**DETERMINATION AND FINDINGS (D&F)**

**AUTHORITY FOR TIME & MATERIALS (T&M) TASK ORDER**

Upon the basis of the following findings, it is hereby being determined that no other contract type other than time-and-materials (T&M) is suitable for enhanced entry screening services in support of the [Agency/Organization]. This determination is made pursuant to Federal Acquisition Regulation (FAR) 8.404(h)(3)(iii). The total estimated value of the T&M CLINs under this task order, covering a [Insert PoP] period, is a Not to Exceed (NTE) of [$Ceiling amount].

 **FINDINGS**

The [Agency/Organization] has a need for Hospital Support Services as a result of a novel illness, COVID-19, which was first detected in December, 2019 and subsequently resulted in outbreaks of the virus that spread globally. Effective January 31, 2020, as a result of confirmed cases of COVID-19, the Secretary of the U.S. Department of Health and Human Services (HHS) issued a Determination that a Public Health Emergency Exists. On March 11, 2020, the World Health Organization announced that the COVID-19 outbreak can be characterized as a pandemic, as the rates of infection continue to rise in many locations around the world and across the United States. As of March 13, 2020, the President of the United States issued a Proclamation on Declaring a National Emergency Concerning the COVID-19 Outbreak.

Given the documented outbreak of COVID-19, and consistent with the public health and administrative determinations issued by the controlling authorities described above, federal officials have an obligation to protect their employees and visitors from the risk of community-spread of the virus. Consequently, pursuant to the Federal Management Regulations regarding the policy on admitting persons to federal property, as well as [Office of Management and Budget (OMB) Memorandum 20-16](https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-16.pdf), new building entrance requirements that limit physical access to federal facilities are required.

While the functions involved in the performance of this requirement are not anticipated to change substantially (e.g., screeners will take entrants temperatures and ask a short series of questions) during the base period of performance, the extent and duration of these services prevent the Government from being able to reasonably predict the required level of effort with any degree of certainty. The following factors contribute to this uncertainty:

* HHS’s Centers for Disease Control and Prevention provides continual guidance regarding COVID-19 containment and mitigation strategies. However, as this is a novel virus, the guidance provided is rapidly changing as researchers and public health officials learn more about this virus. For example, between February 13 and March 27, 2020, the CDC has released 71 distinct [guidance documents](https://www.cdc.gov/coronavirus/2019-ncov/communication/guidance-list.html?Sort=Date%3A%3Adesc), demonstrating the dynamic nature of this pandemic. As this guidance and the rollout of these services evolves, so too will the procedures governing enhanced entry screening for Federal facilities, such as the appropriate Personal Protective Equipment requirements and determinations of facility-specific operating statuses (e.g., open to the public, open to all employees, open only to essential personnel, etc.).
* The virus spreads rapidly in a given location, driven by a number of factors such as the adoption of social distancing practices, population density, reliance on public transportation, etc. It is very difficult to predict the length and extent of the virus’ outbreak in a specific geographic area. If an area’s outbreak has substantially subsided or increased, enhanced screening services may be decreased or increased accordingly.
* The public health outlook following the initial outbreaks is not well understood. A number of factors will impact the incidence of the virus in the coming months, such as seasonality and potential immunity from reinfection for those already infected and recovered. These factors will impact the need for enhanced screening services.
* The need for these services would be expected to diminish should a vaccine against COVID-19 become available. A vaccine is not yet available, however, researchers are actively investigating several potential vaccines, such as whole virus vaccines, recombinant protein subunit vaccines, antibody vaccines, and nucleic acid vaccines. The timeline for approval, production, and distribution of successful vaccine is unknown.

This task order is anticipated to be awarded by [MM/DD/YY], and will include a [XXXX] Base Period, with [XXXX] Optional Periods. The entirety of the T&M CLINs across the total period of performance will be evaluated prior to task order award for price fairness and reasonableness.

The GSA Office of Professional Services and Human Capital Categories performed initial market research across Federal Supply Schedule holders in the functional areas aligning with these requirements. Over 60 Industry Partners, consisting of both large and small businesses, responded to a Request for Information released in March, 2020 by confirming their capability to perform the requirement of providing Enhanced Entry Screening Services. The RFI sought recommendations from industry and received substantial feedback in terms of contract type considerations.

Market research indicated that, in order to be able to provide these services on a Firm-Fixed-Price basis, contractors would need to know with some level of certainty information such as the number of locations, hours of operation, visitors per hour, etc. and have minimal variation in those factors. There are a number of elements anticipated to impact those factors, such as building status (e.g., open to the public, open to employees only, open only to essential personnel, etc.); as such, it is not possible for this requirement to allow enough consistency in terms of these varying factors to permit Firm-Fixed-Pricing.

**In accordance with FAR 8.404(h)(3)(iii), a T&M task order may be used only if the Contracting Officer (CO) prepares a Determination and Findings (D&F) that no other contract type is suitable. The D&F shall be signed by the CO prior to the execution of the base period or any option periods of the task order. As such, pursuant to FAR 8.404(h)(3)(iii), the following has been found:**

a) The uncertainties as detailed above make it impossible, at the time of placing the task order, for the Government to accurately estimate the extent, duration, or timing of the work or costs with any reasonable degree of confidence to firm-fix-price these efforts.

b) The requirement has been structured to minimize the use of T&M requirements by ensuring the collection of historical information that should promote the use of additional firm fixed price CLINs and task areas for future acquisitions. The T&M portion of the requirement will only extend as long as is necessary for the current uncertainties surrounding the COVID-19 pandemic to stabilize. Should these enhanced entry screening services be needed in the future on a long term basis, the Contracting Officer will maximize the use of Firm-Fixed-Price requirements.

c) There will be adequate Government surveillance of contractor performance conducted by the formally appointed Contracting Officer’s Representative (COR) who will be an individual with appropriate certification in accordance with the Office of Federal Procurement Policy (OFPP) Federal Acquisition Certification (FAC) program. The appointed COR will be responsible for work performance oversight to ensure efficient methods and effective cost controls are being used.

d) In accordance with FAR 8.404(h)(3)(ii)(B), notice will be provided in the solicitation that the resultant T&M CLINs will be limited to a not-to-exceed ceiling price as stipulated on the Services and Price Schedule, and that the contractor exceeds this amount at their own risk. Any change to the stated ceiling price shall be made only upon written notice from the Contracting Officer via a formal bilateral modification. Inclusion of this language will ensure that the Government will not be obligated to pay the contractor any amount in excess of the ceiling price, and the contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Price Schedule. Any increase to the initially established ceiling for the T&M CLINs will be documented in the contract file to fully justify the amount and reasons for any change.

**DETERMINATION**

Based on the findings above, it is hereby determined that no other contract type is suitable, and that the use of T&M CLINs for this task order are in the best interest of the Government in accordance with FAR 8.404(h)(3)(iii).

Prepared and Submitted by:

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[CO Name]

Contracting Officer

[Insert additional approval authorities’ signature blocks IAW Agency policy]