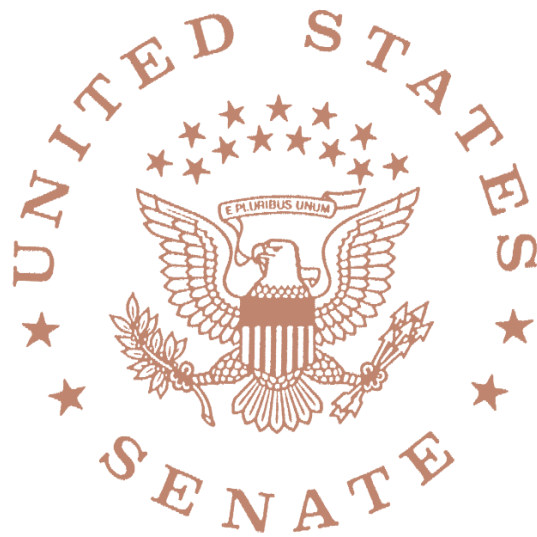





A photograph of a person in a wheelchair in a hallway, with a large white 'E' and the word 'APPENDIX' overlaid on a brown square. The person is in silhouette, moving away from the camera. The hallway has a tiled floor and a door on the right. The text 'APPENDIX' is written vertically in a serif font, and the letter 'E' is a large, bold serif character.

APPENDIX  
E




# Exhibit 1

	<b>State of South Carolina</b>  <b>Invitation For Bid</b>	Solicitation: Date Issued: Procurement Officer: Phone: E-Mail Address:	 11/17/2020 WHITNEY CARSWELL  wpc
---	---	--	---

**DESCRIPTION: Turnkey services of Long-Term and Non Long-Term Care Survey Teams to conduct CMS Recertification / Revisit / Complaint Surveys at Long-Term and Non Long-Term Care Facilities identified by DHEC**

USING GOVERNMENTAL UNIT: **SC Dept. of Health & Environmental Control**

<b>SUBMIT YOUR OFFER ON-LINE AT THE FOLLOWING URL:</b>  (See Pages 3 and 4 for Instructions)
---

SUBMIT OFFER BY (Opening Date/Time): **12/22/2020 2:30 PM ET** (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: **12/03/2020 5:00 PM ET** (See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: **Online Submission Preferred - One (1) Copy if Paper Submission**

<b>CONFERENCE TYPE: Not Applicable</b> <b>DATE &amp; TIME:</b>  (As appropriate, see "Conferences - Pre-Bid/Proposal" & "Site Visit" provisions)	<b>LOCATION: Not Applicable</b>
---	---------------------------------

<b>AWARD &amp; AMENDMENTS</b>	Award will be posted on <b>December 29, 2020</b> . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: <a href="http://www.procurement.sc.gov">http://www.procurement.sc.gov</a>
-------------------------------	---

You must submit a signed copy of this form with Your Offer. By signing, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of thirty (30) calendar days after the Opening Date. (See "Signing Your Offer" provision)

<b>NAME OF OFFEROR</b>  (Full legal name of business submitting the offer)	Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.
<b>AUTHORIZED SIGNATURE</b>  (Person must be authorized to submit binding offer to contract on behalf of Offeror)	<b>DATE SIGNED</b>
<b>TITLE</b>  (Business title of person signing above)	<b>STATE VENDOR NO.</b>  (Register to Obtain S C Vendor No at <a href="http://www.procurement.sc.gov">www.procurement.sc.gov</a> )
<b>PRINTED NAME</b>  (Printed name of person signing above)	<b>STATE OF INCORPORATION</b>  (If you are a corporation, identify the state of incorporation)

<b>OFFEROR'S TYPE OF ENTITY: (Check one)</b> (See "Signing Your Offer" provision)
<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Other _____
<input type="checkbox"/> Corporate entity (not tax-exempt) <input type="checkbox"/> Corporation (tax-exempt) <input type="checkbox"/> Government entity (federal, state, or local)

**PAGE TWO**

**(Return Page Two with Your Offer)**

<p>HOME OFFICE ADDRESS (Address for offeror's home office / principal place of business)</p>          	<p>NOTICE ADDRESS (Address to which all procurement and contract related notices should be sent.) (See "Notice" clause)</p>          <p>_____</p> <p>Area Code - Number - Extension Facsimile</p>    <p>_____</p> <p>E-mail Address</p>
--	---

<p>PAYMENT ADDRESS (Address to which payments will be sent.) (See "Payment" clause)</p>          <p>_____ Payment Address same as Home Office Address</p> <p>_____ Payment Address same as Notice Address <b>(check only one)</b></p>	<p>ORDER ADDRESS (Address to which purchase orders will be sent) (See "Purchase Orders and "Contract Documents" clauses)</p>          <p>_____ Order Address same as Home Office Address</p> <p>_____ Order Address same as Notice Address <b>(check only one)</b></p>
---	--

**ACKNOWLEDGMENT OF AMENDMENTS**

Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue. (See "Amendments to Solicitation" Provision)

Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date

<p><b>DISCOUNT FOR PROMPT PAYMENT</b> (See "Discount for Prompt Payment" clause)</p>	<p>10 Calendar Days (%)</p>	<p>20 Calendar Days (%)</p>	<p>30 Calendar Days (%)</p>	<p>_____ Calendar Days (%)</p>
--	-----------------------------	-----------------------------	-----------------------------	--------------------------------

**PREFERENCES - A NOTICE TO VENDORS (SEP. 2009):** On June 16, 2009, the South Carolina General Assembly rewrote the law governing preferences available to in-state vendors, vendors using in-state subcontractors, and vendors selling in-state or US end products. This law appears in Section 11-35-1524 of the South Carolina Code of Laws. A summary of the new preferences is available at [www.procurement.sc.gov/preferences](http://www.procurement.sc.gov/preferences). ***ALL THE PREFERENCES MUST BE CLAIMED AND ARE APPLIED BY LINE ITEM, REGARDLESS OF WHETHER AWARD IS MADE BY ITEM OR LOT. VENDORS ARE CAUTIONED TO CAREFULLY REVIEW THE STATUTE BEFORE CLAIMING ANY PREFERENCES. THE REQUIREMENTS TO QUALIFY HAVE CHANGED. IF YOU REQUEST A PREFERENCE, YOU ARE CERTIFYING THAT YOUR OFFER QUALIFIES FOR THE PREFERENCE YOU'VE CLAIMED. IMPROPERLY REQUESTING A PREFERENCE CAN HAVE SERIOUS CONSEQUENCES.*** [11-35-1524(E)(4)&(6)]

**PREFERENCES - ADDRESS AND PHONE OF IN-STATE OFFICE:** Please provide the address and phone number for your in-state office in the space provided below. An in-state office is necessary to claim either the Resident Vendor Preference (11-35-1524(C)(1)(i)&(ii)) or the Resident Contractor Preference (11-35-1524(C)(1)(iii)). Accordingly, you must provide this information to qualify for the preference. An in-state office is not required, but can be beneficial, if you are claiming the Resident Subcontractor Preference (11-35-1524(D)).

\_\_\_\_\_ In-State Office Address same as Home Office Address    \_\_\_\_\_ In-State Office Address same as Notice Address **(check only one)**

## **INSTRUCTIONS FOR OFFERORS SUBMITTING BIDS ON LINE**

All Offerors desiring to respond to this solicitation should register and submit your response online. To respond online, Offeror must follow the new South Carolina Enterprise Information System (SCEIS) vendor registration instructions found at the South Carolina Procurement Information Center website address of: <http://www.procurement.sc.gov/>. If Offeror is registered in the old procurement system, Offerors must register or update their information in the new SCEIS system. Once the registration process is complete, the system will generate a SCEIS vendor user ID and password. The Offeror must keep this information current or the Offeror will not be able to submit future bids.

**Offerors will need to follow these instructions carefully when responding to the solicitation online.**

1. The original solicitation response should be submitted online and it will be the official response.
2. All Offerors must attach all additional requested documents to their response in the online system. These documents can be attached under the “**Notes and Attachments**” tab of the online solicitation either on the main page or under the necessary line item.

### **OFFERORS ENCOUNTERING REGISTRATION OR BIDDING PROBLEMS SHOULD CONTACT:**

DSIT Help Desk (803) 896-0001 Select Option 1 then Option 2  
Monday – Friday 8:00 AM – 4:30 PM

Offeror instructions can be found at:

<https://procurement.sc.gov/vendor/submitting-offers>

### **NOTICE**

- To submit bids vendors must use Internet Explorer 8, 9 or 10, which is compatible with SAP. Other browsers such as Internet Explorer 11, Google Chrome, or Mozilla Firefox will not function properly and may prohibit bid submissions.
- **It will be the responsibility of each bidder to ensure that their response was submitted properly. The Response Status must indicate 'Submitted'. If the response is in a 'HELD' or 'SAVED' status, you MUST go back in the system and submit the response before it can be 'ACCEPTED' by the State.**
- Bidders are encouraged to review the 'Simulation for Bid Creation' before trying to submit their response.
- Electronic bid submission (SRM Login) – <https://vendorportal.sc.gov/irj/portal>
- Submitting Confidential Data - <https://procurement.sc.gov/legal/general-info>

---

## **INSTRUCTIONS FOR OFFERORS SUBMITTING HARD COPY BIDS**

### **Mailing Address:**

SC DHEC – Division of Procurement Services  
Bureau of Business Management  
2600 Bull Street  
Columbia, S.C. 29201

### **Physical Address:**

SCDHEC – Division of Procurement Services  
Bureau of Business Management  
Columbia Mills Building – 4<sup>th</sup> Floor  
301 Gervais Street  
Columbia, S.C. 29201

**See Section II.A. – Public Opening Information – DHEC Clause**

1. Offerors shall submit one (1) copy.
2. The solicitation number and opening date must appear on the package exterior.

**PLEASE NOTE THAT IF TERMS AND CONDITIONS ARE OBJECTED OR QUALIFIED OR OFFEROR INCLUDES ADDITIONAL TERMS AND CONDITIONS TO BE CONSIDERED, THE OFFER WILL BE DEEMED NON-RESPONSIVE AND WILL BE ELIMINATED FROM FURTHER CONSIDERATION.**

**IF YOU QUALIFY YOUR OFFER WITH A STATEMENT SUCH AS, “THIS IS NOT AN OFFER”, THE OFFER WILL BE DEEMED “NON-RESPONSIVE” AND REMOVED FROM FURTHER CONSIDERATION.**

## OFFEROR BID SUBMISSION VALIDATION

After submitting an online response to a solicitation, Offerors may validate their submission with the following steps:

**STEP 1:** Go back to the initial 'RFX and Auctions' screen

The screenshot shows the SAP RFX and Auctions interface. The main table lists various RFXs. The following table represents the data visible in the screenshot:

Event Number	Event Description	Event Type	Event Status	Start Date	End Date	Response Number	Response Status	Event Version	Response Version	Q&A	Start Time	End Time
540006906	Computer Replacement for SOGOV	Request for Proposal	Published	11/06/2013			No Bid Created	2		0	01:00:00	14:00:00
540006905	Computer Room Upgrade Project	Request for Proposal	Published	11/06/2013			No Bid Created	2		0	01:00:00	15:00:00
540006893	RAY44228 1104/2013 89-48-46	Invitation For Bid	Published	11/06/2013			No Bid Created	1		0	01:00:00	11:00:00
540006907	Whiteboard Stand	Invitation For Bid	Published	11/15/2013			No Bid Created	3		0	01:00:00	18:00:00
540006796	Computer Room Upgrade Project	Invitation For Bid	Published	11/05/2013		5500029632	Submitted	8		0	01:00:00	17:00:00
540006909	Homemaker Services	Request for Proposal	Published	01/25/2014			No Bid Created	3		0	01:00:00	14:00:00
540006627	Web Site Design Project	Request for Proposal	Published	11/06/2013			No Bid Created	7		0	01:00:00	17:00:00
540006328	DSS FFB Technical Assistance & Support	Fixed Price Bid	Published	06/30/2018			No Bid Created	5		0	01:00:00	11:00:00
540006269	FFB TO PROVIDE MULTI-AGENCY COMMUNITY BA	Fixed Price Bid	Published	05/31/2014			No Bid Created	3		0	01:00:00	11:30:00
540006038	Xirus Network Products & Services	Fixed Price Bid	Published	08/19/2019			No Bid Created	3		0	01:00:00	14:30:00

**STEP 2:** Select the 'Refresh' button to update the screen.

**STEP 3:** Make sure the RFX you responded to, has your specific bid response number '55XXXXXXXX' displayed in the Response Number column and the Response Status column has a status of 'Submitted' before you log off.

**NOTE:** You also have the ability to print out a copy of your submission by selecting the 'Print Preview' button after your offer has been submitted.

The screenshot shows the 'Display RFX Response' dialog box with the following information:

RFX Response Number	5500029632	RFX Number	5400006796	Status	Submitted
RFX Response Version Number	Active Version	RFX Version Number	8		

## Table of Contents

<b>SECTION_I</b> .....	<b>7</b>
ACQUIRE SERVICES (JAN 2006) .....	7
MAXIMUM CONTRACT PERIOD - ESTIMATED (JAN 2006) .....	7
<b>SECTION_IIA</b> .....	<b>8</b>
DEFINITIONS, CAPITALIZATION, AND HEADINGS (DEC 2015) .....	8
AMENDMENTS TO SOLICITATION (JAN 2004) .....	8
AUTHORIZED AGENT (FEB 2015) .....	8
AWARD NOTIFICATION (MODIFIED) .....	9
BID/PROPOSAL AS OFFER TO CONTRACT (JAN 2004) .....	9
BID ACCEPTANCE PERIOD (JAN 2004) .....	9
BID IN ENGLISH and DOLLARS (JAN 2004) .....	9
CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008) .....	9
CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JAN 2004) .....	10
CODE OF LAWS AVAILABLE (JAN 2006) .....	11
DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (FEB 2015) .....	11
DEADLINE FOR SUBMISSION OF OFFER (JAN 2004) .....	11
DRUG FREE WORK PLACE CERTIFICATION (JAN 2004) .....	11
DUTY TO INQUIRE (FEB 2015) .....	11
ETHICS CERTIFICATE (MAY 2008) .....	11
OMIT TAXES FROM PRICE (JAN 2004) .....	12
OPEN TRADE REPRESENTATION (JUN 2015) .....	12
PROTESTS (MAY 2019) .....	12
PROHIBITED COMMUNICATIONS AND DONATIONS (FEB 2015) .....	12
PUBLIC OPENING (JAN 2004) .....	12
QUESTIONS FROM OFFERORS (FEB 2015) .....	12
REJECTION/CANCELLATION (JAN 2004) .....	13
RESPONSIVENESS/IMPROPER OFFERS (JUN 2015) .....	13
SIGNING YOUR OFFER (JAN 2004) .....	13
STATE OFFICE CLOSINGS (JAN 2004) .....	14
SUBMITTING CONFIDENTIAL INFORMATION (FEB 2015) .....	14
SUBMITTING A PAPER OFFER OR MODIFICATION (MAR 2015) .....	14
TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (JAN 2008) .....	15
VENDOR REGISTRATION MANDATORY (JAN 2006) .....	15
WITHDRAWAL OR CORRECTION OF OFFER (JAN 2004) .....	15
<b>SECTION_IIB</b> .....	<b>16</b>
OFFERING BY ITEM (JAN 2006) .....	16
ON-LINE BIDDING INSTRUCTIONS (MAR 2015) .....	16
PROTEST - CPO - MMO ADDRESS (MODIFIED) .....	16
UNIT PRICES REQUIRED (JAN 2006) .....	16
<b>SECTION_III</b> .....	<b>17</b>
DELIVERY/PERFORMANCE LOCATION -- SPECIFIED (JAN 2006) .....	18
<b>SECTION_IV</b> .....	<b>19</b>
INFORMATION FOR OFFERORS TO SUBMIT -- GENERAL (MAR 2015) .....	19
MINORITY PARTICIPATION (DEC 2015) .....	19
<b>SECTION_V</b> .....	<b>21</b>
QUALIFICATIONS OF OFFEROR (MAR 2015) .....	21
QUALIFICATIONS -- REQUIRED INFORMATION (MODIFIED) .....	21
<b>SECTION_VI</b> .....	<b>22</b>
AWARD CRITERIA -- BIDS (JAN 2006) .....	22
AWARD TO MULTIPLE OFFERORS (MODIFIED) .....	22
COMPETITION FROM PUBLIC ENTITIES (JAN 2006) .....	22
UNIT PRICE GOVERNS (JAN 2006) .....	22
<b>SECTION_VIIA</b> .....	<b>23</b>
ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE (FEB 2015) .....	23
BANKRUPTCY - GENERAL (FEB 2015) .....	23
CHOICE-OF-LAW (JAN 2006) .....	23
CONTRACT DOCUMENTS and ORDER OF PRECEDENCE (MODIFIED) .....	23



DISCOUNT FOR PROMPT PAYMENT (JAN 2006) .....	23
DISPUTES (JAN 2006) .....	24
EQUAL OPPORTUNITY (JAN 2006) .....	24
FALSE CLAIMS (JAN 2006) .....	24
FIXED PRICING REQUIRED (JAN 2006) .....	24
NO INDEMNITY OR DEFENSE (FEB 2015) .....	24
NOTICE (JAN 2006) .....	24
OPEN TRADE (JUN 2015) .....	25
PAYMENT and INTEREST (FEB 2015) .....	25
PUBLICITY (JAN 2006) .....	25
PURCHASE ORDERS (JAN 2006) .....	25
SURVIVAL OF OBLIGATIONS (JAN 2006) .....	25
TAXES (JAN 2006) .....	25
TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006) .....	26
THIRD PARTY BENEFICIARY (JAN 2006) .....	26
WAIVER (JAN 2006) .....	26
<b>SECTION_VIIB</b> .....	<b>27</b>
CHANGES (JAN 2006) .....	27
COMPLIANCE WITH LAWS (JAN 2006) .....	27
CONTRACTOR’S LIABILITY INSURANCE – GENERAL (FEB 2015) .....	27
CONTRACTOR PERSONNEL (JAN 2006) .....	28
CONTRACTOR'S OBLIGATION -- GENERAL (JAN 2006) .....	28
DEFAULT (JAN 2006) .....	28
ESTIMATED QUANTITY – UNKNOWN (JAN 2006) .....	29
ILLEGAL IMMIGRATION (NOV 2008) .....	29
INDEMNIFICATION-THIRD PARTY CLAIMS – GENERAL (NOV 2011) .....	30
LICENSES AND PERMITS (JAN 2006) .....	30
OWNERSHIP OF DATA & MATERIALS (JAN 2006) .....	30
PRICE ADJUSTMENTS (JAN 2006) .....	30
PRICING DATA – AUDIT -- INSPECTION (JAN 2006) .....	30
RELATIONSHIP OF THE PARTIES (JAN 2006) .....	31
RESTRICTION ON PRESENTING TERMS OF USE OR OFFERING ADDITIONAL SERVICES (FEB 2015).....	31
TERM OF CONTRACT -- EFFECTIVE DATE / INITIAL CONTRACT PERIOD (JAN 2006) .....	31
TERM OF CONTRACT -- OPTION TO RENEW (JAN 2015) .....	31
TERMINATION FOR CONVENIENCE (JAN 2006) .....	31
<b>SECTION_VIIC DHEC’S SPECIAL CLAUSES</b> .....	<b>33</b>
DHEC’s CONFIDENTIALITY POLICY (DHEC – MAR 2014).....	33
PREVENTING AND REPORTING FRAUD, WASTE AND ABUSE (DHEC 2008).....	33
TOBACCO-FREE CAMPUS POLICY (DHEC – Feb 2016).....	34
DHEC’s BUSINESS ASSOCIATE AGREEMENT (DHEC – MAR 2013).....	34
<b>SECTION_VIII</b> .....	<b>35</b>
BIDDING SCHEDULE (NOV 2007).....	34
<b>SECTION_IX</b> .....	<b>41</b>
LIST OF ATTACHMENTS .....	41
NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING .....	41
OFFEROR’S CHECKLIST (JUN 2007).....	42
APPENDIX A – COVID-19 TESTING OF HEALTH FACILITY INSPECTORS .....	43
APPENDIX B – DHEC’s BUSINESS ASSOCIATE AGREEMENT (DHEC – MAR 2013) .....	46

## **I. SCOPE OF SOLICITATION**

It is the intent of the State of South Carolina, South Carolina Department of Health and Environmental Control (DHEC) to establish a contract to provide as-needed statewide:

- Turnkey services of Long-term Care (LTC) and Non Long Term Care Survey Team(s) to conduct Centers for Medicare and Medicaid Services (CMS) Recertification/Revisit/Complaint Surveys at LTC and non-LTC facilities identified by DHEC, in accordance with the requirements stated herein.

Offerors do not have to submit a response to all items to be considered responsive.

Contracts will be awarded up to the two (2) lowest responsive and responsible offeror(s) for each line item, as identified under Section III 3.8 and Bidding Schedule. Offerors do not have to submit a response to all lines to be considered responsive. No minimum or maximum dollar amount is guaranteed.

### **ACQUIRE SERVICES (JAN 2006)**

The purpose of this solicitation is to acquire services complying with the enclosed description and/or specifications and conditions. [01-1010-1]

### **MAXIMUM CONTRACT PERIOD - ESTIMATED (JAN 2006)**

**Start date: 01/08/2021    End date: 01/07/2022.**

Dates provided are estimates only. Any resulting contract will begin on the date specified in the notice of award. See clause entitled "Term of Contract - Effective Date/Initial Contract Period". [01-1040-1]

The initial term of the contract is for one (1) year, and there will be one (1) one-year option to renew for a maximum contract life of two (2) years, or until individually awarded amounts are reached, not to exceed a combined total of \$6 million. However, the contract term shall not exceed two years.

## II. INSTRUCTIONS TO OFFERORS - A. GENERAL INSTRUCTIONS

### DEFINITIONS, CAPITALIZATION, AND HEADINGS (DEC 2015)

CLAUSE HEADINGS USED IN THIS SOLICITATION ARE FOR CONVENIENCE ONLY AND SHALL NOT BE USED TO CONSTRUE MEANING OR INTENT. EVEN IF NOT CAPITALIZED, THE FOLLOWING DEFINITIONS ARE APPLICABLE TO ALL PARTS OF THE SOLICITATION, UNLESS EXPRESSLY PROVIDED OTHERWISE.

**AMENDMENT** means a document issued to supplement the original solicitation document.

**AUTHORITY** means the State Fiscal Accountability Authority or its successor in interest.

**BUSINESS** means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity. [11-35-310(3)]

**CHANGE ORDER** means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract. [11-35-310(4)]

**CONTRACT** See clause entitled Contract Documents & Order of Precedence.

**CONTRACT MODIFICATION** means a written order signed by the procurement officer, directing the contractor to make changes which the clause of the contract titled "Changes," if included herein, authorizes the Procurement Officer to order without the consent of the contractor. [11-35-310(9)]

**CONTRACTOR** means the Offeror receiving an award as a result of this solicitation.

**COVER PAGE** means the top page of the original solicitation on which the solicitation is identified by number. Offerors are cautioned that Amendments may modify information provided on the Cover Page.

**OFFER** means the bid or proposal submitted in response this solicitation. The terms Bid and Proposal are used interchangeably with the term Offer.

**OFFEROR** means the single legal entity submitting the offer. The term Bidder is used interchangeably with the term Offeror. See bidding provisions entitled Signing Your Offer and Bid/Proposal As Offer To Contract.

**PAGE TWO** means the second page of the original solicitation, which is labeled Page Two.

**PROCUREMENT OFFICER** means the person, or his successor, identified as such on either the Cover Page, an amendment, or an award notice.

**YOU** and **YOUR** means Offeror.

**SOLICITATION** means this document, including all its parts, attachments, and any Amendments.

**STATE** means the Using Governmental Unit(s) identified on the Cover Page.

**SUBCONTRACTOR** means any person you contract with to perform or provide any part of the work.

**US** or **WE** means the using governmental unit.

**USING GOVERNMENTAL UNIT** means the unit(s) of government identified as such on the Cover Page. If the Cover Page identifies the Using Governmental Unit as "Statewide Term Contract," the phrase "Using Governmental Unit" means any South Carolina Public Procurement Unit [11-35-4610(5)] that has submitted a Purchase Order to you pursuant to the contract resulting from this solicitation. Reference the clauses titled "Purchase Orders" and "Statewide Term Contract."

**WORK** means all labor, materials, equipment, services, or property of any type, provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract. [02-2A003-3]

### AMENDMENTS TO SOLICITATION (JAN 2004)

(a) The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the following web site for the issuance of Amendments: [www.procurement.sc.gov](http://www.procurement.sc.gov) (b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two, (3) by letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged. [02-2A005-1]

### AUTHORIZED AGENT (FEB 2015)

All authority regarding this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the government with regard to this procurement or the resulting contract. [02-2A007-1]

## **AWARD NOTIFICATION (MODIFIED)**

Notice regarding any award, cancellation of award, or extension of award will be posted at the location and on the date specified on the Cover Page or, if applicable, any notice of extension of award. Should the contract resulting from this Solicitation have a total or potential value in excess of one hundred thousand dollars, such notice will be sent electronically to all Offerors responding to the Solicitation and any award will not be effective until the calendar day (including weekends and holidays) immediately following the seventh business day after such notice is given.

## **BID/PROPOSAL AS OFFER TO CONTRACT (JAN 2004)**

By submitting Your Bid or Proposal, You are offering to enter into a contract with the Using Governmental Unit(s). Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror on the Cover Page. An Offer may be submitted by only one legal entity; "joint bids" are not allowed. [02-2A015-1]

## **BID ACCEPTANCE PERIOD (JAN 2004)**

In order to withdraw Your Offer after the minimum period specified on the Cover Page, You must notify the Procurement Officer in writing. [02-2A020-1]

## **BID IN ENGLISH and DOLLARS (JAN 2004)**

Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation. [02-2A025-1]

## **CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008)**

### **GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS.**

(a) By submitting an offer, the offeror certifies that-

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to-

- (i) Those prices;
- (ii) The intention to submit an offer; or
- (iii) The methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory-

(1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; or

(2)(i) Has been authorized, in writing, to act as agent for the offeror's principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification [As used in this subdivision (b)(2)(i), the term "principals" means the person(s) in the offeror's organization responsible for

determining the prices offered in this bid or proposal];

(ii) As an authorized agent, does certify that the principals referenced in subdivision (b)(2)(i) of this certification have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification.

(c) If the offeror deletes or modifies paragraph (a)(2) of this certification, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure. [02-2A032-1]

#### **CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JAN 2004)**

(a) (1) By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-

(i) Offeror and/or any of its Principals-

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any public (Federal, state, or local) entity.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

(b) Offeror shall provide immediate written notice to the Procurement Officer if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) If Offeror is unable to certify the representations stated in paragraphs (a)(1), Offer must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Officer may render the Offeror nonresponsible.

(d) 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 paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the State, the Procurement Officer may terminate the contract resulting from this solicitation for default. [02-2A035-1]

## **CODE OF LAWS AVAILABLE (JAN 2006)**

The South Carolina Code of Laws, including the Consolidated Procurement Code, is available at:  
<http://www.scstatehouse.gov/code/statmast.php>

The South Carolina Regulations are available at:  
<http://www.scstatehouse.gov/coderegs/statmast.php>  
[02-2A040-2]

## **DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (FEB 2015)**

You warrant and represent that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. The two underlying principles are (a) preventing the existence of conflicting roles that might bias a contractor's judgment, and (b) preventing an unfair competitive advantage. If you have an unfair competitive advantage or a conflict of interest, the state may withhold award. Before withholding award on these grounds, an offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered. Without limiting the foregoing, you represent that your offer identifies any services that relate to either this solicitation or the work and that has already been performed by you, a proposed subcontractor, or an affiliated business of either. [02-2A047-2]

## **DEADLINE FOR SUBMISSION OF OFFER (JAN 2004)**

Any offer received after the Procurement Officer of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the governmental body's mail room which services that purchasing office prior to the opening. [R.19-445.2070(G)] [02-2A050-1]

## **DRUG FREE WORK PLACE CERTIFICATION (JAN 2004)**

By submitting an Offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended. [02-2A065-1]

## **DUTY TO INQUIRE (FEB 2015)**

Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. All ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation shall be interpreted to require the better quality or greater quantity of work and/or materials, unless otherwise directed by amendment. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the State's attention. See clause entitled "Questions from Offerors." [02-2A070-2]

## **ETHICS CERTIFICATE (MAY 2008)**

By submitting an offer, the offeror certifies that the offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by consultants; and Section 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract. The state may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor

participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the procurement officer at the same time the law requires the statement to be filed. [02-2A075-2]

#### **OMIT TAXES FROM PRICE (JAN 2004)**

Do not include any sales or use taxes in Your price that the State may be required to pay. [02-2A080-1]

#### **OPEN TRADE REPRESENTATION (JUN 2015)**

By submitting an Offer, Offeror represents that Offeror is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300. [02-2A083-1]

#### **PROTESTS (MAY 2019)**

If you are aggrieved in connection with the solicitation or award of the contract, you may be entitled to protest, but only as provided in Section 11-35-4210. To protest a solicitation, you must submit a protest within fifteen days of the date the applicable solicitation document is issued. To protest an award, you must (i) submit notice of your intent to protest within seven business days of the date the award notice is posted, and (ii) submit your actual protest within fifteen days of the date the award notice is posted. Days are calculated as provided in Section 11-35-310(13). Both protests and notices of intent to protest must be in writing and must be received by the appropriate Chief Procurement Officer within the time provided. See clause entitled "Protest-CPO". The grounds of the protest and the relief requested must be set forth with enough particularity to give notice of the issues to be decided. [02-2A085-2]

#### **PROHIBITED COMMUNICATIONS AND DONATIONS (FEB 2015)**

Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of law.

