-3708). For all contracts in excess of \$100,000 that involve the employment of mechanics and laborers, Vendor shall comply with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).
- 2.33 **Environmental Protection:** Vendor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251 et seq.).
- 2.34 **Contracting Information Responsibilities:** If this contract has a stated value equal to or in excess of \$1 million or results in the expenditure of an amount equal to or in excess of \$1 million in public funds, in accordance with Section 552.372 of the Texas Government Code, Vendor agrees to (1) preserve all contracting information related to the contract as provided by the records retention requirement applicable to TWC for the duration of the Contract, (2) promptly provide to TWC any contracting information related to the contract that is in the custody or possession of the Vendor on request of TWC, and (3) on termination or expiration of the contract, either provide at no cost to TWC all contracting information related to the contract that is in the custody or possession of the Vendor or preserve the contracting information related to the contract as provided by the records retention requirements applicable to TWC. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to the contract and Vendor agrees that the contract may be terminated if the Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 2.35 **Disaster Recovery Plan.** In accordance with 13 TAC § 6.94(a)(9), Vendor shall provide to TWC the descriptions of its business continuity and disaster recovery plans.
- 2.36 **Media Releases.** Vendor shall not use TWC’s name, logo, or other likeness in any press release, marketing material, or other announcement without TWC’s prior written approval. TWC does not endorse any vendor, commodity, or service. Vendor is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the solicitation response or the services to which they relate without Agency’s prior written consent, and then only in accordance with explicit written instruction from TWC.

3. REQUIRED CERTIFICATIONS

By responding to this solicitation and accepting the award of a contract or purchase order, Vendor certifies to the following:

- 3.1. Vendor represents and warrants that all statements and information prepared and submitted in this Proposal are current, complete, true and accurate. Submitting a Proposal with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Proposal and any resulting contract.
- 3.2. **All Terms and Conditions Met:** that all terms and conditions listed in the solicitation will be met.
- 3.3. By submitting the Proposal, Vendor represents and warrants that the individual submitting this document and the documents made part of this Proposal is authorized to sign such documents on behalf of the Vendor and to bind the Vendor under any contract that may result from the submission of this Proposal
- 3.4. **U.S. Department of Homeland Security’s E-Verify System:** By entering into this Contract, the Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security’s E-Verify system to determine eligibility of:
 - 3.4.1. All persons employed to perform duties within Texas, during the term of the Contract; and
 - 3.4.2. All persons (including subcontractors) assigned by the Respondent to perform work pursuant to the Contract, within the United States of America.
 - 3.4.3. The Contractor shall provide, upon request of TWC, 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.
 - 3.4.4. **If this certification is falsely made, the Contract may be immediately terminated, at the discretion of TWC and at no fault to TWC, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that TWC must undertake to replace the terminated Contract.**
- 3.5. **Inducements/Dealings with Public Servants:** that the Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted solicitation response.

