

STATE OF ALASKA INVITATION TO BID (ITB)



MEDICAL WASTE DISPOSAL

ITB 2025-1600-0401

ISSUED JUNE 27, 2025 (REVISED 8/25/2025)

THE STATE OF ALASKA DEPARTMENT OF HEALTH, DIVISION OF PUBLIC HEALTH, IS SEEKING CONTRACTOR(S) TO PROVIDE BIOMEDICAL WASTE PICK-UP, TRANSPORTATION, AND DISPOSAL SERVICES FOR TWO (2) SITES IN ANCHORAGE AND ONE (1) SITE IN FAIRBANKS.

ISSUED BY:

DEPARTMENT OF HEALTH
DIVISION OF PUBLIC HEALTH

PRIMARY CONTACT:

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BIDDERS ARE NOT REQUIRED TO RETURN THIS FORM.

IMPORTANT NOTICE: IF YOU RECEIVED THIS SOLICITATION FROM THE STATE OF ALASKA'S "ONLINE PUBLIC NOTICE" WEB SITE, YOU MUST REGISTER WITH THE PROCUREMENT OFFICER LISTED IN THIS DOCUMENT TO RECEIVE NOTIFICATION OF SUBSEQUENT AMENDMENTS. FAILURE TO CONTACT THE PROCUREMENT OFFICER MAY RESULT IN THE REJECTION OF YOUR OFFER.

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SECTION 1. INTRODUCTION & INSTRUCTIONS

SEC. 1.01 PURPOSE OF THE ITB

The Department of Health, Division of Public Health, is soliciting bids from qualified contractors to provide biomedical waste pick-up, transportation, and disposal services at the Alaska Public Health Laboratory and State Medical Examiner's office in Anchorage, and the Virology Laboratory in Fairbanks. Up to two (2) contracts may be awarded from this solicitation, one for the two (2) Anchorage sites and one for the Fairbanks site.

SEC. 1.02 BUDGET

The Department of Health, Division of Public Health, estimates a budget of \$500,000.00 for both locations. Bids for Anchorage priced at more than \$350,000.00 will be considered non-responsive. Bids for Fairbanks priced at more than \$150,000.00 will be considered non-responsive. An offeror does not have to bid on both locations to be deemed responsive.

Approval or continuation of contracts resulting from this ITB is contingent upon legislative appropriation or federal funding.

SEC. 1.03 DEADLINE FOR RECEIPT OF BIDS

Bids must be received no later than **12:00 PM Alaska Time on September 5, 2025**, at which time they will be publicly opened. Late bids or amendments will be considered non-responsive and will not be opened or accepted for evaluation.

SEC. 1.04 MANDATORY REQUIREMENTS

To be considered responsive for this ITB, a bidder must meet the mandatory minimum requirements that are provided in the mandatory requirements section of ITB 2025-1600-0401 – Submittal Forms. Failure to meet all these requirements will result in immediate disqualification.

SEC. 1.05 REQUIRED REVIEW

Bidders shall carefully review this ITB for defects and questionable or objectionable material. Comments concerning defects and questionable or objectionable material in the ITB should be made in writing and received by the procurement officer at least ten days before the deadline for receipt of bids. This will allow time for an amendment to be issued if one is required. It will also help prevent the opening of a defective bid, upon which award cannot be made, and the resultant exposure of bidders' prices.

SEC. 1.06 QUESTIONS PRIOR TO DEADLINE FOR RECEIPT OF BIDS

All questions must be in writing and directed to the procurement officer. 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 ITB. These questions may be answered over the telephone. Other questions may be more complex and may require a written amendment to the ITB. The procurement officer will make that decision.

SEC. 1.07 BID RETURN INSTRUCTIONS

Bidders must submit their bids via email. The bid must contain the ITB number in the subject line. The maximum size of a single email (including all text and attachments) that can be received by the state is 25mb (megabytes). If the email containing the bid exceeds this size, the bid must be sent in multiple emails that are each less than 25 megabytes.

Please note that email transmission is not instantaneous. Similar to sending a hard copy bid, if you are emailing your bid, the state recommends sending it enough ahead of time to ensure the email is delivered by the deadline for receipt of bids. It is the bidder's responsibility to contact the above email address to confirm that the bid has been received. The state is not responsible for unreadable, corrupt, or missing attachments.

SEC. 1.08 BID SUBMITTAL FORMS

Bidders shall use the ITB 2025-1600-0401 Submittal Forms, and any other forms identified in this ITB for submitting bids. The form must be signed by an individual authorized to bind the bidder to the provisions of the ITB.

By signature on the form, the bidder also certifies they comply with the items listed in the Certifications section of the form. If the bidder fails to comply with these items, the state reserves the right to disregard the bid, consider the contractor in default, or terminate the contract.

The form also requests the following information:

- a) The complete name and address of bidder's company along with the bidder's Tax ID.
- b) Information on the person the state should contact regarding the bid.
- c) Addenda acknowledgement.
- d) Conflict of interest statement.
- e) Alaska preference qualifications.

A bidder's failure to provide this information may cause the bid to be considered non-responsive and rejected.

SEC. 1.09 ASSISTANCE TO BIDDERS WITH DISABILITY

The State of Alaska complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, and/or special modifications to submit a bid should contact the procurement officer no later than ten days prior to the closing of the bid to make any necessary arrangements.