(a) During the period between publication of the solicitation and final award, ***you must not communicate, directly or indirectly, with the Using Governmental Unit or its employees, agents or officials regarding any aspect of this procurement activity***, unless otherwise approved in writing by the Procurement Officer. All communications must be solely with the Procurement Officer. [R. 19-445.2010]

(b) You are advised to familiarize yourself with Regulation 19-445.2165, which restricts donations to a governmental entity with whom you have or seek to have a contract. ***You represent that your offer discloses any gifts made, directly or through an intermediary, by you or your named subcontractors to or for the benefit of the Using Governmental Unit during the period beginning eighteen months prior to the Opening Date.*** [R. 19-445.2165] [02-2A087-1]

#### **PUBLIC OPENING (JAN 2004)**

Offers will be publicly opened at the date/time and at the location identified on the Cover Page, or last Amendment, whichever is applicable. [02-2A090-1]

#### **QUESTIONS FROM OFFERORS (FEB 2015)**

(a) Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions regarding the original solicitation or any amendment must be received by the Procurement Officer no later than five (5) days prior to opening unless an earlier date is stated on the Cover Page. Label any communication regarding your questions with the name of the procurement officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. [See R. 19-445.2042(B)] Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. See

clause entitled "Duty to Inquire." **We will not identify you in our answer to your question.** (b) The State seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer -- as soon as possible -- regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition. [See R. 19-445.2140] [02-2A095-2]

#### **REJECTION/CANCELLATION (JAN 2004)**

The State may cancel this solicitation in whole or in part. The State may reject any or all proposals in whole or in part. [SC Code Section 11-35-1710 & R.19-445.2065] [02-2A100-1]

#### **RESPONSIVENESS/IMPROPER OFFERS (JUN 2015)**

(a) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.

(b) Multiple Offers. Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate offer must be submitted as a separate document. If this solicitation is a Request for Proposals, multiple offers may be submitted as one document, provided that you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable.

(c) Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)]

(d) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. [R. 19-445.2070].

(e) Unbalanced Bidding. The State may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the State even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

(f) **Do not submit bid samples or descriptive literature unless expressly requested.** Unsolicited bid samples or descriptive literature will not be examined or tested, will not be used to determine responsiveness, and will not be deemed to vary any of the provisions of the solicitation. S.C. Code Ann. Reg. 19-445.2077(D). [02-2A105-2]

#### **SIGNING YOUR OFFER (JAN 2004)**

Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words by its Partner, and signed by a general partner. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) An Offer may be submitted by a joint venturer involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal. [02-2A115-1]



## STATE OFFICE CLOSINGS (JAN 2004)

If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the government office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal government processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If state offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information may be available at: <https://scemd.org/closings/> [02-2A120-3]

## SUBMITTING CONFIDENTIAL INFORMATION (FEB 2015)

(An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)) For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) agrees that any information not marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify and hold harmless the State of South Carolina, its agencies, officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from withholding information by the State of South Carolina or any of its agencies, that Offeror marked as "confidential" or "trade secret" or "PROTECTED". (All references to S.C. Code of Laws.) [02-2A125-2]

## SUBMITTING A PAPER OFFER OR MODIFICATION (MAR 2015)

Unless specifically instructed otherwise in the solicitation, you should submit your offer or modification in accordance with the clause titled "ON-LINE BIDDING INSTRUCTIONS." Paper offers are discouraged. If you must submit a paper offer or modification the following instructions apply. (a) All prices and notations should be printed in ink or typewritten. Errors should be crossed out, corrections entered and initialed by the person signing the bid. Do not modify the solicitation document itself (including bid schedule). (b) (1) All copies of the offer or modification, and any other documents required to be submitted with the offer shall be enclosed in a sealed, opaque envelope or package. (2) Submit your offer or modification to the address on the Cover Page. (3) The envelope or package must show the time and date specified for opening, the solicitation number, and the name and address of the bidder. If the offer or modification is sent by mail or special delivery service (UPS, Federal Express, etc.), the outermost envelope or wrapper must be labeled "OFFER ENCLOSED" on the face thereof. (c) If you are responding to more than one solicitation, submit each offer in a separate envelope or package. (d) Submit the number of copies indicated on the Cover Page. (e) Facsimile or e-mail offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation. [02-2A130-2]

## **TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (JAN 2008)**

Pursuant to Section 12-6-3350, a taxpayer having a contract with this State who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to four percent of the payments to that subcontractor for work pursuant to the contract. The subcontractor must be certified as a socially and economically disadvantaged small business as defined in Section 11-35-5010 and regulations pursuant to it. The credit is limited to a maximum of fifty thousand dollars annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor. The credit may be claimed on Form TC-2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the contractor's income tax return. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734-0657, Fax: (803) 734-2498. [02-2A135-1]

## **VENDOR REGISTRATION MANDATORY (JAN 2006)**

You must have a state vendor number to be eligible to submit an offer. To obtain a state vendor number, visit [www.procurement.sc.gov](http://www.procurement.sc.gov) and select New Vendor Registration. (To determine if your business is already registered, go to "Vendor Search"). Upon registration, you will be assigned a state vendor number. Vendors must keep their vendor information current. If you are already registered, you can update your information by selecting Change Vendor Registration. (Please note that vendor registration does not substitute for any obligation to register with the S.C. Secretary of State or S.C. Department of Revenue. You can register with the agencies at <http://www.scbos.com/default.htm>) [02-2A145-1]

## **WITHDRAWAL OR CORRECTION OF OFFER (JAN 2004)**

Offers may be withdrawn by written notice received at any time before the exact time set for opening. If the Solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for opening. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid. The withdrawal and correction of Offers is governed by S.C. Code Section 11-35-1520 and Regulation 19-445.2085. [02-2A150-1]

## II. INSTRUCTIONS TO OFFERORS -- B. SPECIAL INSTRUCTIONS

### OFFERING BY ITEM (JAN 2006)

Offers may be submitted for one or more items. [02-2B085-1]

### ON-LINE BIDDING INSTRUCTIONS (MAR 2015)

(a) Mandatory Registration. You must register before you can submit an offer on line! See clause entitled "VENDOR REGISTRATION MANDATORY."

(b) Steps for On-Line Bidding

1 The link provided on the solicitation's Cover Page will take you to our web based on-line bidding system, where you will enter and/or upload your offer.

2 Follow the general user instructions posted at [www.procurement.sc.gov](http://www.procurement.sc.gov) under the heading "Submitting Offers."

3 Confirm your offer has a status of "submitted" by refreshing the "RFx and Auctions" screen.

**Only offers with a status of "submitted" have been received by the State.**

**Offers with a status of "saved" have not been received.**

4 Save or print a copy of your offer using the "Print Preview" button after your offer has been submitted. [02-2B105-2]

### PROTEST - CPO - MMO ADDRESS (MODIFIED)

Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing

(a) by email to [REDACTED], or

(c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201.

### UNIT PRICES REQUIRED (JAN 2006)

Unit price to be shown for each item. [02-2B170-1]

### III. SCOPE OF WORK/SPECIFICATIONS

It is the intent of the State of South Carolina, South Carolina Department of Health and Environmental Control (DHEC) to establish a contract(s) to provide statewide Turn-key services of Long-term Care (LTC) Survey Teams to conduct as-needed Centers for Medicare and Medicaid Services (CMS) Recertification/Revisit/Complaint Surveys at LTC facilities identified by DHEC, in accordance with the requirements stated herein.

#### SPECIFICATIONS

##### **3.1. Survey Teams:**

- 3.1.1. Survey teams will be made up of experienced surveyors per survey as designated by DHEC, depending on facility size and job function, or can be individual surveyors contracted to supplement a DHEC team.
  - 3.1.1.1. Recertification Survey (5 person team)
  - 3.1.1.2. Recertification Survey (4-person team)
  - 3.1.1.3. Recertification Survey (3-person team)
  - 3.1.1.4. Recertification Survey (2-person team)
  - 3.1.1.5. Complaint Survey (2-person team)
  - 3.1.1.6. Complaint Survey (1-person team)
  - 3.1.1.7. Revisits (2-person team)
  - 3.1.1.8. Revisits (1-person team)
  - 3.1.1.9. Individual RN Surveyor (per person/per survey cost)
  - 3.1.1.10. Initial Survey (2 Person Team)
  - 3.1.1.11. Initial Survey (4 Person Team)
- 3.1.2. If the team requested from the contractor is serving as the full survey team, the team must include at least one (1) Registered Nurse (RN) per CMS requirements.
- 3.1.3. Individual surveyors or team survey members shall be available in the event Immediate Jeopardy is identified or an extended survey is required within the time frames for an onsite investigation set by CMS.
- 3.1.4. DHEC will set the schedule and assign the facility.
- 3.1.5. Contractor shall provide all materials and equipment needed by the surveys to perform the work.
- 3.1.6. Recertification survey is to include the Emergency Preparedness (EP) portion of the survey
- 3.1.7. Any deviations from the team configuration in item 3.1.1. above requires a signed Change Order from contractor(s).
  - 3.1.7.1. A Change Order must be initiated by the Procurement Officer listed on the first page of the solicitation document or another authorized Procurement Officer from DHEC.

##### **3.2. Surveyor Qualifications:**

- 3.2.1. Each contracted surveyor must have successfully completed the Surveyor Minimum Qualifications Test (SMQT), trained in the Long Term Care Survey Process (LTCSP), with experience surveying Long Term Care facilities.
- 3.2.2. Surveyors must have sufficient experience to identify deficient practice and conduct thorough investigations. Surveys include, recertification, complaint, extended and revisit surveys.
- 3.2.3. Surveyors must be well versed in the federal regulations and requirements for Skilled Nursing Facilities (SNF) and have knowledge of the electronic CMS Long Term Care Survey process and must apply this consistent survey methodology throughout the state.
- 3.2.4. The contractor, and surveyors, must have access to and operational knowledge of the Automated Survey Processing Environment (ASPEN) and specifically ASPEN Survey Explorer-Quality (ASE-Q) portion of the ASPEN database.
- 3.2.5. Surveyors must be equipped with their own laptop, printer and supplies.
  - 3.2.5.1. Any flash drives or other removable electronic media used must be encrypted.
- 3.2.6. Surveyor professional disciplines may range from registered nurses, dieticians, social workers, pharmacists and generalists.
- 3.2.7. All Contractor employees performing services under this contract will have a satisfactory criminal background check.
- 3.2.8. All Contractor employees performing services under this contract will have Centers for Medicare and Medicaid Services (CMS) certification.

- 3.2.9. Surveyors must be COVID tested under the guidelines of Appendix A, COVID-19 Testing of Health Facility Inspectors Within The Division of Healthcare Quality, Page 43.

**3.3. Travel Requirements:**

- 3.3.1. Contracted surveyors will need to travel and stay overnight at least 3-4 nights each week to any part of the state of South Carolina.
- 3.3.2. The contractor must provide arrangement for transportation, hotel arrangements, car rental and all other travel arrangements to ensure timely completion of surveys designated by DHEC.
- 3.3.3. All travel related costs, including transportation, lodging, and meals, shall be included in the bid price and not invoiced separately.

**3.4. Survey Documentation:**

- 3.4.1. All survey results must be documented and the contractor must produce survey results and related cited deficiencies on the Form CMS-2567, Statement of Deficiencies and Plan of Correction, using CMS Principles of Documentation format within CMS mandated timeframes for completing survey reports, preferably within three (3) business days of the survey exit date.
- 3.4.2. All reports must have undergone a Quality Assurance (QA) process by the contractor and the contractor must interface with CMS and DHEC when required.

**3.5. Survey Types:**

- 3.5.1. The majority of the surveys will be recertification surveys; however, survey teams may be required to perform Initial surveys, Revisit surveys, or Complaint surveys, at DHEC's request. Recertification and Revisit surveys may also include complaint surveys, if the facility being surveyed has an open complaint(s) on file. DHEC may also request an individual Registered Nurse to serve as a supplemental member of a DHEC recertification team.
- 3.5.2. Contractor may be asked to provide additional team members if needed.
  - 3.5.2.1. The addition of team members cannot exceed the team configurations in item 3.1.1. above without a signed Change Order initiated by the Procurement Officer listed on the first page of the solicitation document or another authorized Procurement Officer from DHEC and signed by the awarded offeror(s).
- 3.5.3. Contractor may decline certain assignments within 72-hour notice (without penalty) due to lack of staff availability.

**3.6. Pricing:**

- 3.6.1. Pricing shall be all inclusive of all associated costs to perform the surveys and/or revisit survey.
  - 3.6.1.1. Recertification Survey (5-person team)
  - 3.6.1.2. Recertification Survey (4-person team)
  - 3.6.1.3. Recertification Survey (3-person team)
  - 3.6.1.4. Recertification Survey (2-person team)
  - 3.6.1.5. Complaint Survey (2-person team)
  - 3.6.1.6. Complaint Survey (1-person team)
  - 3.6.1.7. Revisits (2-person team)
  - 3.6.1.8. Revisits (1-person team)
  - 3.6.1.9. Individual RN Surveyor (per person, per team)
  - 3.6.1.10. Initial Survey (2 Person Team)
  - 3.6.1.11. Initial Survey (4 Person Team)
- 3.6.2. Pricing will remain unchanged for the 2-year contract period.

**DELIVERY/PERFORMANCE LOCATION -- SPECIFIED (JAN 2006)**

After award, all deliveries shall be made and all services provided to the following address, unless otherwise specified:  
[03-3030-1]

## IV. INFORMATION FOR OFFERORS TO SUBMIT

### INFORMATION FOR OFFERORS TO SUBMIT -- GENERAL (MAR 2015)

You shall submit a signed Cover Page and Page Two. If you submit your offer electronically, you must upload an image of a signed Cover Page and Page Two. Your offer should include all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in Part IX. Attachments to Solicitations. You should submit a summary of all insurance policies you have or plan to acquire to comply with the insurance requirements stated herein, if any, including policy types; coverage types; limits, sub-limits, and deductibles for each policy and coverage type; the carrier's A.M. Best rating; and whether the policy is written on an occurrence or claims-made basis. [04-4010-2]

To be considered for award, all bids must include, as a minimum, the following information. The bid must contain all required information listed below.

4.1. Provide executed Business Associate Agreement. (Pages 46– 52 of Solicitation document)

4.1.1. The entire document is to be returned with the signature page completed. A fully executed copy with the PO number and contract beginning date will be returned to the awarded offeror(s) with a Purchase Order.

### MINORITY PARTICIPATION (DEC 2015)

Is the bidder a South Carolina Certified Minority Business?  Yes  No

Is the bidder a Minority Business certified by another governmental entity?  Yes  No

If so, please list the certifying governmental entity: \_\_\_\_\_

Will any of the work under this contract be performed by a SC certified Minority Business as a subcontractor?  Yes  No

If so, what percentage of the total value of the contract will be performed by a SC certified Minority Business as a subcontractor? \_\_\_\_\_

Will any of the work under this contract be performed by a minority business certified by another governmental entity as a subcontractor?  Yes  No

If so, what percentage of the total value of the contract will be performed by a minority business certified by another governmental entity as a subcontractor? \_\_\_\_\_

If a certified Minority Business is participating in this contract, please indicate all categories for which the Business is certified:

- Traditional minority
- Traditional minority, but female
- Women (Caucasian females)
- Hispanic minorities
- DOT referral (Traditional minority)
- DOT referral (Caucasian female)
- Temporary certification
- SBA 8 (a) certification referral
- Other minorities (Native American, Asian, etc.)

(If more than one minority contractor will be utilized in the performance of this contract, please provide the information above for each minority business.)

The Department of Administration, Division of Small and Minority Business Contracting and Certification, publishes a list

of certified minority firms. The Minority Business Directory is available at the following URL:  
<http://osmba.sc.gov/directory.html>

[04-4015-3]

## V. QUALIFICATIONS

### QUALIFICATIONS OF OFFEROR (MAR 2015)

(1) To be eligible for award, you must have the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance. We may also consider a documented commitment from a satisfactory source that will provide you with a capability. We may consider information from any source at any time prior to award. We may elect to consider (i) key personnel, any predecessor business, and any key personnel of any predecessor business, including any facts arising prior to the date a business was established, and/or (ii) any subcontractor you identify. (2) You must promptly furnish satisfactory evidence of responsibility upon request. Unreasonable failure to supply requested information is grounds for rejection. (3) **Corporate subsidiaries are cautioned that the financial capability of an affiliated or parent company will not be considered in determining financial capability;** however, we may elect to consider any security, e.g., letter of credit, performance bond, parent-company corporate guaranty, that you offer to provide. Instructions and forms to help assure acceptability are posted on [procurement.sc.gov](http://procurement.sc.gov), link to "Standard Clauses & Provisions." [05-5005-2]

### QUALIFICATIONS – REQUIRED INFORMATION (MODIFIED)

If requested by the Procurement Officer, submit the following information or documentation for you and for any subcontractor (at any tier level) that you identify pursuant to the clause titled Subcontractor – Identification. Err on the side of inclusion. You represent that the information provided is complete. (a) The general history and experience of the business in providing work of similar size and scope. (b) Information reflecting the current financial position. Include the most current financial statement and financial statements for the last two fiscal years. If the financial statements have been audited in accordance with the following requirements, provide the audited version of those statements. [Reference Statement of Financial Accounting Concepts No. 5 (FASB, December, 1984), as amended.] (c) A detailed, narrative statement listing the three most recent, comparable contracts (including contact information) which have been performed. For each contract, describe how the supplies or services provided are similar to those requested by this solicitation, and how they differ. (d) A list of every business for which supplies or services substantially similar to those sought with this solicitation have been provided, at any time during the past three years. (e) A list of every South Carolina public body for which supplies or services have been provided at any time during the past three years, if any. (f) List of failed projects, suspensions, debarments, and significant litigation.



## **VI. AWARD CRITERIA**

### **AWARD CRITERIA -- BIDS (JAN 2006)**

Award will be made to the lowest responsible and responsive bidder(s). [06-6020-1]

### **AWARD TO MULTIPLE OFFERORS (MODIFIED)**

Award will be made to up to the two (2) lowest responsible and responsive bidder(s) for each Line Item, as identified under Section III 3.8 and Bidding Schedule.

### **COMPETITION FROM PUBLIC ENTITIES (JAN 2006)**

If a South Carolina governmental entity submits an offer, the Procurement Officer will, when determining the lowest offer, add to the price provided in any offers submitted by non-governmental entities a percentage equivalent to any applicable sales or use tax. S.C. Code Ann. Regs 117-304.1 (Supp. 2004). [06-6057-1]

### **UNIT PRICE GOVERNS (JAN 2006)**

In determining award, unit prices will govern over extended prices unless otherwise stated. [06-6075-1]

## **VII. TERMS AND CONDITIONS -- A. GENERAL**

### **ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE (FEB 2015)**

(a) Contractor shall not assign this contract, or its rights, obligations, or any other interest arising from this contract, or delegate any of its performance obligations, without the express written consent of the responsible procurement officer. The foregoing restriction does not apply to a transfer that occurs by operation of law (e.g., bankruptcy; corporate reorganizations and consolidations, but not including partial asset sales). Notwithstanding the foregoing, contractor may assign monies receivable under the contract provided that the state shall have no obligation to make payment to an assignee until thirty days after contractor (not the assignee) has provided the responsible procurement officer with (i) proof of the assignment, (ii) the identity (by contract number) of the specific state contract to which the assignment applies, and (iii) the name of the assignee and the exact address or account information to which assigned payments should be made. (b) If contractor amends, modifies, or otherwise changes its name, its identity (including its trade name), or its corporate, partnership or other structure, or its FEIN, contractor shall provide the procurement officer prompt written notice of such change. (c) Any name change, transfer, assignment, or novation is subject to the conditions and approval required by Regulation 19-445.2180, which does not restrict transfers by operation of law. [07-7A004-2]

### **BANKRUPTCY - GENERAL (FEB 2015)**

(a) Notice. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Using Governmental Unit. This notification shall be furnished within two (2) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract. (b) Termination. This contract is voidable and subject to immediate termination by the State upon the contractor's insolvency, including the filing of proceedings in bankruptcy. [07-7A005-2]

### **CHOICE-OF-LAW (JAN 2006)**

The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. [07-7A010-1]

### **CONTRACT DOCUMENTS and ORDER OF PRECEDENCE (MODIFIED)**

(a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) the solicitation, as amended, (3) discussions [11-35-1530(6)] of an offer, if applicable, (4) your offer, (5) any statement reflecting the State's final acceptance (a/k/a "award"), and (6) purchase orders. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. (b) The terms and conditions of documents (1) through (5) above shall apply notwithstanding any additional or different terms and conditions in any other document, including without limitation, (i) a purchase order or other instrument submitted by the State, (ii) any invoice or other document submitted by Contractor, or (iii) any privacy policy, terms of use, or end user agreement. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect.

### **DISCOUNT FOR PROMPT PAYMENT (JAN 2006)**

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the state annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day. [07-7A020-1]

#### **DISPUTES (JAN 2006)**

(1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the government regarding the Agreement is not a waiver of either the government's sovereign immunity or the government's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. (2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail. [07-7A025-1]

#### **EQUAL OPPORTUNITY (JAN 2006)**

Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, Part 60 of the Code of Federal Regulations, including but not limited to Sections 60-1.4, 60-4.2, 60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference. [07-7A030-1]

#### **FALSE CLAIMS (JAN 2006)**

According to the S.C. Code of Laws Section 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime. [07-7A035-1]

#### **FIXED PRICING REQUIRED (JAN 2006)**

Any pricing provided by contractor shall include all costs for performing the work associated with that price. Except as otherwise provided in this solicitation, contractor's price shall be fixed for the duration of this contract, including option terms. This clause does not prohibit contractor from offering lower pricing after award. [07-7A040-1]

#### **NO INDEMNITY OR DEFENSE (FEB 2015)**

Any term or condition is void to the extent it requires the State to indemnify, defend, or pay attorney's fees to anyone for any reason. [07-7A045-2]

#### **NOTICE (JAN 2006)**

(A) After award, any notices shall be in writing and shall be deemed duly given (1) upon actual delivery, if delivery is by hand, (2) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by telex, telegram, facsimile, or electronic mail, or (3) upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used. (B) Notice to contractor shall be to the address identified as the Notice Address on Page Two. Notice to the state shall be to the Procurement Officer's address on the Cover Page. Either party may designate a different address for notice by giving notice in accordance with this

paragraph. [07-7A050-1]

### **OPEN TRADE (JUN 2015)**

During the contract term, including any renewals or extensions, Contractor will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300. [07-7A053-1]

### **PAYMENT and INTEREST (FEB 2015)**

(a) The State shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted by the Government. (b) Unless otherwise provided herein, including the purchase order, payment will be made by check mailed to the payment address on "Page Two." (c) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, or Chapter 6 of Title 29 (real property improvements) when applicable, which provides the Contractor's exclusive means of recovering any type of interest from the Owner. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. Except as set forth in this paragraph, the State shall not be liable for the payment of interest on any debt or claim arising out of or related to this contract for any reason. (d) Amounts due to the State shall bear interest at the rate of interest established by the South Carolina Comptroller General pursuant to Section 11-35-45 ("an amount not to exceed fifteen percent each year"), as amended, unless otherwise required by Section 29-6-30. (e) Any other basis for interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including S.C. Code Ann. Section 34-31-20, are expressly waived by both parties. If a court, despite this agreement and waiver, requires that interest be paid on any debt by either party other than as provided by items (c) and (d) above, the parties further agree that the applicable interest rate for any given calendar year shall be the lowest prime rate as listed in the first edition of the Wall Street Journal published for each year, applied as simple interest without compounding. (f) The State shall have all of its common law, equitable and statutory rights of set-off. [07-7A055-3]

### **PUBLICITY (JAN 2006)**

Contractor shall not publish any comments or quotes by State employees, or include the State in either news releases or a published list of customers, without the prior written approval of the Procurement Officer. [07-7A060-1]

### **PURCHASE ORDERS (JAN 2006)**

Contractor shall not perform any work prior to the receipt of a purchase order from the using governmental unit. The using governmental unit shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of this contract. Purchase orders may be electronic. No particular form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order. [07-7A065-1]

### **SURVIVAL OF OBLIGATIONS (JAN 2006)**

The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this contract shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Indemnification - Third Party Claims, Intellectual Property Indemnification, and any provisions regarding warranty or audit. [07-7A075-1]

### **TAXES (JAN 2006)**

Any tax the contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the State, and such sums shall be due and payable to the contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the State. It shall be solely the State's obligation, after payment to contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax

collected, which is subsequently determined not to be proper and for which a refund has been paid to contractor by the taxing authority. In the event that the contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the State to contractor, contractor shall be liable to the State for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the contractor. [07-7A080-1]

#### **TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006)**

Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. In the event of a cancellation pursuant to this paragraph, contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term. [07-7A085-1]

#### **THIRD PARTY BENEFICIARY (JAN 2006)**

This Contract is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Contract as a third party beneficiary or otherwise. [07-7A090-1]

#### **WAIVER (JAN 2006)**

The State does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to strictly or promptly insist upon any term of the Contract. Only the Procurement Officer has actual authority to waive any of the State's rights under this Contract. Any waiver must be in writing. [07-7A095-1]

## **VII. TERMS AND CONDITIONS -- B. SPECIAL**

### **CHANGES (JAN 2006)**

(1) Contract Modification. By a written order, at any time, and without notice to any surety, the Procurement Officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

- (a) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the [State] in accordance therewith;
- (b) method of shipment or packing;
- (c) place of delivery;
- (d) description of services to be performed;
- (e) time of performance (i.e., hours of the day, days of the week, etc.); or,
- (f) place of performance of the services. Subparagraphs (a) to (c) apply only if supplies are furnished under this contract. Subparagraphs (d) to (f) apply only if services are performed under this contract.

(2) Adjustments of Price or Time for Performance. If any such change increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made in the contract price, the delivery schedule, or both, and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the State promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

(3) Time Period for Claim. Within 30 days after receipt of a written contract modification under Paragraph (1) of this clause, unless such period is extended by the Procurement Officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the State is prejudiced by the delay in notification.

(4) Claim Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract. [07-7B025-1]

### **COMPLIANCE WITH LAWS (JAN 2006)**

During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs. [07-7B035-1]

### **CONTRACTOR'S LIABILITY INSURANCE - GENERAL (FEB 2015)**

(a) Without limiting any of the obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees or subcontractors.

(b) Coverage shall be at least as broad as:

(1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. This contract shall be considered to be an "insured contract" as defined in the policy.

(2) Auto Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage.

(3) Worker's Compensation: As required by the State of South Carolina, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

(c) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or

operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

(d) For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the State, every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials, employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.

(e) Prior to commencement of the work, the Contractor shall furnish the State with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this section. All certificates are to be received and approved by the State before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this section, at any time.

(f) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the State immediately upon receiving any information that any of the coverages required by this section are or will be changed, cancelled, or replaced.

(g) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer.

(h) Any deductibles or self-insured retentions must be declared to and approved by the State. The State may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(i) The State reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. [07-7B056-2]

#### **CONTRACTOR PERSONNEL (JAN 2006)**

The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. [07-7B060-1]

#### **CONTRACTOR'S OBLIGATION -- GENERAL (JAN 2006)**

The contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the work. The contractor must act as the prime contractor and assume full responsibility for any subcontractor's performance. The contractor will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements. [07-7B065-1]

#### **DEFAULT (JAN 2006)**

(a) (1) The State may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or

(iii) Perform any of the other material provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The State's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Procurement Officer) after receipt of the notice from the Procurement Officer specifying the failure.

(b) If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Procurement Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not

terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the State in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the State may require the Contractor to transfer title and deliver to the State, as directed by the Procurement Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Procurement Officer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.

(f) The State shall pay contract price for completed supplies delivered and accepted. The Contractor and Procurement Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property; if the parties fail to agree, the Procurement Officer shall set an amount subject to the Contractor's rights under the Disputes clause. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the Procurement Officer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the termination had been issued for the convenience of the State. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the State, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the contractor's rights under the Disputes clause.

(h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract. [07-7B075-1]

#### **ESTIMATED QUANTITY -- UNKNOWN (JAN 2006)**

The total quantity of purchases of any individual item on the contract is not known. The State does not guarantee that the State will buy any specified item or total amount. The omission of an estimated purchase quantity does not indicate a lack of need but rather a lack of historical information. [07-7B095-1]

#### **ILLEGAL IMMIGRATION (NOV 2008)**

(An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)) By signing your offer, you certify that you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or (b) that you and your subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." You agree to include in any contracts with your subcontractors language requiring your subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14. [07-7B097-1]



## **INDEMNIFICATION-THIRD PARTY CLAIMS - GENERAL (NOV 2011)**

Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such claims are made by a third party or an Indemnitee; however, if an Indemnitee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnitee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancelation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees. [07-7B100-2]

## **LICENSES AND PERMITS (JAN 2006)**

During the term of the contract, the Contractor shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and /or inspections required by the State, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract. [07-7B115-1]

## **OWNERSHIP OF DATA & MATERIALS (JAN 2006)**

All data, material and documentation prepared for the state pursuant to this contract shall belong exclusively to the State. [07-7B125-1]

## **PRICE ADJUSTMENTS (JAN 2006)**

(1) Method of Adjustment. Any adjustment in the contract price made pursuant to a clause in this contract shall be consistent with this Contract and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the Contractor (including profit, if otherwise allowed):

- (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (b) by unit prices specified in the Contract or subsequently agreed upon;
- (c) by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed, all as specified in the Contract; or subsequently agreed upon;
- (d) in such other manner as the parties may mutually agree; or,
- (e) in the absence of agreement by the parties, through a unilateral initial written determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed, all as computed by the Procurement Officer in accordance with generally accepted accounting principles, subject to the provisions of Title 11, Chapter 35, Article 17 of the S.C. Code of Laws.

