



TEXAS HEALTH AND HUMAN SERVICES COMMISSION

JAN 13 2011 THOMAS M. SUEHS
EXECUTIVE COMMISSIONER

December 27, 2010

Subject: Action Required-New Local Prosecuting Agreement Contract

Dear **Rene Guerra**,

The Texas Health and Human Services Commission (HHSC), Office of Inspector General (OIG) has received final approval for the contract boilerplate that we have been working on for the last year. With this new contract there will be many required changes and mandated requirements.

This contract must be in place by February 5, 2011 so in order to facilitate this turn around we are providing you a return envelop for mailing. Please ensure you fill out all the necessary areas and sign.

Please assist by following the instructions outlined below:

- 1) Complete and sign the enclosed Vendor Information Form;
- 2) Review and sign **both** original 7 page contracts; and
- 3) Obtain approval/signature from your County Judge.

Please carefully review the enclosed documentation. **All information must be completed entirely and signed using blue ink** before your contract can be processed. Please make sure it is legible for us to read in order to prevent us sending it back to you for further explanation.

Please feel free to contact me should you have any questions concerning your contract or the new requirements it contains at 512-491-2874. Thank you in advance for responding to this request and returning the signed documents in a timely manner.

Respectfully,

A handwritten signature in blue ink, appearing to read "Leslie Kruse".

Leslie Kruse
Office of Inspector General
Business Operations Division

Enclosures: Boilerplate Contract, and Vendor Information Form

Vendor Information Form

Instructions: This form must be completed and submitted to ASD with each New Contract, and when the vendor's information has changed. As applicable, this form may be requested for contract amendments, renewals and/or extensions. (Please type or print information.)

Part 1: Vendor/Contractor General Information

1. Organization's Legal Name: Hidalgo County District Attorney
2. Legal Doing Business As (DBA) Name:
3. Physical Address:
4. Remit To (Payment) Address:
5. Texas Identification Number (TIN), or Federal Employer Identification Number (FEIN) or Social Security Number (SSN):
6. Legal Status (check one): For-profit Entity Non-profit Entity Governmental Entity
7. Business Structure (check one):

<input type="checkbox"/> Corporation	<input type="checkbox"/> Limited (Liability) Company
<input type="checkbox"/> Joint Venture	<input type="checkbox"/> Limited (Liability) Partnership
<input type="checkbox"/> Partnership*	<input type="checkbox"/> Sole Proprietorship
	<input type="checkbox"/> Other (must specify):
- * If Partnership, must provide SSN or TIN for minimum of two partners
 Partner Name _____ TIN # or SSN
 Partner Name _____ TIN # or SSN
8. State of Incorporation, If Applicable:
9. Texas Charter Number, If applicable:
10. Name of Parent Entity, If Applicable:

Part 2: Vendor/Contractor Contact Information

1. Person Who Will Sign the Contract: Name: <u>Rene Guerra</u> Title: <u>District Attorney</u> Mailing Address: Telephone: Fax: E-mail:	2. Primary Contact for Contract Information: Name: <u>Rene Guerra</u> Title: <u>District Attorney</u> Mailing Address: Telephone: Fax: E-mail:
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Part 3: Vendor/Contractor Authorized Signature (or authorized HHSC agent)

Signature  Date 1/24/11
 Print Name _____ Phone _____

Part 4: HHSC Agency Use Only Mail Code: _____

1. Historically Underutilized Business (HUB) Status (check one): HUB web site:
<http://www.window.state.tx.us/procurement/cmb1/cmb1hub.html> TX HUB Certified Non-Certified HUB
 2. Contractor to Receive Payment: Yes No
- Legacy Contract Number: _____ HHSC Contract No. _____

**Health & Human Services Commission
Office of Inspector General
Agreement with Local Prosecuting Authority**

Name:	Hidalgo County District Attorney	Contract Number:	529-11-0064-
County:	Hidalgo		

GENERAL CONDITIONS:

- 1. Parties.** The Texas Health and Human Services Commission - Office of Inspector General ("HHSC-OIG"), and Hidalgo County District Attorney, ("the Local Prosecuting Authority") do hereby make and enter into this agreement ("Agreement"). This Agreement constitutes the entire agreement between the parties. The parties agree that, for the purposes of this Agreement, all references to "Health and Human Services Commission" or "HHSC" mean the administrative agency within the executive department of Texas state government established under Chapter 531, Texas Government Code or its designee. All references to "Health and Human Services Commission – Office of Inspector General," "HHSC-OIG," or "OIG" mean the Office within HHSC as established in section 531.008(c) and described in 531.101, *et seq*, Texas Government Code.
- 2. Authority to enter Agreement.** This Agreement is entered into as authorized under Texas Government Code § 531.039 and Texas Government Code § 41.004. HHSC-OIG is acting pursuant to a duly authorized delegation of contracting authority.
- 3. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Unless otherwise mutually agreed in writing, venue will be in state District Court, Travis County, Texas.
- 4. Term.** The term of this Agreement becomes effective upon signatures of both parties, and continues until and unless revoked by the parties.
- 5. Purpose.** The purpose of the Local Prosecuting Authority Agreement is to establish the terms and conditions for the purpose of assisting to defray the costs of prosecutions, as authorized by Texas Government Code section 41.004(b) in the course of the referral of cases from HHSC-OIG to the Local Prosecuting Authority.

CONTRACTED COMPONENTS OF SERVICES:

6. HHSC-OIG Responsibilities.

- A) OIG will investigate allegations of fraud, waste and abuse in the following programs: Temporary Assistance to Needy Families (TANF), Food Stamps (FS), Supplemental Nutrition Assistance Program (SNAP), Medicaid, Women, Infants and Children (WIC), and Children's Health Insurance Program (CHIP).
- B) If OIG discovers criminal conduct may have been committed, OIG will complete and submit written reports and relevant evidence to the Local Prosecuting Authority to facilitate its prosecutorial decision.
- C) OIG will provide the necessary records and staff as resources to the Local Prosecuting Authority at such time cases are prosecuted.
- D) As provided for in 1 TAC 357.661, HHSC will pay the County in which the Local Prosecuting Authority has jurisdiction, the following amounts in accordance with this Agreement:
 - 1) \$280 for each case in which a Defendant is sentenced following an uncontested plea in a court of appropriate jurisdiction.

2) \$678 for each case in which a verdict is rendered in favor or against a Defendant in a contested trial before a court of competent jurisdiction.

E) After conviction, OIG will notify the Local Prosecuting Authority if and when court-ordered restitution payments are sixty (60) days past due or are not being paid.

7. LOCAL PROSECUTING AUTHORITY Responsibilities.

F) The Local Prosecuting Authority will review and evaluate cases referred by OIG for appropriate judicial action.

G) The Local Prosecuting Authority will prepare complaints, informations and/or indictments in cases it accepts for prosecution.

H) If community supervision is to be granted in a case, the Local Prosecuting Authority shall (to the extent it finds them to be appropriate in its sole legal and policy judgment) recommend the following actions be taken in additions to any other conditions of community supervision:

- 1) The individual be disqualified from participation in the TANF, Food Stamp, SNAP, WIC and/or CHIP program as provided in Section 6(b) of the Federal Food Stamp Act of 1977.
- 2) The individual be ordered to make restitution to the Texas Health and Human Services Commission, Office of the Inspector General for the amount of benefits unlawfully obtained.
- 3) To take appropriate action against individuals who fail to comply with court ordered restitution upon notification from the Department.

I) The Local Prosecuting Authority will make available at reasonable times and for reasonable periods, books records and supporting documents kept current by the Local Prosecuting Authority pertaining to this Agreement, for purposes of inspecting, monitoring, auditing, or evaluating by HHSC-OIG, its representatives, the U.S. Department of Agriculture, or the U.S. Department of Health and Human Services.

J) The Local Prosecuting Authority will be responsible for any audit exception or other payment deficiency for which the Local Prosecuting Authority is legally responsible under this Agreement, which is determined to exist after monitoring or auditing by HHSC or the U.S. Department of Agriculture.