- 3.6. Lobbying:** that the Vendor will not and has not used any 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. Vendor certifies that it 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. Further, Vendor certifies that no funds provided under the contract will be used in any way to attempt to influence in any manner a member of Congress to favor or oppose any legislation or appropriation by Congress, or for lobbying with State or local legislators.
- 3.7. Not Ineligible:** that neither the Vendor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from participating in this contract by any state or federal agency.
- 3.8. Non-Discrimination:** The Vendor agrees that no person will, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief, be excluded from the participation in, be denied the benefits or, be subjected to discrimination under, or be denied employment in the administration of, or in connection with, any program or activity funded in whole or in part with funds available under this Contract. The Vendor certifies compliance with the Rehabilitation Act of 1998 § 508, 29 U.S.C. § 794d, relating to the use of electronic and information technology for individuals with disabilities; the Housing and Urban Development Act § 3, 12 USC §1701u Sec. 1701u, relating to economic opportunities for low- and very low-income persons; Titles VI and VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); 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. Part 60, "Office of Federal contract Compliance Programs, Equal Employment Opportunity Department of Labor."; the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101); and all amendments to each.
- 3.9. Drug-Free Workplace:** The Vendor agrees to provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 81, Title V, Subtitle D).
- 3.10. Franchise Tax:** The Vendor is not currently delinquent in the payment of any franchise tax owed to the State of Texas, pursuant to Chapter 171, Texas Tax Code.
- 3.11. Child Support:** The Vendor is not ineligible to receive the specified grant, loan, or payment under Section 231.006 of the Texas Family Code (relating to child support) and acknowledges that the contract may be terminated and payment may be withheld if certification is inaccurate. Pursuant to Texas Family Code § 231.006(c), Vendor must provide the name and Social Security Number (SSN) of each person with at least 25% ownership of the business. This information must be provided prior to contract award.
- 3.12. Certain Bids and Contracts Prohibited:** Under Texas Government Code § 2155.004, Vendor certifies that the individual or business entity named in the solicitation response is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and/or payment withheld if this certification is inaccurate.
- 3.13. Fair Business Practices:** The Vendor has not been found guilty of unfair business practices in a judicial or state agency administrative proceeding during the preceding year. The Vendor further affirms that no officer of the Vendor has served as an officer of any company found guilty of unfair business practices in a judicial or state agency administrative proceeding during the preceding year.
- 3.14. Antitrust Affirmation:** Affirms under penalty of perjury of the laws of the State of Texas that (1) in connection with this Response and any resulting contract, neither I nor any representative of the Vendor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (2) in connection with this Response and any resulting contract, neither I nor any representative of the Vendor have violated any federal antitrust law; and (3) neither I nor any representative of the Vendor have directly or indirectly communicated any of the contents of this Response to a competitor of the Vendor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Vendor.
- 3.15. No Compensation:** The Vendor has not received compensation for participation in the preparation of the solicitation. This section does not prohibit a Vendor or contract participant from providing free technical assistance.
- 3.16. Conflict of Interest:** Vendor has disclosed any existing or potential conflict of interest relative to the performance of the contract. Failure to do so will be grounds for contract termination.
- 3.17. Prohibition on Certain Bids and Contracts related to Disasters and Hurricanes Katrina and Rita:** Under Texas Government Code § 2155.006, the Vendor certifies that the individual or business entity named in response to this solicitation is not ineligible to receive the specified contract and acknowledges that any contract resulting from this solicitation may be terminated and payment withheld if this certification is inaccurate.
- 3.18. Independent Contractor:** Vendor or Vendor's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under any contract resulting from this solicitation. Vendor and Vendor's employees, representatives, agents and any subcontractors shall not be employees of TWC. Should Vendor subcontract any of the services required in this solicitation, Vendor expressly understands and acknowledges that in entering into such subcontract(s), TWC is in no manner liable to any subcontractor(s) of Vendor. In no event shall this provision relieve Vendor of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this solicitation and any resulting contract.

3.19. Workers' Compensation Insurance. Vendor must maintain Workers' Compensation insurance coverage in accordance with statutory limits.

Workers Compensation: Statutory Limits

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

Disease – Each Employee \$1,000,000

Disease – Policy Limit \$1,000,000 Commercial General Liability:

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 to You: \$50,000

NOTE: The required coverage is to be with companies licensed in the state of Texas with an "A" rating from A.M. Best, and authorized to provide the corresponding coverage.

3.20. Felony Criminal Convictions: Vendor represents and warrants that Vendor has not and Vendor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Vendor has fully advised TWC as to the facts and circumstances surrounding the conviction.

3.21. Restricted Employment for Former State Officers or Employees Under Texas Government Code § 572.069: Vendor certifies that it has not employed and will not employ a former TWC or state officer who participated in a procurement or contract negotiations for TWC involving Vendor within two (2) years after the state officer or employee left state agency employment or service. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.

3.22. Vendor certifies that both of the following statements are true and correct and that the Vendor understands that making a false statement is a material breach of the contract and is grounds for termination of contract award:

3.22.1. Vendor is current in Unemployment Insurance taxes, Payday and Child Labor law monetary obligations, and Proprietary School fees and assessments payable to the State of Texas, to the extent applicable.

3.22.2. Vendor has no outstanding Unemployment Insurance overpayment balance payable to the State of Texas.

3.23. Entities that Boycott Israel: In contracts worth \$100,000 or more in value, if Vendor is a Company as defined by Texas Government Code § 808.001 with 10 or more full-time employees, and Vendor is not a sole proprietorship, Vendor represents and warrants that, pursuant to Texas Government Code § 2271.002, Vendor does not boycott Israel and will not boycott Israel during the term of any contract executed with TWC.