(2) Submission of Price or Cost Data. Upon request of the Procurement Officer, the contractor shall provide reasonably available factual information to substantiate that the price or cost offered, for any price adjustments is reasonable, consistent with the provisions of Section 11-35-1830. [07-7B160-1]

## **PRICING DATA -- AUDIT -- INSPECTION (JAN 2006)**

[Clause Included Pursuant to Section 11-35-1830, - 2210, & -2220] (a) Cost or Pricing Data. Upon Procurement Officer's request, you shall submit cost or pricing data, as defined by 48 C.F.R. Section 2.101 (2004), prior to either (1) any award to contractor pursuant to 11-35-1530 or 11-35-1560, if the total contract price exceeds \$500,000, or (2) execution of a change order or contract modification with contractor which exceeds \$100,000. Your price, including profit or fee, shall be adjusted to exclude any significant sums by which the state finds that such price was increased because you furnished cost

or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between parties. (b) Records Retention. You shall maintain your records for three years from the date of final payment, or longer if requested by the chief Procurement Officer. The state may audit your records at reasonable times and places. As used in this subparagraph (b), the term "records" means any books or records that relate to cost or pricing data submitted pursuant to this clause. In addition to the obligation stated in this subparagraph (b), you shall retain all records and allow any audits provided for by 11-35-2220(2). (c) Inspection. At reasonable times, the state may inspect any part of your place of business which is related to performance of the work. (d) Instructions Certification. When you submit data pursuant to subparagraph (a), you shall (1) do so in accordance with the instructions appearing in Table 15-2 of 48 C.F.R. Section 15.408 (2004) (adapted as necessary for the state context), and (2) submit a Certificate of Current Cost or Pricing Data, as prescribed by 48 CFR Section 15.406-2(a) (adapted as necessary for the state context). (e) Subcontracts. You shall include the above text of this clause in all of your subcontracts. (f) Nothing in this clause limits any other rights of the state. [07-7B185-1]

#### **RELATIONSHIP OF THE PARTIES (JAN 2006)**

Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party. [07-7B205-1]

#### **RESTRICTION ON PRESENTING TERMS OF USE OR OFFERING ADDITIONAL SERVICES (FEB 2015)**

(a) Citizens, as well as public employees (acting in their individual capacity), should not be unnecessarily required to agree to or provide consent to policies or contractual terms in order to access services acquired by the government pursuant to this contract (hereinafter "applicable services") or, in the case of public employees, to perform their job duties; accordingly, in performing the work, contractor shall not require or invite any citizen or public employee to agree to or provide consent to any end user contract, privacy policy, or other terms of use (hereinafter "terms of use") not previously approved in writing by the procurement officer. Contractor agrees that any terms of use regarding applicable services are void and of no effect. (b) Unless expressly provided in the solicitation, public contracts are not intended to provide contractors an opportunity to market additional products and services; accordingly, in performing the work, contractor shall not – for itself or on behalf of any third party – offer citizens or public employees (other than the procurement officer) any additional products or services not required by the contract.

© Any reference to contractor in items (a) or (b) also includes any subcontractor at any tier. Contractor is responsible for compliance with these obligations by any person or entity that contractor authorizes to take any action related to the work.

(d) Any violation of this clause is a material breach of contract. The parties acknowledge the difficulties inherent in determining the damage from any breach of these restrictions. Contractor shall pay the state liquidated damages of \$1,000 for each contact with a citizen or end user that violates this restriction. [07-7B212-1]

#### **TERM OF CONTRACT -- EFFECTIVE DATE / INITIAL CONTRACT PERIOD (JAN 2006)**

The effective date of this contract is the first day of the Maximum Contract Period as specified on the final statement of award. The initial term of this agreement is 1 years, 0months, 0days from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award. [07-7B240-1]

#### **TERM OF CONTRACT -- OPTION TO RENEW (JAN 2015)**

(a) At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of 1year(s), 0month(s), and 0day(s), unless contractor receives notice that the state elects not to renew the contract at least thirty (30) days prior to the date of renewal. Regardless, this contract expires no later than the last date stated on the final statement of award. (b) Contractor acknowledges that, unless excused by Section 11-57-320, if the contractor is on the then-current Iran Divestment Act List as of the date of any contract renewal, the renewal will be void ab initio. [07-7B245-2]

#### **TERMINATION FOR CONVENIENCE (JAN 2006)**

(1) Termination. The Procurement Officer may terminate this contract in whole or in part, for the convenience of the State. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

(2) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities

and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the State. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(3) Right to Supplies. The Procurement Officer may require the contractor to transfer title and deliver to the State in the manner and to the extent directed by the Procurement Officer: (a) any completed supplies; and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the contractor in which the State has an interest. If the Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this Section in no way implies that the State has breached the contract by exercise of the Termination for Convenience Clause.

(4) Compensation. (a) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data required by Section 11-35-1830 bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

(b) The Procurement Officer and the contractor may agree to a settlement and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) of this clause, and the contract price of the work not terminated;

(c) Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay the contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph:

(i) contract prices for supplies or services accepted under the contract;

(ii) costs reasonably incurred in performing the terminated portion of the work less amounts paid or to be paid for accepted supplies or services;

(iii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c)(ii) of this paragraph;

(iv) any other reasonable costs that have resulted from the termination. The total sum to be paid the contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.

(d) Contractor must demonstrate any costs claimed, agreed to, or established under Subparagraphs (b) and (c) of this Paragraph using its standard record keeping system, provided such system is consistent with any applicable Generally Accepted Accounting Principles.

(5) Contractor's failure to include an appropriate termination for convenience clause in any subcontract shall not (i) affect the state's right to require the termination of a subcontract, or (ii) increase the obligation of the state beyond what it would have been if the subcontract had contained an appropriate clause. [07-7B265-1]

## VII. TERMS AND CONDITIONS – C. DHEC’S SPECIAL CLAUSES

### DHEC’s CONFIDENTIALITY POLICY (DHEC – MAR 2014)

Confidential information includes information known or maintained in any form, whether recorded or not, consisting of protected health information, other health information, personal information, personal identifying information, confidential business information, and any other information required by law to be treated as confidential, designated as confidential by DHEC, or known or believed by contractor or contractor’s employee or agent to be claimed as confidential or entitled to confidential treatment.

- (a) Contractor will not:
  - (i) access, view, use, or disclose confidential information without written authorization from DHEC, unless required to perform its responsibilities under this contract or required by law (as determined by a court or other governmental body with authority);
  - (ii) discuss confidential information obtained in the course of its relationship with DHEC with any other person or in any location outside of its area of responsibility in DHEC; or
  - (iii) make any unauthorized copy of confidential information, or remove or transfer this information to any unauthorized location or media.
- (b) If contractor discloses confidential information pursuant to a properly completed authorization or legal process, order, or requirement, contractor must document the disclosure and make the documentation and authorization available for DHEC inspection and audit. Contractor will direct any request it receives for confidential information obtained through performance of services under this contract, including a subpoena, litigation discovery request, court order, or Freedom of Information Act request, to the DHEC Contracts Manager and DHEC Office of General Counsel as soon as possible, and in every case within one business day of receipt.
- (c) Contractor must ensure that its employees, agents, and subcontractors who may have access to DHEC confidential information are aware of and comply with these confidentiality requirements. Contractor must ensure that any release of confidential information is limited to the minimum necessary to meet its obligations under this agreement and applicable law. If contractor will or may have access to any Protected Health Information (PHI) under the Health Insurance Portability and Accountability Act (HIPAA), Public Law 104-92, as amended, and regulations (45 CFR Parts 160 and 164), DHEC may require the contractor to sign and comply with DHEC’s Business Associate Agreement (DHEC Form 0854, attached) and protect PHI in compliance with the referenced HIPAA laws.
- (d) Unauthorized use or disclosure of confidential information may result in termination of this agreement and may be grounds for fines, penalties, imprisonment, injunctive action, damages, civil suit, or debarment from doing business with the State. The contractor must immediately notify the DHEC Compliance Officer and the DHEC Contracts Manager of any unauthorized use or disclosure of confidential information received under this contract.
- (e) The obligations of this provision shall survive termination, cancellation, or expiration of the contract.

### PREVENTING AND REPORTING FRAUD, WASTE AND ABUSE (DHEC MAR-2014)

DHEC has procedures and policies concerning the prevention and reporting of fraud, waste and abuse (FWA) in agency-funded programs, including but not limited to those funded by federal grants such as Medicaid. No agency employee, agent, or contractor shall direct, participate in, approve, or tolerate any violation of federal or State laws regarding FWA in government programs.

Federal law prohibits any person or company from knowingly submitting false or fraudulent claims or statements to a federally funded program, including false claims for payment or conspiracy to get such a claim approved or paid. The False Claims Act, 31 U.S.C. §3729-3733, and other “whistleblower” statutes include remedies for employees who are retaliated against in their employment for reporting violations of the Act or for reporting fraud, waste, abuse, or violations of law in connection with federal contracts or grants, or danger to public health or safety. Under State law, persons may be criminally prosecuted for false claims made for health care benefits, for Medicaid fraud, for insurance fraud, or for using a computer in a fraud scheme or to obtain money or services by false representations. Additional information regarding the federal and State laws prohibiting false claims and SCDHEC’s policies and procedures regarding false claims may be obtained from the agency’s Contracts Manager or Bureau of Business Management.

Any employee, agent, or contractor of SCDHEC who submits a false claim in violation of federal or State laws will be reported to appropriate authorities.

If Contractor, Contractor’s agents or employees have reason to suspect FWA in agency programs, this information should be reported in confidence to the agency. A report may be made by writing to the Office of Internal Audits, DHEC, 2600 Bull Street, Columbia, SC 29201; or by calling the Agency Fraud, Waste and Abuse Hotline at 803-896-0650 or toll-free at 1-866-206-5202. Contractor is required to inform Contractor’s employees of the existence of DHEC’s policy prohibiting

FWA and the procedures for reporting FWA to the agency. Contractor must also inform Contractor's employees, in writing, of their rights and remedies under 41 U.S.C. §4712 concerning reporting FWA or violations of law in connection with federal contracts or grants, or danger to public health or safety, in the predominant native language of the workforce. [Reference: False Claims Act, 31 U.S.C. §3729-3733; 41 U.S.C. §4712]

**TOBACCO-FREE CAMPUS POLICY (DHEC - Feb 2016)**

Use of all tobacco products, including smokeless tobacco and electronic cigarettes, is prohibited in any facility or on any property owned or controlled by DHEC (including parking lots, parking garages, sidewalks, and breezeways).

**BUSINESS ASSOCIATE AGREEMENT CLAUSE (DHEC – JAN 2011)**

Prior to any work being done on any contract resulting from this solicitation, the contractor will be required to sign DHEC's Business Associate Agreement (Form 0854) to safeguard the privacy and security of Protected Health Information (PHI) and Electronic Protected Health Information (ePHI) pursuant to requirements of the Health Insurance Portability and Accountability Act of 1995 (HIPAA). A copy of the Business Associate Agreement is included in the Appendix of this solicitation. By submission of an offer, you are agreeing to sign DHEC's Business Associate Agreement, if awarded.

## VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL

### BIDDING SCHEDULE (NOV 2007)

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0001	10	each		
<b>Item Description:</b> 5-Person Recertification Team				
<b>Tendering Text:</b> Pricing shall be all inclusive of all associated costs to perform the surveys and/or follow-up. Quantities are estimates only and are not a commitment to purchase.				
Question	Mandatory / Optional	Multiple Responses Accepted?	Response	
The bidder has read and understands all Amendments.	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1. The Submitter has read and understands the terms and conditions of this solicitation.	Mandatory	No	<input type="checkbox"/> Yes. I have read and understand the terms and conditions.	
2. The offer is in accordance with the terms and conditions of this solicitation.	Mandatory	No	<input type="checkbox"/> Yes, I am in accordance with the terms and conditions.	

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0002	10	each		
<b>Item Description:</b> 4-Person Recertification Team				
<b>Tendering Text:</b> Pricing shall be all inclusive of all associated costs to perform the surveys and/or follow-up. Quantities are estimates only and are not a commitment to purchase.				
Question	Mandatory / Optional	Multiple Responses Accepted?	Response	
The bidder has read and understands all Amendments.	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1. The Submitter has read and understands the terms and conditions of this solicitation.	Mandatory	No	<input type="checkbox"/> Yes. I have read and understand the terms and conditions.	
2. The offer is in accordance with the terms and conditions of this solicitation.	Mandatory	No	<input type="checkbox"/> Yes, I am in accordance with the terms and conditions.	

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0003	10	each		
<b>Item Description:</b> 3-Person Recertification Team				
<b>Tendering Text:</b> Pricing shall be all inclusive of all associated costs to perform the surveys and/or follow-up. Quantities are estimates only and are not a commitment to purchase.				
Question	Mandatory / Optional	Multiple Responses Accepted?	Response	
The bidder has read and understands all Amendments.	Mandatory	No	____ Yes ____ No	
1. The Submitter has read and understands the terms and conditions of this solicitation.	Mandatory	No	____ Yes. I have read and understand the terms and conditions.	
2. The offer is in accordance with the terms and conditions of this solicitation.	Mandatory	No	____ Yes, I am in accordance with the terms and conditions.	

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0004	10	each		
<b>Item Description:</b> 2-Person Recertification Team				
<b>Tendering Text:</b> Pricing shall be all inclusive of all associated costs to perform the surveys and/or follow-up. Quantities are estimates only and are not a commitment to purchase.				
Question	Mandatory / Optional	Multiple Responses Accepted?	Response	
The bidder has read and understands all Amendments.	Mandatory	No	____ Yes ____ No	
1. The Submitter has read and understands the terms and conditions of this solicitation.	Mandatory	No	____ Yes. I have read and understand the terms and conditions.	
2. The offer is in accordance with the terms and conditions of this solicitation.	Mandatory	No	____ Yes, I am in accordance with the terms and conditions.	

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0005	10	each		
<b>Item Description:</b> 2-Person Complaint Team				
<b>Tendering Text:</b> Pricing shall be all inclusive of all associated costs to perform the surveys and/or follow-up. Quantities are estimates only and are not a commitment to purchase.				
Question	Mandatory / Optional	Multiple Responses Accepted?	Response	
The bidder has read and understands all Amendments.	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1. The Submitter has read and understands the terms and conditions of this solicitation.	Mandatory	No	<input type="checkbox"/> Yes. I have read and understand the terms and conditions.	
2. The offer is in accordance with the terms and conditions of this solicitation.	Mandatory	No	<input type="checkbox"/> Yes, I am in accordance with the terms and conditions.	

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0006	10	each		
<b>Item Description:</b> 1-Person Complaint Team				
<b>Tendering Text:</b> Pricing shall be all inclusive of all associated costs to perform the surveys and/or follow-up. Quantities are estimates only and are not a commitment to purchase.				
Question	Mandatory / Optional	Multiple Responses Accepted?	Response	
The bidder has read and understands all Amendments.	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1. The Submitter has read and understands the terms and conditions of this solicitation.	Mandatory	No	<input type="checkbox"/> Yes. I have read and understand the terms and conditions.	
2. The offer is in accordance with the terms and conditions of this solicitation.	Mandatory	No	<input type="checkbox"/> Yes, I am in accordance with the terms and conditions.	



Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0007	10	each		
<b>Item Description:</b> 2-Person Revisits Team				
<b>Tendering Text:</b> Pricing shall be all inclusive of all associated costs to perform the surveys and/or follow-up. Quantities are estimates only and are not a commitment to purchase.				
Question	Mandatory / Optional	Multiple Responses Accepted?	Response	
The bidder has read and understands all Amendments.	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1. The Submitter has read and understands the terms and conditions of this solicitation.	Mandatory	No	<input type="checkbox"/> Yes. I have read and understand the terms and conditions.	
2. The offer is in accordance with the terms and conditions of this solicitation.	Mandatory	No	<input type="checkbox"/> Yes, I am in accordance with the terms and conditions.	

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0008	10	each		
<b>Item Description:</b> 1-Person Revisits Team				
<b>Tendering Text:</b> Pricing shall be all inclusive of all associated costs to perform the surveys and/or follow-up. Quantities are estimates only and are not a commitment to purchase.				
Question	Mandatory / Optional	Multiple Responses Accepted?	Response	
The bidder has read and understands all Amendments.	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1. The Submitter has read and understands the terms and conditions of this solicitation.	Mandatory	No	<input type="checkbox"/> Yes. I have read and understand the terms and conditions.	
2. The offer is in accordance with the terms and conditions of this solicitation.	Mandatory	No	<input type="checkbox"/> Yes, I am in accordance with the terms and conditions.	

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0009	10	each		
<b>Item Description:</b> Individual RN Surveyor				
<b>Tendering Text:</b> Pricing shall be all inclusive of all associated costs to perform the surveys and/or follow-up. Quantities are estimates only and are not a commitment to purchase.				
Question	Mandatory / Optional	Multiple Responses Accepted?	Response	
The bidder has read and understands all Amendments.	Mandatory	No	____ Yes ____ No	
1. The Submitter has read and understands the terms and conditions of this solicitation.	Mandatory	No	____ Yes. I have read and understand the terms and conditions.	
2. The offer is in accordance with the terms and conditions of this solicitation.	Mandatory	No	____ Yes, I am in accordance with the terms and conditions.	

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0010	10	each		
<b>Item Description:</b> 2-Person Initial Survey Team				
<b>Tendering Text:</b> Pricing shall be all inclusive of all associated costs to perform the surveys and/or follow-up. Quantities are estimates only and are not a commitment to purchase.				
Question	Mandatory / Optional	Multiple Responses Accepted?	Response	
The bidder has read and understands all Amendments.	Mandatory	No	____ Yes ____ No	
1. The Submitter has read and understands the terms and conditions of this solicitation.	Mandatory	No	____ Yes. I have read and understand the terms and conditions.	
2. The offer is in accordance with the terms and conditions of this solicitation.	Mandatory	No	____ Yes, I am in accordance with the terms and conditions.	

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0011	10	each		
<b>Item Description:</b> 4-Person Initial Survey Team				
<b>Tendering Text:</b> Pricing shall be all inclusive of all associated costs to perform the surveys and/or follow-up. Quantities are estimates only and are not a commitment to purchase.				
Question	Mandatory / Optional	Multiple Responses Accepted?	Response	
The bidder has read and understands all Amendments.	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1. The Submitter has read and understands the terms and conditions of this solicitation.	Mandatory	No	<input type="checkbox"/> Yes. I have read and understand the terms and conditions.	
2. The offer is in accordance with the terms and conditions of this solicitation.	Mandatory	No	<input type="checkbox"/> Yes, I am in accordance with the terms and conditions.	

## IX. ATTACHMENTS TO SOLICITATION

Important Tax Notice – Nonresidents Only

Offeror's Checklist

Appendix A - COVID-19 Testing of Health Facility Inspectors

Appendix B - DHEC's Business Associate Agreement

### IMPORTANT TAX NOTICE - NONRESIDENTS ONLY

Withholding Requirements for Payments to Nonresidents: Section 12-8-550 of the South Carolina Code of Laws requires persons hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within South Carolina to withhold 2% of each payment made to the nonresident. The withholding requirement does not apply to (1) payments on purchase orders for tangible personal property when the payments are not accompanied by services to be performed in South Carolina, (2) nonresidents who are not conducting business in South Carolina, (3) nonresidents for contracts that do not exceed \$10,000 in a calendar year, or (4) payments to a nonresident who (a) registers with either the S.C. Department of Revenue or the S.C. Secretary of State and (b) submits a Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to the person letting the contract.

The withholding requirement applies to every governmental entity that uses a contract ("Using Entity"). Nonresidents should submit a separate copy of the Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to every Using Entity that makes payment to the nonresident pursuant to this solicitation. Once submitted, an affidavit is valid for all contracts between the nonresident and the Using Entity, unless the Using Entity receives notice from the Department of Revenue that the exemption from withholding has been revoked.

Section 12-8-540 requires persons making payment to a nonresident taxpayer of rentals or royalties at a rate of \$1,200.00 or more a year for the use of or for the privilege of using property in South Carolina to withhold 7% of the total of each payment made to a nonresident taxpayer who is not a corporation and 5% if the payment is made to a corporation. Contact the Department of Revenue for any applicable exceptions.

For information about other withholding requirements (e.g., employee withholding), contact the Withholding Section at the South Carolina Department of Revenue at 803-898-5383 or visit the Department's website at: <https://dor.sc.gov>

This notice is for informational purposes only. This agency does not administer and has no authority over tax issues. All registration questions should be directed to the License and Registration Section at 803-898-5872 or to the South Carolina Department of Revenue, Registration Unit, Columbia, S.C. 29214-0140. All withholding questions should be directed to the Withholding Section at 803-896-1420.

PLEASE SEE THE "NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING" FORM (FORM NUMBER I-312) LOCATED AT: <https://dor.sc.gov> [09-9005-4]

## OFFEROR'S CHECKLIST (JUN 2007)

### OFFEROR'S CHECKLIST -- AVOID COMMON BID/PROPOSAL MISTAKES

Review this checklist prior to submitting your bid/proposal.

If you fail to follow this checklist, you risk having your bid/proposal rejected.

- Do not include any of your standard contract forms!
- Unless expressly required, do not include any additional boilerplate contract clauses.
- Reread your entire bid/proposal to make sure your bid/proposal does not take exception to any of the state's mandatory requirements.
- Make sure you have properly marked all protected, confidential, or trade secret information in accordance with the instructions entitled: SUBMITTING CONFIDENTIAL INFORMATION. **DO NOT mark your entire bid/proposal as confidential, trade secret, or protected! Do not include a legend on the cover stating that your entire response is not to be released!**
- Have you properly acknowledged all amendments? Instructions regarding how to acknowledge an amendment should appear in all amendments issued.
- Make sure your bid/proposal includes a copy of the solicitation cover page. Make sure the cover page is signed by a person that is authorized to contractually bind your business.
- Make sure your Bid/proposal includes the number of copies requested.
- Check to ensure your Bid/proposal includes everything requested!
- If you have concerns about the solicitation, do not raise those concerns in your response! **After opening, it is too late! If this solicitation includes a pre-bid/proposal conference or a question & answer period, raise your questions as a part of that process!** Please see instructions under the heading "submission of questions" and any provisions regarding pre-bid/proposal conferences. [09-9010-1]



**Subject: COVID-19 TESTING OF HEALTH FACILITY INSPECTORS WITHIN THE DIVISION OF HEALTHCARE QUALITY**

**THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.**

**Policy Statement:** DHEC follows the guidance of the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) and the Centers for Disease Control and Prevention (CDC) as well as other Health Organizations when developing procedures for inspecting healthcare facilities. The purpose of this procedure is to outline the agency's protocol on testing staff and contractors assigned to conduct surveys, investigations or inspections.

Interim Final Rule (IFR) CMS-3401 IFR, (dated August 26, 2020) issued by the Center for Medicare and Medicaid Services establishes Long-Term Care (LTC) facility testing requirements for residents and staff. Specifically, facilities are required to test residents and staff, including individuals providing services under arrangement and volunteers, for COVID-19 based on parameters set forth by the Health and Human Services (HHS) Secretary.

1. Based on guidance of the Center for Disease Control (CDC) and public health authorities, as of March 2020, the COVID-19 Pandemic meets the direct threat standard. The CDC and public health authorities have acknowledged community spread of COVID-19 in the United States and have issued precautions to slow the spread, such as significant restrictions on public gatherings. In addition, numerous state and local authorities have issued closure orders for businesses, entertainment and sport venues, and schools in order to avoid bringing people together in close quarters due to the risk of contagion. These facts manifestly support a finding that a significant risk of substantial harm would be posed by having someone with COVID-19, or symptoms of it, present in the workplace at the current time.
2. The CDC has also identified individuals over 65 as being at risk for developing complications from COVID-19.

**Rules:**

1. Employees assigned to conduct an inspection or survey for the facility type referenced above must be tested weekly for COVID-19 and report test results no later than Friday prior to visiting

a facility on the following Monday. The following type of testing is required: a rapid or standard PCR test using a nasal or throat swab or saliva, a rapid or standard antigen test using a nasal swab. An antibody test is not acceptable test.

2. Supervisors will schedule employees to be tested at the nearest health department conducting testing and notify employees of their test time and location.

### **Procedures for Employees:**

1. The test result will be shared directly with the employee within 1-2 days.
2. The employee's test result is confidential. However, the employee is required to immediately provide DHEC Human Resources documentation of their test result (regardless of outcome) in an effort for management to provide adequate staffing coverage. The employee's test result will be kept in the employee's medical file in Human Resources.
3. If the employee tests positive for COVID-19, the employee must immediately notify their manager so another employee can be scheduled to perform the inspection/survey.
4. If there are no job duties for the employee to perform from home, the employee would be eligible to use Emergency Paid Sick Leave, Sick Leave, Annual Leave during the quarantine period. If leave is exhausted, the employee will need to use Leave without Pay.
5. If an employee is not feeling well and is having COVID-19 related symptoms or identified as a close contact of someone who tested positive for COVID-19, the employee should immediately notify their supervisor and not report to work until they have completed the DHEC interim guidance for COVID-19 Scenarios.
6. Employees who refuse to be tested or provide a copy of their test result in accordance with this Procedure, or who violate any provision of this Procedure, may be subject to disciplinary action.

### **Procedures for Contractors:**

1. Contractors are required to conduct weekly testing for COVID-19 of their employees who are to report to DHEC to perform inspections/surveys. The following type of testing is required: a rapid or standard PCR test using a nasal or throat swab or saliva, a rapid or standard antigen test using a nasal swab. An antibody test is not acceptable test.
2. If a contractor's employee tests positive for COVID-19, the contractor must not send that employee to a facility to conduct inspections/surveys on behalf of DHEC until the employee has completed the protocol under DHEC Interim Guidance for COVID-19 Scenarios. If the contractor's employee has been assigned to conduct a survey and it is determined that the employee has a positive COVID-19 test result, then DHEC management must be notified and a new employee must be assigned to conduct that survey.
3. Contractors must maintain employee test results for the term of the contract and pursuant to the Audit Provisions of the contract with DHEC.
- 4.

### **Procedures for Human Resources**

1. Place Employee's test results in the employee's medical file in human resources.
2. Notify Employees who test positive of the need to follow the DHEC Interim Guidance for COVID-19 Scenarios.

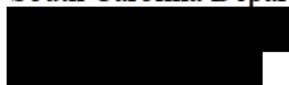
### **Responsibility:**

Order of responsibility for ensuring policy is implemented correctly, from Program/Area to Supervisor/Manager to staff.

<b>Responsibility</b>	<b>Action</b>
<b>Employee</b>	Submit to testing at a minimum of weekly and notify human resources and their manager if a positive test result is reported. Follow DHEC protocol for quarantine.
<b>DHEC Manager/Supervisor</b>	Schedule testing for DHEC Staff
<b>DHEC Health Departments</b>	Perform COVID-19 Testing and Report Results to Employee within 1-2 Days.
<b>Human Resources</b>	Maintain Confidentiality of Test Results

**Program Contact:**

Angie Smith  
Interim Director  
Bureau of Facilities Oversight  
Healthcare Quality  
South Carolina Department of Health and Environmental Control



**Laws/Regulations:** None

**Date of Initial Approval:** 10/5/2020

Amended 10/30/2020

**References:**

Interim Final Rule (IFR) CMS-3401 IFR

<https://www.cms.gov/medicareprovider-enrollment-and-certificationsurveycertificationgeninfopolicy-and-memos-states-and/interim-final-rule-ifc-cms-3401-ifc-updating-requirements-reporting-sars-cov-2-test-results-clia>

CDC Determination COVID-19 Is Direct Threat.

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

CDC Determination Individuals Over 65 Are At Risk From COVID-19.

<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html>

DHEC Interim Guidance For COVID-19 Scenarios for Businesses

[https://scdhec.gov/sites/default/files/media/document/DHEC-Interim-Guidance-for-COVID-19-Scenarios-forBusinesses\\_7.25.20.pdf](https://scdhec.gov/sites/default/files/media/document/DHEC-Interim-Guidance-for-COVID-19-Scenarios-forBusinesses_7.25.20.pdf)

This Policy is subject to modification and or revocation at the Division of Healthcare Quality's discretion.