8. Performance Measures. The Parties will use their best efforts to perform the responsibilities of this Agreement and the Parties agree:

A) Referrals of cases from OIG to the Local Prosecuting Authority will be made as soon as practical after any investigation is completed.

B) The Local Prosecuting Authority shall utilize its own independent legal judgment in the manner which it conducts any criminal proceedings involving Defendants.

FINANCIAL REQUIREMENTS:

9. Conditions of Payment. All payments shall be made to the Local Prosecuting Authority after deducting any known previous overpayment made by HHSC-OIG. HHSC-OIG is not obligated to pay for unauthorized services or to pay more than is consistent with federal and state regulations.

A) The rates listed in paragraph 6(D) above are set by the Code of Federal Regulations and shall be in effect until amended or modified by Congress, in which event HHSC will notify the County and the Local prosecuting Authority of such rates and the County and the Local Prosecuting Authority shall have thirty days to agree to the new rates or to terminate this Agreement.

B) Local Prosecuting Authority represents that it has sufficient resources to enable the Local Prosecuting Authority to carry out the terms of this Agreement.

C) The Local Prosecuting Authority shall recover only once for the services delivered under this Agreement. The Local Prosecuting Authority shall not bill for or retain any additional compensation for such services from HHSC or any other entity.

D) HHSC-OIG shall pay the Local Prosecuting Authority the service unit rate as indicated herein.

10. Billing Process.

A) The Local Prosecuting Authority shall submit a Health and Human Services Commission State of Texas Purchase Voucher for payment. The Local Prosecuting Authority shall contact the local HHSC-OIG Case Investigator for instructions on how to prepare and where to mail the voucher.

B) HHSC-OIG reserves the right to review any/all services for compliance with performance measures and adherence to agreed billing rates. OIG staff will make a determination on the sufficiency of the services. Upon final approval, OIG will authorize payment and process all necessary warrant requests.

11. Accounting Records. The Local Prosecuting Authority shall adhere to Generally Accepted Accounting Principles promulgated by the Financial Accounting Standards Advisory Board and follow Department fiscal management policies and procedures in maintaining financial records. (<http://www.fasab.gov/accepted.html>).

12. Notifications.

The Local Prosecuting Authority shall:

A) Maintain at all times at least one active electronic mail (email) address for the receipt of agreement-related communications from HHSC-OIG. It is the Local Prosecuting Authority's responsibility to monitor this email address for Agreement-related information.

B) Maintain his/her current license in good standing with the State of Texas and maintain all necessary license requirements.

C) Notify HHSC-OIG within ten (10) days of receiving notice of any change in the status of a professional license or board certification, and/or of a complaint that has been filed against his/her license, and/or that an investigation of his/her license or board certification has been initiated.

D) Notify the HHSC Civil Rights Office of any civil rights complaints received relating to its performance under this Agreement. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this section must be directed to:

HHSC Civil Rights Office
701 W. 51st Street, Mail Code W206
Austin, Texas 78751
Phone Toll Free: (888) 388-6332
Phone: (512) 438-4313
TTY Toll Free: (877) 432-7232
Fax: (512) 438-5885

13. Agreement Contingencies.

A) The undersigned Parties certify that: the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the HHSC-OIG; the proposed arrangements serve the interest of efficient and economical administration of state government; the services contracted for are not required by Section 21, Article XVI of the Constitution of Texas to be supplied under a contract awarded to the lowest responsible bidder; and the selection and award of this contract was made on the basis of demonstrated competence and qualifications to perform the services for a fair and reasonable price.

