



INFORMAL REQUEST FOR PROPOSAL (IRFP)

IRFP 0619-105

Transcription Services for Alaska Mental Health Board and Advisory Board on Alcoholism and Drug Abuse

Issued By
STATE OF ALASKA
Department of Health & Social Services
PO Box 110650
JUNEAU, AK 99811-0650

Issue Date:
January 4, 2019

Closing Date:
January 14, 2019
3:00 PM Alaska Standard Time

Matt Meienberg
Procurement Specialist
Phone: 907-465-5293
Email: matt.meienberg@alaska.gov

SECTION 1: INTRODUCTION & INSTRUCTIONS

Purpose

The Alaska Department of Health & Social Services (DHSS), Division of Behavioral Health is soliciting proposals for transcription services.

Contract Budget

The total budget for the completion of this project is \$20,000.00 per year for a total cost of \$80,000.00 for the life of the contract. Proposals priced at more than \$20,000.00 per year will be considered non-responsive and rejected.

Approval of continuation of a contract resulting from this solicitation is contingent upon legislative appropriation.

Deadline for Receipt of Proposals and Return Instructions

Proposals must be received no later than **3:00 PM Alaska Standard Time on January 14, 2019**. Faxed or oral proposals are not acceptable.

Proposal Submission Instructions

Email Submission

The preferred method of response submission to this solicitation is via email, sent to the following address:

hss.procurement.proposal@alaska.gov

The email submission must contain the IRFP number in the subject line. In the body of the email, please indicate the Procurement Specialist's name, the Offeror's name, the number of attachments, and the names of the attachments being submitted.

When submitting a proposal via email, the technical proposal and cost proposal must be saved as separate, clearly labeled PDF documents, such as "Vendor A – Technical Proposal.pdf" and "Vendor A – Cost Proposal.pdf" (Vendor A is the name of the offeror). The maximum size of a single email (including all text and attachments) that can be received by the State is 20mb (megabytes). If the email containing the proposal exceeds this size, the proposal must be sent in multiple emails that are each less than 20 megabytes; each email must comply with the requirements above. Please also include an indication of multiple email submissions (1 of 2, 2 of 2, etc).

It is the offeror's responsibility to ensure that the issuing agency has received the proposal in full, prior to the deadline. The Procurement Specialist will respond to the email to confirm receipt. If you do not receive a confirmation, it is your responsibility to contact the Procurement Specialist to confirm. The State is not responsible for lost, unreadable, or corrupt emails, or missing attachments.

An offeror's failure to submit its proposal prior to the deadline will cause the proposal to be disqualified. Late proposals or amendments will not be opened or accepted for evaluation.

Paper Submission

If submitted a proposal by mail, Offerors must submit one hard copy of their proposal, to the Procurement Specialist in a sealed package. The cost proposal included with the package must be sealed separately from the rest of the proposal and must be clearly identified.

The sealed proposal package(s) must be addressed as follows:

Department of Health and Social Services
Division of Finance and Management Services
Attention: Matt Meienberg, Procurement Specialist
IRFP Number: 0619-105
IRFP Title: AMHB & ABADA Transcription Services

If mailing via US Mail, please use the following address:

PO Box 110650
Juneau, AK 99811-0650

If utilizing a delivery service, please use the following address:

333 Willoughby – Suite 760
Juneau, AK 99801

An offeror's failure to submit its proposal prior to the deadline will cause the proposal to be disqualified. Late proposals or amendments will not be opened or accepted for evaluation.

Faxed proposals are not acceptable. Oral proposals are not acceptable.

Minimum Qualifications

In order to be deemed responsive, offerors must provide evidence in the proposal that they meet these minimum prior experience requirements:

- Must have at least five years' experience providing transcription services.
- Must have at least two years' experience transcribing oral testimony.
- Must have at least two years' experience traveling to rural Alaskan communities is required.
- Must be a Certified Real-time Reporters (CRR certified).
- Must be able to provide real-time transcription in CaseViewNet or similar software and wireless devices (tablet, laptop, etc.).

NOTE: An offeror's failure to meet these minimum prior experience requirements will cause their proposal to be considered non-responsive and their proposal will be rejected.

Required Review

Offerors shall carefully review this solicitation without delay, for defects and questionable or objectionable matter. Questions, objections, or comments must be brought to the attention of the Procurement Specialist using the contact information listed on the cover page of this

document. A protest filed based upon any omission, error, or the context of the solicitation will be disallowed if not brought to the attention of the Procurement Specialist prior to the scheduled IRFP closing date. Verbal contact must be followed up with written notification.

Questions Received Prior to Opening of Proposals

All questions must be in writing and directed to the Procurement Specialist identified in this IRFP. The interested party must confirm telephone conversations in writing.

Two types of questions generally arise. One may be answered by directing the questioner to a specific section of the IRFP. These questions may be answered over the telephone. Other questions may be more complex and may require a written amendment to the IRFP. The Procurement Specialist will make that decision.

If an amendment is issued, it will be provided to all who have registered with the Procurement Specialist.

Alternate Proposals

Offerors may only submit one proposal for evaluation. In accordance with 2 AAC 12.830, alternate proposals (proposals that offer something different than what is asked for) will be rejected.

Authorized Signature

An individual authorized to bind the offeror to the provisions of the IRFP must sign the proposal. By signing their proposal, the offeror certifies that the proposal remains valid for at least ninety (90) days from the proposal receipt deadline.

By signing the proposal, the offeror certifies that all services provided under this contract by the contractor and all subcontractors shall be performed in the United States. Failure to comply with this requirement may cause the State to reject the bid or proposal as non-responsive, or cancel the contract.

Offeror's Certification

By signature on the proposal, offerors certify that they comply with the following:

- (a) the laws of the State of Alaska;
- (b) the applicable portion of the Federal Civil Rights Act of 1964;
- (c) the Equal Employment Opportunity Act and the regulations issued thereunder by the federal government;
- (d) the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the federal government;
- (e) all terms and conditions set out in this IRFP;
- (f) a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury;
- (g) that the offers will remain open and valid for at least 90 days; and
- (h) that programs, services, and activities provided to the general public under the resulting contract conform with the Americans with Disabilities Act of 1990, and the regulations issued thereunder by the federal government.

If any offeror fails to comply with (a) through (h) of this section, the State reserves the right to disregard the proposal, terminate the contract, or consider the contractor in default.

Vendor Tax ID

A valid Vendor Tax ID must be submitted to the issuing office with the proposal or within five days of the State's request.