## DHEC'S BUSINESS ASSOCIATE AGREEMENT (DHEC – MAR 2013)

## BUSINESS ASSOCIATE AGREEMENT

BETWEEN

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

AND

[REDACTED]

**PURPOSE**

The South Carolina Department of Health and Environmental Control (hereafter referred to as "Covered Entity") and [REDACTED] (hereafter referred to as "Business Associate") desire to enter into this Business Associate Agreement (hereafter, "BA Agreement" or "the Agreement") for the purpose of protecting the privacy and security of clients' health information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including all pertinent regulations ( 45 CFR Part 160 and Part 164), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act HITECH), Title XIII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

- II. DEFINITIONS** Terms used, but not otherwise defined, in this Agreement shall have the same meanings as set forth in HIPAA and HITECH. A change to HIPAA or HITECH which modifies any defined term, or which alters the regulatory citation for the definition, shall be deemed incorporated into this Agreement.
- a. Breach. "Breach" shall have the meaning given under HITECH Section 13400, 42 U.S.C § 17921, and 45 CFR §164.402.
  - b. Data Aggregation. "Data Aggregation" shall have the meaning given under the Privacy Rule, including, but not limited to, 45 CFR §164.501.
  - c. Designated Record Set. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR §164.501.
  - d. Disclose and Disclosure shall have the meaning given in 45 CFR §160.103.
  - e. Electronic Protected Health Information. "Electronic Protected Health Information" (referred to below as EPHI) shall have the same meaning as the term "electronic protected health information" in 45 CFR § 160.103.
  - f. HIPAA. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-91, as amended, and related HIPAA regulations (45 CFR Parts 160-164.)
  - g. HITECH. "HITECH" shall mean the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005.
  - h. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
  - i. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information codified at 45 CFR Part 160 and Part 164, Subparts A and E and any other applicable provisions of HIPAA, or amendments thereto, including HITECH.
  - j. Protected Health Information. "Protected Health Information" (referred to below as PHI) shall have the same definition contained in 45 CFR §160.103. For purposes of this Agreement, PHI is limited to the information created or received by Business Associate from or on behalf of Covered Entity. "Protected Health Information" includes, without limitation, "Electronic Protected Health Information," as defined below.
  - k. Required By Law. "Required By Law" shall have the meaning given to the term under the Privacy Rule, including but not limited to, 45 CFR §164.103, and any additional requirements created under HITECH.
  - l. Secretary. "Secretary" shall mean the Secretary of the U. S. Department of Health and Human Services or his/her designee.
  - m. Security Incident. "Security Incident" shall have the meaning given in 45 CFR §164.304.

- n. Security Standards. “Security Standards” shall mean the Standards for the Protection of Electronic Protected Health Information that are codified at 45 CFR Part 160 and Part 164, Subparts A and C, and any other applicable provision of HIPAA, or amendments thereto, including HITECH.
- o. Unsecured PHI. “Unsecured PHI” shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in Section 13402 of HITECH.
- p. “Use” or “Uses” shall have the meaning given in 45 CFR §160.103.

### **III. USE OR DISCLOSURE OF PHI BY BUSINESS ASSOCIATE**

- a. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Contract # [REDACTED], or as otherwise provided by law, if such use or disclosure would not violate the Privacy Rule or the Security Standards if done by Covered Entity.
- b. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, and may disclose PHI for those purposes provided that as to any such disclosure: 1) the disclosure is required by law; or 2) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which the person is aware in which the confidentiality of the information has been breached.
- c. Business Associate will notify the Covered Entity of any breach of confidentiality or security by a person to whom the Business Associate has disclosed PHI pursuant to this Section, and will mitigate and/or assist the person and the Covered Entity in mitigating any harmful effects resulting from the breach of information.
- d. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).
- e. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).
- f. Business Associate may disclose PHI to any of its subcontractors for use in filling the obligations of this Agreement as long as the subcontractor agrees in writing to the restrictions and conditions in this Agreement with respect to PHI.
- g. Business Associate may disclose PHI to another entity as authorized by the Covered Entity in a separate written agreement or amendment to this agreement, if such disclosure of PHI would not violate the Privacy Rule or HITECH if done by Covered Entity itself.
- h. Business Associate, upon entering into an agreement using PHI for any of its functions and activities on behalf of the Covered Entity or in its general operations, will make available that agreement to the Covered Entity upon request.

### **IV. DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI**

- a. Business Associate shall comply with the Confidentiality provision contained in Contract # [REDACTED] and any Confidentiality Agreement signed by the Business Associate pursuant to that Contract for so long as this BA Agreement remains in effect.
- b. Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement or as required by law. Business Associate will not use PHI in any manner that would constitute a violation of the Privacy Rule, Security Standards, HIPAA, or HITECH if so used by Covered Entity.
- c. Business Associate shall develop, implement, maintain, and use appropriate safeguards to prevent any use or disclosure of PHI or EPHI other than as provided by this Agreement, and shall implement administrative, physical, and technical safeguards to comply with the Security Standards as required by 45 CFR Sections 164.308, 164.310, 164.312 and 164.316 in order to protect the confidentiality, integrity, and availability of EPHI or PHI that Business Associate creates, receives, maintains, or transmits, to the same extent as if Business Associate were a Covered Entity, pursuant to HITECH Section 13401, 42 U.S.C. § 17931. These safeguards are required regardless of the mechanism used to transmit the information.
- d. Business Associate shall adopt the effective and appropriate technical safeguards and technology and methodology standards provided in any guidance issued by the Secretary pursuant to HITECH Sections 13401-13402, 42 U.S.C. §§ 17931-17932.
- e. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement or of a Breach of Unsecured PHI, pursuant to 45 CFR § 164.530(f) and HITECH § 13402.
- f. Business Associate shall notify Covered Entity by the most expedient manner within one business day of any use or disclosure of PHI or EPHI not authorized by this Agreement or in violation of any applicable federal or state laws or regulations of which Business Associate becomes aware, or of any suspected or actual Security

- Incident or Breach, unless delayed in accordance with 45 CFR §164.412. Business Associate shall notify Covered Entity immediately upon the law enforcement delay being lifted.
- g. In addition to the notification required by IV f, Business Associate will provide written notification of a Breach of Unsecured PHI to Covered Entity without unreasonable delay and in no event later than 5 calendar days after discovery of the Breach. A Breach of Unsecured PHI shall be treated as discovered by the Business Associate as of the first day on which such breach is known to Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. Notification of a Breach of Unsecured PHI required by this paragraph shall comply with HITECH Section 13402, 42 U.S.C. § 17932, and 45 CFR § 164.410. The Breach notice shall include, to the extent possible, the identification of each individual whose Unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during the Breach. Business Associate shall provide Covered Entity with the following information at the time of the Breach notification or promptly thereafter as soon as information becomes available:
1. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known, and the nature of the non-permitted use or disclosure;
  2. A description of the unsecured PHI that was involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
  3. Who made the non-permitted use or disclosure;
  4. Who received the non-permitted use or disclosure;
  5. Any steps individuals should take to protect themselves from potential harm resulting from the Breach; and
  6. What Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further breaches.
- h. Business Associate shall ensure that any agent or subcontractor to whom it provides PHI received from Covered Entity, or that creates, receives, maintains, or transmits PHI on behalf of Business Associate, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information, including this paragraph, and agrees to implement reasonable and appropriate safeguards to protect such PHI, including the safeguards required by paragraph IV.c and IV.d above with respect to PHI. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of such violation.
- i. Business Associate shall provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to fulfill the requirements of 45 CFR § 164.524 if the Business Associate has PHI in a designated record set. If Business Associate receives a request directly from an Individual, Business Associate will direct the Individual to the Covered Entity.
- j. Business Associate shall make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity, if Business Associate has PHI in a Designated Record Set. Business Associate shall not amend PHI received from the Covered Entity or created and/or provided to the Business Associate on behalf of the Covered Entity unless the amendment is directed by or consented to by the Covered Entity. If an Individual requests an amendment of PHI directly from Business Associate or any of its agents or subcontractors, Business Associate will direct Individual to Covered Entity. The Business Associate shall provide a copy of the amended PHI to the Covered Entity.
- k. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Business Associate agrees to collect and maintain disclosure information as it relates to PHI including: (i) the date of disclosure; (ii) the name of the entity or person who received the PHI and, if known, the address of the entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the Individual of the basis for the disclosure, or a copy of the written request for disclosure under 45 CFR § 164.502(a)(2)(ii) or 164.512, if any. Business Associate will maintain records related to disclosures of PHI for at least six (6) years after the date of the disclosure. The provisions of this subparagraph shall survive termination of this Agreement.
- l. Business Associate will provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with Section IV.k of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. In addition, Business Associate agrees to make PHI available for purposes of accounting of disclosures as required by Section 164.528 of the Privacy Rule and Section 13405(c)(3) of HITECH, 42 U.S.C. § 17935(c)(3). If the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to Covered Entity in writing.
- m. Business Associate shall comply with any requests for restrictions on certain disclosures of PHI pursuant to Section 164.522 of the Privacy Rule to which Covered Entity has agreed and of which Business Associate is notified by Covered Entity

- n. Business Associate shall comply, pursuant to HITECH and its implementing regulations, with all additional requirements of the Privacy Rule, including those contained in 45 CFR 164.502(e) and 164.504(e)(1)(ii) at such time as the requirements are applicable to Business Associate, pursuant to HITECH Section 13404, 42 U.S.C. § 17934.
- o. If applicable, and if requested by Covered Entity, Business Associate will provide a copy of Covered Entity's Notice of Privacy Practices to the client at the time of first contact, and maintain documentation of the client's receipt of the Notice.
- p. Business Associate shall make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of the Secretary determining compliance with the Privacy Rule. Business Associate shall comply and cooperate with any request for documents or other information from the Secretary directed to Covered Entity that seeks documents or other information held by Business Associate. Business Associate shall provide to Covered Entity a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.
- q. Business Associate and its agents and subcontractors may only request, use, or disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use, or disclosure pursuant to this agreement and consistent with Covered Entity's minimum necessary policies and procedures. Except as otherwise permitted by HIPAA standards, until the effective date on which the Secretary issues guidance on what constitutes "minimum necessary," when using or disclosing PHI or responding to a request for PHI, Business Associate and its agents or subcontractors must limit such PHI, to the extent practicable, to a Limited Data Set, or if more information than a Limited Data Set is required, to the minimum necessary to accomplish the intended purpose of such use, disclosure or request. After the effective date on which the Secretary issues guidance on what constitutes "minimum necessary," Business Associate and its agents or subcontractors shall only request, use, and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure, and shall comply with the Secretary's guidance on what constitutes "minimum necessary." See HITECH Section 13405, 42 U.S.C. § 17935.
- r. Business Associate shall provide Covered Entity reasonable access to its premises for review and demonstration of its internal practices and procedures for safeguarding PHI of Covered Entity for purposes of determining that Business Associate has complied with this Agreement and HITECH; provided that 1) the Parties mutually agree in advance upon the scope, location and timing of such access, and 2) Covered Entity shall protect confidential and proprietary information of Business Associate to which Covered Entity has access.
- s. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.
- t. If Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered Entity's obligations under the Agreement or other arrangement, Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, Business Associate must terminate the Agreement or other arrangement if feasible, or, if termination is not feasible, report the problem to the Secretary. Business Associate shall provide written notice to Covered Entity of any pattern of activity or practice of the Covered Entity that Business Associate believes constitutes a material breach or violation of the Covered Entity's obligations under the Agreement within five (5) days of discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.
- u. Business Associate acknowledges that if it violates any of the requirements provided under this Business Associate Agreement, Business Associate will be subject to the same civil and criminal penalties that a Covered Entity would be subject to if such Covered Entity violated the same requirement.
- v. The additional requirements of HITECH that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate and shall be and by this reference are incorporated into this Agreement.
- w. Business Associate will contact the Covered Entity's Privacy Officer at (803) 898-3318 at any time clarification or guidance is needed regarding compliance with the terms of this Agreement.
- x. Business Associate shall not use or disclose PHI for fundraising or marketing purposes.
- y. Business Associate may not enter into any agreements with its agents or subcontractors pertaining to its obligations under this Agreement without the express written consent of Covered Entity.

**V. DUTIES OF COVERED ENTITY**

- a. If applicable, Covered Entity shall provide the Business Associate with a copy of its policies and procedures implementing the Privacy Rule, including the Notice of Privacy Practices.
- b. Covered Entity shall notify Business Associate of any limitation(s) in Covered Entity's Notice of Privacy Practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

- c. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI, within a reasonable period of time after Covered Entity becomes aware of such changes to or revocation of permission.
- d. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to or must comply with in accordance with 45 CFR § 164.522 and HITECH § 13405(a), 42 USC § 17935(a), to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- e. Covered Entity will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

**VI. TERM AND TERMINATION**

- a. Term. The Term of this Agreement shall be effective as of [REDACTED], and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall do any of the following:
  - 1. Provide an opportunity for Business Associate to cure the breach or end the violation, and terminate this Agreement and Contract # [REDACTED] if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
  - 2. Immediately terminate this Agreement and Contract # [REDACTED] if Business Associate has breached a material term of this Agreement and cure is not feasible;
  - 3. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary;
  - 4. Immediately stop all further disclosures of PHI to Business Associate pursuant to each agreement between Covered Entity and Business Associate that is the subject of such breach, until the breach is cured.
- c. Effect of Termination.
  - 1. Except as provided in paragraph (2) of this section, upon termination of this Agreement for any reason or upon written demand from Covered Entity, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies, including backups, of the PHI. If the return or destruction of PHI held by the Business Associate is not permissible pursuant to South Carolina law, the Business Associate will extend the protections of this Agreement to the PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible.
  - 2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.
- d. Continuing Privacy Obligation. Business Associate's obligation to protect the privacy of PHI is continuous and survives any termination, cancellation, expiration, or other conclusion of this Agreement or any other agreement between Business Associate and Covered Entity.

- VII. INDEMNIFICATION (the following does not apply to other government agencies or political subdivisions)**
- Business Associate agrees to indemnify and hold harmless Covered Entity from any claims, demand, suit, loss, liability, or administrative penalties that the Covered Entity may sustain as a result of the Business Associate's breach of this Agreement, including any breach of confidentiality by a person to whom the Business Associate has disclosed information pursuant to this Agreement; provided, however, that the Business Associate shall not hold the Covered Entity harmless from any claims, demands or causes of action arising or resulting directly or indirectly from negligence of the Covered Entity, its officers, agents, representatives or employees, or any person or entity not subject to the Business Associate's supervision or control. This indemnification shall include reasonable expenses including attorney's fees incurred by defending such claims and damages incurred by reason of the Business Associate's failure to comply with applicable laws and regulations or for damages caused by the Business Associate, its employees and/or agents, including subcontractors. As a condition precedent to asserting a right of indemnity, the Covered Entity shall provide timely written notice to the Business Associate of the assertion of the claim to which the right of indemnification is claimed to exist.

## VIII. MISCELLANEOUS

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule or the Security Standards means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement to comply with the requirements of the Privacy Rule, the Security Standards, HIPAA, HITECH, or any other state or federal law affecting this Agreement. If a Party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of HITECH or its regulations, such Party shall notify the other Party in writing. For a period of thirty days, the Parties shall address such concern in good faith and amend the terms of the Agreement if necessary to bring it into compliance. If, after such thirty day period, the Agreement fails to comply with HIPAA, the Privacy Rule, the Security Standards or HITECH, then either Party has the right to terminate upon written notice to the other Party.
- c. Survival. The respective rights and obligations of Business Associate under Section VI.c and VI.d of this Agreement shall survive termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule and the Security Standards.
- e. All notices pursuant to this Agreement must be given in writing and shall be effective when received if hand-delivered or upon dispatch if sent by reputable overnight delivery service, facsimile, or U.S. Mail to the appropriate address or facsimile number. Notification of any unauthorized use or disclosure of PHI or of a Breach of Unsecured PHI under paragraphs IV.f and IV.g shall be made to the DHEC Privacy Officer at 2600 Bull Street, Columbia, SC 29201, 803-898-0707 (phone), 803-898-0476 (fax).
- f. Business Associate and Covered Entity agree that Individuals who are the subject of PHI are not third-party beneficiaries of this Agreement.
- g. The parties acknowledge that state and federal laws relating to electronic data security and privacy are evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA and HITECH and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all PHI that it receives or creates pursuant to this Agreement. Upon Covered Entity's request, Business Associate agrees to promptly enter into negotiations with Covered Entity concerning the terms of any amendment to the Agreement embodying written assurances consistent with the standards and requirements of HIPAA and HITECH or other applicable laws. Covered Entity may terminate this Agreement and Contract# [REDACTED] upon thirty (30) days written notice if (i) Business Associate does not promptly enter into negotiations to amend this Agreement when requested by Covered Entity pursuant to this Section, or (ii) Business Associate does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and HITECH.
- h. If any provision of this Agreement violates any applicable statute, ordinance, or rule of law in any jurisdiction that governs this Agreement, such provision shall be ineffective to the extent of such violation without invalidating any other provision of this Agreement.
- i. This Agreement may not be amended, altered, or modified except by written agreement signed by Business Associate and Covered Entity.
- j. No provision of this Agreement may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision.
- k. The persons signing below have the right and authority to execute this Agreement for their respective entities and no further approvals are necessary to create a binding Agreement.
- l. Neither Covered Entity nor Business Associate shall use the names or trademarks of the other party or of any of the respective party's affiliated entities in any advertising, publicity, endorsement, or promotion unless prior written consent has been obtained for the particular use contemplated.
- m. All references to specific statutes, codes, or regulations shall be deemed to be references to those statutes, codes or regulations as they may be amended from time to time.
- n. Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or authority to control or direct the activities of the other or the right or authority to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party, unless expressly authorized in this or another agreement between the parties.

AS TO DHEC

BY: \_\_\_\_\_  
Whitney Carswell, Procurement Officer  
Division of Procurement Services  
Bureau of Business Management

DATE: \_\_\_\_\_

AS TO THE CONTRACTING PARTY

BY: \_\_\_\_\_  
(NAME)

Its: \_\_\_\_\_  
(TITLE)


DATE: \_\_\_\_\_

MAILING ADDRESS:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DHEC 0854 (Revised 3/06/13)

# Exhibit 2



	<p><b>STATE OF ARIZONA</b>  <b>Department of Health Services</b></p> <p><b>NOTICE OF REQUEST FOR PROPOSAL (RFP)</b></p>	<p><b>ARIZONA DEPARTMENT OF HEALTH SERVICES</b>  150 N. 18<sup>th</sup> Avenue, Suite 530  Phoenix, Arizona 85007</p>
---	---	---

<b>SOLICITATION NUMBER:</b>	<b>BPM004668 – PART 1, LOT 1, ROUND 2</b>
<b>SOLICITATION DUE DATE/TIME:</b>	<b>July 29, 2022 at 3:00 PM Local AZ Time</b>
<b>SUBMITTAL LOCATION:</b>	<a href="https://app.az.gov">https://app.az.gov</a>
<b>DESCRIPTION:</b>	<b>Investigating Long-Term Care Facilities - Complaints and Self-Reports</b>
<b>PRE-OFFER CONFERENCE:</b>	<b>July 13, 2022 10:00 AM Arizona Time</b> <div style="background-color: black; width: 100%; height: 15px; margin-top: 5px;"></div>


In accordance with Arizona Revised Statutes (A.R.S.) § 41-2534, competitive sealed proposals for the services specified will be received by the Arizona Department of Health Services (ADHS) online in the State of Arizona’s online procurement system, <https://app.az.gov> (Arizona Procurement Portal – APP). Proposals received by the due date and time will be opened. The name of each Offeror will be publicly available. Proposals must be submitted in the State APP system on or prior to the date and time indicated. Late proposals will not be considered. It is the responsibility of the supplier/offeror to routinely check the APP website for Solicitation Amendments. Additional instructions for preparing an Offer are included in this solicitation.

With seventy-two (72) hours prior notice, persons with disabilities may request special accommodations such as interpreters, alternative formats, or assistance with physical accessibility. Such requests must be addressed to the Solicitation contact person named below.

**OFFERORS ARE STRONGLY ENCOURAGED TO READ THE ENTIRE SOLICITATION CAREFULLY.**

**Solicitation Contact:**

Gina Corwin  
Procurement Officer  
Arizona Department of Health Services

	<p><b>PART ONE (1) - Table of Contents</b></p> <p><b>REQUEST FOR PROPOSAL No.: BPM004668</b></p> <p><b>Investigating Long-Term Care Facilities - Complaints and Self-Reports</b></p>	<p><b>ARIZONA DEPARTMENT OF HEALTH SERVICES</b>  150 N. 18th Avenue, Suite 530  Phoenix, Arizona 85007</p>
---	--	--

\*The following table of contents applies to all attachment documents in APP for this Solicitation\*

SECTION	CONTENT
<b>Part One (1)</b>	<p>Table of Contents</p> <p><a href="#">Scope of Services</a></p> <p><a href="#">Special Terms and Conditions</a></p> <p><a href="#">Uniform Terms and Conditions</a></p> <p>Exhibit One (1) CMS 2567</p> <p>Exhibit Two (2) CMS 670</p>
<b>Part Two (2)</b>	<p>Special Instructions to Offerors</p> <p>Uniform Instructions to Offerors</p>
<b>Attachments Located in APP</b>	<ul style="list-style-type: none"> <li>● Attachment A: Offer and Acceptance</li> <li>● Attachment B: Notices, Correspondence, Reports, and Payments</li> <li>● Attachment C: Designation of Confidential, Trade Secret and Proprietary</li> <li>● Attachment D: Participation if Boycott of Israel</li> </ul>



**PART ONE (1) - Scope of Services**

**REQUEST FOR PROPOSAL No.: BPM004668**

**Investigating Long-Term Care Facilities - Complaints and Self-Reports**

**ARIZONA DEPARTMENT OF HEALTH SERVICES**  
150 N. 18th Avenue, Suite 530  
Phoenix, Arizona 85007

**SCOPE OF SERVICES**

**1. BACKGROUND**

The Arizona Department of Health (ADHS), Bureau of Long-Term Care (LTC) is required under its Agreement with the Centers for Medicare and Medicaid Services (CMS) to investigate complaints and self-reports on LTC facilities. As complaints and self-reports are submitted to ADHS, they are assigned a priority level. If an onsite investigation is required, an investigation should be completed within the time frames identified in [CMS' State Operation Manual \(SOM\)](#) Chapters five (5) and seven (7).

**2. OBJECTIVES**

ADHS is looking into the feasibility of contracting out the investigations of complaints and self-reports about LTC facilities within the time frames prescribed by the SOM to effectively and efficiently reduce and eliminate the backlog of complaints and self-reports, as well as address the complaints and self-reports about LTC facilities that may not have been investigated in compliance with to the SOM requirements.

**3. SCOPE OF SERVICE**

The Contractor shall conduct State complaint and self-report investigations in compliance with the SOM and coordination with the Bureau of LTC.

**4. REQUIREMENTS**

- 4.1 The Contractor shall have the following requisite knowledge, skills, and abilities:
  - 4.1.1 Meet the minimum qualifications as a health professional per the SOM as listed under Chapter 4, section 4009B "Health Professional Qualifications" and section 4009C "Education, Training, and Experience",
  - 4.1.2 Surveyor Minimum Qualifications Test (SMQT) certification,
  - 4.1.3 Arizona Revised Statutes (A.R.S.) and Arizona Administrative Code (A.A.C.), survey and investigation methods, workload management, policies and procedures applicable to state licensure and/or Medicare certification and operational policies and procedures of ADHS,
  - 4.1.4 The American with Disabilities Act (ADA) as it relates to health care facilities,
  - 4.1.5 Enforcement options available to ADHS and legal document preparation, of organizational and corporate structures and management practices and procedures typically experienced/utilized in state licensed and CMS certified health care facilities,
  - 4.1.6 Characteristics and identification of physical, sexual and emotional abuse,
  - 4.1.7 Physical and behavioral signs of illness and disease including persons with special needs, growth and development stages,
  - 4.1.8 Disease and the aging process,
  - 4.1.9 How to provide and the purpose for/of, educational and activity programs, including the activities of daily living,



## **PART ONE (1) - Scope of Services**

### **REQUEST FOR PROPOSAL No.: BPM004668**

#### **Investigating Long-Term Care Facilities - Complaints and Self-Reports**

**ARIZONA DEPARTMENT  
OF HEALTH SERVICES**  
150 N. 18th Avenue, Suite 530  
Phoenix, Arizona 85007

- 4.1.10 Nutrition, sanitation, dispensing of medications, disease control, restraints, both physical and psychotropic, and other life-sustaining standards,
- 4.1.11 Community resources, including other state agencies, advocacy groups, networking and provider associations,
- 4.1.12 Federal regulations, the SOM, and associated Appendices, Interpretive Guidelines and State Agency letters,
- 4.1.13 Healthcare delivery models/practices including nursing, pharmacy, social services, infection control and dietary,
- 4.1.14 Oral and written communication and documentation,
- 4.1.15 Analyzing and evaluating a wide variety of administrative and program records to determine compliance with applicable state statutes and rules during complaint investigations,
- 4.1.16 Interpersonal relations as applied to contacts with providers and staff, representative of local and state governmental agencies including Adult Protective Services (APS), local police departments, Public Health consumers, media and the public,
- 4.1.17 Educating and assisting providers on a variety of topics including those of discipline and abuse, development, records maintenance, supervision, safety, equipment standards, nutrition, sanitation, dispensing of medications, transportation, persons with special needs, the ADA, zoning and others,
- 4.1.18 Time management and organization to support compliance and investigation workloads and prioritize work activities based on CMS and ADHS performance measures,
- 4.1.19 Computer skills - knowledge of Automated Survey Process Environment (ASPEN) and ASPEN Complaint Tracking System (ACTS),
- 4.1.20 Receive detailed information through oral communication,
- 4.1.21 Work effectively in a team or independently,
- 4.1.22 Identify problems requiring immediate corrective action,
- 4.1.23 Determine recommendations to include in reports developed as a result of surveys and/or investigations conducted,
- 4.1.24 Make recommendations for initiating enforcement and/or enforcement actions against providers not in compliance with statutes and rules,
- 4.1.25 Make recommendations approving/denying/revoking a license, certification, for issuing cease and desist orders for non-compliant actions, assessment of civil money penalties; temporary orders, intermediate sanctions and provisional licenses, and
- 4.1.26 Support a diverse multi-cultural workforce that reflects the community, promotes equal opportunity at all levels of public employment, and creates an inclusive work environment that enables all individuals to perform to their fullest potential free from discrimination.



**PART ONE (1) - Scope of Services**

**REQUEST FOR PROPOSAL No.: BPM004668**

**Investigating Long-Term Care Facilities - Complaints and Self-Reports**

**ARIZONA DEPARTMENT  
OF HEALTH SERVICES**  
150 N. 18th Avenue, Suite 530  
Phoenix, Arizona 85007

- 4.2 The Contractor shall meet the following pre-contracting requirements:
- 4.2.1 Contractors who drive on state business shall possess and have the ability to retain a current, valid state-issued driver's license appropriate to the assignment,
  - 4.2.2 Contractors who drive on state business are subject to driver's license checks, must maintain acceptable driving records and must complete any driver training. See [A.A.C. R2-10-207.11](#),
  - 4.2.3 Must possess a valid level one (1) fingerprint clearance card issued pursuant to [A.R.S. § 41-1758.07](#) or must apply for a level one (1) fingerprint clearance card within seven (7) working days after commencement of the Contract, or a prior-approved out-of-state equivalent, and
  - 4.2.4 Must submit within ten (10) days of Contract award and maintain throughout the life of the Contract, a valid Certificate of Insurance (COI) as outlined under the Special Terms and Conditions, Provision 20, Insurance Requirements.

**5. TASKS**

The Contractor shall


- 5.1 Provide technical assistance to licensees and their staff members, as well as consumers of services;
- 5.2 Write citations as identified for the CMS 2567 form (Exhibit 1) in ACTS;
- 5.3 Complete field trip reports in ACTS;
- 5.4 Submit time on the CMS 670 form (Exhibit 2) in ACTS;
- 5.5 Timely notify the Bureau of LTC to process each complaint packet to ensure compliance with SOM prescribed time frames;
- 5.6 Testify at formal appeals hearings, if required;
- 5.7 Prepare reports documenting compliance and non-compliance, complaint investigation and monitoring field trip reports, enforcement and legal actions, and data collection all within established timelines, pursuant to the SOM (and associated Appendices), State and Federal law, as well as ADHS policies and procedures; and
- 5.8 Ensure good character of all personnel, owners or volunteers through fingerprint background clearance, and personal and professional references.

**6. STATE PROVIDED ITEMS**

The ADHS Bureau of LTC will provide local and remote access to ASPEN.

**7. APPROVALS**

- 7.1 ADHS will review all claims related to travel reimbursement. Travel reimbursement will be approved based upon the State of Arizona General Accounting Offices (GAO) travel policy <https://gao.az.gov/travel/welcome-gao-travel> Support documentation shall be required to approve all travel claims.

	<p><b>PART ONE (1) - Scope of Services</b></p> <p><b>REQUEST FOR PROPOSAL No.: BPM004668</b></p> <p><b>Investigating Long-Term Care Facilities - Complaints and Self-Reports</b></p>	<p><b>ARIZONA DEPARTMENT OF HEALTH SERVICES</b>  150 N. 18th Avenue, Suite 530  Phoenix, Arizona 85007</p>
---	--	--

7.2 Travel is by vehicle from locations in Arizona. Mileage or use of rental car, meals with receipts, and lodging must comply with the State of Arizona Accounting Manual (SAAM). Travel to get to Arizona will not be reimbursed.