- B) Limits on Compensation. This Agreement is **expressly conditioned** on the availability of appropriated funds. All compensation hereunder is contingent upon that availability.
- C) This Agreement is at all times contingent upon the availability and receipt of the Texas Legislature to appropriate funds; Enactment of superseding law or adoption of a superseding rule or policy; and, if funds for this Agreement become unavailable during any budget period, this Agreement may be immediately terminated or reduced by the Department, in its sole determination. The Department shall notify the Local Prosecuting Authority when it knows that funds for this Agreement will be reduced or eliminated. The Local Prosecuting Authority may terminate the Agreement based upon such notification. If the Local Prosecuting Authority terminates this Agreement based on the Department's notice to reduce or eliminate funding, the Local Prosecuting Authority must notify the Department in writing of its intent to terminate the Agreement within fifteen (15) calendar days of receipt of the Department's notification. The notice must contain the actual date of termination and the Local Prosecuting Authority's date of termination must not be less than ten (10) calendar days from the Department's receipt of such notice and it must not exceed ninety (90) calendar days from the date the Department receives such notice.
- D) The Local Prosecuting Authority agrees to comply with state and federal anti-discrimination laws, including without limitation:
- (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*);
 - (2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
 - (3) Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*);
 - (4) Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);
 - (5) Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
 - (6) Food Stamp Act of 1977 (7 U.S.C. §200 *et seq.*); and
 - (7) The HHS agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement; and
 - (8) Discovery of a disqualifying debt (state franchise tax, child support, or debt to HHSC or the State of Texas).

14. Agreement Changes, Amendments and Renewals.

- A) **Changes and Amendments.** No change, modification, or amendment to the agreement will be effective until approved in writing by the Parties. This agreement together with any approved amendment(s) to this agreement shall be the controlling instrument in case of any dispute relating to the wording of any portion of the agreement or amendment. In the event of any conflict or contradiction between or among the agreement terms and attachments, the documents shall control in the following order of precedence: (1) The final executed Agreement and all amendments thereto; and (2) The Agreement Exhibits or Attachments, and all amendments thereto.
- B) **Unilateral Amendments.**
- i. HHSC-OIG reserves the right to make unilateral amendments to this agreement when necessary to:
 - a. Incorporate new or revised Federal, State, or Department laws, regulations, rules, or policies;
 - b. Update service level descriptions or unit rates; or
 - c. Comply with a court order or judgment.
 - d. The unilateral amendment will be effective upon the Local Prosecuting Authority's receipt of a copy of the amendment signed by HHSC-OIG.

15. Provisions for Termination of Agreement and Dispute Resolution.

- A) If the Local Prosecuting Authority fails to provide services according to the terms and conditions of this agreement, HHSC-OIG may, upon written notice of default to the Local Prosecuting Authority, terminate all or any part of the agreement. Termination is cumulative of any other rights and remedies provided by law, agency regulations, or under this agreement excluding pending claims for work performed prior to the termination date.

B) This agreement may be terminated at any time by mutual written consent. In addition, any party may terminate this agreement by giving thirty (30) calendar days written notice to the other parties. This agreement will be terminated at the end of the thirty (30) calendar day notice period. Nothing in this subsection shall be construed to prohibit immediate termination of the agreement pursuant to subsection A of this section, above.

C) At the end of the agreement term or other agreement termination, the Local Prosecuting Authority shall in good faith and in reasonable cooperation with the Department, aid in the transition to any new arrangement or provider of services, including the orderly transition of case files/reviews and all other documentation prepared by the Local Prosecuting Authority. The respective accrued interests or obligations incurred to date of termination must be settled equitably.

D) Dispute Resolution.

- i. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used by HHSC-OIG and the parties to attempt to resolve any claim for breach of agreement.
- ii. A Local Prosecuting Authority's claim for breach of this agreement that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Texas Government Code §§ 2260.051-2260.056. To initiate the process, the Local Prosecuting Authority shall submit timely written notice to the agreement liaison described in Paragraph 9, supra, with a copy to the HHSC Executive Commissioner or his designee. Said notice shall specifically state that the provisions of Chapter 2260, subchapter B, Government Code, are being invoked. A copy of the notice shall also be given to all other representatives of HHSC-OIG and the Local Prosecuting Authority otherwise entitled to notice under this agreement.
- iii. Compliance by the Local Prosecuting Authority with subchapter B is a jurisdictional condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Government Code. The contested case process provided in Chapter 2260, subchapter C, of the Government Code is the Local Prosecuting Authority's sole and exclusive process for seeking a remedy for any and all alleged breaches of agreement by HHSC-OIG if the parties are unable to resolve their disputes through negotiation or mediation.
- iv. Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this agreement by HHSC-OIG nor any other conduct of any representative of HHSC or HHSC-OIG relating to the agreement shall be considered a waiver of sovereign immunity to suit.
- v. The submission, processing and resolution of the Local Prosecuting Authority's claim is governed by the administrative rules adopted by HHSC pursuant to Chapter 2260, Government Code, as currently effective, hereafter enacted or subsequently amended. The parties shall use the specific procedures set forth in 1 Texas Administrative Code Chapters 391 and 394.
- vi. Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the Local Prosecuting Authority, in whole or in part.