SEC. 1.10 AMENDMENTS TO BIDS

Amendments to or withdrawals of bids will only be allowed if acceptable requests are received prior to the deadline that is set for receipt of bids, in accordance with 2 AAC 12.140. No amendments or withdrawals will be accepted after the deadline unless the delay is due to an error of the contracting agency, in accordance with 2 AAC 12.160.

SEC. 1.11 AMENDMENTS TO THE ITB

If an amendment is issued before the deadline for receipt of bids, the amendment will be posted on the State of Alaska Online Public Notice (OPN) website. The link to the posting of the amendment will be provided to all who were notified of the ITB and to those who have registered with the procurement officer after receiving the ITB from the OPN.

SEC. 1.12 ITB SCHEDULE

The ITB schedule below represents the State of Alaska’s best estimate of the schedule that will be followed. If a component of this schedule, such as the deadline for receipt of bids, is delayed, the rest of the schedule may be shifted accordingly. All times are Alaska Time.

ACTIVITY	TIME	DATE
Issue Date / ITB Released		6/27/2025
Pre-Bid Conference	10:00 AM	8/26/2025
Deadline for Receipt of Bids / Bid Due Date	12:00 PM	9/5/2025
Bid Evaluations Complete		9/5/2025
Notice of Intent to Award		9/8/2025
Contract Issued		9/15/2025

This ITB does not, by itself, obligate the state. The state's obligation will commence when the contract is approved by the Commissioner of the Department of Health or the Commissioner's designee. Upon written notice to the contractor, the state may set a different starting date for the contract. The state will not be responsible for any work done by the contractor, even work done in good faith, if it occurs prior to the contract start date set by the state.

SEC. 1.13 ITB PRE-BID CONFERENCE

The ITB Pre-Bid Conference is scheduled for August 26, 2025, at 10:00 AM Alaska Time. Details to join are provided below.

Microsoft Teams [Need help?](#)

[Join the meeting now](#)

Meeting ID: 232 157 115 726 0

Passcode: eH6Pd7Yy

Dial in by phone

[+1 907-202-7104,209592382#](#) United States, Anchorage

[Find a local number](#)

Phone conference ID: 209 592 382#

Join on a video conferencing device

Tenant key: 260748889@t.plcm.vc

Video ID: 115 258 889 8

SEC. 1.14 ALTERNATE BIDS

Bidders may only submit one bid for evaluation per location. In accordance with 2 AAC 12.830 alternate bids (bids that offer something different than what is asked for) will be rejected.

SEC. 1.15 FIRM, UNQUALIFIED, AND UNCONDITIONAL OFFER

To be responsive a bid must constitute a definite, firm, unqualified and unconditional offer to meet all the material terms of the ITB. Material terms are those that could affect the price, quantity, quality, or delivery. Also included as material terms are those which are clearly identified in the ITB, and which must be complied with at risk of bid rejection for non-responsiveness.

SEC. 1.16 SUPPORTING INFORMATION

Provided a bid meets the requirements for a definite, firm, unqualified, unconditional offer, the state reserves the right to request supplemental information or product samples from the bidder, after the bids have been opened, to ensure that the products or services offered completely meet the ITB requirements. The requirement for such supplemental information will be at the reasonable discretion of the state and may include the requirement that a bidder will provide a sample product(s) so that the state can make a first-hand examination and determination.

A bidder's failure to provide this supplemental information or the product sample(s), within the time set by the state, may cause the state to consider the offer non-responsive and reject the bid.

SECTION 2. CONTRACT TERMS AND CONDITIONS

SEC. 2.01 SCOPE OF WORK AND SPECIFICATIONS

The State of Alaska Department of Health, Division of Public Health, is seeking a contractor to provide biomedical waste pick-up, transportation, and disposal services at the Alaska Public Health Laboratory in Anchorage, the State Medical Examiner's Office in Anchorage, and the Virology Laboratory in Fairbanks. These services must comply with all applicable federal, state, and local regulations regarding the handling and disposal of biohazardous and pathological waste.

The Department of Health operates clinical and forensic facilities which routinely generate biomedical and pathological waste due to drug testing diagnostics, and autopsy procedures. Safe and timely disposal of this waste is essential for compliance with health and safety regulations and for maintaining uninterrupted laboratories and forensic services.

The contractor will be responsible for providing the following services:

1. Scheduled Pickup of Biomedical Waste:

- Anchorage Public Health Lab: 1–2 pickups per week
- Fairbanks Virology Lab: 1 pickup per week (biweekly during low volume periods)
- State Medical Examiner's Office (Anchorage): 2 pickups per week, may increase depending on case load

2. Waste Types:

- Regulated Medical Waste (RMW)
- Pathological Waste (e.g., tissues, organs)
- Sharps (e.g., needles, scalpels)
- Biohazardous Laboratory Materials

3. Containers:

- The contractor must provide all required containers suitable for DOT transport.
- All containers must be leak-proof, puncture-resistant, and compliant with OSHA and EPA standards.

4. Transport and Disposal:

- Waste must be transported in vehicles properly licensed and approved for biomedical waste.
- Waste must be disposed of via incineration or alternative sterilization methods (e.g., autoclaving of sharps) that reduce waste to sterile, non-infectious state or ash.
- Disposal methods must comply with the most stringent applicable standard (DEC, OSHA, EPA, federal, state, or city).
- The contractor must maintain proper manifests and disposal documentation.

5. Compliance Requirements:

- The contractor must comply with all federal, state, and local laws and regulations, including but not limited to OSHA, EPA, DOT, and DEC standards.
- Contractor staff must be trained and certified in biomedical waste handling and transport.
- Contractor must follow all U.S. Environmental Protection Agency (EPA) standards.