**8. DELIVERABLES**

The Contractor shall submit to ADHS Bureau of LTC the following:

- 8.1 After the on-site inspection, submit a written statement of deficiencies on the CMS 2567 form within ten (10) business days of the exit of the complaint/self-report inspection; and
- 8.2 A completed CMS 670 form, completed field trip reporting ACTS and any Surveyor notes for the complaint/self-report investigation is due within fourteen (14) days after the survey is completed.

**9. NOTICES, CORRESPONDENCE REPORTS AND INVOICES**

9.1 All notices, correspondences, and reports from the Contractor to ADHS shall be sent via electronic mail to the following:

Arizona Department of Health Services  
Bureau of Long-Term Care  
Diane Eckles, Bureau Chief

[Redacted]

9.2 All invoices shall be emailed to the following email address:

[Redacted]

**9.3 AUTOMATED CLEARING HOUSE**

9.3.1 ADHS may pay invoices for some or all Orders through an Automated Clearing House (ACH). In order to receive payments in this manner, the Contractor must complete an ACH Vendor Authorization Form (form GAO-618) within 30 (thirty) days after the effective date of the Contract. The form is available online at: <https://gao.az.gov/sites/default/files/GAO-618%20ACH%20Authorization%20Form%20101019.pdf>

9.3.2 ACH Vendor Authorization Form shall be emailed to [Redacted]



## PART ONE (1) - Special Terms and Conditions

### REQUEST FOR PROPOSAL No.: BPM004668

Investigating Long-Term Care Facilities - Complaints and Self-Reports

ARIZONA DEPARTMENT OF  
HEALTH SERVICES  
150 North 18<sup>th</sup> Ave, Suite 530  
Phoenix, Arizona 85007

#### SPECIAL TERMS AND CONDITIONS

##### 1. PURPOSE

Pursuant to provisions of the Arizona Procurement Code, A.R.S. 41-2501 Et Seq., the State of Arizona, ADHS intend to establish a Contract for the materials or services as listed herein.

##### 2. TERM OF CONTRACT (1 YEAR)

The term of any resultant Contract shall commence **upon final signature**, and shall continue for a period of one (1) year thereafter, unless terminated, canceled, or extended as otherwise provided herein.

##### 3. CONTRACT EXTENSIONS 5 YEAR MAXIMUM

The Contract term **shall begin as specified in the section two (2) above**, and shall continue for a period of one (1) year subject to additional successive periods of twelve (12) months per extension with a maximum aggregate including all extensions not to exceed five (5) years.

##### 4. CONTRACT TYPE

Fixed Price

##### 5. LICENSES

The Contractor shall maintain in current status, all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor.

##### 6. KEY PERSONNEL

It is essential that the Contractor provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract. The Contractor must agree to assign specific individuals to the key positions.

6.1 The Contractor agrees that, once assigned to work under this Contract, key personnel shall not be removed or replaced without written notice to the State. Such notice shall be given thirty (30) days prior to the reassignment or personnel's last day assigned to the Contract.

6.2 If key personnel are not available for work under this Contract for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the State, and shall, subject to the concurrence of the State, replace such personnel with personnel of substantially equal ability and qualifications.

6.3 The State Agency reserves the right to review resumes and participate in interviews for the hiring of any staff assigned to this Contract. Further, the State Agency reserves the right to deny or refuse any offered replacement personnel by the Planning Contractor.

##### 7. POINT OF CONTACT

7.1 It is essential that the Contractor provide a Point of Contact, capable of and devoted to the successful accomplishment of work to be performed under this Contract. The Contractor must agree to assign a



## **PART ONE (1) - Special Terms and Conditions**

### **REQUEST FOR PROPOSAL No.: BPM004668**

#### **Investigating Long-Term Care Facilities - Complaints and Self-Reports**

**ARIZONA DEPARTMENT OF  
HEALTH SERVICES**  
150 North 18<sup>th</sup> Ave, Suite 530  
Phoenix, Arizona 85007

specific individual to serve as a primary day-to-day contact.

7.2 The Contractor agrees that, once assigned to work under this Contract, the Point of Contact shall not be removed or replaced without written notice to the State.

7.3 If the Point of Contact is not available for work under this Contract for a continuous period exceeding thirty (30) calendar days, or is expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the State, and shall, subject to the concurrence of the State, replace such personnel with personnel of substantially equal ability and qualifications.

#### **8. MOST-FAVORED CUSTOMER**

Throughout the life of the Contract, the Contractor shall always offer the State the Most-Favored Customer or Highest Tier Customer price discount rate on contracted product(s) concurrent with a published price discount rate made to other Customers (both Private and Public sectors). The Contractor shall extend to the State that most-favored customer or Highest Tier Customer price discount on all new product lines during the life of the contract.

#### **9. NON-EXCLUSIVE CONTRACT**

Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The State reserves the right to obtain like goods or services from another source when necessary, or when determined to be in the best interest of the State.

#### **10. VOLUME OF WORK**

The ADHS does not guarantee a specific amount of work either for the life of the Contract or on an annual basis.

#### **11. INFORMATION DISCLOSURE**

The Contractor shall establish and maintain procedures and controls that are acceptable to the State for the purpose of assuring that no information contained in its records or obtained from the state or from others in carrying out its functions under the Contract shall be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the State. The Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the State.

#### **12. EMPLOYEES OF THE CONTRACTOR**

All employees of the Contractor employed in the performance of work under the Contract shall be considered employees of the Contractor at all times, and not employees of the ADHS or the State. The Contractor shall comply with the Social Security Act, Workman's Compensation laws and Unemployment laws of the State of Arizona and all State, local and Federal legislation relevant to the Contractor's business.

#### **13. ORDER PROCESS**

The award of a contract shall be in accordance with the Arizona Procurement Code. Any attempt to represent any material and/or service not specifically awarded as being under contract with ADHS is a violation of the Contract and the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the state inclusive of, but not limited to, Contract cancellation, suspension, and/or debarment of the Contractor.





## PART ONE (1) - Special Terms and Conditions

### REQUEST FOR PROPOSAL No.: BPM004668

#### Investigating Long-Term Care Facilities - Complaints and Self-Reports

ARIZONA DEPARTMENT OF  
HEALTH SERVICES  
150 North 18<sup>th</sup> Ave, Suite 530  
Phoenix, Arizona 85007

#### 14. CONTRACTOR PERFORMANCE REPORTS

Program management shall document Contractor performance, both exemplary and needing improvements where corrective action is needed or desired. Copies of corrective action reports will be forwarded to the ADHS Procurement Office for review and any necessary follow-up. The Procurement Office may contact the Contractor upon receipt of the report and may request corrective action. The Procurement Office shall discuss the Contractor's suggested corrective action plan with the Program for approval of the plan prior to sending it to the Contractor.

#### 15. PAYMENT PROCEDURES

- 15.1 ADHS accounting will not make payments to any Entity, Group or individual other than the Contractor with the Federal Employer Identification (FEI) Number identified in the Contract. Contractor invoices requesting payment to any Entity, Group or individual other than the contractually specified Contractor shall be returned to the Contractor for correction.
- 15.2 The Contractor shall review and insure that the invoices for services provided show the correct Contractor name prior to sending them to the ADHS Accounting Office for payment.
- 15.3 If the Contractor Name and FEI Number change, the Contractor must complete an "Assignment and Agreement" form transferring contract rights and responsibilities to the new Contractor. ADHS must indicate consent on the form. A written Contract Amendment must be signed by both parties and a new W-9 form must be submitted by the new Contractor and entered into the system prior to any payments being made to the new Contractor.

#### 16. FINANCIAL MANAGEMENT

- 16.1 For all contracts, the practices, procedures, and standards specified in the State of Arizona Accounting Manual <https://gao.az.gov/publications/SAAM/> and required by the Arizona Department of Health Services and Guidance for Federal Grant Award Management Manual shall be used by the Contractor in the management of contract funds and by the ADHS when performing a contract audit. <https://azdhs.gov/documents/operations/financial-services/bluebook-2018.pdf> The contractor also agrees to abide by the rules as outlined by 2 CFR 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards. Funds collected by the Contractor in the form of fees, donations, and/or charges for the delivery of these contract services shall be accounted for in a separate fund. [https://ecfr.io/Title-02/cfr200\\_main](https://ecfr.io/Title-02/cfr200_main)
- 16.2 State Funding Contractors receiving state funds under this Contract shall comply with the certified Compliance provisions of A.R.S. § 35-181.03.
- 16.3 Federal Funding Contractors receiving federal funds under this contract shall comply with the certified finance and compliance audit provision of the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200), if applicable. The federal financial assistance information shall be stated in a Change Order or Purchase Order.

#### 17. INSPECTION AND ACCEPTANCE

All services, data, and required reports are subject to final inspection, review, evaluation, and acceptance by the ADHS. The ADHS may withhold payment for services that are deemed to not meet contract standards.



## **PART ONE (1) - Special Terms and Conditions**

### **REQUEST FOR PROPOSAL No.: BPM004668**

#### **Investigating Long-Term Care Facilities - Complaints and Self-Reports**

**ARIZONA DEPARTMENT OF  
HEALTH SERVICES**  
150 North 18<sup>th</sup> Ave, Suite 530  
Phoenix, Arizona 85007

#### **18. AUTHORIZATION FOR SERVICES**

Authorization for purchase of services under this Contract shall be made only upon ADHS issuance of a Purchase Order that is signed by an authorized agent. The Purchase Order will indicate the Contract number and the dollar amount of funds authorized. The Contractor shall only be authorized to perform services up to the amount on the Purchase Order. ADHS shall not have any legal obligation to pay for services in excess of the amount indicated on the Purchase Order. No further obligation for payment shall exist on behalf of ADHS unless a) the Purchase Order is changed or modified with an official ADHS Procurement Change Order, and/or b) an additional Purchase Order is issued for purchase of services under this Contract.

#### **19. INDEMNIFICATION CLAUSE**

- 19.1 To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona.
- 19.2 This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

#### **20. INSURANCE REQUIREMENTS**

- 20.1 Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.
- 20.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.
- 20.3 Minimum Scope and Limits of Insurance

Contractor shall provide coverage with limits of liability not less than those stated below.



## **PART ONE (1) - Special Terms and Conditions**

### **REQUEST FOR PROPOSAL No.: BPM004668**

#### **Investigating Long-Term Care Facilities - Complaints and Self-Reports**

**ARIZONA DEPARTMENT OF  
HEALTH SERVICES**  
150 North 18<sup>th</sup> Ave, Suite 530  
Phoenix, Arizona 85007

#### 20.3.1 Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

20.3.1.1 General Aggregate \$2,000,000.00

20.3.1.1.1 Products – Completed Operations Aggregate \$1,000,000.00

20.3.1.1.2 Personal and Advertising Injury \$1,000,000.00

20.3.1.1.3 Damage to Rented Premises \$ 50,000.00

20.3.1.1.4 Each Occurrence \$1,000,000.00

20.3.1.2 The policy shall not exclude coverage for Sexual Abuse and Molestation (SAM). This coverage may be sub-limited to no less than \$500,000. The limits may be included within the General Liability limit or provided by separate endorsement with its own limits. If you are unable to obtain SAM coverage under your General Liability because the insurance market will not support it, it should it be included with the Professional Liability.

20.3.1.3 Contractor must provide the following statement on their Certificate(s) of Insurance: “Sexual Abuse and Molestation coverage is included” or “Sexual Abuse and Molestation coverage is not excluded.”

20.3.1.4 Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

20.3.1.5 Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

#### 20.3.2 Business Automobile Liability

20.3.2.1 Bodily injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this contract.

20.3.2.1.1 To Combined Single Limit (CSL) \$1,000,000.00

20.3.2.2 Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.

20.3.2.3 Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents and employees for losses arising



## PART ONE (1) - Special Terms and Conditions

### REQUEST FOR PROPOSAL No.: BPM004668

#### Investigating Long-Term Care Facilities - Complaints and Self-Reports

ARIZONA DEPARTMENT OF  
HEALTH SERVICES  
150 North 18<sup>th</sup> Ave, Suite 530  
Phoenix, Arizona 85007

from work performed by or on behalf of the Contractor.

#### 20.3.3 Workers; Compensation and Employers' Liability

20.3.3.1 Workers Compensation Statutory

#### 20.3.3.2 Employers' Liability

20.3.3.2.1 Each accident \$1,000,000.00

20.3.3.2.2 Disease – Each employee \$1,000,000.00

20.3.3.2.3 Disease – Policy Limit \$1,000,000.00

20.3.3.3 Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents and employees for losses arising from work performed by or on behalf of the Contractor.

20.3.3.4 This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23.901 and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

#### 20.3.4 Professional Liability (Errors and Omissions Liability)

20.3.4.1 Each Claim \$2,000,000.00

20.3.4.2 Annual Aggregate \$2,000,000.00

20.3.5 In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of two (2) years beginning at the time work under this Contract is completed.

20.3.6 The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

#### 20.4 Additional Insurance Requirements

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

20.4.1 The Contractor's policies as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

20.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.



## **PART ONE (1) - Special Terms and Conditions**

### **REQUEST FOR PROPOSAL No.: BPM004668**

#### **Investigating Long-Term Care Facilities - Complaints and Self-Reports**

**ARIZONA DEPARTMENT OF  
HEALTH SERVICES**  
150 North 18<sup>th</sup> Ave, Suite 530  
Phoenix, Arizona 85007

#### 20.5 Notice of Cancellation

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, or hand delivered to Arizona Department of Health Services, 150 N 18th Ave, Suite 260, Phoenix, AZ 85007.

#### 20.6 Acceptability of Insurers

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

#### 20.7 Verification of Coverage

Contractor shall furnish the State of Arizona with certificates of insurance (COI) (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

20.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

20.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

20.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

#### 20.8 Subcontractors

Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of this contract, proof from the Contractor that its subcontractors have the required coverage.

#### 20.9 Approval and Modifications

The Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed



## **PART ONE (1) - Special Terms and Conditions**

### **REQUEST FOR PROPOSAL No.: BPM004668**

#### **Investigating Long-Term Care Facilities - Complaints and Self-Reports**

**ARIZONA DEPARTMENT OF  
HEALTH SERVICES**  
150 North 18<sup>th</sup> Ave, Suite 530  
Phoenix, Arizona 85007

necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

#### **20.10 Exceptions**

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply

### **21. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996**

21.1 If applicable, the Contractor warrants that it is familiar with the requirements of HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of 2009, and accompanying regulations and will comply with all applicable HIPAA requirements in the course of this Contract. Contractor warrants that it will cooperate with the Arizona Department of Health Services (ADHS) in the course of performance of the Contract so that both ADHS and Contractor will be in compliance with HIPAA, including cooperation and coordination with the Arizona Department of Administration-Arizona Strategic Enterprise Technology (ADOA-ASET) Office, the ADOA-ASET Arizona State Chief Information Security Officer and HIPAA Coordinator and other compliance officials required by HIPAA and its regulations. Contractor will sign any documents that are reasonably necessary to keep ADHS and Contractor in compliance with HIPAA, including, but not limited to, business associate agreements.

21.2 If applicable, and requested by the ADHS Procurement Office, Contractor agrees to sign a "Pledge To Protect Confidential Information" and to abide by the statements addressing the creation, use and disclosure of confidential information, including information designated as protected health information and all other confidential or sensitive information as defined in policy. In addition, if requested, Contractor agrees to attend or participate in HIPAA training offered by ADHS or to provide written verification that the Contractor has attended or participated in job related HIPAA training that is: (1) intended to make the Contractor proficient in HIPAA for purposes of performing the services required and (2) presented by a HIPAA Privacy Officer or other person or program knowledgeable and experienced in HIPAA and who has been approved by the ADOA-ASET Arizona State Chief Information Security Officer and HIPAA Coordinator.

### **22. PANDEMIC CONTRACTUAL PERFORMANCE**

22.1 The State shall require a written plan that illustrates how the Contractor shall perform up to contractual standards in the event of a pandemic. The State may require a copy of the plan at any time prior or post award of a Contract. At a minimum, the pandemic performance plan shall include:

22.1.1 Key succession and performance planning if there is a sudden significant decrease in Contractor's workforce;

22.1.2 Alternative methods to ensure there are products in the supply chain; and

22.1.3 An up to date list of company contacts and organizational chart.

22.2 In the event of a pandemic, as declared by the Governor of Arizona, U.S. Government, or the World Health Organization, which makes performance of any term under this Contract impossible or impracticable, the State shall have the following rights:

22.2.1 After the official declaration of a pandemic, the State may temporarily void the Contract(s) in whole



## **PART ONE (1) - Special Terms and Conditions**

### **REQUEST FOR PROPOSAL No.: BPM004668**

#### **Investigating Long-Term Care Facilities - Complaints and Self-Reports**

**ARIZONA DEPARTMENT OF  
HEALTH SERVICES**  
150 North 18<sup>th</sup> Ave, Suite 530  
Phoenix, Arizona 85007

or specific sections, if the Contractor cannot perform to the standards agreed upon in the initial terms;

22.2.2 The State shall not incur any liability if a pandemic is declared and emergency procurements are authorized by the Director as per A.R.S. § 41-2537 of the Arizona Procurement Code; and

22.2.3 Once the pandemic is officially declared over and/or the Contractor can demonstrate the ability to perform, the State, at its sole discretion, may reinstate the temporarily voided Contract(s).

22.3 The State, at any time, may request to see a copy of the written plan from the Contractor. The Contractor shall produce the written plan within seventy-two (72) hours of the request.

### **23. Unique Entity Identifier (UEI)**

Pursuant to 2 CFR 25.100 et seq., no entity (defined as a Governmental organization, which is a State, local government, or Indian tribe; foreign public entity; domestic or foreign nonprofit organization; domestic or foreign for-profit organization; or Federal agency, but only as a sub-recipient under an award or sub-award to a non-Federal entity) may receive a sub-award from ADHS unless the entity provides its Unique Entity Identifier Number to ADHS. The number can be created in SAM.gov. If already registered the UEI has been assigned and can be viewed in SAM.gov

### **24. NEW SERVICES**

The State, at its sole discretion may allow new services identified by the Contractor or ADHS to be incorporated. The request may be submitted at any time during the Contract period. The requested services shall align with the current Scope of Work, Requirements, Deliverables, and Price List.

### **25. THE FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA OR TRANSPARENCY ACT - P.L.109-282, AS AMENDED BY SECTION 6202(A) OF P.L. 110-252), FOUND AT [HTTPS://WWW.FSRS.GOV/](https://www.fsrs.gov/)**

If applicable, the subrecipient or sub-awardee is required to abide by the Federal Funding Accountability and Transparency Act (FFATA or Transparency Act – P.L. 109-282, as amended by section 6202(a) of P.L. 110-252), found at <https://www.fsrs.gov/>. The associated Grant Reporting Certification Form and completion instructions will be sent to the subrecipient from ADHS Program(s) responsible for the specific contract. The subrecipient or sub-awardee must return the completed form to ADHS Program(s) by the 15<sup>th</sup> of the month following that in which the award was received. Failure to complete a required Grant Reporting Certification Form may result in loss of funding.

### **26. TRANSITION ACTIVITIES**

26.1 The Contractor shall support the transfer of the Evaluation Reports at the conclusion of its Contract;

26.2 Upon termination of this Contract, if ADHS anticipates a continued need for the Contract Services specified herein and a contract is awarded to a new Contractor, there shall be a transition of services period of not less than thirty (30) days. During this period, the existing Contractor shall work closely with the new Contractor, or Contractors, personnel and/or staff to ensure a smooth and complete transfer of duties and responsibilities;

26.3 An authorized representative from ADHS shall coordinate all transition activities. A transition plan will be developed in conjunction with the outgoing Contractor to assist the new Contractor, or Contractors, personnel and/or staff to implement the transfer of duties;



## **PART ONE (1) - Special Terms and Conditions**

### **REQUEST FOR PROPOSAL No.: BPM004668**

#### **Investigating Long-Term Care Facilities - Complaints and Self-Reports**

**ARIZONA DEPARTMENT OF  
HEALTH SERVICES**  
150 North 18<sup>th</sup> Ave, Suite 530  
Phoenix, Arizona 85007

26.4 ADHS reserves the right to determine which projects nearing completion will remain with the current Contractor of record.

26.5 The Contractor shall return all ADHS equipment, reports, and any other documentation developed during the term of the Contract that ADHS deems necessary to maintain ongoing operations.

#### **27. CONTRACTING; PROCUREMENT; INVESTMENT; PROHIBITIONS**

27.1 A public entity may not enter into a contract with a company to acquire or dispose of services, supplies, information technology or construction unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of Israel.

27.2 A public entity may not adopt a procurement, investment or other policy that has the effect of inducing or requiring a person or company to boycott Israel.

27.3 Contractor hereby certifies that it is not currently engaged in, and will not for the duration of this Contract engage in, a boycott of Israel as defined by A.R.S. § 35-393.01. Violation of this certification by Contractor may result in action by the State up to and including termination of this Contract.





## Part ONE (1) Uniform Terms and Conditions

### REQUEST FOR PROPOSAL No.: BPM004668

#### Investigating Long-Term Care Facilities - Complaints and Self-Reports

ARIZONA DEPARTMENT  
OF HEALTH SERVICES  
150 North 18<sup>th</sup> Ave, Suite 530  
Phoenix, AZ 85007

## UNIFORM TERMS AND CONDITIONS

### 1. DEFINITION OF TERMS

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

- 1.1 *"Attachment"* means any item the Solicitation requires the Offeror to submit as part of the Offer.
- 1.2 *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
- 1.3 *"Contract Amendment"* means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
- 1.4 *"Contractor"* means any person who has a Contract with the State.
- 1.5 *"Days"* means calendar days unless otherwise specified.
- 1.6 *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
- 1.7 *"Gratuity"* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- 1.8 *"Materials"* means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.9 *"Procurement Officer"* means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
- 1.10 *"Services"* means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
- 1.11 *"Subcontract"* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
- 1.12 *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.
- 1.13 *"State Fiscal Year"* means the period beginning with July 1 and ending June 30.

### 2. CONTRACT INTERPRETATION

- 2.1 Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.2.2.



## Part ONE (1) Uniform Terms and Conditions

### REQUEST FOR PROPOSAL No.: BPM004668

#### Investigating Long-Term Care Facilities - Complaints and Self-Reports

ARIZONA DEPARTMENT  
OF HEALTH SERVICES  
150 North 18<sup>th</sup> Ave, Suite 530  
Phoenix, AZ 85007

- 2.2 Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3 Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
- 2.3.1 Special Terms and Conditions;
  - 2.3.2 Uniform Terms and Conditions;
  - 2.3.3 Statement or Scope of Work;
  - 2.3.4 Specifications;
  - 2.3.5 Attachments;
  - 2.3.6 Exhibits;
  - 2.3.7 Documents referenced or included in the Solicitation.
- 2.4 Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5 Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6 No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7 No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

### 3. CONTRACT ADMINISTRATION AND OPERATION

- 3.1 Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2 Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3 Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.



## Part ONE (1) Uniform Terms and Conditions

### REQUEST FOR PROPOSAL No.: BPM004668

#### Investigating Long-Term Care Facilities - Complaints and Self-Reports

ARIZONA DEPARTMENT  
OF HEALTH SERVICES  
150 North 18<sup>th</sup> Ave, Suite 530  
Phoenix, AZ 85007

- 3.4 Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5 Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6 Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7 Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8 Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.
- 3.9 Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.
- 3.10 E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.



## Part ONE (1) Uniform Terms and Conditions

### REQUEST FOR PROPOSAL No.: BPM004668

#### Investigating Long-Term Care Facilities - Complaints and Self-Reports

ARIZONA DEPARTMENT  
OF HEALTH SERVICES  
150 North 18<sup>th</sup> Ave, Suite 530  
Phoenix, AZ 85007

3.11 Offshore Performance of Work Prohibited. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

#### 4. COSTS AND PAYMENTS

4.1 Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

4.2 Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

4.3 Applicable Taxes.

4.3.1 Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2 State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.3.3 Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

4.3.4 IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.

4.4 Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

4.5 Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

4.5.1 Accept a decrease in price offered by the contractor;

4.5.2 Cancel the Contract; or

4.5.3 Cancel the contract and re-solicit the requirements.



## Part ONE (1) Uniform Terms and Conditions

### REQUEST FOR PROPOSAL No.: BPM004668

#### Investigating Long-Term Care Facilities - Complaints and Self-Reports

ARIZONA DEPARTMENT  
OF HEALTH SERVICES  
150 North 18<sup>th</sup> Ave, Suite 530  
Phoenix, AZ 85007

## 5. CONTRACT CHANGES

- 5.1 Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2 Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3 Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

## 6. RISK AND LIABILITY

- 6.1 Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2 Indemnification
- 6.2.1 Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.
- 6.2.2 Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."
- 6.3 Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.



## Part ONE (1) Uniform Terms and Conditions

### REQUEST FOR PROPOSAL No.: BPM004668

#### Investigating Long-Term Care Facilities - Complaints and Self-Reports

ARIZONA DEPARTMENT  
OF HEALTH SERVICES  
150 North 18<sup>th</sup> Ave, Suite 530  
Phoenix, AZ 85007

#### 6.4 Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions- intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2 Force Majeure shall not include the following occurrences:

6.4.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3 Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4 Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5 Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

## 7. WARRANTIES

7.1 Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2 Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1 Of a quality to pass without objection in the trade under the Contract description;

7.2.2 Fit for the intended purposes for which the materials are used;



## Part ONE (1) Uniform Terms and Conditions

### REQUEST FOR PROPOSAL No.: BPM004668

#### Investigating Long-Term Care Facilities - Complaints and Self-Reports

ARIZONA DEPARTMENT  
OF HEALTH SERVICES  
150 North 18<sup>th</sup> Ave, Suite 530  
Phoenix, AZ 85007

7.2.3 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4 Adequately contained, packaged and marked as the Contract may require; and

7.2.5 Conform to the written promises or affirmations of fact made by the Contractor.

7.3 Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4 Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5 Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

7.6 Survival of Rights and Obligations after Contract Expiration or Termination.

7.6.1 Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.6.2 Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

## 8. STATE'S CONTRACTUAL REMEDIES

8.1 Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. Stop Work Order.

8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.



## Part ONE (1) Uniform Terms and Conditions

### REQUEST FOR PROPOSAL No.: BPM004668

#### Investigating Long-Term Care Facilities - Complaints and Self-Reports

ARIZONA DEPARTMENT  
OF HEALTH SERVICES  
150 North 18<sup>th</sup> Ave, Suite 530  
Phoenix, AZ 85007

8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

- 8.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.
- 8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.5. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

## 9. CONTRACT TERMINATION

- 9.1 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2 Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3 Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.
- 9.4 Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just





## Part ONE (1) Uniform Terms and Conditions

### REQUEST FOR PROPOSAL No.: BPM004668

#### Investigating Long-Term Care Facilities - Complaints and Self-Reports

ARIZONA DEPARTMENT  
OF HEALTH SERVICES  
150 North 18<sup>th</sup> Ave, Suite 530  
Phoenix, AZ 85007

and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

#### 9.5 Termination for Default.

9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6 Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

## 10. CONTRACT CLAIMS

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

## 11. ARBITRATION

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

## 12. COMMENTS WELCOME

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 305, Phoenix, AZ, 85007.



## EXHIBIT ONE (1)

### REQUEST FOR PROPOSAL No.: BPM004668

#### Investigating Long-Term Care Facilities - Complaints and Self-Reports

**ARIZONA DEPARTMENT  
OF HEALTH SERVICES**  
150 North 18<sup>th</sup> Ave, Suite 530  
Phoenix, AZ 85007

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
CENTERS FOR MEDICARE & MEDICAID SERVICES

FORM APPROVED

#### SURVEY TEAM COMPOSITION AND WORKLOAD REPORT

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Office of Financial Management, HCFA, P.O. Box 26684, Baltimore, MD 21207; or to the Office of Management and Budget, Paperwork Reduction Project(0838-0583), Washington, D.C. 20503.

Provider/Supplier Number	Provider/Supplier Name
--------------------------	------------------------

Type of Survey (select all that apply)

- |                           |                         |                     |
|---------------------------|-------------------------|---------------------|
| A Complaint Investigation | E Initial Certification | I Recertification   |
| B Dumping Investigation   | F Inspection of Care    | J Sanctions/Hearing |
| C Federal Monitoring      | G Validation            | K State License     |
| D Follow-up Visit         | H Life Safety Code      | L CHOW              |
| M Other                   |                         |                     |

Extent of Survey (select all that apply)

- A Routine/Standard Survey (all providers/suppliers)  
 B Extended Survey (HHA or Long Term Care Facility)  
 C Partial Extended Survey (HHA)  
 D Other Survey

#### SURVEY TEAM AND WORKLOAD DATA

Please enter the workload information for each surveyor. Use the surveyor's identification number.

Surveyor ID Number (A)	First Date Arrived (B)	Last Date Departed (C)	Pre-Survey Preparation Hours (D)	On-Site Hours 12am-8am (E)	On-Site Hours 8am-6pm (F)	On-Site Hours 6pm-12am (G)	Travel Hours (H)	Off-Site Report Preparation Hours (I)
1.								

Total SA Supervisory Review Hours.....

Total RO Supervisory Review Hours....

Total SA Clerical/Data Entry Hours....

Total RO Clerical/Data Entry Hours.....

Was Statement of Deficiencies given to the provider on-site at completion of the survey?...