Conflict of Interest

Each proposal shall include a statement indicating whether or not the firm or any individuals working on the contract has a possible conflict of interest (e.g., employed by the State of Alaska) and, if so, the nature of that conflict. The Commissioner, Department of Health and Social Services, reserves the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the program to be developed by the offeror. The Commissioner's determination regarding any questions of conflict of interest shall be final.

ADA Certification

The State of Alaska complies with Title II of the Americans with Disabilities Act (ADA) of 1990. Individuals with disabilities who may need auxiliary aids, services, and/or special modifications to submit a proposal should contact the Procurement Specialist named above to make necessary arrangements.

By signing their proposal, the offeror certifies compliance with the ADA of 1990 and that program; services and activities provided to the general public on behalf of the State under a contract resulting from this solicitation comply with the ADA of 1990, CFR, Part 35, Subpart B 35.130 of the federal government.

SECTION 2: BACKGROUND, SCOPE OF WORK AND CONTRACT INFORMATION

Background

The Alaska Mental Health Board (AMHB) and the Advisory Board on Alcoholism and Drug Abuse (ABADA) are the state agencies charged with planning and coordinating behavioral health services funded by the State of Alaska. The joint mission of AMHB/ABADA is to advocate for programs and services that promote health, independent, productive Alaskans.

The Boards have worked collectively to advise, educate and advocate for Alaskans with substance use and mental health disorders. The duties, function and composition of these Boards are mandated both in state and federal statutes. Board members are not compensated for their work and are comprised of behavioral health consumers, family members, behavioral professionals and dedicated advocates.

The Boards meet in-person approx. two times a year, for 3-4 days of meetings. One of these bi-annual meetings take place in either Juneau or Anchorage, the other is held in a rural community usually off the road system. The transcriber will travel to the meeting locations and will document all discussions, presentations and testimony provided to the Boards during the meetings.

During the in-person meetings, AMHB/ABADA board members meet with local behavioral health providers and consumers, as well as local governmental and tribal staff. The Boards are mandated by Alaska statute to hold public hearings during the Board meeting. All of these activities will be documented verbatim by the transcriber in order to maintain a public record of these presentations and hearings.

Scope of Work

The Department of Health and Social Services, Division of Behavioral Health at the Alaska Mental Health Board and Advisory Board on Alcoholism and Drug Abuse is soliciting proposals for transcription services. The successful contractor should provide the following:

- Travel to and provide transcription services for the in-person Board meetings of the Alaska Mental Health Board and Advisory Board on Alcoholism and Drug Abuse. These meetings take place approx. two times a year, with 3-4 days of meetings.
- For ADA purposes, the contractor will provide real-time transcription through CaseViewNet or similar software and wireless devices (tablet, laptop, etc.).
- Transcription must include accurate speaker identification and index by subject. Average number of speakers per meeting is approx. 40 unique individuals.
- The hard copy version of the transcribed record shall provide a 100% record of everything spoken during a session. The minutes shall reflect a summary of presentations, discussion, and actions taken at the meeting, and shall include verbatim the formal public comment period of each meeting.
- One hard copy transcript and one audio recording, plus an electronic copy, is required within (30) days of the last day of the meeting.
- The contractor will provided all the necessary industry standard stenographic equipment, cables, software, and computer.
- Set up time and stand-by time to be included at no additional cost.

- The contractor shall be responsible for responding promptly to complaints or other notices or advice regarding inaccuracies in capturing the spoken word.

The contractor must be able to provide transcription services for in-person meetings of the Alaska Mental Health Board and Advisory Board on Alcoholism and Drug Abuse. These meetings take place approx. two times a year, with 3-4 days of meetings. The State does not guarantee any minimum or maximum number of meetings per year.

These meetings may take place at various locations throughout Alaska. The meetings are usually held twice a year with one meeting taking place in either Juneau or Anchorage, and one in a rural community that is not connected to a main road system. Travel costs (airfare, hotel and meals) will be arranged and paid for by the State, in accordance with state travel regulations.

Advance notice of services required will usually be at least 30 days prior to the meeting.

Term of Contract

The term of the contract will be one (1) year from the date of award with three (3) additional renewal options to be exercised at the sole discretion of the State.

Deliverables

Consultant will prepare the following deliverables

- Must be able to provide transcription services for in-person meetings of the Alaska Mental Health Board and Advisory Board on Alcoholism and Drug Abuse.
- Must provide real-time transcription through CaseViewNet or similar software and wireless devices (tablet, laptop, etc.).
- Transcription must include accurate speaker identification and index by subject. Average number of speakers per meeting is approx. 40 unique individuals.
- The hard copy version of the transcribed record must provide a 100% record of everything spoken during a session. The minutes shall reflect a summary of presentations, discussion, and actions taken at the meeting, and shall include verbatim the formal public comment period of each meeting.
- One hard copy transcript and one audio recording, plus an electronic copy, is required within (30) days of the last day of the meeting.
- The contractor will provided all the necessary industry standard stenographic equipment, cables, software, and computer.
- Must become a registered vendor in the State of Alaska's Integrated Resource Information System (IRIS).
- Must provide a detailed invoice that describes the number of transcription pages produced at each meeting.

Location of Work

The State will not provide workspace for the contractor. The contractor must provide its own workspace.

The contractor should include in their price proposal: transportation, lodging, and per diem costs sufficient to pay for travel as required to complete the work described in this solicitation.

By signature on their proposal, the offeror certifies that all services provided under this contract by the contractor and all subcontractors shall be performed in the United States.

If the offeror cannot certify that all work will be performed in the United States, the offeror must contact the Procurement Specialist in writing to request a waiver at least 10 days prior to the deadline for receipt of proposals.

The request must include a detailed description of the portion of work that will be performed outside the United States, where, by whom, and the reason the waiver is necessary.

Failure to comply with this requirement or to obtain a waiver may cause the State to reject the proposal as non-responsive, or cancel the contract.

Subcontractors

Subcontractors will not be allowed.

Business License

Offerors must have a valid Alaska Business License (ABL) or application on file for one, by the date of award in order to provide services in the State of Alaska. Offerors should contact the Department of Commerce, Community, and Economic Development, Division of Occupational Licensing, P.O. Box 110806, Juneau, Alaska 99811-0806, for information on these licenses.

Note: The Alaska Business License is not required if the vendor is located out of state and all services are completed outside the State of Alaska.

Insurance Requirements

The successful offeror must provide proof of workers' compensation insurance prior to contract approval.

The successful offeror must secure the insurance coverage required by the State. The coverage must be satisfactory to the Department of Administration Division of Risk Management. An offeror's failure to provide evidence of such insurance coverage is a material breach and grounds for withdrawal of the award or termination of the contract.