E) In the event of any litigation, appeal, or other legal action to enforce any provision of the Agreement, Local Prosecuting Authority agrees to pay all expenses of such action, including attorneys' fees and costs if HHSC-OIG is the prevailing Party.

16. Use of Information. The Local Prosecuting Authority, in developing and disseminating information under this agreement, shall:

A) Retain all rights to copyright, use, reproduce, and distribute any material written or produced solely by the Local Prosecuting Authority, subject to the following confidentiality and indemnity provisions. When the Local Prosecuting Authority develops materials using funds from this agreement, it must grant the state and federal government a royalty-free, non-exclusive, and irrevocable license or right to reproduce, translate, publish, use, disseminate, and dispose of such materials and to authorize others to do so for governmental purposes.

B) Defend any claim, suit, or proceeding against the State of Texas, HHSC, or HHSC-OIG arising out of

improper disclosure of any confidential, privileged, or protected information or arising out of allegations of other misconduct by Local Prosecuting Authority, its agents, employees, or representatives, and indemnify the state or agency for any liability arising of such proceedings.

- C) The Local Prosecuting Authority shall use reasonable precautions so that access to information relating to its services for HHSC-OIG is limited to those persons within its employ for whom it is necessary and appropriate for purposes of performing the services required under this Agreement.
- D) All work papers, investigative notes, test results, records, reports, findings, policies and procedures, recommendations, data, memoranda or other documents prepared or reviewed by Local Prosecuting Authority pursuant to this Agreement, regardless of their nature and source, are property of HHSC-OIG, and shall be held by Local Prosecuting Authority solely for its convenience and subject to HHSC-OIG's unqualified right to possession, custody and control.
- E) Unless the Local Prosecuting Authority receives express written permission from HHSC-OIG or is compelled to disclose by administrative or judicial process, neither the Local Prosecuting Authority nor any agent or other person within its employ shall disclose: (i) the nature of content of any communications, information, documents, studies, data, or reports in any way relating to the services performed hereunder, (ii) the terms of this Agreement, or (iii) the contents of any reports performed hereunder. The Local Prosecuting Authority understands and agrees that all information and materials compiled by HHSC-OIG in connection with an audit or investigation are confidential by statute and not subject to disclosure under the Public Information Act, discovery request, subpoena, or other means of legal compulsion. A person who receives such information may disclose the information only in accordance with Texas Government Code § 531.1021(g).
- F) The Local Prosecuting Authority shall immediately notify OIG of the occurrence of any of the following events: (i) a request by any person to examine, inspect or copy any work papers, test results, records, findings, recommendations, data, memoranda or other documents prepared by the Local Prosecuting Authority or submitted to it relating in any way to its role as Local Prosecuting Authority under this Agreement; and, (ii) the exhibition or surrender of any such documents in a manner not expressly authorized by OIG.

17. Cooperation with HHSC and state administrative agencies. The Local Prosecuting Authority agrees to reasonably cooperate with and work with the State's contractors, subcontractors and third-party representatives as requested by HHSC or OIG. To the extent permitted by OIG's financial and personnel resources, OIG agrees to reasonably cooperate with Local Prosecuting Authority.

Texas Department of Health and Human
Services Commission:

Signature

Printed Name:

Inspector General

Printed Title:

Date:

Local Prosecuting Authority:

Rene Guerra

Signature

Rene Guerra

Printed Name:

District Attorney

Printed Title

Date:

Approved:

BY _____

_____ County Judge

_____ County, Texas