## EXHIBIT TWO (2)

### REQUEST FOR PROPOSAL No.: BPM004668

**Investigating Long-Term Care Facilities - Complaints and Self-Reports**

**ARIZONA DEPARTMENT  
OF HEALTH SERVICES**  
150 North 18<sup>th</sup> Ave, Suite 530  
Phoenix, AZ 85007

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
CENTERS FOR MEDICARE & MEDICAID SERVICES

PRINTED: 06/22/2022  
FORM APPROVED  
OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____  B. WING _____		(X3) DATE SURVEY COMPLETED
NAME OF PROVIDER OR SUPPLIER		STREET ADDRESS, CITY, STATE, ZIP CODE		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
F 000	INITIAL COMMENTS	F 000		


LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

Any deficiency statement ending with an asterisk (\*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See Instructions.) Except for nursing homes, the findings stated above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. For nursing homes, the above findings and plans of correction are disclosable 14 days following the date these documents are made available to the facility. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

# Exhibit 3

  
**CONTRACT  
BETWEEN  
THE ALABAMA DEPARTMENT OF PUBLIC HEALTH  
AND  
CERTISURV, LLC**

This Contract entered into by and between the **Alabama Department of Public Health**, hereinafter "**Department**," and **CertiSurv, LLC**, hereinafter "**Contractor**," is effective **December 1, 2021**, or upon approval by the Governor, and terminates **September 30, 2022**.

WHEREAS, the purpose of this Contract is to conduct surveys required to make recommendations to the Secretary, Department of Health & Human Services, for the certification of health care providers and suppliers; and

WHEREAS, the State of Alabama, through the Department of Public Health, Bureau of Health Provider Standards, is designated as the State Agency responsible for identifying, surveying and making recommendations to the Secretary, Department of Health & Human Services, for the certification of health care providers and suppliers; and

WHEREAS, long-term care facilities and Intermediate Care Facilities for Individuals with an Intellectual Disability, hereinafter referred to as "LTCFs and ICFs/IID" as required to be surveyed for compliance with Federal laws, rules and regulations; and

WHEREAS, Contractor possesses the qualifications necessary to conduct surveys and related activities for LTCFs and ICFs/IID to determine compliance with applicable federal laws, rules and regulations; and

WHEREAS, funding for activities performed under this Contract was provided by the Department, Bureau of Health Provider Standards, through a cooperative agreement with the Centers for Medicare and Medicaid Services, being grant number 93.777, State Survey and Certification of Health Care Providers and Suppliers (Title XVIII) Medicare, for grant budget period October 1, 2021 through September 30, 2022. Funding source 2GA18300S, grant #2015-AL-5001. The program was authorized through the following Act: Coronavirus, Aid, Relief, and Economic Security (CARES) Act.

WHEREAS, this Contract is entered into following a request for proposal process in accordance with Code of Ala. 1975, § 41-16-72.

WHEREAS, the Contractor will fully comply with the request for proposal, Contractor's proposal, Department's acceptance thereof and the plan or scope of work, which are herein incorporated by reference.

[REDACTED]

NOW THEREFORE, in consideration of the mutual covenants herein below specified and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties herein agree to the following:

The Department shall:

1. Department shall notify Contractor within two (2) work days of any omissions or errors contained in draft survey reports and Contractor shall be provided an opportunity to correct any identified problems. Repeated omissions or errors in the draft survey report or any deviations from the application of federal standards may result in the termination of this Contract and/or withholding of payments to Contractor until all omissions, errors or deviations from federal standards by Contractor have been resolved to the satisfaction of Department.
2. Compensate Contractor at the established rate per survey for all time spent conducting LTCF and ICF/IID surveys. This shall include, but is not limited to, pre- and post-conferences, travel, onsite visits, researching information as needed, and formulating, in writing, the decisions reached by the survey team.

Survey Type	Pricing	Per Surveyor
Complaint Investigation (not part of a Recertification)	\$5,950 per surveyor	\$5,950
Long-Term Care Recertification w/3 Surveyors	\$21,750	\$7,250
Long-Term Care Recertification w/4 Surveyors	\$27,950	\$6,987
Long-Term Care Recertification w/5 Surveyors	\$34,750	\$6,950
Additional L TC Recertification Surveyors above team of 5	\$6,925 per surveyor	\$6,925
ICF/IID Recertification w/1 Surveyor	\$5,750	\$5,750
ICF/IID Recertification w/2 Surveyors	\$10,900	\$5,450

Said compensation shall be paid to Contractor upon submission in duplicate of an itemized invoice showing hours, half hours, or quarter hours, billed at the approved rate, and for the activities engaged in, according to the requirements of the State Finance Department.

3. Department and Contractor will cooperate with each other in the setting of dates, times, and locations for surveys.

The Contractor shall:

1. Contractor shall perform federal certification surveys of LTCFs and ICFs/IID, and one (1) follow-up visit, if needed, to determine compliance with applicable federal laws, rules and regulations in Alabama. Surveys and related activities performed by Contractor shall be carried out in accordance with the survey priority list provided by the Department.



2. Contractor shall perform said surveys of LTCFs and ICFs/IID in Alabama and have the authority to schedule surveys and follow-up visits, as Contractor deems necessary, giving appropriate consideration to the survey dates identified on the above referenced survey priority list. All surveys and related activity conducted by Contractor shall be carried out in conformance with governing federal standards and shall be completed using all necessary federal forms and software. Teams of surveyors shall be assigned by Contractor according to federal requirements as needed to complete surveys in a timely and accurate manner.
3. Contractor shall provide any necessary Personal Protective Equipment (PPE) to the surveyors working pursuant to the Contract.
4. Contractor will enter all survey findings into the Automated Survey Processing Environment (ASPEN) shell and submit to the Department no later than five (5) working days of the survey exit. Contractor shall submit draft survey reports, and all documents written or gathered during the course of the survey to include the 2567, Statement of Deficiencies, 670 – Surveyor Workload Report, and the COVID19 Focused Survey for Nursing Homes in the format agreed upon by Department via e-mail to the attention of [REDACTED] at the following e-mail address: [REDACTED]. All appropriate hard copy documents shall be scanned and sent electronically to Department at the time of submission of the above referenced information.
5. Contractor shall be authorized to make final determinations of compliance with federal standards, including deficiencies cited at substantial compliance and not rising to the level of actual harm. These proposed deficiencies shall be reviewed by the Contractor's Quality Assurance before being forwarded to the Department.
6. Contractor shall not be authorized to make any final determinations of compliance with federal standards, including but not limited to ongoing non-compliance after a follow up survey, Actual Harm level deficiencies, deficiencies cited at Substandard Quality of Care, determination of Immediate Jeopardy (IJ) and non-compliance with conditions of participation without first contacting the Contractor's supervisor. If the Contractor's supervisor is in agreement with the team's deficiency determination findings, the Contractor's supervisor should then contact the Department's Quality Assurance Director to discuss evidence to support the non-compliance before notification of the facility. Should the Contractor notify a facility of deficiencies at the IJ level, the Contractor must agree to remain onsite for a reasonable time to remove the IJ prior to exit. All surveys and related activities performed by Contractor shall be subject to Departmental Supervisory review. Contractor agrees that it has no authority to initiate any adverse agency action.



7. Contractor shall address any omissions or errors contained in draft survey reports identified by the Department and shall be provided an opportunity to correct any identified problems. Repeated omissions or errors in the draft survey report or any deviations from the application of federal standards may result in the termination of this Contract and/or withholding of payments to Contractor until all omissions, errors or deviations from federal standards by Contractor have been resolved to the satisfaction of Department.
8. Contractor shall ensure that all surveyors utilized to carry out LTCF and ICFs/IID surveys and related activities have completed the federally required training courses and are qualified for the surveys they are conducting, to include Qualified Mental Retardation Professional (QMRP) for ICFs/IID Facilities and have successfully passed the Surveyor Minimum Qualifications Test (SMQT) for LTCFs. Contractors agree surveyors are available to complete surveys and related activities within time frames agreed upon by Contractor and Department.
9. Contractor shall participate in meetings or conference calls with the Department to assist in the review of survey findings. In addition, Contractor shall provide requested documentation or testimony, which includes Informal Dispute Resolutions or Independent Informal Dispute Resolutions, regarding enforcement actions as needed to support federal or State counsel in any resulting litigation.
10. Contractor agrees to abide by the interagency Agreement between the Department and the Alabama Medicaid Agency for Medicaid Survey and Certification which is incorporated by reference and attached hereto as Attachment #1.
11. Contractor shall comply with all federal requirements governing confidentiality of the information reviewed and gathered pursuant to this Contract. Contractor will not disclose or use, either during or after the term of this Agreement, any proprietary or confidential information without prior written permission from Department except to the extent necessary to perform services specified under this Contract.

Proprietary or confidential information includes:


- All written, printed, graphic or electronically recorded materials furnished by Department for Contractor use.
- Information belonging to Department about which Contractor gained knowledge as a result of Contractor's services to Department.
- All survey data, reports, notes, documents and copies of records gathered during the surveys required by this Contract.





12. Upon termination of Contractor's services to Department, at the conclusion of the Contract period, or at Department's request, Contractor shall deliver to Department all materials in Contractor's possession relating to the performance of services under this Agreement. In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify and cooperate with Department in any lawful effort to protect the confidential information. The Contractor shall immediately report to Department any unauthorized disclosure of confidential information. The Contractor's confidentiality obligation created under this Contract shall survive the termination of the Contract.
13. The Contractor shall be responsible for worker's compensation coverage for all persons performing services under this Contract whenever such coverage is required. Department shall not provide worker's compensation coverage for any persons contracting with the Contractor for the performance of services authorized under this Contract.
14. The Contractor, and any subcontractor, shall maintain insurance coverage in full force and effect throughout the duration of this Contract. The insurance coverage shall cover all of the work performed under this Contract or any extensions hereto. The Contractor's insurance shall be occurrence based and shall insure against loss or damage resulting from or related to Contractor's performance under this Contract, regardless of the date the claim is filed. Neither the State of Alabama nor the Department provides any insurance coverage to the Contractor for the performance of the services required by this Contract.
15. This Agreement may be terminated at any time upon the mutual written consent of the parties, or by either party, with just cause, upon thirty (30) days written notice to the other party. In the event of termination, Department shall be under no further obligation to the Contractor.
16. Each Party to this Contract represents and warrants to the other that it has the right, power and authority to enter into this Contract.
17. If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.
18. Any and all notices required under this Contract shall be provided in writing by registered or certified mail, return receipt requested, to the persons and addresses provided in the Execution section below.

FOR AND IN CONSIDERATION of the above named services and upon approval by Department, Contractor shall be paid as follows:

- 
- Reimbursement under this Agreement shall be made upon submission by Contractor of an invoice in a format specified by Department. Funds expended under this Agreement shall be in accordance with the above-mentioned services, and any changes must meet the approval of the Department.
  - Contractor is not eligible and cannot be compensated under this Contract for any other expenses or costs other than those detailed above.

Under no circumstances shall the maximum amount payable under this Contract exceed \$4,500,000.00 for the Contract period.

FEDERAL DISCLOSURES CLAUSE. The Contract must meet the Federal requirements for pass-through entities in 2 C.F.R. § 200.331 (see also 45 C.F.R. § 75.352) which require the Department to notify Contractor of the following:

- a. This Contract constitutes a subaward. The identification information required to be provided under the subaward is enumerated in 2 C.F.R. § 200.331(a)(1) (see also 45 C.F.R. § 75.352(a)(1));
- b. All requirements imposed by the Department on Contractor so that the Federal award is used in accordance with Federal statutes, regulations, and terms and conditions of the Federal award, as set forth below:
  - (1) This Agreement is exclusive to the parties and may not be assigned by Contractor. Any attempted assignment without such approval shall be void and shall constitute a breach of this Agreement.
  - (2) Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, or any association of any kind between the Parties hereto.
  - (3) There are no third party beneficiaries to this Contract.
  - (4) The Contractor, its employees and agents, shall comply with all applicable federal and state laws when performing services under this Contract.
- c. Any additional requirements the Department imposes on Contractor in order for the Department to meet its own responsibility to the Federal awarding agency, including identification of any required financial and performance reports, as set forth below:
  - (1) Invoice at established rate per survey for all time spent conducting LTCF and ICF/IID surveys. This shall include, but is not limited to, type of survey, activity breakdown of pre- and post-conferences, travel, onsite visits, researching information as needed, and formulating, in writing, the decisions reached by the survey team.
- d. An approved federally recognized indirect cost rate negotiated between Contractor and the Federal Government, or, if no such rate exists, either a rate negotiated between the Department and Contractor (in compliance with 2 C.F.R. Part 200 and 45 C.F.R. Part 75), or a de minimis indirect cost rate, as defined in 2 C.F.R. § 200.414(f) (see also 45 C.F.R. § 75.414(f)), as set forth below:
  - (1) *Not applicable.*

- [REDACTED]
- e. Contractor must permit the Department, including the Office of Program Integrity, and auditors access to Contractor's records and financial statements as necessary for the Department to meet the requirements of 2 C.F.R. Part 200 (see also 45 C.F.R. Part 75);
  - f. Additional terms and conditions concerning closeout of the subaward, as set forth below:
    - (1) *Not applicable.*
  - g. Contractor's use of the subaward will be monitored by the Department for compliance with the conditions of the award, Federal law and regulations, and for achievement of performance goals. As part of its compliance monitoring, the Department must:
    - (1) Review financial and performance reports required by the Department;
    - (2) Follow up and ensure that Contractor takes timely and appropriate action on all deficiencies pertaining to the subaward detected through audits, onsite reviews, and other means;
    - (3) Issue a management decision for audit findings pertaining to the subaward, as required by 2 C.F.R. § 200.521 (see also 45 C.F.R. § 75.521);
  - h. Any additional specific subaward conditions imposed on Contractor by the Department, as described in 2 C.F.R. § 200.207 (see also 45 C.F.R. § 75.207), and as set forth herein, including, if applicable, the reasons for imposition of such conditions and any actions required by Contractor for their removal:
    - (1) *Not applicable.*
  - i. Contractor's failure to comply with the requirements of 2 C.F.R. Part 200 (see also 45 C.F.R. Part 75) may result in the imposition of additional special conditions by the Department, as provided under 2 C.F.R. § 200.207 (see also 45 C.F.R. § 75.207), or additional remedies for non-compliance, as provided under 2 C.F.R. § 200.338 (see also 45 C.F.R. § 75.371).

The Department must also notify Contractor of the requirement to adhere to the Federal property standards in 2 C.F.R. Part 200 (see also 45 C.F.R. Part 75) for any equipment purchased with subaward funding, including the standards in 2 C.F.R. § 200.313 (see also 45 C.F.R. § 75.320) for the use of all such equipment.

BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT. By signing this Contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom. ✓

OFFICE OF INSPECTOR GENERAL EXCLUSION PROVISION. Section 6501 of the Patient Protection and Affordable Care Act ("PPACA") regarding exclusions from federal health care programs took effect on January 1, 2011. This Section of PPACA

[REDACTED]

amends the Social Security Act to provide that State Medicaid agencies must exclude or terminate from participation any individual or entity excluded from participating in any Federal healthcare program, such that, if an individual or entity is excluded or terminated by Medicare or by Medicaid in any state, that individual or entity must be excluded from all other states' Medicaid programs.

Pursuant to that provision, if the Contractor is entering into this agreement for a federal health care program, Contractor agrees to screen all employees and subcontractors against the OIG list of excluded individuals and entities upon engagement and at least monthly. *This includes screening of former names and variations of names.*

**CLOSEOUT CLAUSE.** Contractor acknowledges that all invoices or other demands for payment must be received by the Department by October 14, 2022. Invoices or demands for payment received after that date cannot be paid and are forfeited.

**ANTI-DISCRIMINATION CLAUSE.** Contractor will comply with Titles IV, VI, and VII of the Civil Rights Act of 1964, the Federal Age Discrimination in Employment Act, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and all applicable Federal and State laws, rules and regulations implementing the foregoing statutes with respect to nondiscrimination on the basis of race, creed, color, religion, national origin, age, sex, or disability, as defined in the above laws and regulations. Contractor shall not discriminate against any otherwise qualified disabled applicant for, or recipient of aid, benefits, or services or any employee or person on the basis of physical or mental disability in accordance with the Rehabilitation Act of 1973 or the Americans With Disabilities Act of 1990.


**ANTI-BOYCOTT CLAUSE.** Contractor represents that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

**GOVERNOR'S PRORATION CLAUSE.** It is agreed that the Department may terminate this Contract providing a thirty (30) day written notice to Contractor should the Governor of Alabama declare proration of the fund from which payment under this Contract is to be made. This termination for cause is supplemental to other rights the Department may have under this Contract or otherwise to terminate this Contract.

**TERMINATION CLAUSE.** This Contract may be terminated by either party providing a thirty (30) day written notice to the other party.

**AMENDMENT CLAUSE.** This Contract may be amended only by mutual agreement in writing, signed by Department and Contractor, and processed through and approved by all necessary authorities.

**STANDARD OF PRACTICE CLAUSE.** Contractor agrees to observe and comply at all times with all Federal and State laws and rules in effect during the term of this



Contract which in any manner affect performance under this Contract. Contractor agrees to perform services consistent with customary standard of practice and ethics in the profession.

**WHISTLEBLOWER PROTECTION CLAUSE.** Pursuant to 41 U.S.C. § 4712, an employee of a contractor, subcontractor, or grantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for whistleblowing. The statute defines whistleblowing as making a disclosure that the employee reasonably believes is evidence of:

- Gross mismanagement of a Federal contract or grant;
- A gross waste of Federal funds;
- An abuse of authority relating to a Federal contract or grant;
- A substantial and specific danger to public health or safety; or
- A violation of law, rule, or regulation related to a Federal contract or grant.

To qualify under the statute, the employee's disclosure must be made to:

- A Member of Congress or a representative of a Congressional committee;
- An Inspector General;
- The Government Accountability Office;
- A federal employee responsible for contract or grant oversight or management at the relevant agency;
- An official from the Department of Justice or other law enforcement agency;
- A court or grand jury; or
- A management official or other employee of the contractor, subcontractor, or grantee who has responsibility to investigate, discover or address misconduct.

**ASSIGNMENT CLAUSE.** The rights, duties, and obligations arising under the terms of this Contract shall not be assigned by any of the parties hereto without the written consent of all other parties.

**ENTIRE AGREEMENT CLAUSE.** This Contract contains the entire agreement of the parties and there are no other agreements, verbal or written, affecting this Contract that have not been incorporated herein or attached hereto.

**SEVERABILITY CLAUSE.** Each provision of this Contract is intended to be severable. If any term or provision of this Contract is illegal or invalid for any reason whatsoever, said illegality or invalidity shall not affect the legality or validity of the remainder of this Contract.

**HEADINGS CLAUSE.** Headings in this Contract are for convenient reference only and shall not be used to interpret or construe the provisions of this Contract.

**DO NOT WORK CLAUSE.** Contractor acknowledges and understands that this Contract is not effective until it has received all requisite State government approvals.

[REDACTED]

and Contractor shall not begin performing work under this Contract until notified to do so by the Department. Contractor is entitled to no compensation for work performed prior to the effective date of this Contract.

**EMERGENCY CANCELLATION CLAUSE.** Notwithstanding any other provision of this Contract, upon the issuance of a Declaration of Financial Necessity by the State Health Officer, this Contract may be canceled immediately upon notice of such cancellation being given in writing to the Contractor. Notwithstanding such cancellation, the Contractor shall be recompensed for work and labor performed and completed prior to the issuance of such notice on principles of quantum meruit.

**FINANCIAL NECESSITY CLAUSE.** All terms and conditions of this Contract notwithstanding, the parties agree that upon the issuance of a Declaration of Financial Necessity by the State Health Officer, the maximum amount payable under this Contract may be unilaterally reduced by the Department to an appropriate amount to be determined by the Department upon notice of such being given in writing to the Contractor. Notwithstanding such reduction, the Contractor shall be recompensed for work and labor performed and completed prior to the issuance of such notice on principles of quantum meruit.

**DEBT OF STATE CLAUSE.** It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article XI, Section 213 of the Constitution of Alabama of 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this Contract shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this Contract, be enacted, then that conflicting provision in the Contract shall be deemed null and void. The Contractor's sole remedy for the settlement of any and all disputes arising under the terms of this Contract shall be limited to the filing of a claim with the Board of Adjustment for the State of Alabama.

**DISPUTES.** In the event of any dispute between the parties, senior officials of both parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail and the dispute involves the payment of money, a party's sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama. For any and all other disputes arising under the terms of this contract which are not resolved by negotiation, the parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing where appropriate, mediators selected from the roster of mediators maintained by the Center for Dispute Resolution of the Alabama State Bar. ✓

**MERIT SYSTEM CLAUSE.** Contractor shall not be entitled to receive any benefits under this Contract that merit system employees receive by virtue of their status or employment, nor may Contractor nor any of its officers, agents, servants or employees be employed as a merit system employee during the term of this Contract. Any such employment automatically voids this Contract. ✓

[REDACTED]

**HOLD HARMLESS CLAUSE.** Contractor hereby indemnifies and holds harmless the State of Alabama and the Department and their officers, agents, servants, and employees from any and all claims arising out of acts or omissions committed by the Contractor or any Subcontractor, agent, servant or employee of Contractor while in performance hereunder.

**FUND APPROPRIATION CLAUSE.** It is agreed that the Department may terminate this Contract by providing a thirty (30) day written notice to Contractor should the Legislature of Alabama fail to appropriate funds for the continued payment of this Contract. This termination for cause is supplemental to any other rights Department may have under this Contract or otherwise to terminate this Contract.

**TOBACCO SMOKE CLAUSE.** Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994, requires that smoking not be permitted in any portion of any indoor facility routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to one-thousand dollars (\$1000) per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this Contract the Contractor certifies that it will comply with the requirements of the Act.

The Contractor further agrees that it will require the language of this certification be included in any sub-awards which contain provisions for the children's services and that all Subcontractors shall certify accordingly.

**LOBBYING CLAUSE.** The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of

[REDACTED]

a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten-thousand dollars (\$10,000) and not more than one-hundred-thousand dollars (\$100,000) for each such failure.

**DEBARMENT, SUSPENSION CLAUSE.** For the purposes of this clause, "prospective lower tier participant" or "lower tier participant" refers to the Contractor.

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause 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 lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had 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 meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant 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 proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for



[REDACTED]

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 proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, 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 Federal Procurement and Nonprocurement 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 sub-paragraph 5 above, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

#### Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion--Lower Tier Covered Transactions.

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is 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 lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**RECORD RETENTION.** The Contractor is aware that it must retain all records pertinent to expenditure incurred under this Contract for a period of three (3) years after the termination of all activities funded under this Contract. Records for any displaced person must be kept three (3) years after he/she has received final payment. Notwithstanding the above, if there are litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the three-year period, then such records must be retained until completion of the actions and resolutions of all issues, or the expiration of the three-year period, plus the current year whichever occurs later. See Department of Public Examiners for its record retention policy.

**AVAILABILITY OF FINANCIAL STATEMENTS.** All records and financial statements, to include a copy of the independent audit report, shall be made available to

[REDACTED]

authorized personnel from the State or Federal Program Office, the Examiners of Public Accounts or their representatives, for audit and inspection purposes.

**AUDIT REQUIREMENTS.** A non-Federal Contractor that expends \$750,000 in federal awards or more during the Contractor's fiscal year must have a single audit conducted in accordance with the Uniform Administrative Requirements, 2 CFR Part 200, Subpart F.

**HIPAA CLAUSE.** This clause is necessitated by the application of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (the "HITECH Act"), any associated regulations and the federal regulations published at 45 CFR parts 160 and 164 (sometimes collectively referred to as "HIPAA"). References to this clause are to the Code of Federal Regulations, hereinafter "CFR."

The parties agree to use and disclose Protected Health Information in compliance with the Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule"). The definitions set forth in the Privacy Rule are incorporated by reference into this Contract (45 C.F.R. §§ 160.103 and 164.501). The Parties likewise agree to take all necessary precautions to protect the integrity of electronic protected health information (e-PHI) by complying with the HIPAA Security Rule.

**BUSINESS ASSOCIATE AGREEMENT (BAA) CLAUSE.** It is understood and agreed that the Department is a "hybrid entity" as defined by HIPAA of 1996 and the federal "Standards for Privacy of Individually Identifiable Health Information" promulgated thereunder at 45 CFR Parts 160 and 164. Further, it is agreed that as a business associate of the Department that its use or disclosure of any person's protected health information received from or on behalf of the Department will be governed by the Business Associate Agreement, attached hereto as Attachment 2, which the Contractor agrees to by signing and submitting with this contract. Such Business Associate Agreement is executed and is effective simultaneously with this contract/amendment. However, the Business Associate Agreement will survive this contract/amendment pursuant to Section 4 of the Business Associate Agreement until the information is destroyed or returned to the Department.

**INTERPRETATION CLAUSE.** Where there is an apparent conflict among the Contract documents which cannot be resolved by interpretation, this document controls.

Contractor:  
CertiSurv, LLC

Alabama Department of Public Health  
*This Contract has been reviewed as to content*

Signed: [Signature]  
Robert Feurer  
CEO

Signed: [Signature]  
Jacqueline D. Milledge, Acting Director  
Bureau of Health Provider Standards

Date: 10/28/2021

Date: 11/2/2021

Address:  
112 W 7<sup>th</sup> St, Ste C  
Columbia, TN 38401

APPROVED:  
Alabama Department of Public Health

Telephone: [Redacted]  
Fax: [Redacted]

Signed: [Signature]  
Scott Harris, M.D., M.P.H.  
State Health Officer

Contractor please type or print your  
email address: www.certisurv.com

[Redacted]

Date: 11/4/21

APPROVED:  
State of Alabama

Signed: [Signature]  
Kay Ivey, Governor

Reviewed by Contract  
Review Committee  
Contract [Redacted]

Date: 12-9-2021

DEC 02 2021

Alabama Legislature  
[Signature]

APPROVED AS TO FORM AND  
COMPLIANCE WITH APPLICABLE  
RULES AND REGULATIONS  
DEPT. OF PUBLIC HEALTH

NOV 3 2021

[Signature]  
OFFICE OF GENERAL COUNSEL

# Exhibit 4



STATE OF IOWA  
MASTER AGREEMENT  
Contract Declaration and Execution

MA 005

23107

EFFECTIVE BEGIN DATE: 03-01-2023  
EXPIRATION DATE: 02-28-2025  
PAGE: 1 of 4

**VENDOR:**

Healthcare Management Solutions  
LLC

Attention: Matt Loss  
1000 Technology Dr Ste 1310  
Fairmont, WV 26554-8829

**VENDOR CONTACT:**

Matt Loss  
PHONE: [REDACTED]  
EMAIL: [REDACTED]

**ISSUER:**

Kathy Harper  
PHONE: [REDACTED]  
EMAIL: [REDACTED]

EXT:

**FOB:**

**Contract For:** Long Term Care Surveyors

The parties agree to comply with the terms and conditions on the following attachments which are by this reference made a part of the Agreement.

Attachments are on file with the Department of Administrative Services - Central Services Enterprise

Attachment 1: Competitive Solicitation 005-RFP-0161-2022

Attachment 2: Contractor's Response to Competitive Solicitation 005-RFP-0161-2022

Attachment 3: Contractor's Cost (final pricing documentation) Response to competitive solicitation document 005-RFP-0161-2022

**RENEWAL OPTIONS**

<b>FROM</b>	03-01-2025	<b>TO</b>	02-28-2026
<b>FROM</b>	03-01-2026	<b>TO</b>	02-28-2027
<b>FROM</b>	03-01-2027	<b>TO</b>	02-29-2028
<b>FROM</b>	03-01-2028	<b>TO</b>	02-28-2029

**AUTHORIZED DEPARTMENT**

427 Inspections and Appeals, Dept Of



**STATE OF IOWA**  
**MASTER AGREEMENT**  
 Contract Declaration and Execution

MA 005

23107

EFFECTIVE BEGIN DATE: 03-01-2023  
 EXPIRATION DATE: 02-28-2025  
 PAGE: 2 of 4

LINE NO.	QUANTITY / SERVICE DATES	UNIT	COMMODITY / DESCRIPTION	UNIT COST / PRICE OF SERVICE
----------	--------------------------	------	-------------------------	------------------------------

1	0.00000	EA	961	\$ 18,496.000000 \$ 0.000000
---	---------	----	-----	---------------------------------

REF DOC: REF VNDR LN: REF COMM LN: REF TYPE: FINAL

MISCELLANEOUS SERVICES, NO. 1 (NOT OTHERWISE CLASSIFIED)  
 0 - 48 beds (and up to three (3) attached complaints)

Survey for a facility with 0 - 48 beds (and up to three (3) attached complaints)

2	0.00000	EA	961	\$ 27,515.000000 \$ 0.000000
---	---------	----	-----	---------------------------------

REF DOC: REF VNDR LN: REF COMM LN: REF TYPE: FINAL

MISCELLANEOUS SERVICES, NO. 1 (NOT OTHERWISE CLASSIFIED)  
 49 - 95 beds (and up to three (3) attached complaints)

Survey for a facility with 49 - 95 beds (and up to three (3) attached complaints)

3	0.00000	EA	961	\$ 36,385.000000 \$ 0.000000
---	---------	----	-----	---------------------------------

REF DOC: REF VNDR LN: REF COMM LN: REF TYPE: FINAL

MISCELLANEOUS SERVICES, NO. 1 (NOT OTHERWISE CLASSIFIED)  
 96-174 beds (and up to three (3) attached complaints)

Cost per survey for a facility with 96-174 beds (and up to three (3) attached complaints)

4	0.00000	EA	961	\$ 45,255.000000 \$ 0.000000
---	---------	----	-----	---------------------------------

REF DOC: REF VNDR LN: REF COMM LN: REF TYPE: FINAL

MISCELLANEOUS SERVICES, NO. 1 (NOT OTHERWISE CLASSIFIED)  
 175 + beds (and up to three (3) attached complaints)

Cost per survey for a facility with 175 + beds (and up to three (3) attached complaints)

5	0.00000	EA	961	\$ 9,625.000000 \$ 0.000000
---	---------	----	-----	--------------------------------

REF DOC: REF VNDR LN: REF COMM LN: REF TYPE: FINAL

MISCELLANEOUS SERVICES, NO. 1 (NOT OTHERWISE CLASSIFIED)  
 Additional surveyors for attached complaints over(3)



STATE OF IOWA  
MASTER AGREEMENT  
Contract Declaration and Execution

MA 005

23107

EFFECTIVE BEGIN DATE: 03-01-2023

EXPIRATION DATE: 02-28-2025

PAGE: 3 of 4

LINE NO.	QUANTITY / SERVICE DATES	UNIT	COMMODITY / DESCRIPTION	UNIT COST / PRICE OF SERVICE
----------	--------------------------	------	-------------------------	------------------------------

Cost for additional surveyors for attached complaints in excess of three (3)



STATE OF IOWA

MA 005

23107

MASTER AGREEMENT

EFFECTIVE BEGIN DATE:

03-01-2023

Contract Declaration and Execution

EXPIRATION DATE:



02-28-2025

PAGE:

4 of 4

TERMS AND CONDITIONS

THIS MASTER AGREEMENT IS EFFECTIVE AS OF THE LATEST DATE SHOWN IN "EFFECTIVE BEGIN DATE" IN THE UPPER RIGHT HAND CORNER OR THE DATE BELOW SIGNED BY THE STATE OF IOWA.