6. Service Hours:

- All regular pickups must occur during normal business hours (8:00 AM – 4:30 PM, Monday–Friday).
- Emergency pickups must be available with 24-hour notice.

7. Documentation:

- Waste manifests must be signed at each pickup and returned to the facility after disposal.
- Monthly service reports are required, documenting volumes picked up and confirmation of disposal.

8. Insurance and Certification:

- The contractor must maintain insurance for the duration of the contract.
- The contractor must hold current copies of required hauling permits and disposal facility certifications with bid for the duration of the contract.

9. Additional Requirements:

- Alaska State Public Health Labs may request additional pickups or containers on an as-needed basis via phone or email.
- The State does not guarantee any minimum or maximum volumes.

SEC. 2.02 CONTRACT TERM

The length of the contracts will be from the date of award, approximately September 15, 2025, through August 30, 2026, with the option to renew for four (4) additional one – year terms under the same terms and conditions as the original contract. Renewals will be exercised at the sole discretion of the state.

Any extension of the contract beyond the exercised renewal options will be upon mutual agreement between the State and the contractor and effected with a contract amendment processed by the procurement officer and signed by both parties. All other terms and conditions of the contract, including those previously amended, shall remain in full force and effect. Unless otherwise agreed to by both parties, the procurement officer will provide written notice to the contractor of the intent to cancel an extension at least 30 days before the desired date of cancellation.

SEC. 2.03 CONTRACT TYPE

This contract is a firm fixed price contract.

SEC. 2.04 CONTRACT ADMINISTRATION

The administration of this contract is the responsibility of the procurement officer or person appointed by the Department of Health, Division of Public Health.

SEC. 2.05 CONTRACT PERFORMANCE LOCATION

The location(s) the work is to be performed, completed, and managed are at the following locations:

Anchorage contract:

Alaska Department of Health
Division of Public Health – Anchorage Laboratory
5455 Dr. Martin Luther King, Jr. Avenue
Anchorage, Alaska 99507
Attention: Mike Kruzinski

Alaska Department of Health
Division of Public Health – Medical Examiner’s Office
5455 Dr. Martin Luther King, Jr. Avenue
Anchorage, Alaska 99507
Attention: Mike Kruzinski

Fairbanks contract:

Alaska Department of Health
Division of Public Health – Fairbanks Laboratory
University of Alaska Fairbanks
1051 Sheenjek Drive
P.O. Box 60230
Fairbanks, AK 99706

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

By signature on their bid, the bidder certifies that all services provided under this contract by the contractor shall be performed in the United States.

If the bidder cannot certify that all work will be performed in the United States, the bidder must submit a request, set out in a separate document in their bid, that provides a detailed description of the portion of work that will be performed outside the United States, where, by whom, and the reason that is necessary.

Failure to comply with these requirements may cause the state to reject the bid as non-responsive or cancel the contract.

SEC. 2.06 CONTRACT PAYMENT

No payment will be made until the contract is approved by the Commissioner of the Department of Health, the procurement officer, or the Commissioner's designee. The State is not responsible for and will not pay local, state, or federal taxes. All costs associated with the contract must be stated in U.S. currency.

For agreements over \$500,000, under no conditions will the State be liable for the payment of any interest charges associated with the cost of the contract. Payment for agreements under \$500,000 will be made within 30 days of the receipt of a proper billing or the delivery of the goods or services to the location(s) specified in the agreement, whichever is later. A late payment is subject to 1.5% interest per month on the unpaid balance. Interest will not be paid if there is a dispute or if there is an agreement that establishes a lower interest rate or precludes the charging of interest.

SEC. 2.07 BILLING INSTRUCTIONS

The contractor will submit monthly invoices detailing services performed in accordance with Appendix C. The invoice must:

1. Reference the contractor's name, address, and telephone number
2. Reference the contract number
3. Include an invoice number
4. Reference the Department of Health, Division of Public Health
5. Itemize the contractual services provided during the period invoiced, as described in Appendix C

The contractor shall submit invoices to the address specified below no later than 30 days after the end the period for which services were performed. Failure to include the required information on the invoice may cause an unavoidable delay to the payment process. The State will pay all invoices within thirty (30) days of invoice approval by the Project Director.

SEC. 2.08 ELECTRONIC PAYMENTS

The State of Alaska prefers vendors receive payment via Electronic Funds Transfer (EFT). Bidders may review information concerning the EFT process and access the **Electronic Payment Agreement Form for Vendors** at the following link: <https://doa.alaska.gov/dof/vendor.html>. Method of payment is not a factor in the State's determination for award.

Any single contract payments of \$1 million or higher must be accepted by the contractor via Electronic Funds Transfer (EFT).

SEC. 2.09 CONTRACT CHANGES – UNANTICIPATED AMENDMENTS

During the course of this contract, the contractor may be required to perform additional work. That work will be within the general scope of the initial contract. When additional work is required, the state will provide the contractor a written description of the additional work and request the contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work. Cost and pricing data must be provided to justify the cost of such amendments per AS 36.30.400.

The contractor will not commence additional work until the procurement officer has secured required state approvals necessary and issued a written contract amendment.

SEC. 2.10 THIRD-PARTY FINANCING AGREEMENTS NOT ALLOWED

Because of the additional administrative and accounting time required of the State when third party financing agreements are permitted, they will not be allowed under this contract.

SEC. 2.11 SUBCONTRACTORS

Subcontractors will not be allowed.