Offerors must review form APPENDIX B2 in the attached EXAMPLE –Standard Agreement, for details on required coverage. No alteration of these requirements will be permitted without prior written approval from the Department of Administration, Division of Risk Management.

Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

Expenditures from this contract may involve federal funds. The U.S. Department of Labor requires all state agencies that are expending federal funds to have a certification filed in the proposal (by the offeror) that they have not been debarred or suspended from doing business with the federal government. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions (**included in this document**) **must be completed and submitted with your proposal.** <https://www.epls.gov/>

SECTION 3: PROPOSAL FORMAT AND CONTENT**Proposal Format**

The Department wishes to discourage unnecessarily lengthy and costly proposal preparation; however, all proposals must contain the following information in the following format. Proposals should be limited to the requested information and shall consist of six parts – Cover Letter, Understanding, Methodology, Management, Experience & Qualifications and Cost. All pages must be consecutively numbered.

Cover Letter

An individual authorized to bind the offeror to the provisions of the IRFP **must** sign the proposal. The cover letter should contain the offeror's complete name, mailing address, email address, telephone number; a statement confirming that the proposal is valid for ninety (90) days from the closing date for receipt of proposals; a statement confirming that the offeror will comply with all provisions of the IRFP; if applicable, provide notice that the offeror qualifies as an Alaska Bidder; provide an Alaska Business License number or certificate (if applicable); and a statement relating to any perceived or potential conflict of interest.

Cost Proposal

The Cost Proposal must be submitted on the form provided in this document. **Only one copy of the Cost Proposal need be submitted and must be submitted in a separate, sealed envelope. No portion of the Cost Proposal shall be included within the body of the proposal. Failure to comply with this requirement may cause the State to reject the bid or proposal as non-responsive, or cancel the contract.**

SECTION 4: EVALUATION CRITERIA & PROCESS**Evaluation Criteria**

All proposals will be reviewed to determine if they are responsive. They will then be evaluated using the criterion that is set out below.

An evaluation may not be based on discrimination due to the race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation of the offeror.

A proposal shall be evaluated to determine whether the offeror responds to the provisions, including goals and financial incentives, established in the IRFP in order to eliminate and prevent discrimination in state contracting because of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, or disability.

Proposals will be evaluated against the questions set out in Appendix C - IRFP Evaluation Form.

Understanding of the Project (150 POINTS)

Offerors should provide a concise narrative statement that illustrates their understanding of the requirements of the project and the project schedule.

Methodology (100 POINTS)

Offerors should provide a concise narrative statement that sets out the methodology they intend to employ if awarded the contract, illustrating how this methodology will serve to accomplish the work and meet the State's project schedule.

Management Plan (50 POINTS)

Offerors should provide a concise narrative statement that sets out the management plan they intend to follow, illustrating how this plan will serve to accomplish the work and meet the State's project schedule.

Experience & Qualifications (20 POINTS)

Proposals should demonstrate the applicable education and experience of the personnel designated to work on the project.

Cost (400 POINTS)

The lowest priced proposal will receive the maximum number of points allocated to cost. Other proposals for cost point allocation will be determined by the following formula:

$$\text{Lowest Cost Proposal} \times \text{Maximum Points for Cost} / \text{Cost of Each Higher Priced Proposal} \\ = \text{TOTAL POINTS for cost}$$

Alaska Offeror's Preference (100 POINTS)

If an offeror qualifies for the Alaska Bidder Preference, the offeror will also receive the Alaska Offeror's Preference. The preference will be ten percent (10%) of the total available points. This amount will be added to the overall score of each Alaska offeror after evaluation of proposals.

5% Alaskan Bidder Preference

An Alaska Bidder Preference of five percent will be applied prior to evaluation. The preference will be given to a person who:

- (a) holds a current Alaska business license and;
- (b) submits a proposal for goods or services under the name on the Alaska business license and;
- (c) has maintained a place of business within the state staffed by the offeror, or an employee of the offeror, for a period of six months immediately preceding the date of the proposal and;
- (d) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship, and the proprietor is a resident of the state or is a partnership, and all partners are residents of the state and;
- (e) if a joint venture, is composed entirely of entities that qualify under (a)-(d) of this subsection.

5% Alaska Veteran Preference

An Alaska Veteran Preference of five percent will be applied prior to evaluation. The preference will be given to an offeror who qualifies under AS 36.30.170 (b) as an Alaska bidder and is a:

- (a) sole proprietorship owned by an Alaska veteran;
- (b) partnership under AS 32.06 or AS 32.11 if a majority of the partners are Alaska veterans;
- (c) limited liability company organized under AS 10.50 if a majority of the members are Alaska veterans; or
- (d) corporation that is wholly owned by individuals and a majority of the individuals are Alaska veterans.

In order to receive the Alaska Veteran Preference, proposals must include a statement certifying that the offeror is eligible to receive the Alaska Veteran Preference.

Right of Rejection

Offerors must comply with all of the terms of the IRFP, the State Procurement Code (AS 36.30), and all applicable local, state, and federal laws, codes, and regulations. The Procurement Specialist may reject any proposal that does not comply with all of the material and substantial terms, conditions, and performance requirements of the IRFP.

Offerors may not qualify the proposal nor restrict the rights of the State. If an offeror does so, the Procurement Specialist may determine the proposal to be a non-responsive counter-offer and the proposal may be rejected.

Minor informalities that:

- do not affect responsiveness;
- are merely a matter of form or format;
- do not change the relative standing or otherwise prejudice other offers;
- do not change the meaning or scope of the IRFP;
- are trivial, negligible, or immaterial in nature;
- do not reflect a material change in the work; or
- do not constitute a substantial reservation against a requirement or provision;

may be waived by the Procurement Specialist.

The State reserves the right to refrain from making an award if it determines that to be in its best interest. A proposal from a debarred or suspended offeror shall be rejected.

Clarifications of Offers

In order to determine if a proposal is reasonably susceptible for award, communications by the Procurement Specialist or the proposal evaluation committee (PEC) are permitted with an offeror to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Clarifications may not result in a material or substantive change to the proposal. The evaluation by the Procurement Specialist or the PEC may be adjusted as a result of a clarification under this section.

Failure to Negotiate

If the selected offeror:

- fails to provide the information required to begin negotiations in a timely manner; or
- fails to negotiate in good faith; or
- indicates they cannot perform the contract within the budgeted funds available for the project; or
- if the offeror and the State, after a good faith effort, simply cannot come to terms,

the State may terminate negotiations with the offeror initially selected and commence negotiations with the next highest ranked offeror.

Notice of Award (NOA) – Offeror Notification of Selection

After the completion of contract negotiation the Procurement Specialist will issue a written Notice of Award (NOA) and send copies to all offerors. The NOA will set out the names of all offerors and identify the proposal selected for award.