CONTRACTOR		STATE OF IOWA	
<b>CONTRACTOR'S NAME</b> (If other than an individual, state whether a corp, partnership, etc.) Healthcare Management Solutions, LLC		<b>AGENCY NAME</b> DAS Central Services Enterprise	
<b>BY (Authorized Signature)</b>	<b>Date Signed</b>	<b>BY (Authorized Signature)</b>	<b>Date Signed</b>
 <small>Laura Reeder (Oct 31, 2022 10:52 EDT)</small>	10/31/22		10/31/22
<b>Printed Name and Title of Person Signing</b>		<b>Printed Name and Title of Person Signing</b>	
		Kathy Harper, Purchasing Agent III	
<b>Address</b> 1000 Technology Drive, Suite 1310 Fairmont, WV 26554		<b>Address</b> Hoover Building, 3rd Floor 1305 Walnut Street Des Moines, Iowa 50319	



# Exhibit 5

# Attachment DD

## VENDOR PROPOSAL



**Section I – Title Page**

<b>Part IA – Technical Proposal</b>	
RFP Title:	Federal Health Facility Inspections
RFP:	40DHHS-S988
Vendor Name:	Healthcare Management Solutions, LLC
Address:	1000 Technology Drive, Suite 1310, Fairmont, WV 26554
Opening Date:	May 19, 2020
Opening Time:	2:00 PM



## Section II – Table of Contents

Section I – Title Page .....	i
Section II – Table of Contents .....	ii
Section III – Vendor Information Sheet.....	1
Section IV – State Documents .....	2
A.    Signature Page From All Amendments .....	2
B.    Attachment A – Confidentiality and Certification of Indemnification .....	3
C.    Attachment B – Vendor Certifications .....	5
D.    Attachment H – Certification Regarding Lobbying.....	7
E.    Vendor Licensing Agreements and Hardware/Software Maintenance Agreements .....	9
F.    Applicable Certifications and/or Licenses .....	10
Section V – Scope of Work .....	11
Section VI – Company Background and References.....	12
Section VII – Proposed Staff Resumes .....	22
Section VIII – Other Informational Materials .....	23

## Section III – Vendor Information Sheet

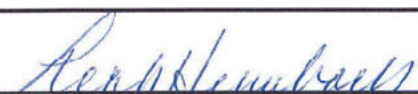
V1	<b>Company Name</b>	
	Healthcare Management Solutions, LLC	

V2	<b>Company Address</b>	
	Street Address:	1000 Technology Drive, Suite 1310
	City, State, Zip Code:	Fairmont, WV 26554

V3	<b>Telephone Numbers</b>			
		<b>Area Code</b>	<b>Number</b>	<b>Extension</b>
	Telephone:			N/A
	Fax:			N/A
	Toll Free:	N/A		

V4	<i>Contact Person for Questions / Contract Negotiations, including address if different than above</i>	
	Name:	Matthew Loss
	Title:	Proposal Manager
	Address:	1000 Technology Drive, Suite 1310, Fairmont, WV 26554
	Email Address:	
	Telephone Number:	
	Fax:	

V5	<i>Name of Individual Authorized to Bind the Organization</i>	
	Name:	Leah Heimbach
	Title:	President

V6	<i>Signature (Individual shall be legally authorized to bind the vendor per NRS 333.337)</i>	
	Signature: 	Date: April 22, 2020

## Section IV – State Documents

### A. Signature Page From All Amendments

No amendments with a signature page for Request for Proposal: 40DHHS-S988 have been released. However, HMS did receive and review the answers to questions.

## **B. Attachment A – Confidentiality and Certification of Indemnification**

Please see the following page for HMS' completed Attachment A – Confidentiality and Certification of Indemnification document.

**ATTACHMENT A – CONFIDENTIALITY AND CERTIFICATION OF INDEMNIFICATION**

Submitted proposals, which are marked “confidential” in their entirety, or those in which a significant portion of the submitted proposal is marked “confidential” **shall not** be accepted by the State of Nevada. Pursuant to NRS 333.333, only specific parts of the proposal may be labeled a “trade secret” as defined in NRS 600A.030(5). All proposals are confidential until the contract is awarded; at which time, both successful and unsuccessful vendors’ technical and cost proposals become public information.

In accordance with the submittal instructions of this RFP, vendors are requested to submit confidential information in separate files marked “**Part IB Confidential Technical**” and “**Part III Confidential Financial**”.

The State shall not be responsible for any information contained within the proposal. If vendors do not comply with the labeling and packing requirements, proposals shall be released as submitted. In the event a governing board acts as the final authority, there may be public discussion regarding the submitted proposals that shall be in an open meeting format, the proposals shall remain confidential.

By signing below, I understand it is my responsibility as the vendor to act in protection of the labeled information and agree to defend and indemnify the State of Nevada for honoring such designation. I duly realize failure to so act shall constitute a complete waiver and all submitted information shall become public information; additionally, failure to label any information that is released by the State shall constitute a complete waiver of any and all claims for damages caused by the release of the information.

This proposal contains Confidential Information, Trade Secrets and/or Proprietary information.

*Please initial the appropriate response in the boxes below and provide the justification for confidential status.*

Part IB – Confidential Technical Information			
YES	<input checked="" type="checkbox"/>	NO	<input type="checkbox"/>
Justification for Confidential Status			
This volume contains HMS employee names, education and certifications, employment history, etc.			
This is personally identifiable information (PII) and is considered by HMS to be confidential and proprietary.			

Part III – Confidential Financial Information			
YES	<input checked="" type="checkbox"/>	NO	<input type="checkbox"/>
Justification for Confidential Status			
This volume contains HMS' 2020 interim and last two years Profit and Loss Statements and Balance Statements and is considered by HMS to be confidential and proprietary.			

Heathcare Management Solutions, LLC

Company Name

Signature *Leah Heimbach*

Signature

Leah Heimbach

Print Name

04/22/20

Date

This document shall be submitted in Section IV of vendor’s technical proposal



## C. Attachment B – Vendor Certifications

Please see the following page for HMS' completed Attachment B – Vendor Certifications document.

**ATTACHMENT B – VENDOR CERTIFICATIONS**

Vendor agrees and shall comply with the following:

- (1) Any and all prices that may be charged under the terms of the contract do not and shall not violate any existing federal, State or municipal laws or regulations concerning discrimination and/or price fixing. The vendor agrees to indemnify, exonerate and hold the State harmless from liability for any such violation now and throughout the term of the contract.
- (2) All proposed capabilities can be demonstrated by the vendor.
- (3) The price(s) and amount of this proposal have been arrived at independently and without consultation, communication, agreement or disclosure with or to any other contractor, vendor or potential vendor.
- (4) All proposal terms, including prices, shall remain in effect for a minimum of 180 days after the proposal due date. In the case of the awarded vendor, all proposal terms, including prices, shall remain in effect throughout the contract negotiation process.
- (5) No attempt has been made at any time to induce any firm or person to refrain from proposing or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal. All proposals shall be made in good faith and without collusion.
- (6) All conditions and provisions of this RFP are deemed to be accepted by the vendor and incorporated by reference in the proposal, except such conditions and provisions that the vendor expressly excludes in the proposal. Any exclusion shall be in writing and included in the proposal at the time of submission.
- (7) Each vendor shall disclose any existing or potential conflict of interest relative to the performance of the contractual services resulting from this RFP. Any such relationship that might be perceived or represented as a conflict shall be disclosed. By submitting a proposal in response to this RFP, vendors affirm that they have not given, nor intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant or any employee or representative of same, in connection with this procurement. Any attempt to intentionally or unintentionally conceal or obfuscate a conflict of interest shall automatically result in the disqualification of a vendor's proposal. An award shall not be made where a conflict of interest exists. The State shall determine whether a conflict of interest exists and whether it may reflect negatively on the State's selection of a vendor. The State reserves the right to disqualify any vendor on the grounds of actual or apparent conflict of interest.
- (8) All employees assigned to the project are authorized to work in this country.
- (9) The company has a written equal opportunity policy that does not discriminate in employment practices with regard to race, color, national origin, physical condition, creed, religion, age, sex, marital status, sexual orientation, developmental disability or disability of another nature.
- (10) The company has a written policy regarding compliance for maintaining a drug-free workplace.
- (11) Vendor understands and acknowledges that the representations within their proposal are material and important and shall be relied on by the State in evaluation of the proposal. Any vendor misrepresentations shall be treated as fraudulent concealment from the State of the true facts relating to the proposal.
- (12) Vendor shall certify that any and all subcontractors comply with Sections 7, 8, 9, and 10, above.
- (13) The proposal shall be signed by the individual(s) legally authorized to bind the vendor per NRS 333.337.

**Healthcare Management Solutions, LLC**

Vendor Company Name

Vendor Signature



**Leah Heimbach**

Print Name

**04/22/20**

Date

**This document shall be submitted in Section IV of vendor's technical proposal**

---

## **D. Attachment H – Certification Regarding Lobbying**

Please see the following page for HMS' completed Attachment H – Certification Regarding Lobbying document.

**CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

By:  04/22/20  
 Signature of Official Authorized to Sign Application Date

For: Healthcare Management Solutions, LLC  
 Vendor Name

Federal Health Facility Inspections  
 Project Title

**This document shall be submitted in Section IV of vendor's technical proposal**

## **E. Vendor Licensing Agreements and Hardware/Software Maintenance Agreements**

No vendor licensing agreements and/or hardware and software maintenance agreements are required in the execution of this project. However, HMS provides all surveyors with an encrypted laptop with ASPEN Survey Explorer-Quality (ASE-Q) software and each surveyor has a CMS Profile.

## **F. Applicable Certifications and/or Licenses**

Please see Part IB – Confidential Technical Proposal for HMS staff certifications.

## Section V – Scope of Work

1. The selected vendor would need to have surveyors qualified to conduct the inspections for the inspection types listed in Section 2.3, including having Surveyor Minimum Qualifications Test (SMQT) inspectors to conduct Skilled Nursing Facilities inspections.
2. Vendor must have the ability to show surveyors assigned to conduct specific inspection type surveys, as noted in Section 2.3, have been qualified to do so by CMS, such as providing a copy of the surveyors CMS federal training transcript, upon request of the Division.
3. Inspection Types:
  - 3.1 Skilled Nursing Facilities (SNF);
  - 3.2 End-Stage Renal Disease (ESRD);
  - 3.3 Hospice;
  - 3.4 Home Health Agencies (HHA);
  - 3.5 Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID);
  - 3.6 All Hospital Types;
  - 3.7 Outpatient Physical Therapy/Outpatient Speech Pathology;
  - 3.8 Comprehensive Outpatient Rehabilitation Facilities;
  - 3.9 Rural Health Clinics (RHC); and
  - 3.10 Ambulatory Surgical Centers
4. The inspectors would be required to document inspection findings in the federal SOD form in accordance with federal principles of documentation.
  - 4.1 The SOD must be in a form that is provided to Nevada in a manner that can be uploaded into the federal database.
5. The selected vendor will be required to send inspectors to any facility through Nevada that requires an inspection.

**Section VI – Company Background and References**

1. Vendor Information

1.1 Vendors shall provide a company profile in the table format below.

Question	Response
Company name:	<i>Healthcare Management Solutions, LLC</i>
Ownership (sole proprietor, partnership, etc.):	<i>Limited Liability Company</i>
State of incorporation:	<i>West Virginia</i>
Date of incorporation:	<i>August 8, 2002</i>
# of years in business:	<i>17 Years</i>
List of top officers:	<i>Leah Heimbach, President Laura Reeder, CFO/Executive Vice President William Turner, Chief Strategy Officer Jason Cunningham, Chief Technology Officer</i>
Location of company headquarters, to include City and State:	<i>1000 Technology Drive, Suite 1310 Fairmont, WV 26554</i>
Location(s) of the office that shall provide the services described in this RFP:	<i>1000 Technology Drive, Suite 1310 Fairmont, WV 26554</i>
Number of employees locally with the expertise to support the requirements identified in this RFP:	<i>One in the State of Nevada</i>
Number of employees nationally with the expertise to support the requirements in this RFP:	<i>62 available nationwide</i>
Location(s) from which employees shall be assigned for this project:	<i>HMS' surveyors are located nationwide.</i>

1.2 Please be advised, pursuant to NRS 80.010, a corporation organized pursuant to the laws of another state shall register with the State of Nevada, Secretary of State's Office as a foreign corporation before a contract can be executed between the State of Nevada and the awarded vendor, unless specifically exempted by NRS 80.015.

1.3 The selected vendor, prior to doing business in the State of Nevada, shall be appropriately licensed by the State of Nevada, Secretary of State's Office pursuant to NRS 76. Information regarding the Nevada Business License can be located at <http://nvsos.gov>.

Question	Response
Nevada Business License Number:	<span style="background-color: black; color: black;">[REDACTED]</span>
Legal Entity Name:	<i>Healthcare Management Solutions, LLC</i>



Is “Legal Entity Name” the same name as vendor is doing business as?

Yes	X	No	
-----	---	----	--

If “No”, provide explanation.

1.4 Has the vendor ever been engaged under contract by any State of Nevada agency?

Yes	X	No	
-----	---	----	--

If “Yes”, complete the following table for each State agency for whom the work was performed. Table can be duplicated for each contract being identified.

Question	Response
Name of State agency:	<i>Department of Health and Human Services, Division of Public and Behavioral Health, Bureau of Health Care Quality and Compliance</i>
State agency contact name:	<i>Federal Health Facility Inspections</i>
Dates when services were performed:	<i>12/18/2017 – 10/31/2020</i>
Type of duties performed:	<i>Provide federal, Centers for Medicare and Medicaid Services (CMS) inspections</i>
Total dollar value of the contract:	<i>\$2,950,572.00</i>

1.5 Are you now or have you been within the last two (2) years an employee of the State of Nevada, or any of its agencies, departments, or divisions?

Yes		No	X
-----	--	----	---

If “Yes”, please explain when the employee is planning to render services, while on annual leave, compensatory time, or on their own time?

If you employ (a) any person who is a current employee of an agency of the State of Nevada, or (b) any person who has been an employee of an agency of the State of Nevada within the past two (2) years, and if such person shall be performing or producing the services which you shall be contracted to provide under this contract, you shall disclose the identity of each such person in your response to this RFP, and specify the services that each person shall be expected to perform.

- 1.6 Disclosure of any significant prior or ongoing contract failures, contract breaches, civil or criminal litigation in which the vendor has been alleged to be liable or held liable in a matter involving a contract with the State of Nevada or any other governmental entity. Any pending claim or litigation occurring within the past six (6) years which may adversely affect the vendor’s ability to perform or fulfill its obligations if a contract is awarded as a result of this RFP shall also be disclosed.

Does any of the above apply to your company?

Yes		No	X
-----	--	----	---

If “Yes”, please provide the following information. Table can be duplicated for each issue being identified.

Question	Response	
Date of alleged contract failure or breach:		
Parties involved:		
Description of the contract failure, contract breach, or litigation, including the products or services involved:		
Amount in controversy:		
Resolution or current status of the dispute:		
If the matter has resulted in a court case:	<b>Court</b>	<b>Case Number</b>
Status of the litigation:		

- 1.7 Vendors shall review and provide if awarded a contract the insurance requirements as specified in Attachment D, Insurance Schedule for RFP 40DHHS-S988.
- 1.8 Company background/history and why vendor is qualified to provide the services described in this RFP. Limit response to no more than five (5) pages.

*Healthcare Management Solutions, LLC (HMS) has extensive experience performing healthcare facility inspections (i.e., surveys) on behalf of the Centers for Medicare and Medicaid Services (CMS) and State Survey Agencies (SAs) and employs over 160 healthcare-focused professionals nationwide. Because of the volumes of surveys we conduct, we have a dedicated HMS Survey Division devoted to survey activities. This team includes qualified and*

*experienced surveyors, and seasoned project management personnel who coordinate and conduct approximately 600 surveys a year throughout all 50 states and territories.*

*In a detailed review of Nevada’s (NV) Division of Public and Behavioral Health, Bureau of Health Care Quality and Compliance (HCQC) Request for Proposal (RFP), we are confident that the requirements requested map well to our corporate experience. HMS has strong past and current performance in inspections (i.e., surveys) for Long-Term Care (LTC) and non-LTC facilities on behalf of CMS and the SAs for over 14 years.*

*Surveys we conduct are for multiple facility types which include all of those listed within this Scope of Work (SOW). Support to CMS and SAs in these efforts includes scheduling surveys, collecting and analyzing data in preparation for surveys, arranging travel logistics in accordance with Federal Travel Regulations, executing surveys, collecting and submitting required paperwork within defined timeframes, and performing follow-up activities as needed or directed. We do this through customized solutions such as our dedicated Coordination Center that is responsible for arranging travel for survey teams, and our survey management tool which is a customizable web-based tool developed by HMS to schedule, track, and report on survey activity. Using these tools and others, we will provide the required services to NV within the contracted time limits, as approved and as the budget allows.*

*Given the experience of our dedicated Survey Division team, we are well prepared to manage and perform the activities associated with conducting federal recertification surveys including emergency preparedness surveys, when applicable, federal complaint surveys, and federal follow-up revisit surveys throughout the State of NV. This will include gathering the required documentation, as provided by the Division of Public and Behavioral Health, and submitting such documentation to the Division via secure method for compliance assessment.*

## 1.8.1 Qualified Surveyors

*We currently have a qualified and talented pool of over 60 surveyors who support LTC and non-LTC inspections from which we may draw to conduct surveys in NV.*

## 1.8.2 Ability to Show Assigned Surveyors Qualification

*HMS maintains a repository of all surveyors’ training transcripts and certifications. This repository is managed by a dedicated coordinator who is responsible for ensuring all required documentation (i.e., certificates or transcripts) have been received and that qualifications are updated as needed. To demonstrate our ability to show our surveyors’ qualifications, we have provided resumes and training transcripts of current HMS surveyors in Part IB – Confidential Technical Proposal.*

*All HMS surveyors have completed the CMS trainings required for the provider type they are assigned to survey, including the Emergency Preparedness requirements. Many of our surveyors inspect multiple facility types. All HMS LTC surveyors have successfully completed the Surveyor Minimum Qualifications Test (SMQT). Survey investigations will be conducted in accordance with the State Operations Manual (SOM) by the appropriate clinical or non-clinical surveyors (i.e., registered nurses, registered dieticians, licensed social workers, or*

generalists). HMS also provides surveyors with ongoing training related to survey protocols and interpretive guidelines and their application to ensure ongoing survey quality.

Before hire, the HMS Human Resources team requests copies of surveyor training transcripts and certifications. All HMS surveyors are required to meet the CMS training and certification requirements to perform surveys for the facility type(s) in which they were hired, whether performing the surveys for CMS or an SA. All the inspections performed are in accordance with CMS' SOM and its appendices, Principles of Documentation, Survey Specific Interpretive Guidance, and required software and/or forms. The surveyors will conduct NV surveys in accordance with these guidelines and requirements.

### 1.8.3 Inspection Types

Over the past 5 years, HMS surveyors have performed over 2,500 LTC and non-LTC inspections through our work with CMS and SAs, with additional surveys scheduled or to be scheduled. For three of those years, we have been providing inspection services to NV demonstrating our ability to conduct all inspection types listed within the SOW. To date, we have successfully conducted the following inspection types on behalf of NV with additional requests actively in process:

<i>Inspection Type</i>	<i># Conducted</i>
<i>LTC (including Skilled Nursing Facilities (SNFs))</i>	<i>4</i>
<i>End-Stage Renal Disease (ESRD)</i>	<i>32</i>
<i>Hospice</i>	<i>10</i>
<i>Home Health Agencies (HHAs)</i>	<i>55</i>
<i>Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)</i>	<i>2</i>
<i>Hospitals</i>	<i>5</i>
<i>Outpatient Physical Therapy/Outpatient Speech Pathology (OPT/OSP)</i>	<i>1</i>
<i>Comprehensive Outpatient Rehabilitation Facilities (CORF)</i>	<i>1</i>
<i>Rural Health Clinics (RHC)</i>	<i>1</i>
<i>Ambulatory Surgical Centers (ASCs)</i>	<i>24</i>
<b>TOTAL</b>	<b>135</b>

Additional information to demonstrate our ability to conduct inspections is detailed in the following sections.

- **SNF:** HMS has been performing nursing home inspections on behalf of CMS since 2011, and we continue to do so. We also perform LTC inspections on behalf of 6 states. We have over 50 surveyors trained to do LTC inspections and all LTC surveyors are SMQT certified. HMS will work with the HCQC staff to schedule, plan, and execute these LTC inspections as efficiently and effectively as possible.
- **ESRD:** HMS has been performing ESRD inspections on behalf of CMS for 9 years, beginning in 2011. We have a qualified and talented core of 27 surveyors ready to support the need for ESRD inspections.
- **Hospice:** HMS began surveying hospices on behalf of CMS in 2014 to support efforts in addressing the increased workload dictated by the IMPACT Act, which requires

*hospice facilities to be surveyed no less than once every 36.9 months. Additionally, we have 22 surveyors qualified to perform hospice inspections.*

- *HHA: HMS has 17 surveyors qualified to perform HHA inspections.*
- *ICF/IID: Our first contract with CMS was to provide inspections of ICFs/IID in 2005. We have over 19 surveyors qualified to perform inspections of ICFs/IID.*
- *All Hospital Types: HMS currently conducts hospital surveys for 3 SAs. We also conduct these surveys on behalf of CMS. We have 29 surveyors qualified to perform hospital inspections.*
- *OPT/OSP: This facility type is required in our current contract with NV. We have conducted all assigned inspections with our 3 qualified surveyors.*
- *CORF: HMS has 3 surveyors qualified to perform CORF inspections.*
- *RHC: We have conducted all assigned inspections to date under RHCs. HMS has 9 surveyors qualified to perform RHC inspections.*
- *ASC: HMS has 14 surveyors qualified to perform ASC inspections.*

#### 1.8.4 Document Inspection Findings in the Federal SOD Form

*HMS recognizes that quality is integral to the survey process and has instituted a rigorous Quality Assurance (QA) review to ensure citations meet the CMS Principles of Documentation. After citations have passed HMS' quality review process, and by the fifth business day after survey exit, the assigned QA Analyst will submit the 670, Time and Expense forms, the completed ASPEN survey shell, and a copy of the exported 2567 as a PDF file. Additional supporting documentation collected from the facility will also be scanned into electronic format and submitted to NV via a secure method compliant with HIPAA regulations.*

*HMS has extensive experience with ASPEN Survey Explorer-Quality (ASE-Q) and requests a CMS Profile for surveyors once hired, so there is no delay in accessing and utilizing the tool. Surveyors utilize the Long-Term Care Survey Process (LTCSP) tool when completing LTC surveys and use electronically fillable forms for ESRD surveys since the STAR system became obsolete as of January 1, 2020.*

*Once the team is secured for an inspection, HMS will send an official email notification to NV. The email will list: 1) the facility, 2) survey dates, 3) assigned surveyors, 4) surveyor credentials, 5) CMS surveyor IDs, and 6) a request for the ASPEN survey shell. The completed shells will be used for final survey deliverables and will be submitted by the fifth business day after survey exit. HMS transmits completed survey shells and any other required documentation for survey findings to the predetermined contacts and will continue this same process for NV.*

#### 1.8.5 Ability to Send Inspectors to any Facility Through Nevada

*Based on our knowledge, experience, and understanding of this work, HMS is confident we will provide NV with the necessary support to complete the requirements in this solicitation throughout the entire state. HMS will use our innovative solutions to facilitate efficient, effective, and quality surveys, including the use of our Coordination Center, HMS' Survey*

*Management Application (SMA) tool, and internal Protected Health Information/Personally Identifiable Information (PHI/PII) documentation repositories which have two-factor authentication. These solutions can be modified to meet the specific needs of NV for this survey project and are briefly described in the following table.*

<i>Coordination Center</i>	<i>Survey Management Application</i>	<i>PHI/PII Collection Site</i>
<p><i>Core team of qualified staff who coordinate the logistics of each survey, which includes but is not limited to:</i></p> <ul style="list-style-type: none"> <li><i>• coordinating flights (with Southwest preference considered), ground transportation, and lodging at the lowest fares and in accordance with Federal Travel Regulations;</i></li> <li><i>• receiving, processing, and destruction of survey documentation;</i></li> <li><i>• processing surveyor expenses timely, and</i></li> <li><i>• providing travel-related troubleshooting to surveyors while in the field.</i></li> </ul>	<p><i>Customized web-based application designed to manage aspects and critical details of surveys. Through the SMA, we:</i></p> <ul style="list-style-type: none"> <li><i>• track the status of surveyor certifications;</i></li> <li><i>• assign surveyors based on qualifications, availability, and proximity to survey sites;</i></li> <li><i>• assign quality assurance staff;</i></li> <li><i>• collect citations/tags;</i></li> <li><i>• notify management of citation severity;</i></li> <li><i>• securely collect survey forms that contain PHI/PII; and</i></li> <li><i>• create custom reports that detail survey activity (e.g., surveys completed, surveys by type, surveys scheduled).</i></li> </ul>	<ul style="list-style-type: none"> <li><i>• Internal electronic repositories that hold survey records that contain PHI and PII.</i></li> <li><i>• Internal site helps collect and securely maintain documentation in an easy-to-access electronic format, which includes use of two-factor authentication.</i></li> </ul>

*HMS will continue utilizing current survey solutions that have proven to be successful in multiple states, including NV, to accommodate their needs. Because of our experience with NV, we already have processes in place to adjust to obstacles in the field. For example, there have been times when surveyors have arrived at a facility and found it is closed. We collaborate with NV to find solutions to optimize funds already expended by offering alternative survey services. This is just one of many examples of how HMS customizes solutions for our clients.*

*As with our current contract, HMS will work with NV to help ensure we have a shared understanding of objectives when beginning the work, and we will recommend modifications to approaches and/or strategies as needed.*

- 1.9 Provide a brief description of the length of time vendor has been providing services described in this RFP to the public and/or private sector.

---

*HMS has been performing surveys on behalf of CMS since 2005. We began working with State Survey Agencies in 2012. We perform approximately 600 surveys a year.*

1.10 Financial information and documentation to be included in accordance with *Section 8.5, Part III – Confidential Financial Information.*

1.10.1 Dun and Bradstreet Number

1.10.2 Federal Tax Identification Number

1.10.3 The last two (2) years and current year interim:

A. Profit and Loss Statement

B. Balance Statement

*Please see Part III – Confidential Financial Information for HMS’ Dun and Bradstreet Number, Federal Tax Identification Number, and the last two years and current year interim Profit and Loss Statement and Balance Statement.*

## 2. Subcontractor Information

Subcontractors are defined as a third party, not directly employed by the contractor, who shall provide services identified in this RFP. This does not include third parties who provide support or incidental services to the contractor.

### 2.1 Does this proposal include the use of subcontractors?

Yes		No	X
-----	--	----	---

If “Yes”, vendor shall:

- 2.1.1 Identify specific subcontractors and the specific requirements of this RFP for which each proposed subcontractor shall perform services.
- 2.1.2 If any tasks are to be completed by subcontractor(s), vendors shall:
  - A. Describe how the work of any subcontractor(s) shall be supervised, channels of communication shall be maintained and compliance with contract terms assured; and
  - B. Describe your previous experience with subcontractor(s).
- 2.1.3 Provide the same information for any proposed subcontractors as requested in **Section 3.1, Vendor Information**.
- 2.1.4 Vendor shall not allow any subcontractor to commence work until all insurance required of the subcontractor is provided to the vendor.
- 2.1.5 Vendor shall notify the using agency of the intended use of any subcontractors not identified within their original proposal and provide the information originally requested in the RFP in **Section 3.2, Subcontractor Information**. The vendor shall receive agency approval prior to subcontractor commencing work.