SEC. 2.12 JOINT VENTURES

Joint ventures will not be allowed.

SEC. 2.13 RIGHT TO INSPECT PLACE OF BUSINESS

At reasonable times, the State may inspect those areas of the contractor's place of business that are related to the performance of a contract. If the State makes such an inspection, the contractor must provide reasonable assistance.

SEC. 2.14 INSPECTION & MODIFICATION - REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES

The contractor is responsible for providing all products or the completion of all work set out in the contract. All products or work is subject to inspection, evaluation, and approval by the State. The State may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract. The State may instruct the contractor to make corrections or modifications if needed in order to accomplish the contract's intent. The contractor will not unreasonably withhold such changes.

Substantial failure of the contractor to perform the contract may cause the State to terminate the contract. In this event, the State may require the contractor to reimburse monies paid (based on the identified portion of unacceptable products or work received) and may seek associated damages.

SEC. 2.15 ESTIMATED QUANTITIES

The estimated annual use quantities referenced in this contract are only estimates and may vary from the quantities of medical waste disposed of. The state does not guarantee any minimum or maximum purchase. Orders may be issued throughout the contract period by various state agencies on an as-needed basis.

SEC. 2.16 NONDISCLOSURE AND CONFIDENTIALITY

The 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 both facility physical security and electronic 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 and HIPAA. 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.

Confidential information, as used herein, means any data, files, software, information or materials (whether prepared by the state or its agents or advisors) in oral, electronic, tangible or intangible form and however stored, compiled or memorialized that is classified confidential as defined by State of Alaska classification and categorization guidelines provided by the state to the contractor or a contractor agent or otherwise made available to the contractor or a contractor agent in connection with this contract, or acquired, obtained or learned by the contractor or a contractor agent in the performance of this contract. Examples of confidential information include, but are not limited to technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data (infrastructure, architecture, operating systems, security tools, IP addresses, etc.).

Additional information that the contractor shall hold as confidential during the performance of services under this contract include:

- Medical or clinical waste manifest data that may contain PHI or facility-identifiable data
- Facility service schedules, access codes, or waste storage locations that could compromise operational or patient safety if disclosed.
- Records or documentation of hazardous waste containing patient identifiers (e.g. sharps containers, lab specimens, pathology waste, etc.).

If confidential information is requested to be disclosed by the contractor pursuant to a request received by a third party and such disclosure of the confidential information is required under applicable state or federal law, regulation, governmental or regulatory authority, the contractor may disclose the confidential information after providing the state with written notice of the requested disclosure (to the extent such notice to the state is permitted by applicable law) and giving the state opportunity to review the request. If the contractor receives no objection from the State, it may release confidential information within 30 days. Notice of the requested disclosure of confidential information by the contractor must be provided to the state within a reasonable time after the contractor's receipt of notice of the requested disclosure and, upon the request of the State, shall seek to obtain legal protection from the release of the confidential information.

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.

SEC. 2.17 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.

SEC. 2.18 INSURANCE

Without limiting the contractor's indemnification, it is agreed that the 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 procurement officer prior to contract approval 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.

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.

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 \$1,000,000 combined single limit per claim.

Commercial Automobile Liability Insurance: covering all vehicles used by the contractor in the performance of services under this agreement with minimum coverage limits of \$1,000,000 combined single limit per claim. This coverage must include coverage for hazardous materials transport.

Pollution Liability Insurance: covering sudden, accidental, and gradual pollution and remediation. The policy limit shall be no less than \$500,000 per claim and in the aggregate for the Anchorage location and \$300,000 per claim in the aggregate for the Fairbanks location. All activities contemplated in this agreement shall be specifically scheduled on the policy as “covered operations”. The policy shall provide coverage for the hauling of waste from State facilities listed in this contract to the final disposal location, including non-owned disposal sites.

SECTION 3. EVALUATION AND CONTRACTOR SELECTION

SEC. 3.01 EVALUATION OF BIDS

After bid opening, the procurement officer will evaluate the bids for responsiveness. Bids deemed non-responsive will be eliminated from further consideration. 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 bidder.

SEC. 3.02 APPLICATION OF PREFERENCES

Certain preferences apply to all State contracts, regardless of their dollar value. The Alaska Bidder and Alaska Veteran preferences are the most common preferences involved in the ITB process. Additional preferences that may apply to this procurement are listed below. Guides that contain excerpts from the relevant statutes and codes, explain when the preferences apply and provide examples of how to calculate the preferences are available at the following website:

<https://oppm.doa.alaska.gov/policy-oversight/policy-resources/user-guide-matrixes/>

- Alaska Military Skills Program Preference – AS 36.30.321(I)
- Alaska Products Preference - AS 36.30.332
- Recycled Products Preference - AS 36.30.337
- Local Agriculture and Fisheries Products Preference - AS 36.15.050
- Employment Program Preference - AS 36.30.321(b)
- Alaskans with Disabilities Preference - AS 36.30.321(d)

The Division of Vocational Rehabilitation in the Department of Labor and Workforce Development keeps a list of qualified employment programs and individuals who qualify as persons with a disability. As evidence of a business' or an individual's right to the Employment Program or Alaskans with Disabilities preferences, the Division of Vocational Rehabilitation will issue a certification letter. To take advantage of these preferences, a business or individual must be on the appropriate Division of Vocational Rehabilitation list prior to the time designated for receipt of proposals. Bidders must attach a copy of their certification letter to the proposal. **A bidder's failure to provide this certification letter with their proposal will cause the state to disallow the preference.**

SEC. 3.03 ALASKA BIDDER PREFERENCE

An Alaska Bidder Preference of 5% will be applied to the total bid price. The preference will be given to a bidder who:

- 1) holds a current Alaska business license prior to the deadline for receipt of bids;
- 2) submits a bid for goods or services under the name appearing on the bidder's current Alaska business license;

- 3) has maintained a place of business within the state staffed by the bidder, or an employee of the bidder, for a period of six months immediately preceding the date of the bid;
- 4) 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, is a limited liability company (LLC) organized under AS 10.50 and all members are residents of the state, or is a partnership under AS 32.06 or AS 32.11 and all partners are residents of the state; and
- 5) if a joint venture, is composed entirely of ventures that qualify under (1)-(4) of this subsection.