3.24. Foreign Terrorist Organizations: Vendor 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.

3.25. Executive: Vendor certifies it is in compliance with Texas Government Code § 669.003, relating to contracting with the executive head of a State agency. If applicable, Vendor will complete the following for TWC evaluation:

Former Executive Name: _____

State Agency Name: _____

Date Separated from Agency: _____

Position with Vendor: _____

Date employed with Vendor: _____

3.26. Buy Texas: Vendor agrees to comply with Texas Government Code § 2155.4441, pertaining to purchasing products and materials produced in the State of Texas.

- 3.27. Human Trafficking.** Under Section 2155.0061, Texas Government Code, Vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. Further, Vendor acknowledges that TWC may not award a contract to person convicted of on any offense related to the direct support of promotion of human trafficking during the five-year period preceding the date of award and that if TWC determines that Vendor is ineligible to have accepted the Contract, TWC may immediately terminate the contract without further obligation to Vendor.
- 3.28. Disclosure of Prior State Employment.** In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Vendor certifies that it does not employ an individual who has been employed by TWC or another agency at any time during the two (2) years preceding submission of the solicitation response or, in the alternative, Vendor has disclosed in its solicitation response the following: (a) the nature of the previous employment with TWC or the other agency; (b) the date employment was terminated; and (c) the annual rate of compensation for the employment at the time of termination.
- 3.29. Former Agency Employees.** In accordance with Section 2252.0901 of the Texas Government Code, Vendor represents and warrants that none of its employees, including but not limited to those authorized to provide services under the contract were former employees of TWC during the twelve (12) month period immediately prior to the date of execution of the contract.
- 3.30.** Vendor represents and warrants that if selected for award of a contract as a result of this solicitation, Respondent will submit to Agency a Certificate of Interested Parties, prior to contract execution as required by Section 2252.908 of the Texas Government Code.
- 3.31. Cybersecurity Training:** Vendor represents and warrants that it will comply with the requirement of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program. Specifically, if Vendor or any Vendor employee of subcontractor employee has access to a state computer system or database, Vendor shall ensure that Vendor, or any Vendor employee or subcontractor employee completes a cybersecurity training program certified under Texas Government Code § 2054.519 as provided by TWC. The cybersecurity training program must be completed by Vendor during the term of the contract and during any renewal period. Vendor shall verify completion of the cybersecurity training to the TWC point of contact.
- 3.32. Computer Equipment Recycling Program:** Vendor hereby certifies its compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act located in Subchapter Y, Chapter 361, Texas Health and Safety Code and the Texas Commission on Environmental Quality rules, 30 TAC, Chapter 328.
- Failure of a Vendor to provide this certification shall render the Vendor ineligible to participate in the bidding process. TWC shall reject the related bid and not evaluate it.
- 3.33. Television Equipment Recycling Program:** Vendor certifies its compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.
- 3.34.

4. SPECIFICATIONS

- 4.1.** Any catalog, brand name or manufacturer's reference used in the solicitation is descriptive only (not restrictive), and is used to indicate type and quality desired. Submitted responses containing other brands that are functionally equivalent will be considered unless TWC has advertised the solicitation as proprietary under Texas Government Code § 2155.067. If Vendor takes an exception to the solicitation's specifications and Vendor's response contains equivalent product, Vendor is required to include additional information such as manufacturer, brand or trade name, illustrations, and specifications for the equivalent product as part of their response to the solicitation. If Vendor takes no exception to the specifications, the Vendor must furnish the item(s) as specified in the solicitation.
- 4.2.** Manufacturer's standard warranty shall apply unless otherwise stated in the solicitation. Written warranty is to be provided with product, and is to include the point-of-contact name, phone number, and all information needed to initiate a warranty service call.
- 4.3. No Substitutions:** Vendor will not make any substitution to the specifications of any solicitation or PO, unless the substitution is (1) proposed to TWC in writing by the Vendor, and (2) supported by the expressed written prior approval of TWC.
- 4.4. Replacement Parts Available:** The Vendor, in connection with an agreement with the manufacturer of the equipment, warrants that new or reconditioned replacement parts will be available until five (5) calendar years after the date of the award of the contract. All replacement parts must meet or exceed original manufacturer's specifications and be compatible with existing equipment.
- 4.5.** All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).
- 4.6.** Vendor guarantees product offered will meet or exceed specifications; that the product is new, in current production, including the manufacturer's standard equipment and accessories; and is qualified for full maintenance coverage, service and support at, or below, the manufacturer's standard maintenance rates.
- 4.7. Projects Using Iron or Steel Products:** Pursuant to Texas Government Code § 2252.202, iron or steel products produced through a manufacturing process and used in the project must be produced in the United States.