Protest

2 AAC 12.695 provides that an interested party may protest the content of the IRFP or the award of a contract.

An interested party is defined in 2 AAC 12.990(a) (7) as "an actual or prospective bidder or offeror whose economic interest might be affected substantially and directly by the issuance of a contract solicitation, the award of a contract, or the failure to award a contract."

An interested party must first attempt to informally resolve the dispute with the Procurement Specialist. If that attempt is unsuccessful, the interested party may file a written protest. The written protest must be filed with the Commissioner of the purchasing agency or the Commissioner's designee. The protester must also file a copy of the protest with the Procurement Specialist. A protester must have submitted a proposal in order to have sufficient standing to protest the award of a contract. Written protests must include the following information:

- a. the name, address, and telephone number of the protester;
- b. the signature of the protester or the protester's representative;
- c. identification of the contracting agency and the solicitation or contract at issue;
- d. a detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- e. the form of relief requested.

If the protestor agrees, the Commissioner of the purchasing department or the Commissioner's designee may assign the protest to the Procurement Specialist or other state official for alternate dispute resolution. In other cases, the Commissioner or the Commissioner's designee may issue a decision sustaining or denying the protest, or may conduct a hearing using procedures set out in AS 36.30.670(b).

A written protest of the content of the solicitation must be received by the Commissioner or Commissioner's designee prior to the deadline for receipt of proposals. A written protest of the award of a contract must be received by the Commissioner or Commissioner's designee within ten days after the date the Notice of Award is issued.

State Not Responsible for Preparation Costs

The State will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any proposal.

Disclosure of Proposal Contents

All proposals and other material submitted become the property of the State of Alaska and may be returned only at the state's option. AS 40.25.110 requires that public records to be open to reasonable inspection. All proposal information, including detailed price and cost information, will be held in confidence during the evaluation process and prior to the time an Award or Notice of Award is issued. Thereafter, proposals will become public information.

Trade secrets and other proprietary data contained in proposals may be held confidential if the offeror requests, in writing, that the Procurement Specialist does so, and if the Procurement Specialist agrees, in writing, to do so. Material considered confidential by the offeror must be clearly identified and the offeror must include a brief statement that sets out the reasons for confidentiality.

SECTION 5: GENERAL LEGAL INFORMATION**Standard Contract Provisions**

The contractor will be required to sign and submit the State's Standard Agreement Form for Professional Services Contracts (including all associated appendices). This form is attached in Section 6 Appendices for review. The contractor must comply with all contract provisions set out in this attachment. No alteration of these provisions will be permitted without prior written approval from the Department of Law. Objections to any of the provisions in the Standard Agreement Form must be set out in the offeror's proposal.

Contract Approval

This IRFP does not obligate the state until a contract is signed and approved by both parties. If approved, it is effective from the date of approval by the DHSS. The state shall not be responsible for work done, even in good faith, prior to DHSS approval of the contract.

Nondisclosure and Confidentiality

Contractor agrees that all confidential information shall be used only for purposes of providing the deliverables and performing the services specified herein and shall not disseminate or allow dissemination of confidential information except as provided for in this section. The contractor shall hold as confidential and will use reasonable care (including administrative, physical and technological security) to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, the confidential information. "Reasonable care" means compliance by the contractor with all applicable federal and state law, including the Social Security Act, the Health Insurance Portability and Accountability Act ("HIPAA"), the Health Information Technology for Economical and Clinical Health Act ("HITECH Act"), and 45 C.F.R. Parts 160 and 164 ("Privacy and Security Rule"). The contractor must promptly notify the state in writing if it becomes aware of any storage, disclosure, loss, unauthorized access to or use of the confidential information.

The contractor shall comply with the business associate requirements set forth in HIPAA, the HITECH Act, and the Privacy and Security Rule if the contractor will be using or will have access to the protected health information (as defined in 45 C.F.R. 160.103) of DHSS, as part of the services performed by the contractor. The contractor shall be required to agree to the terms of, and sign, the HIPAA Business Associate Agreement as a condition of this contract if the contractor will be using or will have access to the protected health information of DHSS, as part of the services performed by the contractor (see Appendix E of the attached STANDARD AGREEMENT FORM).

The following information shall not be considered confidential information: information previously known to be public information when received from the other party; information freely available to the general public; information which now is or hereafter becomes publicly known by other than a breach of confidentiality hereof; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

Assignment

Per 2 AAC 12.480, the contractor may not transfer or assign any portion of the contract without prior written approval from the Procurement Specialist.

Disputes

Any dispute arising out of this agreement will be resolved under the laws of the State of Alaska. Any appeal of an administrative order or any original action to enforce any provision of this agreement or to obtain relief from or remedy in connection with this agreement may be brought only in the Superior Court for the State of Alaska.

Severability

If any provision of the contract or agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and, the rights and obligations of the parties will be construed and enforced as if the contract did not contain the particular provision held to be invalid.

Supplemental Terms and Conditions

Proposals must comply with Section 4 Rights of Rejection. However, if the State fails to identify or detect supplemental terms or conditions that conflict with those contained in this RFP or that diminish the State's rights under any contract resulting from the RFP, the term(s) or condition(s) will be considered null and void. After award of contract:

- a) if conflict arises between a supplemental term or condition included in the proposal and a term or condition of the RFP, the term or condition of the RFP will prevail; and
- b) if the State's rights would be diminished as a result of application of a supplemental term or condition included in the proposal, the supplemental term or condition will be considered null and void.

SECTION 6: APPENDICES

- Appendix A – Cost Proposal Form
- Appendix B – Debarment Certification Form
- Appendix C – IRFP Evaluation Form
- Appendix D – Standard Agreement Form

COST PROPOSAL

Note: The purpose of the cost formula is to provide a mechanism for offerors to submit project costs in a manner that DHSS can evaluate and score and then use to establish billing rates for the resultant contract.

Please enter your cost in the spaces provided below for completion of each deliverable.

Transcription Rate per page (\$ _____) x Estimated 2000 pages annually

= TOTAL PROJECT COST (not to exceed \$20,000/year) \$ _____

This page must be completed and submitted with all offers and received by the State at the time and date set for receipt of proposals.

**Certification Regarding Debarment, Suspension, Ineligibility
and Voluntary Exclusion Lower Tier Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participant's responsibilities.

The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

**(BEFORE COMPLETING CERTIFICATION, READ THE INSTRUCTIONS ON THE
FOLLOWING PAGE WHICH ARE AN INTEGRAL PART OF THE CERTIFICATION)**

(1) The prospective recipient of Federal assistance funds certifies, by submission of this bid, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective recipient of Federal assistance funds is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this Proposal.