Alaska Bidder Preference Certification Form

To receive the Alaska Bidder Preference, the bid must include the Alaska Bidder Preference Certification Form attached to this ITB. A bidder does not need to complete the Alaska Veteran Preference questions on the form if not claiming the Alaska Veteran Preference. A bidder's failure to provide this completed form with their bid will cause the state to disallow the preference.

SEC. 3.04 ALASKA VETERAN PREFERENCE

An Alaska Veteran Preference of 5%, not to exceed \$5,000, will be applied to the total bid price. The preference will be given to a bidder who qualifies under AS 36.30.990(2) 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 accordance with AS 36.30.321(i), the bidder must also add value by actually performing, controlling, managing, and supervising the services provided, or for supplies, the bidder must have sold supplies of the general nature solicited to other state agencies, other government, or the general public.

Alaska Veteran Preference Certification

To receive the Alaska Veteran Preference, the bid must include the Alaska Bidder Preference Certification Form attached to this ITB. A bidder's failure to provide this completed form with their bid will cause the state to disallow the preference.

SEC. 3.05 ALASKA MILITARY SKILLS PROGRAM PREFERENCE

An Alaska Military Skills Program Preference of 2%, not to exceed \$5,000, will be applied to the price in the proposal. The preference will be given to an offeror who qualifies under AS 36.30.990(2) as an Alaska bidder and:

- a) Employs at least one person who is currently enrolled in, or within the previous two years graduated from, a United States Department of Defense SkillBridge or United States Army career skills program for service members or spouses of service members that offers civilian work experience through specific industry training, pre-apprenticeships, registered apprenticeships, or internships during the last 180 days before a service member separates or retires from the service; or
- b) has an active partnership with an entity that employs an apprentice through a program described above.

In accordance with AS 36.30.321(i), the bidder must also add value by actually performing, controlling, managing, and supervising the services provided, or for supplies, the bidder must have sold supplies of the general nature solicited to other state agencies, other government, or the general public.

Alaska Military Skills Program Preference Certification

In order to receive the Alaska Military Skills Program Preference, the bid must include the Alaska Bidder Preference Certification Form attached to this ITB. A bidder's failure to provide this completed form with their bid will cause the state to disallow the preference.

In addition, proof of graduation of the qualifying employee from an eligible program as described in AS 36.30.321(l) must be provided to the procurement officer at time of bid submission. Bidders must provide clarification or additional information requested by the procurement officer related to the preference not later than 5:00 PM Alaska Time one (1) business day following the date of the request. Failure to provide sufficient documentation will result in the bidder not receiving the Military Skills Program Preference.

SEC. 3.06 USE OF LOCAL FOREST PRODUCTS

In a project financed by state money in which the use of timber, lumber and manufactured lumber is required, only timber, lumber and manufactured lumber products originating in this state from Alaska forests shall be used unless the use of those products has been determined to be impractical, in accordance with AS 36.15.010 and AS 36.30.322.

SEC. 3.07 LOCAL AGRICULTURAL AND FISHERIES PRODUCT PREFERENCE

When agricultural, dairy, timber, lumber, or fisheries products are purchased using state money, a seven percent (7%) preference shall be applied to the price of the products harvested in Alaska, or in the case of fisheries products, the products harvested or processed within the jurisdiction of Alaska, in accordance with AS 36.15.050.

SEC. 3.08 ALASKA PRODUCT PREFERENCE

A bidder that designates the use of an Alaska Product which meets the requirements of the ITB specifications and is designated as a Class I, Class II, or Class III Alaska Product by the Department of Community & Economic Development (DCCED) may receive a preference in the bid evaluation in accordance with AS 36.30.332 and 3 AAC 92.010.

To qualify for the preference, the product must have received certification from DCCED, be listed in the current published edition of the Alaska Products Preference List, and the bidder must provide the qualified product on a 100% basis. There are no provisions under Alaska Statutes or Regulations that allow for a product exchanges/substitutions or permit the product to be co-mingled with other products. Rather, AS 36.30.330 provides for a penalty for failing to use the designated Alaska products.

Products are classified in one of three categories:

- Class I products receive a 3% preference.
- Class II products receive a 5% preference.
- Class III products receive a 7% preference.

When the bids are evaluated, the preference percentage will be deducted from the product price. If a bidder fails to specify the brand being offered, no preference will be given. For more information on the Alaska Product Preference and to see the list of products currently on the Alaska Product Preference List, use the following web link:

<https://www.commerce.alaska.gov/web/dcra/AlaskaProductPreferenceProgram.aspx>

Brand Offered

If offering a product that qualifies for the Alaska Product Preference, the bidder must indicate the brand of product they intent to provide. If a bidder is not offering a product that qualifies for the Alaska Product Preference, the bidder does not need to indicate a product brand.