5. DELIVERY

- 5.1. Vendor is to show the number of days required to place material in the receiving location under normal conditions. Failure to state delivery time obligates Vendor to complete delivery within fourteen (14) days. Unrealistically short or long delivery promises may cause Vendor's response to be disregarded. Consistent failure to meet delivery promises will be grounds for termination of the contract.
- 5.2. If delay is foreseen, Vendor shall give written notice to TWC who reserves the right to extend delivery date if reasons appear valid. Vendor must keep TWC advised at all times of status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes TWC to purchase the ordered products elsewhere and charge full increase, if any, in cost and handling to defaulting Vendor. Any damages incurred by TWC as a result of the default may also be assessed to the defaulting Vendor.
- 5.3. Delivery shall be made on State business days between 8:00 am and 5:00 pm, unless prior approval has been obtained from TWC.

6. VALIDATION, INSPECTION & TESTS

- 6.1. Vendor agrees to provide TWC with information necessary to validate any statements made in the Vendor's solicitation response, if requested by TWC. This may include, but is not limited to, allowing access for on-site observation, granting permission for TWC to verify information with third parties, allowing inspection of Vendor's records, and allowing inspection of plans for compliance.
- 6.2. All goods will be subject to inspection and test by TWC to the extent practicable at all times and places. Tests may be performed on samples called for, or on samples taken from regular shipment. In the event products tested fail to meet or exceed all conditions and requirements of the specification, the cost of the sample used and the cost of the testing shall be borne by the supplier. Goods that have been delivered and rejected in whole, or in part may, at TWC's option, be returned to the Vendor or held for disposition at Vendor's risk and expense. Latent defects may result in revocation of acceptance.

7. INVOICING INSTRUCTIONS

- 7.1. Invoices must be submitted to TWC according to the instructions on the PO to the named individual and the address indicated on the PO. Invoice must show TWC as the receiving agency. If the PO includes an email point-of-contact, invoices may be submitted via email.
- 7.2. If paper invoices are submitted, Vendor will submit invoice in duplicate. Upon request, one copy will be returned when making payment.
- 7.3. Invoices must include the name and address of Vendor, which must be identical to the information stated on the PO.
- 7.4. The TWC PO number and date of the PO must be shown on all invoice copies.
- 7.5. Invoice must have description of each item. Item numbers must be shown to correspond with the item numbers on the PO.
- 7.6. Quantity and date delivered, unit of measure specified and total price of each item must be shown, all prices extended on the invoice, with all extensions on the invoice totaled, and the grand total shown.
- 7.7. Discounts, if applicable, must be stated, extended, and deducted to arrive at a Net Total for the invoice.
- 7.8. Trade-in values must be stated on the invoice.

8. PAYMENT

- 8.1. Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 governs remittance of payment and remedies for late payment and non-payment.
- 8.2. TWC will incur no penalty for late payment if payment is made within thirty (30) days of acceptance of goods or services, or within thirty (30) days of receipt of an uncontested invoice submitted according to the instructions on the PO, whichever comes last.
- 8.3. In no event shall use of the product by TWC, for any purpose during any phase of the acceptance testing, constitute acceptance of any product by TWC.
- 8.4. Prior to any payment being made, the goods or services being invoiced must have been received and accepted by TWC.

9. PATENT, TRADEMARK, COPYRIGHT

- 9.1. Intentionally deleted.
- 9.2. Intentionally deleted.
- 9.3. Vendor represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits.

- 9.4. Vendor agrees that for the exclusive use by TWC for State business, TWC is free to reproduce without royalty, all manuals, publications, maintenance programs, diagnostics and documentation pertaining to any product developed as a result of the contract.