Name and Title of Authorized Representative

Signature

Date

Instructions for Certification

1. By signing and submitting this Proposal, the prospective recipient of Federal assistance funds is providing the certification as set out below.
2. The certification in this class is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.
3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to whom this Proposal is submitted if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "Proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective recipient of Federal assistance funds agrees by submitting this Proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.
6. The prospective recipient of Federal assistance funds further agrees by submitting this Proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to check the List of Parties Excluded from Procurement or Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DOL may pursue available remedies, including suspension and/or debarment

Informal Request for Proposal Evaluation Sheet

IRFP NUMBER: _____

Total Number of Points = 1000

Evaluator Initials _____ Date _____

Proposal Company Name: _____

Understanding of the Project – 150 Points

- Did offeror provide a concise narrative statement that illustrates their understanding of the requirements of the project and the project schedule?

Comments:

Total Points for Understanding: _____

Methodology – 100 Points

- Did offeror provide a concise narrative statement that sets out the methodology they intend to employ if awarded the contract, illustrating how this methodology will serve to accomplish the work and meet the State's project schedule?

Comments:

Total Points for Methodology: _____

Management Plan – 50 Points

- Did offeror provide a concise narrative statement that sets out the management plan they intend to follow, illustrating how this plan will serve to accomplish the work and meet the State's project schedule.

Comments:

Total Points for Management Plan: _____

Experience and Qualifications – 200 Points

- Did offeror demonstrate the applicable education and experience of the personnel designated to work on the project?

Comments:

Total Points Experience: _____

Grand Total: _____

Template – SOA Standard Agreement

STANDARD AGREEMENT FORM FOR PROFESSIONAL SERVICES

1. Agency Contract Number	2. Solicitation Number	3. Financial Coding	4. Agency Assigned Encumbrance Number
5. Vendor Number	6. Project/Case Number		7. Alaska Business License Number
This contract is between the State of Alaska,			
8. Department of Health and Social Services		Division	hereafter the State, and
9. Contractor			hereafter the Contractor
Mailing Address	Street or P.O. Box	City	State ZIP+4
<p>10. ARTICLE 1. Appendices: Appendices referred to in this contract and attached to it are considered part of it. ARTICLE 2. Performance of Service: 2.1 Appendix A (General Provisions), Articles 1 through 16, governs the performance of services under this contract 2.2 Appendix B (Indemnity and Insurance) sets forth the liability and insurance provisions of this contract 2.3 Appendix C (Description of Services) sets forth the services to be performed by the Contractor 2.4 Appendix D (Payment for Services) sets forth the provision for payment 2.5 Appendix E (Health Insurance Portability and Accountability Act of 1996 ("HIPAA") Business Associate Agreement) governs the use of Protected Health Information under this contract 2.6 Appendix F (Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered) confirms the Contractor is in good legal standing with the federal government ARTICLE 3. Period of Performance: The period of performance for this contract begins _____, and ends on _____ ARTICLE 4. Considerations: 4.1 In full consideration of the Contractor's performance under this contract, the State shall pay the Contractor a sum not to exceed <u>\$0,000.00</u> in accordance with the provisions of Appendix D. 4.2 When billing, the Contractor shall refer to the Agency Contract Number and send the billing to the address listed in Appendix D.</p>			
11. Department of Health and Social Services		Attention: Contracts Support Team	
Mailing Address P.O. Box 110650, Juneau, Alaska 99811-0650		Attention: Contracts Section	
12. CONTRACTOR		14. CERTIFICATION	
Name of Firm		I certify that the facts herein and on supporting documents are correct, that this voucher constitutes a legal charge against funds and appropriations cited, that sufficient funds are encumbered to pay this obligation, or that there is a sufficient balance in the appropriation cited to cover this obligation. I am aware that to knowingly make or allow false entries or alterations on a public record, or knowingly destroy, mutilate, suppress, conceal, remove or otherwise impair the verity, legibility or availability of a public record constitutes tampering with public records punishable under AS 11.56.815-.820. Other disciplinary action may be taken up to and including dismissal.	
Signature of Authorized Representative	Date		
Typed or Printed Name of Authorized Representative			
Title			
13. CONTRACTING AGENCY		Signature of Head of Contracting Agency or Designee	Date
Department/Division Health & Social Services /			
Signature of Project Director	Date	Typed or Printed Name	
Typed or Printed Name of Project Director		Title Director	
Title Project Director			

(Rev. 04-14)

NOTICE: This contract has no effect until signed by the head of contracting agency or designee.

APPENDIX A GENERAL PROVISIONS

Article 1. Definitions

- 1.1 In this contract and appendices, "Project Director" or "Agency Head" or "Procurement Specialist" means the person who signs this contract on behalf of the Requesting Agency and includes a successor or authorized representative.
- 1.2 "State Contracting Agency" means the department for which this contract is to be performed and for which the Commissioner or Authorized Designee acted in signing this contract.

Article 2. Inspections and Reports

- 2.1 The department may inspect, in the manner and at reasonable times it considers appropriate, all the contractor's facilities and activities under this contract.
- 2.2 The contractor shall make progress and other reports in the manner and at the times the department reasonably requires.

Article 3. Disputes

- 3.1 If the contractor has a claim arising in connection with the contract that it cannot resolve with the State by mutual agreement, it shall pursue the claim, if at all, in accordance with the provisions of AS 36.30.620 – 632.

Article 4. Equal Employment Opportunity

- 4.1 The contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, or because of age, disability, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position(s) do not require distinction on the basis of age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood. The contractor shall take affirmative action to insure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, disability, age, sex, marital status, changes in marital status, pregnancy or parenthood. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.
- 4.2 The contractor shall state, in all solicitations or advertisements for employees to work on State of Alaska contract jobs, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy or parenthood.
- 4.3 The contractor shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' compensation representative of the contractor's commitments under this article and post copies of the notice in conspicuous places available to all employees and applicants for employment.
- 4.4 The contractor shall include the provisions of this article in every contract, and shall require the inclusion of these provisions in every contract entered into by any of its subcontractors, so that those provisions will be binding upon each subcontractor. For the purpose of including those provisions in any contract or subcontract, as required by this contract, "contractor" and "subcontractor" may be changed to reflect appropriately the name or designation of the parties of the contract or subcontract.
- 4.5 The contractor shall cooperate fully with State efforts which seek to deal with the problem of unlawful discrimination, and with all other State efforts to guarantee fair employment practices under this contract, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its Specialists or agents relating to prevention of discriminatory employment practices.
- 4.6 Full cooperation in paragraph 4.5 includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska;

permitting employees of the contractor to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting inspection of the contractor's facilities; and promptly complying with all State directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and State laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.