Brand of Product Changes

During the course of the contract including all renewal options, a contractor that offered a product that qualified for the Alaska Product Preference wishes to change the product brand. The contractor must first provide a written request, along with evidence that the replacement brand also qualifies for the Alaska Product Preference, for approval by the procurement officer. A contract amendment must be issued by the procurement officer to authorize the change.

If a bidder offers a product brand in the original bid that does not qualify for the Alaska Product Preference, a change in the product brand may be made at any time during the course of the contract, including all renewals, as long as the product brand continues to meet the required specifications. A contract amendment is not required if the product brand originally offered did not qualify for the Alaska Product Preference.

SEC. 3.09 EMPLOYMENT PROGRAM PREFERENCE

If a bidder qualifies for the Alaska Bidder Preference and is offering goods or services through an employment program as defined under AS 36.30.990(12), an Employment Program Preference of 15% will be applied to the total bid price.

In accordance with AS 36.30.321(i), the bidder must also add value by actually performing, controlling, managing, and supervising the services provided, or for supplies, the bidder must have sold supplies of the general nature solicited to other state agencies, other government, or the general public.

SEC. 3.10 ALASKANS WITH DISABILITIES PREFERENCE

If a bidder qualifies for the Alaska Bidder Preference and is a qualifying entity as defined in AS 36.30.321(d), an Alaskans with Disabilities Preference of 10% will be applied to the total bid price.

In accordance with AS 36.30.321(i), the bidder must also add value by actually performing, controlling, managing, and supervising the services provided, or for supplies, the bidder must have sold supplies of the general nature solicited to other state agencies, other government, or the general public.

SEC. 3.11 PREFERENCE QUALIFICATION LETTER

Regarding the Employment Program Preference and the Alaskans with Disabilities Preference, the Division of Vocational Rehabilitation in the Department of Labor and Workforce Development maintains lists companies who qualify for those preferences. As evidence of a company's right to the preferences, the Division of Vocational Rehabilitation will issue a certification letter. To take advantage of the preferences, a bidder must be on the appropriate Division of Vocational Rehabilitation list at the time the bid is opened and must attach a copy of their certification letter to their bid. The bidder's failure to provide this certification letter with their bid will cause the state to disallow the preference.

SEC. 3.12 EXTENSION OF PRICES

In case of error in the extension of prices in the bid, the unit prices will govern; in a lot bid, the lot prices will govern.

SEC. 3.13 METHOD OF AWARD

Award will be made to the lowest responsive and responsible bidder for each of the two locations, Anchorage and/or Fairbanks. To be considered responsive, bidders must bid on all items for each location they are bidding on. There are two (2) sites in Anchorage and one (1) site in Fairbanks. The offeror must bid on both sites in Anchorage and / or the one location in Fairbanks.

Anchorage Sites:

Alaska Department of Health
Division of Public Health – Anchorage Laboratory
5455 Dr. Martin Luther King, Jr. Avenue
Anchorage, Alaska 99507
Attention: Mike Kruzinski

Alaska Department of Health
Division of Public Health – Medical Examiner's Office
5455 Dr. Martin Luther King, Jr. Avenue
Anchorage, Alaska 99507
Attention: Mike Kruzinski

Fairbanks Site:

Alaska Department of Health
Division of Public Health – Fairbanks Laboratory
University of Alaska Fairbanks
1051 Sheenjek Drive
P.O. Box 60230
Fairbanks, AK 99706

SEC. 3.14 NOTICE OF INTENT TO AWARD

After the responses to this ITB have been opened and evaluated, the procurement officer will issue a written Notice of Intent to Award for each of the two (2) locations and send copies of the notice to all bidders who submitted bids. The notice will list the names of all the bidders and identify the bidder(s) selected for award.

SECTION 4. GENERAL PROCESS AND LEGAL INFORMATION

SEC. 4.01 INFORMAL DEBRIEFING

When the contract is completed, an informal debriefing may be performed at the discretion of the procurement officer. If performed, the scope of the debriefing will be limited to the products provided or work performed by the contractor.

SEC. 4.02 ALASKA BUSINESS LICENSE AND OTHER REQUIRED LICENSES

Prior to the award of a contract, a bidder must hold a valid Alaska business license. However, to receive the Alaska Bidder Preference and other related preferences, such as the Alaska Veteran Preference and Alaskans with Disabilities Preference, a bidder must hold a valid Alaska business license prior to the deadline for receipt of bids. Bidders should contact the **Department of Commerce, Community and Economic Development, Division of Corporations, Business, and Professional Licensing, PO Box 110806, Juneau, Alaska 99811-0806**, for information on these licenses. Acceptable evidence that the bidder possesses a valid Alaska business license may consist of any one of the following:

- copy of an Alaska business license,
- certification on the bid that the bidder has a valid Alaska business license and has included the license number in the bid,
- a canceled check for the Alaska business license fee,
- a copy of the Alaska business license application with a receipt stamp from the state's occupational licensing office, or
- a sworn and notarized statement that the bidder has applied and paid for the Alaska business license.

You are not required to hold a valid Alaska business license at the time bids are opened if you possess one of the following licenses and are offering services or supplies under that specific line of business:

- fisheries business licenses issued by Alaska Department of Revenue or Alaska Department of Fish and Game,
- liquor licenses issued by Alaska Department of Revenue for alcohol sales only,
- insurance licenses issued by Alaska Department of Commerce, Community and Economic Development, Division of Insurance, or
- Mining licenses issued by Alaska Department of Revenue.