10. TERMINATION PROVISIONS

- 10.1. Each party reserves the right to immediately terminate any PO or contract resulting from or connected to this solicitation, in whole or in part, without recourse or penalty for breach of contract by the other party and failure to cure such breach within fifteen (15) days following receipt of written notice setting forth the specific basis for the alleged breach.
- 10.2. TWC reserves the right to terminate any PO or contract resulting from or connected to this solicitation, in whole or in part, without recourse or penalty upon TWC within thirty (30) calendar days advance written notice, if TWC determines that such termination is in the best interest of the state, including but not limited to the following reasons:
- 10.2.1 Failure to obtain or sustain funding from either Federal or State funding sources.
- 10.2.2 Amendment or judicial interpretation of State or Federal laws or regulations that render fulfillment of the contract substantially unreasonable, impossible, or unnecessary.
- 10.3. In the event of such termination, Vendor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TWC shall be liable for payments limited only to the portion of work TWC expressly authorized in writing and which Vendor has completed, delivered to TWC, and which has been accepted by TWC in writing. All such work shall have been completed, in accordance with contract requirements, prior to the effective date of termination. TWC shall have no other liability, including no liability for any costs associated with the termination.
- 10.4. Subject to the limitations and terms of the Contract, TWC expressly reserves any and all legal remedies to which it may be entitled to collect related to any and all damages directly or indirectly resulting from breach of contract, by the Vendor or any of its agents, representatives, subcontractors, employees, or any other party acting on behalf of the Vendor.
- 10.5. TWC shall retain ownership of all work products including deliverables, source and object code, and documentation in whatever form that they exist. In addition to any other provision, the Vendor shall transfer title and deliver to the TWC any partially completed work products, deliverables, source and object code, or documentation that the Vendor has produced or acquired in the performance of the contract.

11. INFORMATION TECHNOLOGY (IT) PURCHASES:

- 11.1. During the term of the contract, the Vendor must notify TWC whenever an engineering change is made that may affect TWC's use of the product. It will be the sole option of TWC to accept the change.
- 11.2. Vendor represents that the product and all its elements, including, but not limited to, documentation and source code, meet the standards issued by the American National Standards Institute.
- 11.3. Vendor agrees that TWC owns the source code to any jointly-developed application(s) resulting from the contract.
- 11.4. As required by 1 TAC, Chapter 213:
- 11.4.1 Effective September 1, 2006, state agencies shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC, Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
- 11.4.2 If applicable, Vendor shall provide TWC 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 of 1973, as amended (29 USC § 794d)), or indicate that the product/services accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide TWC 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/>.
- 11.4.3 TWC will use either VPAT or the Buy Accessible Wizard to assess the degree of accessibility of a proposed product when making the procurement decision.
- 11.5. Vendor shall follow Web Content and Accessibility Guidelines. (WCAG 2.0) as applicable for new websites, applications or redesigns.
- 11.6. Vendor agrees that all products and/or services equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such products and/or services, either at the end of the Customer's Managed Services product's useful life or the end of the related Customer Managed Services Agreement for such products and/ services, in accordance with 1 TAC, Chapter 202.

Related State Auditor's Office Reports

Table 4

Related State Auditor's Office Reports		
Number	Report Name	Release Date
21-034	<i>An Audit Report on Confidential Data Management at the Texas Workforce Commission</i>	August 2021
21-024	<i>A Report on Contract Monitoring Assessment at Certain State Agencies</i>	June 2021

Copies of this report have been distributed to the following:

Legislative Audit Committee

The Honorable Dan Patrick, Lieutenant Governor, Joint Chair

The Honorable Dade Phelan, Speaker of the House, Joint Chair

The Honorable Jane Nelson, Senate Finance Committee

The Honorable Robert Nichols, Member, Texas Senate

The Honorable Greg Bonnen, House Appropriations Committee

The Honorable Morgan Meyer, House Ways and Means Committee

Office of the Governor

The Honorable Greg Abbott, Governor

Texas Workforce Commission

Mr. Bryan Daniel, Chairman and Commissioner

Mr. Julian Alvarez III, Commissioner

Mr. Aaron Demerson, Commissioner

Mr. Ed Serna, Executive Director



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