4.7 Failure to perform under this article constitutes a material breach of contract.

Article 5. Termination

The Project Director, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the State. In the absence of a breach of contract by the contractor, the State is liable only for payment in accordance with the payment provisions of this contract for services rendered before the effective date of termination.

Article 6. No Assignment or Delegation

The contractor may not assign or delegate this contract, or any part of it, or any right to any of the money to be paid under it, except with the written consent of the Project Director and the Agency Head.

Article 7. No Additional Work or Material

No claim for additional services, not specifically provided in this contract, performed or furnished by the contractor, will be allowed, nor may the contractor do any work or furnish any material not covered by the contract unless the work or material is ordered in writing by the Project Director and approved by the Agency Head.

Article 8. Independent Contractor

The contractor and any agents and employees of the contractor act in an independent capacity and are not Specialists or employees or agents of the State in the performance of this contract.

Article 9. Payment of Taxes

As a condition of performance of this contract, the contractor shall pay all federal, State, and local taxes incurred by the contractor and shall require their payment by any Subcontractor or any other persons in the performance of this contract. Satisfactory performance of this paragraph is a condition precedent to payment by the State under this contract.

Article 10. Ownership of Documents

All designs, drawings, specifications, notes, artwork, and other work developed in the performance of this agreement are produced for hire and remain the sole property of the State of Alaska and may be used by the State for any other purpose without additional compensation to the contractor. The contractor agrees not to assert any rights and not to establish any claim under the design patent or copyright laws. Nevertheless, if the contractor does mark such documents with a statement suggesting they are trademarked, copyrighted, or otherwise protected against the State's unencumbered use or distribution, the contractor agrees that this paragraph supersedes any such statement and renders it void. The contractor, for a period of three years after final payment under this contract, agrees to furnish and provide access to all retained materials at the request of the Project Director. Unless otherwise directed by the Project Director, the contractor may retain copies of all the materials.

Article 11. Governing Law; Forum Selection

This contract is governed by the laws of the State of Alaska. To the extent not otherwise governed by Article 3 of this Appendix, any claim concerning this contract shall be brought only in the Superior Court of the State of Alaska and not elsewhere.

Article 12. Conflicting Provisions

Unless specifically amended and approved by the Department of Law, the terms of this contract supersede any provisions the contractor may seek to add. The contractor may not add additional or different terms to this contract; AS 45.02.207(b)(1). The contractor specifically acknowledges and agrees that, among other things, provisions in any documents it seeks to append hereto that purport to (1) waive the State of Alaska's sovereign immunity, (2) impose indemnification obligations on the State of Alaska, or (3) limit liability of the contractor for acts of contractor negligence, are expressly superseded by this contract and are void.

Article 13. Officials Not to Benefit.

Contractor must comply with all applicable federal or State laws regulating ethical conduct of public Specialists and employees.

Article 14. Covenant Against Contingent Fees

The contractor warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee except employees or agencies maintained by the contractor for the purpose of securing business. For the breach or violation of this warranty, the State may terminate this contract without liability or in its discretion deduct from the contract price or consideration the full amount of the commission, percentage, brokerage or contingent fee.

Article 15. Compliance

In the performance of this contract, the contractor must comply with all applicable federal, state, and borough regulations, codes, and laws, and be liable for all required insurance, licenses, permits and bonds.

Article 16. Force Majeure

The parties to this contract are not liable for the consequences of any failure to perform, or default in performing, any of their obligations under this Agreement, if that failure or default is caused by any unforeseeable Force Majeure, beyond the control of, and without the fault or negligence of, the respective party. For the purposes of this Agreement, Force Majeure will mean war (whether declared or not); revolution; invasion; insurrection; riot; civil commotion; sabotage; military or usurped power; lightning; explosion; fire; storm; drought; flood; earthquake; epidemic; quarantine; strikes; acts or restraints of governmental authorities affecting the project or directly or indirectly prohibiting or restricting the furnishing or use of materials or labor required; inability to secure materials, machinery, equipment or labor because of priority, allocation or other regulations of any governmental authorities.

APPENDIX B² INDEMNITY AND INSURANCE

Article 1. Indemnification

The Contractor shall indemnify, hold harmless, and defend the contracting agency from and against any claim of, or liability for error, omission or negligent act of the Contractor under this agreement. The Contractor shall not be required to indemnify the contracting agency for a claim of, or liability for, the independent negligence of the contracting agency. If there is a claim of, or liability for, the joint negligent error or omission of the Contractor and the independent negligence of the Contracting agency, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "Contractor" and "Contracting agency", as used within this and the following article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the Contracting agency's selection, administration, monitoring, or controlling of the Contractor and in approving or accepting the Contractor's work.

Article 2. Insurance

Without limiting contractor's indemnification, it is agreed that contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the contractor's policy contains higher limits, the state shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the contracting Specialist prior to beginning work and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the contractor's services. All insurance policies shall comply with and be issued by insurers licensed to transact the business of insurance under AS 21.

2.1 Workers' Compensation Insurance: The Contractor shall provide and maintain, for all employees engaged in work under this contract, coverage as required by AS 23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements. The policy must waive subrogation against the State.

2.2 Commercial General Liability Insurance: covering all business premises and operations used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per claim.

2.3 Commercial Automobile Liability Insurance: covering all vehicles used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per claim.

2.4 Professional Liability Insurance: covering all errors, omissions or negligent acts in the performance of professional services under this agreement. Limits required per the following schedule:

Contract Amount Minimum Required Limits

Under \$100,000	\$300,000 per Claim / Annual Aggregate
\$100,000-\$499,999	\$500,000 per Claim / Annual Aggregate
\$500,000-\$999,999	\$1,000,000 per Claim / Annual Aggregate
\$1,000,000 or over	Refer to Risk Management

APPENDIX E
STATE OF ALASKA
DEPARTMENT OF HEALTH & SOCIAL SERVICES
HEALTH INSURANCE PORTABILITY AND
ACCOUNTABILITY ACT OF 1996 ("HIPAA")
BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement is between the State of Alaska, Department of Health and Social Services ("Covered Entity" or "CE") and _____ ("Business Associate" or "BA").