Prior the deadline for receipt of bids, all bidders must hold any other necessary applicable professional licenses required by Alaska Statute.

SEC. 4.03 BUSINESS ASSOCIATE AGREEMENT (BAA)

The State has a standard BAA that is included in contracts that involve Personal Health Information (PHI) covered under the Health Insurance Portability and Accountability (HIPAA) Act. This BAA will be included in the fully executed contract and is attached along with this ITB as HIPAA BAA. Any request to change language in this document must be set out in the bidder's bid in a separate document.

SEC. 4.04 COMPLIANCE

In the performance of a contract that results from this ITB, the contractor must comply with all applicable federal, state, and borough regulations, codes, and laws; be liable for all required insurance, licenses, permits and bonds; and pay all applicable federal, state, and borough taxes.

Vehicles and Equipment

Offeror must own or have access to properly placarded and DOT – compliant vehicles designed for hazardous waste transport. Equipment must be in good working order and subject to routine inspection and maintenance.

SEC. 4.05 ORDER DOCUMENTS

Except as specifically allowed under this ITB, an ordering agency will not sign any vendor contract. The State is not bound by a vendor contract signed by a person who is not specifically authorized to sign for the state under this ITB. Unless otherwise specified in this ITB, a State of Alaska purchase order or contract are the only order documents that may be used to place orders against the contract(s) resulting from this ITB.

SEC. 4.06 HUMAN TRAFFICKING

By signature on their bid, the bidder certifies that the bidder is not established and headquartered or incorporated and headquartered in a country recognized as Tier 3 in the most recent United States Department of State's Trafficking in Persons Report.

The most recent United States Department of State's Trafficking in Persons Report can be found at the following website: <http://www.state.gov/j/tip/>

Failure to comply with this requirement will cause the State to reject the bid as non-responsive or cancel the contract.

SEC. 4.07 RIGHT OF REJECTION

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

Bidders may not qualify the bid nor restrict the rights of the state. If a bidder does so, the procurement officer may determine the bid to be a non-responsive counteroffer, and the bid 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 bidders,
- do not change the meaning or scope of the ITB,
- 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 officer.

The State reserves the right to refrain from making an award if it is determined to be in the state's best interest.
A bid from a debarred or suspended bidder shall be rejected.

SEC. 4.08 STATE NOT RESPONSIBLE FOR PREPARATION COSTS

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

SEC. 4.09 DISCLOSURE OF BID CONTENTS

All bid prices become public information at the bid opening. After the deadline for receipt of bids, all other bid 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 public records to be open to reasonable inspection. All other bid information will be held in confidence during the evaluation process and prior to the time a Notice of Intent to Award is issued. Thereafter, bids 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 officer does so, and if the procurement officer agrees, in writing, to do so. The offeror's request must be included with the proposal, must clearly identify the information they wish to be held confidential, and include a statement that sets out the reasons for confidentiality. Unless the procurement officer agrees in writing to hold the requested information confidential, that information will also become public after the Notice of Intent to Award is issued.

SEC. 4.10 ASSIGNMENTS

Per 2 AAC 12.480, the contractor may not transfer or assign any portion of the contract without prior written approval from the procurement officer. Bids that are conditioned upon the State's approval of an assignment will be rejected as non-responsive.

SEC. 4.11 FORCE MAJEURE (IMPOSSIBILITY TO PERFORM)

The parties to a contract resulting from this ITB are not liable for the consequences of any failure to perform, or default in performing, any of its obligations under the contract, 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 ITB, 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.

SEC. 4.12 DEFAULT

In case of default by the contractor, for any reason whatsoever, the State may procure the goods or services from another source and hold the contractor responsible for any resulting excess cost and may seek other remedies under law or equity.

SEC. 4.13 SEVERABILITY

If any provision of the contract or agreement is found to be invalid or 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.

SEC. 4.14 CONTRACT CANCELLATION

The State reserves the right to cancel the contract at its convenience upon thirty (30) calendar days written notice to the contractor. The State is only liable for payment in accordance with the payment provisions of this contract for supplies or services provide before the effective date termination.

By signature on their bid, the bidder certifies that they will not support or participate in a boycott of the State of Israel. Failure to comply with this requirement may cause the state to reject the bid as non-responsive or cancel the contract.

SEC. 4.15 GOVERNING LAW; FORUM SELECTION

A contract resulting from this ITB is governed by the laws of the State of Alaska. If the contractor has a claim arising in connection with the agreement 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 – AS 36.30.632. To the extent not otherwise governed by the preceding, the claim shall be brought only in the Superior Court of the State of Alaska and not elsewhere.

SEC. 4.16 QUALIFIED BIDDERS

Per 2 AAC 12.875, unless provided for otherwise in the ITB, to qualify as a bidder for award of a contract issued under AS 36.30, the bidder must:

- 1) Add value in the contract by actually performing, controlling, managing, or supervising the services to be provided; or
- 2) Be in the business of selling and have actually sold on a regular basis the supplies that are the subject of the ITB.

If the bidder leases services or supplies or acts as a broker or agency in providing the services or supplies to meet these requirements, the procurement officer may not accept the bidder as a qualified bidder under AS 36.30.

SEC. 4.17 FEDERALLY IMPOSED TARIFFS

Changes in price (increase or decrease) resulting directly from a new or updated federal tariff, excise tax, or duty, imposed after contract award may be adjusted during the contract period or before delivery into the United States via contract amendment.

- **Notification of Changes:** The contractor must promptly notify the procurement officer in writing of any new, increased, or decreased federal excise tax or duty that may result in either an increase or decrease in the contact price and shall take appropriate action as directed by the procurement officer.
- **After-imposed or Increased Taxes and Duties:** Any federal excise tax or duty for goods or services covered by this contract that was exempted or excluded on the contract award date but later imposed on the contractor during the contract period, as the result of legislative, judicial, or administrative action may result in a price increase provided:
 - a) The tax or duty takes effect after the contract award date and isn't otherwise addressed by the contract.
 - b) The contractor warrants, in writing, that no amount of the newly imposed federal excise tax or duty or rate increase was included in the contract price, as a contingency or otherwise.
- **After-relieved or Decreased Taxes and Duties:** The contract price shall be decreased by the amount of any decrease in federal excise tax or duty for goods or services under the contract, except social security or other employment [taxes](#), that the contractor is required to pay or bear, or does not obtain a refund of, through the contractor's fault, negligence, or failure to follow instructions of the procurement officer.
- **State's Ability to Make Changes:** The State reserves the right to request verification of federal excise tax or duty amounts on goods or services covered by this contract and increase or decrease the contract price accordingly.
- **Price Change Threshold:** No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

SEC. 4.18 PROTEST

AS 36.30.560 provides that an interested party may protest the content of the ITB.

An interested party is defined in 2 AAC 12.990(a) (7) as "an actual or prospective bidder or bidder 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."

If an interested party wishes to protest the content of a solicitation, the protest must be received, in writing, by the procurement officer at least ten days prior to the deadline for receipt of bids.

AS 36.30.560 also provides that an interested party may protest the award of a contract or the proposed award of a contract.

If a bidder wishes to protest the award of a contract or the proposed award of a contract, the protest must be received, in writing, by the procurement officer within ten days after the date the Notice of Intent to Award the contract is issued.

A protester must have submitted a bid to have sufficient standing to protest the proposed award of a contract. Protests must include the following information:

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

The procurement officer will issue a written response to the protest. The response will set out the procurement officer's decision and contain the basis of the decision within the statutory time limit in AS 36.30.580. A copy of the decision will be furnished to the protester by certified mail, fax or another method that provides evidence of receipt.

All bidders will be notified of any protest. The review of protests, decisions of the procurement officer, appeals, and hearings, will be conducted in accordance with the State Procurement Code (AS 36.30), Article 8 "Legal and Contractual Remedies."

SECTION 5. ATTACHMENTS

SEC. 5.01 ATTACHMENTS

Attachments:

- 1) Bid Schedule – attached as a separate document
- 2) Submittal Forms - attached as a separate document
- 3) HIPAA BAA

STATE OF ALASKA, DEPARTMENT OF HEALTH
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 ("Covered Entity" or "CE") and _____ ("Business Associate" or "BA"). This agreement is intended to accomplish the objectives of a HIPAA Business Associate Agreement ("BAA") as set out in 45 C.F.R. §164.504(e)(3)(i).

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;
- D. CE may operate a drug and alcohol treatment program that must comply with the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 U.S.C. 290dd-2 and 42 C.F.R. Part 2 (collectively "Part 2"); and
- E. BA may be a Qualified Service Organization ("QSO") under Part 2 and therefore must agree to certain mandatory provisions regarding the use and disclosure of substance abuse treatment information.

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.
- 4) Triennially: "Triennially" shall mean once every three years.

2. Statement of Work and Responsibilities.

As provided by AS 44.21.020 and AS 44.21.160, The BA provides automatic data processing services to the CE. These services include storage, transmission, security, and recovery of electronic information owned by CE. BA is responsible for ensuring continuity of service, delivery, and access to CE electronic information at all times including in the event of a disaster.

3. Permitted Uses and Disclosures by Business Associate.

a. BA may only use or disclose PHI for the following purposes:

- 1) BA may use or disclose PHI as required by law.
- 2) BA agrees to make uses and disclosures and requests for PHI consistent with CE's minimum necessary policies and procedures.
- 3) 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.
- 4) 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.
- 5) BA may provide data aggregation services related to the health care operations of CE.

4. 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 three 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 not use personally owned devices to create, receive, maintain, or transmit PHI. Devices the BA uses to create, receive, maintain, or transmit CE's electronic PHI shall be owned and managed by BA or CE.

BA shall patch its operating systems 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 necessary IT operations only.

- c. Reporting Unauthorized Disclosures and Breaches: During the term of this BAA, BA shall notify CE within 72 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, BA shall amend PHI maintained, transmitted, created, or received by BA on behalf of CE as directed by CE 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: Upon agreement execution and triennially thereafter, or upon changes that occur which significantly affect the security posture of the system (whichever comes first), BA shall comply and complete CE's security assessment. Upon receipt of the security assessment, CE will review BA's responses prior to granting authority to operate, and provide any necessary instruction to ensure the confidentiality, integrity, and availability of CE's PHI. BA shall triennially, or upon changes that occur which significantly affect the security posture of the system (whichever comes first), review and

update CE security assessment, as required, in order to comply with BA's current system controls. BA must provide an implementation response for each specific system control. Upon receipt of the updated assessment, CE will review the changes to the system for renewal of authority to operate.

- 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 10 days' 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 4.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 or fine imposed on 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. Regulatory References. Any reference in this BAA to federal or state law means the section that is in effect or as amended.

11. 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.

12. 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.

13. Privacy and Security Point of Contact. All communications occurring because of this BAA shall be sent to doh.its.dso@alaska.gov in addition to the CE.