RECITALS

Whereas,

- A. CE wishes to disclose certain information to BA, some of which may constitute Protected Health Information ("PHI");
- B. It is the goal of CE and BA to protect the privacy and provide for the security of PHI owned by CE that is disclosed to BA or accessed, received, stored, maintained, modified or retained by BA in compliance with HIPAA (42 U.S.C. 1320d – 3120d-8) and its implementing regulations at 45 C.F.R. 160 and 45 C.F.R. 164 (the "Privacy and Security Rule"), the Health Information Technology for Economic and Clinical Health Act of 2009 (P.L. 111-5) (the "HITECH Act"), and with other applicable laws;
- C. The purpose and goal of the HIPAA Business Associate Agreement ("BAA") is to satisfy certain standards and requirements of HIPAA, HITECH Act, and the Privacy and Security Rule, including but not limited to 45 C.F.R. 164.502(e) and 45 C.F.R. 164.504(e), as may be amended from time to time;

Therefore, in consideration of mutual promises below and the exchange of information pursuant to the BAA, CE and BA agree as follows:

1. Definitions.
 - a. General: As used in this BAA, the terms "Protected Health Information," "Health Care Operations," and other capitalized terms have the same meaning given to those terms by HIPAA, the HITECH Act and the Privacy and Security Rule. In the event of any conflict between the mandatory provisions of HIPAA, the HITECH Act or the Privacy and Security Rule, and the provisions of this BAA, HIPAA, the HITECH Act or the Privacy and Security Rule shall control. Where the provisions of this BAA differ from those mandated by HIPAA, the HITECH Act or the Privacy and Security Rule but are nonetheless permitted by HIPAA, the HITECH Act or the Privacy and Security Rule, the provisions of the BAA shall control.
 - b. Specific:
 - 1) Business Associate: "Business Associate" or "BA" shall generally have the same meaning as the term "business associate" at 45 C.F.R. 160.103.
 - 2) Covered Entity: "Covered Entity" or "CE" shall have the same meaning as the term "covered entity" at 45 C.F.R. 160.103.
 - 3) Privacy and Security Rule: "Privacy and Security Rule" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
2. Permitted Uses and Disclosures by Business Associate.
 - a. BA may only use or disclose PHI for the following purposes: in the rendering of services as described in Appendix C of this document.
 - b. BA may use or disclose PHI as required by law.

- c. BA agrees to make uses and disclosures and requests for PHI consistent with CE's minimum necessary policies and procedures.
 - d. BA may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by CE, except for the specific uses and disclosures set out below.
 - e. BA may disclose PHI for the proper management and administration of BA or to carry out the legal responsibilities of BA, provided the disclosures are required by law, or BA obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notified BA of any instances of which it is aware in which the confidentiality of the information has been breached.
 - f. BA may provide data aggregation services related to the health care operations of CE.
3. Obligations of Business Associate.

- a. Permitted uses and disclosures: BA may only use and disclose PHI owned by the CE that it creates, receives, maintains, or transmits if the use or disclosure is in compliance with each applicable requirement of 45 C.F.R. 164.504(e) of the Privacy Rule or this BAA. The additional requirements of Subtitle D of the HITECH Act contained in Public Law 111-5 that relate to privacy and that are made applicable with respect to Covered Entities shall also be applicable to BA and are incorporated into this BAA.

To the extent that BA discloses CE's PHI to a subcontractor, BA must obtain, prior to making any such disclosure: (1) reasonable assurances from the subcontractor that it will agree to the same restrictions, conditions, and requirements that apply to the BA with respect to such information; and (2) an agreement from the subcontractor to notify BA of any Breach of confidentiality, or security incident, within two business days of when it becomes aware of such Breach or incident.

- b. Safeguards: 45 C.F.R. 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), and 164.316 (policies, procedures and documentation requirements) shall apply to BA in the same manner that such sections apply to CE, and shall be implemented in accordance with HIPAA, the HITECH Act, and the Privacy and Security Rule. The additional requirements of Title XIII of the HITECH Act contained in Public Law 111-5 that relate to security and that are made applicable to Covered Entities shall also apply to BA and are incorporated into this BAA.

Unless CE agrees in writing that this requirement is infeasible with respect to certain data, BA shall secure all paper and electronic PHI by encryption or destruction such that the PHI is rendered unusable, unreadable or indecipherable to unauthorized individuals; or secure paper, film and electronic PHI in a manner that is consistent with guidance issued by the Secretary of the United States Department of Health and Human Services specifying the technologies and methodologies that render PHI unusable, unreadable or indecipherable to unauthorized individuals, including the use of standards developed under Section 3002(b)(2)(B)(vi) of the Public Health Service Act, as added by Section 13101 of the HITECH Act contained in Public Law 111-5.

BA shall patch its operating system and all applications within two weeks of the release of any patch. BA shall keep its antivirus and antimalware installed and active. BA shall limit its use of administrative accounts for IT operations only.

- c. Reporting Unauthorized Disclosures and Breaches: During the term of this BAA, BA shall notify CE within 24 hours of discovering a Breach of security; intrusion; or unauthorized acquisition, access, use or disclosure of CE's PHI in violation of any applicable federal or state law, including security incidents. BA shall identify for the CE the individuals whose unsecured PHI has been, or is reasonably believed to have been, Breached so that CE can comply with any notification requirements if necessary. BA shall also indicate whether the PHI subject to the Breach; intrusion; or unauthorized acquisition, access, use or disclosure was encrypted or destroyed at the time. BA shall take prompt corrective action to cure

any deficiencies that result in Breaches of security; intrusion; or unauthorized acquisition, access, use, and disclosure. BA shall fulfill all breach notice requirements unless CE notifies BA that CE will take over the notice requirements. BA shall reimburse CE for all costs incurred by CE that are associated with any mitigation, investigation and notice of Breach CE undertakes or provides under HIPAA, HITECH Act, and the Privacy and Security Rule as a result of a Breach of CE's PHI caused by BA or BA's subcontractor or agent.

If the unauthorized acquisition, access, use or disclosure of CE's PHI involves only Secured PHI, BA shall notify CE within 10 days of discovering the Breach but is not required to notify CE of the names of the individuals affected.

- d. BA is not an agent of CE.
- e. BA's Agents: If BA uses a subcontractor or agent to provide services under this BAA, and the subcontractor or agent creates, receives, maintains, or transmits CE's PHI, the subcontractor or agent shall sign an agreement with BA containing substantially the same provisions as this BAA and further identifying CE as a third-party beneficiary with rights of enforcement and indemnification from the subcontractor or agent in the event of any violation of the subcontractor or agent agreement. BA shall mitigate the effects of any violation of that agreement.
- f. Availability of Information to CE: Within 15 days after the date of a written request by CE, BA shall provide any information necessary to fulfill CE's obligations to provide access to PHI under HIPAA, the HITECH Act, or the Privacy and Security Rule.
- g. Accountability of Disclosures: If BA is required by HIPAA, the HITECH Act, or the Privacy or Security Rule to document a disclosure of PHI, BA shall make that documentation. If CE is required to document a disclosure of PHI made by BA, BA shall assist CE in documenting disclosures of PHI made by BA so that CE may respond to a request for an accounting in accordance with HIPAA, the HITECH Act, and the Privacy and Security Rule. Accounting records shall include the date of the disclosure, the name and if known, the address of the recipient of the PHI, the name of the individual who is subject of the PHI, a brief description of the PHI disclosed and the purpose of the disclosure. Within 15 days of a written request by CE, BA shall make the accounting record available to CE.
- h. Amendment of PHI: Within 30 days of a written request by CE or an individual, BA shall amend PHI maintained, transmitted, created or received by BA on behalf of CE as directed by CE or the individual when required by HIPAA, the HITECH Act or the Privacy and Security Rule, or take other measures as necessary to satisfy CE's obligations under 45 C.F.R. 164.526.
- i. Internal Practices: BA shall make its internal practices, books and records relating to the use and disclosure of CE's PHI available to CE and all appropriate federal agencies to determine CE's and BA's compliance with HIPAA, the HITECH Act and the Privacy and Security Rule.
- j. Risk Assessment: BA shall biennially conduct a thorough assessment of the potential risks to and vulnerabilities of the confidentiality, integrity, and availability of CE's PHI that BA receives, stores, transmits, or has access to, and shall provide CE with a written report detailing the results of the assessment within 60 days of completing it.
- k. To the extent BA is to carry out one or more of CE's obligations under Subpart E of 45 C.F.R. Part 164, BA must comply with the requirements of that Subpart that apply to CE in the performance of such obligations.
- l. Audits, Inspection and Enforcement: CE may, after providing reasonable notice to the BA, conduct an inspection of the facilities, systems, books, logs and records of BA that relate to BA's use of CE's PHI, including inspecting logs showing the creation, modification, viewing, and deleting of PHI at BA's level. Failure by CE to inspect does not waive any rights of the CE or relieve BA of its responsibility to comply with this BAA. CE's failure to detect or failure to require remediation does not constitute acceptance of any practice or waive any rights of CE to enforce this BAA.

Notwithstanding BA's obligation to report under paragraph 3.c of this BAA, BA shall provide a monthly report to CE detailing the unauthorized, or reasonable belief of unauthorized, acquisition, access, use, or disclosure of CE's PHI, including any unauthorized creation, modification, or destruction of PHI and unauthorized login attempts. BA shall include privileged and nonprivileged accounts in its audit and report, indicating the unique individual using the privileged account. BA shall also indicate whether CE's PHI subject to unauthorized activity was encrypted or destroyed at the time of the unauthorized activity.

BA shall provide a yearly report to CE that lists the names of all individuals with technical or physical access to CE's PHI and the scope of that access.

- m. **Restrictions and Confidential Communications:** Within 10 business days of notice by CE of a restriction upon use or disclosure or request for confidential communications pursuant to 45 C.F.R.164.522, BA shall restrict the use or disclosure of an individual's PHI. BA may not respond directly to an individual's request to restrict the use or disclosure of PHI or to send all communication of PHI to an alternate address. BA shall refer such requests to the CE so that the CE can coordinate and prepare a timely response to the requesting individual and provide direction to the BA.
 - n. **Indemnification:** BA shall indemnify and hold harmless CE for any civil or criminal monetary penalty imposed on CE or monetary settlement reached by CE for acts or omissions in violation of HIPAA, the HITECH Act, or the Privacy or Security Rule that are committed by BA, a member of its workforce, its agent, or its subcontractor.
4. **Obligations of CE.** CE will be responsible for using legally appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to BA under the BAA until the PHI is received by BA. CE will not request BA to use or disclose PHI in any manner that would not be permissible under HIPAA, the HITECH Act or the Privacy and Security Rule if done by CE.
 5. **Termination.**
 - a. **Breach:** A breach of a material term of the BAA by BA that is not cured within a reasonable period of time will provide grounds for the immediate termination of the contract.
 - b. **Reasonable Steps to Cure:** In accordance with 45 C.F.R. 164.504(e)(1)(ii), CE and BA agree that, if it knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party's obligation under the BAA, the nonbreaching party will take reasonable steps to get the breaching party to cure the breach or end the violation and, if the steps taken are unsuccessful, terminate the BAA if feasible, and if not feasible, report the problem to the Secretary of the U.S. Department of Health and Human Services.
 - c. **Effect of Termination:** Upon termination of the contract, BA will, at the direction of the CE, either return or destroy all PHI received from CE or created, maintained, or transmitted on CE's behalf by BA in any form. Unless otherwise directed, BA is prohibited from retaining any copies of PHI received from CE or created, maintained, or transmitted by BA on behalf of CE. If destruction or return of PHI is not feasible, BA must continue to extend the protections of this BAA to PHI and limit the further use and disclosure of the PHI. The obligations in this BAA shall continue until all of the PHI provided by CE to BA is either destroyed or returned to CE.
 6. **Amendment.** The parties acknowledge that state and federal laws relating to electronic data security and privacy are evolving, and that the parties may be required to further amend this BAA to ensure compliance with applicable changes in law. Upon receipt of a notification from CE that an applicable change in law affecting this BAA has occurred, BA will promptly agree to enter into negotiations with CE to amend this BAA to ensure compliance with changes in law.
 7. **Ownership of PHI.** For purposes of this BAA, CE owns the data that contains the PHI it transmits to BA or that BA receives, creates, maintains or transmits on behalf of CE.

8. Litigation Assistance. Except when it would constitute a direct conflict of interest for BA, BA will make itself available to assist CE in any administrative or judicial proceeding by testifying as witness as to an alleged violation of HIPAA, the HITECH Act, the Privacy or Security Rule, or other law relating to security or privacy.
9. Regulatory References. Any reference in this BAA to federal or state law means the section that is in effect or as amended.
10. Interpretation. This BAA shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy and Security Rule and applicable state and federal laws. The parties agree that any ambiguity in BAA will be resolved in favor of a meaning that permits the CE to comply with and be consistent with HIPAA, the HITECH Act, and the Privacy and Security Rule. The parties further agree that where this BAA conflicts with a contemporaneously executed confidentiality agreement between the parties, this BAA controls.
11. No Private Right of Action Created. This BAA does not create any right of action or benefits for individuals whose PHI is disclosed in violation of HIPAA, the HITECH Act, the Privacy and Security Rule or other law relating to security or privacy.

In witness thereof, the parties hereto have duly executed this BAA as of the effective date.