## 3. Business References

- 3.1 Vendors shall provide a minimum of three (3) business references from similar projects performed for private and/or public sector clients within the last Five (5) years.
- 3.2 Vendors shall submit Attachment E, Reference Questionnaire to their business references.
- 3.3 It is the vendor's responsibility to ensure that completed forms are received by the Purchasing Division on or before the deadline as specified in Section 7, RFP Timeline for inclusion in the evaluation process. Reference Questionnaires not received, or not complete, may adversely affect the vendor's score in the evaluation process.
- 3.4 The State reserves the right to contact and verify any and all references listed regarding the quality and degree of satisfaction for such performance.

***Reference questionnaires for HMS have been submitted by the State of Alaska, the State of California, and the State of Idaho.***

## Section VII – Proposed Staff Resumes

A resume shall be completed for each proposed key personnel responsible for performance under any contract resulting from this RFP per Attachment F, Proposed Staff Resume.

*Please see Part IB – Confidential Technical Proposal for resumes of HMS proposed Key Personnel and Survey Staff.*

---

## Section VIII – Other Informational Materials

Vendors shall include any other applicable reference material in this section clearly cross referenced with the proposal.

*HMS has included our Contractor Performance Assessment Reports (CPARs) evaluation from our HMS contract with CMS for survey services. CPARs are a federal government mandated program for the collection of past performance information. Please see the following three pages for a copy of our CPARS evaluation for the Oversight of State Performance contract, number HHSM500201400459G.*

FOR OFFICIAL USE ONLY / SOURCE SELECTION INFORMATION - SEE FAR 2.101, 3.104, AND 42.1503

**CONTRACTOR PERFORMANCE ASSESSMENT REPORT (CPAR)****Nonsystems****Name/Address of Contractor:**

Company Name: HEALTHCARE MANAGEMENT SOLUTIONS LIMITED LIABILITY COMPANY

Division Name:

Street Address: 1000 TECHNOLOGY DRIVE, SUITE 1310

City: FAIRMONT

State/Province: WV Zip Code: 265548829

Country: USA

CAGE Code:

**Evaluation Type:** Final**Contract Percent Complete:** 100**Period of Performance Being Assessed:** 09/29/2018 - 09/28/2019**Contract Number:** GS10F0232R HHSM500201400459G **Business Sector & Sub-Sector:** Nonsystems - Prof/Tech/Mng Support**Contracting Office:** OFC OF ACQUISITION AND GRANTS MGMT **Contracting Officer:** DEBORAH LESTER **Phone Number:** [REDACTED]**Location of Work:****Award Date:** 09/16/2014 **Effective Date:** 09/29/2014**Completion Date:** 09/28/2019 **Estimated/Actual Completion Date:** 09/28/2019**Total Dollar Value:** \$42,938,899 **Current Contract Dollar Value:** \$42,938,899**Complexity:** Medium **Termination Type:** None**Competition Type:** Full and Open Competition **Contract Type:** Time and Materials**Key Subcontractors and Effort Performed:****DUNS:****Effort:****DUNS:****Effort:****DUNS:****Effort:****Project Number:****Project Title:**

Oversight of State Performance

**Contract Effort Description:**

1. Assist CMS in following up on state performance and working with CMS on remediation strategies.
2. Conduct onsite federal and state surveys for Medicare/Medicaid participating providers and suppliers particularly in the US territories and Indian Health Service facilities.
4. Assist CMS in maintaining strong oversight of the quality of the Federal and State onsite inspections through expert review of survey reports, follow-up, and issue identification.

**Small Business Subcontracting:**

Does this contract include a subcontracting plan? No

Date of last Individual Subcontracting Report (ISR) / Summary Subcontracting Report (SSR): N/A

**Evaluation Areas****Past Rating****Rating**

Quality:	Exceptional	Exceptional
Schedule:	Exceptional	Exceptional
Cost Control:	Exceptional	Exceptional
Management:	Exceptional	Exceptional
Small Business Subcontracting:	N/A	N/A

Regulatory Compliance:	Satisfactory	Satisfactory
------------------------	--------------	--------------

Other Areas:

(1):	N/A
(2):	N/A
(3):	N/A

**Variance (Contract to Date):**

Current Cost Variance (%): Variance at Completion (%):

Current Schedule Variance (%):

**Assessing Official Comments:**

QUALITY: HMS provided assistance to CMS Central Office, by supporting a department-wide effort to assist U.S. Territories and Indian Health Services to improve quality of care and safety in their communities and provided assistance to CMS Regional Offices by performing on-site surveys to assist with oversight of States. HMS ensured the information provided to CMS through weekly meetings, as well as monthly and quarterly reports was clear, accurate, timely and useful. Additional tasks, adjustments, and modifications were provided as requested.

Additional detail is broken out by task:

For development of analytic data reports on state performance, HMS was responsive, developed data reports to meet CMS' needs, and formatted information to make the information accessible. HMS worked on State-specific reports for all States, which was well received by users in the ROs.

HMS<sub>2</sub> provided analysis to CMS related to the implementation of the LTC Survey Process. HMS completed an in-depth review of surveyor documents to identify areas of improvement. In addition, HMS assisted CMS with gathering information related to infection control practices in skilled nursing facilities that provide services to ventilator-dependent residents.

Also, HMS continued to work with Survey & Certification operations in five State survey agencies. HMS facilitated strong relationships with the States and CMS Regional Offices and recommend practical areas of improvement. Detailed actions plans were developed and monitored, and HMS assisted the States in executing the plans through multiple activities, such as the development of guides, reporting tools, presentations for training and orienting staff, tracking sheets, training exercises, templates for correspondence, and draft standard operating procedures and policies. The outcome of HMS<sub>2</sub> work includes, but is not limited to, improvements in surveyor outcomes, implementation of complaint protocols, establishment of staff accountability, and increased quality and efficiency in State operations.

For surveys, generally, HMS performed their survey duties professionally, competently, and with an understanding that they represented both HMS and CMS. CMS received positive feedback regarding the experience and professionalism of HMS<sub>2</sub> surveyor staff. There were instances where survey documentation required revisions; in these instances, HMS was responsive to comments from CMS Central Office, the CMS Regional Offices, and States.

HMS also completed an infection control pilot and performed an assessment as to whether there were any gaps in the nursing home survey process.

HMS also developed content for the Surveyor Orientation Resource manual. The development of the manual required flexibility from HMS, as CMS was in the process of revising policies and needed to assure that these were incorporated into the deliverables.

SCHEDULE: HMS provided all deliverables within the SOW in a timely manner. HMS was willing to work with CMS on scheduling surveys, even as surveys were not distributed evenly through the contract year; HMS planned ahead in trying to anticipate any potential staffing shortages. For example, HMS was able to deploy surveyors for 25% of its trips in a two-month period. HMS also exceeded the expectations by providing assistance on surveys with short notice when needed by CMS and the States. For some of these cases, this allowed CMS to provide oversight of facilities to ensure that residents and patients were receiving quality care in a safe environment. HMS accommodated survey requests from Central Office, the Regions, and States without delay.

HMS also assured that all deliverables under the other tasks of the contract were timely.

COST CONTROL: HMS has provided the requested assistance, including additional requests and modified work within the stated cost structure. HMS made every effort to ensure travel arrangements were made at the earliest possible date in order to ensure cost savings. HMS ensured a strict adherence to the GSA rates and Federal Travel Regulations in an effort to maintain costs at a minimum. HMS made every effort to schedule surveys together, when possible, in order to assist with cost control. Also, when there were unanticipated survey cancellations, HMS worked to see if they could salvage the travel costs and conduct a survey at a different facility.

MANAGEMENT: HMS staff, including the Project Director, was always readily accessible and maintained open communication with CMS staff. HMS responded to all scheduled and additionally requested tasks in an accurate and timely manner.

HMS management was highly responsive to feedback on specific tasks and took immediate action to ensure that CMS' needs were met, the project met the terms of the SOW and moved in the right direction. For example, when there were errors identified in CMS' datasets, HMS did not allow this to hinder the project task; the work continued and ultimately met CMS' needs. They also actively sought out feedback

on their continued performance under the Contract which assisted in identifying issues early and addressing them constructively.

REGULATORY COMPLIANCE: HMS has successfully met the terms of the Contract and has worked to identify efficiencies, and areas of improvement.

**RECOMMENDATION:**

Given what I know today about the contractor's ability to perform in accordance with this contract or order's most significant requirements, I would recommend them for similar requirements in the future.

**Name and Title of Assessing Official:**

Name: DEBORAH LESTER

Title: Contracting Officer

Organization: Centers for Medicare & Medicaid Serv

Phone Number: [REDACTED]

Date: 10/14/2019

**Contractor Comments:**

ADDITIONAL/OTHER: We appreciate these evaluation ratings and comments, and value the positive feedback. We are proud of the collaborative nature of the work we have been engaged in, in helping CMS in protecting these vulnerable populations and promoting quality and better outcomes for beneficiaries.

CONCURRENCE: I concur with this evaluation.

**Name and Title of Contractor Representative:**

Name: Leah J. Heimbach

Title: President

Phone Number: 3043680288 Email Address: contracts@hcmsllc.com

Date: 10/28/2019

**Review by Reviewing Official:**

Review by Reviewing Official not required.

**Name and Title of Reviewing Official:**

Name:

Title:

Organization:

Phone Number: Email Address:

Date:

## Section I – Title Page

<b>Part II – Cost Proposal</b>	
RFP Title:	Federal Health Facility Inspections
RFP:	40DHHS-S988
Vendor Name:	Healthcare Management Solutions, LLC
Address:	1000 Technology Drive, Suite 1310 Fairmont, WV 26554
Opening Date:	May 19, 2020
Opening Time:	2:00 PM

## **Section II – Cost Proposal**

*Please see the pages below for HMS' completed Attachment G, Cost Schedule. An electronic Microsoft Excel version is also included with this submission.*



ATTACHMENT G - COST SCHEDULE  
RECERTIFICATION SURVEY

<b>COST SCHEDULE - Recertification</b>	<b>Example (SNF)</b>	<b>SNF</b>	<b>ESRD</b>	<b>Hospice</b>	<b>HHA</b>	<b>ICF/IID</b>	<b>Hospital</b>	<b>OPT</b>	<b>CORF</b>	<b>RHC</b>	<b>ASC</b>
Facility Size (# of beds estimate covers)	2 to 400	2 to 400	Any Size	Any Size	Any Size	1 to 100	Any Size	Any Size	Any Size	Any Size	Any Size
Daily Cost Per Surveyor	\$ 300.00	\$ 910.00	\$ 935.00	\$ 925.00	\$ 905.00	\$ 905.00	\$ 900.00	\$ 930.00	\$ 930.00	\$ 930.00	\$ 895.00
Number of Surveyors	4	4	1	1	2	2	3	1	1	1	2
Number of Survey Days	1	4	4	3	3	3	4	3	3	3	2
Number of Preparation & Follow Up Days	1	1	1	1	1	1	1	1	1	1	1
Number of Travel Days	1	2	2	2	2	2	2	2	2	2	2
Total Days	3	7	7	6	6	6	7	6	6	6	5
Days Onsite (Survey + Travel)*	2	6	6	5	5	5	6	5	5	5	4
Cost Per Surveyor (Daily Cost x Total Days)	\$ 900.00	\$ 6,370.00	\$ 6,545.00	\$ 5,550.00	\$ 5,430.00	\$ 5,430.00	\$ 6,300.00	\$ 5,580.00	\$ 5,580.00	\$ 5,580.00	\$ 4,475.00
<b>SURVEYOR COST SUBTOTAL</b> <b>(Cost Per x Number of Surveyors)</b>	<b>\$ 3,600.00</b>	<b>\$ 25,480.00</b>	<b>\$ 6,545.00</b>	<b>\$ 5,550.00</b>	<b>\$ 10,860.00</b>	<b>\$ 10,860.00</b>	<b>\$ 18,900.00</b>	<b>\$ 5,580.00</b>	<b>\$ 5,580.00</b>	<b>\$ 5,580.00</b>	<b>\$ 8,950.00</b>
<b>Travel Costs (from Travel Calculations Sheet)</b>											
Incline Village/Reno/Sparks	\$ 4,512.00	\$ 8,736.00	\$ 2,184.00	\$ 1,920.00	\$ 3,840.00	\$ 3,840.00	\$ 6,552.00	\$ 1,920.00	\$ 1,920.00	\$ 1,920.00	\$ 3,312.00
Las Vegas	\$ 4,544.00	\$ 8,832.00	\$ 2,208.00	\$ 1,940.00	\$ 3,880.00	\$ 3,880.00	\$ 6,624.00	\$ 1,940.00	\$ 1,940.00	\$ 1,940.00	\$ 3,344.00
Other Nevada Locations	\$ 4,408.00	\$ 8,424.00	\$ 2,106.00	\$ 1,855.00	\$ 3,710.00	\$ 3,710.00	\$ 6,318.00	\$ 1,855.00	\$ 1,855.00	\$ 1,855.00	\$ 3,208.00
<b>TOTAL ESTIMATED COSTS (Subtotal + Travel)</b>											
Incline Village/Reno/Sparks	\$ 8,112.00	\$ 34,216.00	\$ 8,729.00	\$ 7,470.00	\$ 14,700.00	\$ 14,700.00	\$ 25,452.00	\$ 7,500.00	\$ 7,500.00	\$ 7,500.00	\$ 12,262.00
Las Vegas	\$ 8,144.00	\$ 34,312.00	\$ 8,753.00	\$ 7,490.00	\$ 14,740.00	\$ 14,740.00	\$ 25,524.00	\$ 7,520.00	\$ 7,520.00	\$ 7,520.00	\$ 12,294.00
Other Nevada Locations	\$ 8,008.00	\$ 33,904.00	\$ 8,651.00	\$ 7,405.00	\$ 14,570.00	\$ 14,570.00	\$ 25,218.00	\$ 7,435.00	\$ 7,435.00	\$ 7,435.00	\$ 12,158.00

- 1 Complete yellow shaded areas on Cost Schedule with fixed pricing and staffing information for each facility type listed.
- 2 Complete yellow shaded areas on Travel Schedule with estimates for airfare, parking, and transportation.
- 3 The highest priced Total Estimated Cost for each survey type is transferred to the Project Cost Summary table below for evaluation.
- 4 Use this sheet for recertification survey costs

<b>COST SCHEDULE - Follow Up Visit</b>	<b>Example (SNF)</b>	<b>SNF</b>	<b>ESRD</b>	<b>Hospice</b>	<b>HHA</b>	<b>ICF/IID</b>	<b>Hospital</b>	<b>OPT</b>	<b>CORF</b>	<b>RHC</b>	<b>ASC</b>
Facility Size (# of beds estimate covers)	2 to 400	2 to 400	Any Size	Any Size	Any Size	1 to 100	Any Size	Any Size	Any Size	Any Size	Any Size
Daily Cost Per Surveyor	\$ 300.00	\$ 940.00	\$ 945.00	\$ 945.00	\$ 945.00	\$ 945.00	\$ 940.00	\$ 945.00	\$ 945.00	\$ 945.00	\$ 945.00
Number of Surveyors	4	2	1	1	1	1	2	1	1	1	1
Number of Survey Days	1	2	1	1	1	1	2	1	1	1	1
Number of Preparation & Follow Up Days	1	1	1	1	1	1	1	1	1	1	1
Number of Travel Days	1	2	2	2	2	2	2	2	2	2	2
Total Days	3	5	4	4	4	4	5	4	4	4	4
Days Onsite (Survey + Travel)*	2	4	3	3	3	3	4	3	3	3	3
Cost Per Surveyor (Daily Cost x Total Days)	\$ 900.00	\$ 4,700.00	\$ 3,780.00	\$ 3,780.00	\$ 3,780.00	\$ 3,780.00	\$ 4,700.00	\$ 3,780.00	\$ 3,780.00	\$ 3,780.00	\$ 3,780.00
<b>SURVEYOR COST SUBTOTAL</b> <b>(Cost Per x Number of Surveyors)</b>	<b>\$ 3,600.00</b>	<b>\$ 9,400.00</b>	<b>\$ 3,780.00</b>	<b>\$ 3,780.00</b>	<b>\$ 3,780.00</b>	<b>\$ 3,780.00</b>	<b>\$ 9,400.00</b>	<b>\$ 3,780.00</b>	<b>\$ 3,780.00</b>	<b>\$ 3,780.00</b>	<b>\$ 3,780.00</b>
<b>Travel Costs (from Travel Calculations Sheet)</b>											
Incline Village/Reno/Sparks	\$ 4,512.00	\$ 3,312.00	\$ 1,392.00	\$ 1,392.00	\$ 1,392.00	\$ 1,392.00	\$ 3,312.00	\$ 1,392.00	\$ 1,392.00	\$ 1,392.00	\$ 1,392.00
Las Vegas	\$ 4,544.00	\$ 3,344.00	\$ 1,404.00	\$ 1,404.00	\$ 1,404.00	\$ 1,404.00	\$ 3,344.00	\$ 1,404.00	\$ 1,404.00	\$ 1,404.00	\$ 1,404.00
Other Nevada Locations	\$ 4,408.00	\$ 3,208.00	\$ 1,353.00	\$ 1,353.00	\$ 1,353.00	\$ 1,353.00	\$ 3,208.00	\$ 1,353.00	\$ 1,353.00	\$ 1,353.00	\$ 1,353.00
<b>TOTAL ESTIMATED COSTS (Subtotal + Travel)</b>											
<b>Incline Village/Reno/Sparks</b>	<b>\$ 8,112.00</b>	<b>\$ 12,712.00</b>	<b>\$ 5,172.00</b>	<b>\$ 5,172.00</b>	<b>\$ 5,172.00</b>	<b>\$ 5,172.00</b>	<b>\$ 12,712.00</b>	<b>\$ 5,172.00</b>	<b>\$ 5,172.00</b>	<b>\$ 5,172.00</b>	<b>\$ 5,172.00</b>
<b>Las Vegas</b>	<b>\$ 8,144.00</b>	<b>\$ 12,744.00</b>	<b>\$ 5,184.00</b>	<b>\$ 5,184.00</b>	<b>\$ 5,184.00</b>	<b>\$ 5,184.00</b>	<b>\$ 12,744.00</b>	<b>\$ 5,184.00</b>	<b>\$ 5,184.00</b>	<b>\$ 5,184.00</b>	<b>\$ 5,184.00</b>
<b>Other Nevada Locations</b>	<b>\$ 8,008.00</b>	<b>\$ 12,608.00</b>	<b>\$ 5,133.00</b>	<b>\$ 5,133.00</b>	<b>\$ 5,133.00</b>	<b>\$ 5,133.00</b>	<b>\$ 12,608.00</b>	<b>\$ 5,133.00</b>	<b>\$ 5,133.00</b>	<b>\$ 5,133.00</b>	<b>\$ 5,133.00</b>

- 1 Complete yellow shaded areas on Cost Schedule with fixed pricing and staffing information for each facility type listed.
- 2 Complete yellow shaded areas on Travel Schedule with estimates for airfare, parking, and transportation.
- 3 The highest priced Total Estimated Cost for each survey type is transferred to the Project Cost Summary table below for evaluation.
- 4 Use this sheet for follow up survey costs

<b>COST SCHEDULE - Complaint</b>	<b>Example (SNF)</b>	<b>SNF</b>	<b>ESRD</b>	<b>Hospice</b>	<b>HHA</b>	<b>ICF/IID</b>	<b>Hospital</b>	<b>OPT</b>	<b>CORF</b>	<b>RHC</b>	<b>ASC</b>
Facility Size (# of beds estimate covers)	2 to 400	2 to 400	Any Size	Any Size	Any Size	1 to 100	Any Size	Any Size	Any Size	Any Size	Any Size
Daily Cost Per Surveyor	\$ 300.00	\$ 925.00	\$ 920.00	\$ 925.00	\$ 920.00	\$ 920.00	\$ 920.00	\$ 925.00	\$ 925.00	\$ 925.00	\$ 925.00
Number of Surveyors	4	1	1	1	1	1	1	1	1	1	1
Number of Survey Days	1	4	3	2	3	3	3	2	2	2	2
Number of Preparation & Follow Up Days	1	1	1	1	1	1	1	1	1	1	1
Number of Travel Days	1	2	2	2	2	2	2	2	2	2	2
Total Days	3	7	6	5	6	6	6	5	5	5	5
Days Onsite (Survey + Travel)*	2	6	5	4	5	5	5	4	4	4	4
Cost Per Surveyor (Daily Cost x Total Days)	\$ 900.00	\$ 6,475.00	\$ 5,520.00	\$ 4,625.00	\$ 5,520.00	\$ 5,520.00	\$ 5,520.00	\$ 4,625.00	\$ 4,625.00	\$ 4,625.00	\$ 4,625.00
<b>SURVEYOR COST SUBTOTAL (Cost Per x Number of Surveyors)</b>	<b>\$ 3,600.00</b>	<b>\$ 6,475.00</b>	<b>\$ 5,520.00</b>	<b>\$ 4,625.00</b>	<b>\$ 5,520.00</b>	<b>\$ 5,520.00</b>	<b>\$ 5,520.00</b>	<b>\$ 4,625.00</b>	<b>\$ 4,625.00</b>	<b>\$ 4,625.00</b>	<b>\$ 4,625.00</b>
<b>Travel Costs (from Travel Calculations Sheet)</b>											
Incline Village/Reno/Sparks	\$ 4,512.00	\$ 2,184.00	\$ 1,920.00	\$ 1,656.00	\$ 1,920.00	\$ 1,920.00	\$ 1,920.00	\$ 1,656.00	\$ 1,656.00	\$ 1,656.00	\$ 1,656.00
Las Vegas	\$ 4,544.00	\$ 2,208.00	\$ 1,940.00	\$ 1,672.00	\$ 1,940.00	\$ 1,940.00	\$ 1,940.00	\$ 1,672.00	\$ 1,672.00	\$ 1,672.00	\$ 1,672.00
Other Nevada Locations	\$ 4,408.00	\$ 2,106.00	\$ 1,855.00	\$ 1,604.00	\$ 1,855.00	\$ 1,855.00	\$ 1,855.00	\$ 1,604.00	\$ 1,604.00	\$ 1,604.00	\$ 1,604.00
<b>TOTAL ESTIMATED COSTS (Subtotal + Travel)</b>											
<b>Incline Village/Reno/Sparks</b>	<b>\$ 8,112.00</b>	<b>\$ 8,659.00</b>	<b>\$ 7,440.00</b>	<b>\$ 6,281.00</b>	<b>\$ 7,440.00</b>	<b>\$ 7,440.00</b>	<b>\$ 7,440.00</b>	<b>\$ 6,281.00</b>	<b>\$ 6,281.00</b>	<b>\$ 6,281.00</b>	<b>\$ 6,281.00</b>
<b>Las Vegas</b>	<b>\$ 8,144.00</b>	<b>\$ 8,683.00</b>	<b>\$ 7,460.00</b>	<b>\$ 6,297.00</b>	<b>\$ 7,460.00</b>	<b>\$ 7,460.00</b>	<b>\$ 7,460.00</b>	<b>\$ 6,297.00</b>	<b>\$ 6,297.00</b>	<b>\$ 6,297.00</b>	<b>\$ 6,297.00</b>
<b>Other Nevada Locations</b>	<b>\$ 8,008.00</b>	<b>\$ 8,581.00</b>	<b>\$ 7,375.00</b>	<b>\$ 6,229.00</b>	<b>\$ 7,375.00</b>	<b>\$ 7,375.00</b>	<b>\$ 7,375.00</b>	<b>\$ 6,229.00</b>	<b>\$ 6,229.00</b>	<b>\$ 6,229.00</b>	<b>\$ 6,229.00</b>

- 1 Complete yellow shaded areas on Cost Schedule with fixed pricing and staffing information for each facility type listed.
- 2 Complete yellow shaded areas on Travel Schedule with estimates for airfare, parking, and transportation.
- 3 The highest priced Total Estimated Cost for each survey type is transferred to the Project Cost Summary table below for evaluation.
- 4 Use this sheet for complaint investigation costs

ATTACHMENT G - COST SCHEDULE

TRAVEL SCHEDULE	Reno/Sparks	Las Vegas	Other NV
<b>All Items are Per Person</b>			
Airfare - Per Trip	\$ 600.00	\$ 600.00	\$ 600.00
Airport Parking - Per Day	\$ 20.00	\$ 20.00	\$ 20.00
Transportation - Per Day	\$ 80.00	\$ 80.00	\$ 80.00
GSA Lodging - Per Day (excluding taxes)	\$ 103.00	\$ 102.00	\$ 96.00
GSA Meals & Incidentals - Per Day	\$ 61.00	\$ 66.00	\$ 55.00
<b>Per Trip Total:</b>	<b>\$ 600.00</b>	<b>\$ 600.00</b>	<b>\$ 600.00</b>
<b>Per Day Total:</b>	<b>\$ 264.00</b>	<b>\$ 268.00</b>	<b>\$ 251.00</b>

- 1 Please complete the yellow shaded cells for each travel location. Current GSA rates for Lodging and M&IE are from <https://www.gsa.gov/portal/category/100120>. GSA Rates are subject to change yearly.
- 2 For airfare please use rates from Southwest Airlines. If Southwest does not serve a location use the lowest rate available.
- 3 Receipts are required for reimbursement of airfare, airport parking, transportation, and lodging.
- 4 Receipts are not required for meal and incidental expense reimbursement.

# Exhibit 6

STATE OF SOUTH CAROLINA  
SC DHEC  
ATTN: PROCUREMENT SERVICES DIVISION  
301 GERVAIS STREET, 4TH FLOOR  
COLUMBIA SC 29201-3073

**Revised Intent to Award**  
Posting Date: February 21, 2023

**Solicitation:** [REDACTED]  
**Description:** TURNKEY CMS SURVEY TEAMS  
**Agency:** SC Dept of Health & Environmental Control

The State intends to award contract(s) noted below. Unless otherwise suspended or canceled, this document becomes the final Statement of Award effective, **February 21, 2023**. Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.

Contractor should not perform work on or incur any costs associated with the contract prior to the effective date of the contract. Contractor should not perform any work prior to the receipt of a purchase order from the using governmental unit. The State assumes no liability for any expenses incurred prior to the effective date of the contract and issuance of a purchase order.

If you are aggrieved in connection with the award of the contract, you may be entitled to protest, but only as provided in Section 11-35-4210. To protest an award, you must (i) submit notice of your intent to protest within seven business days of the date the award notice is posted, and (ii) submit your actual protest within fifteen days of the date the award notice is posted. Days are calculated as provided in Section 11-35-310(13). Both protests and notices of intent to protest must be in writing and must be received by the appropriate Chief Procurement Officer within the time provided. See clause entitled "Protest-CPO". The grounds of the protest and the relief requested must be set forth with enough particularity to give notice of the issues to be decided.

PROTEST - CPO ADDRESS - MMO: Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing

- (a) by email to [REDACTED],
- (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201.

**Contract Number:** 4400031034  
**Awarded To:** ASCELLON CORPORATION (7000235564)  
8201 CORPORATE DRIVE SUITE 1000  
LANDOVER MD 20785

**Evaluated Amount:** \$ 373,041.00  
**Total Potential Value:** \$ 2,098,800.00  
**Maximum Contract Period:** February 21, 2023 through February 20, 2025

Item	Description	Unit Price
00001	5-Person Recertification Team	\$ 36,724.00
00002	4-Person Recertification Team	\$ 29,531.00
00003	3-Person Recertification Team	\$ 21,959.00

00004	2-Person Recertification Team	\$ 14,766.00
00005	1-Person Recertification Team	\$ 7,573.00
00006	2-Person Validation Team	\$ 14,766.00
00007	1-Person Validation Team	\$ 7,573.00
00008	3-Person Complaint Team	\$ 18,497.00
00009	2-Person Complaint Team	\$ 12,426.00
00010	1-Person Complaint Team	\$ 6,356.00
00011	3-Person Revisits Team	\$ 18,497.00
00012	2-Person Revisits Team	\$ 12,711.00
00013	1-Person Revisits Team	\$ 6,356.00
00014	Individual RN Surveyor (per person/per s	\$ 7,573.00
00015	4-Person Initial Survey Team	\$ 29,531.00
00016	3-Person Initial Survey Team	\$ 21,959.00
00017	2-Person Initial Survey Team	\$ 14,766.00
00018	2-Person In-field Surveyor Team	\$ 14,766.00
00019	1-Person In-field Surveyor Team	\$ 7,573.00
00020	2-Person Certificate of Waiver (COW) Tea	\$ 10,277.00
00021	1-Person Certificate of Waiver (COW) Tea	\$ 5,328.00
00022	1-Person Proficiency Testing Team	\$ 3,921.00
00023	2-Person Certificate of Compliance Team	\$ 7,747.00
00024	1-Person Certificate of Compliance Team	\$ 3,921.00
00025	2-Person Accreditation Certificate Team	\$ 15,146.00
00026	1-Person Accreditation Certificate Team	\$ 7,573.00
00027	2-Person Certificate of Registration Tea	\$ 10,087.00
00028	1-Person Certificate of Registration Tea	\$ 5,138.00

**Contract Number:** 4400031036

**Awarded To:** CERTISURV LLC (7000275106)  
112 W 7TH STREET STE C  
COLUMBIA TN 38401

**Evaluated Amount:** \$ 432,000.00

**Total Potential Value:** \$ 2,430,514.00

**Maximum Contract Period:** February 21, 2023 through February 20, 2025

<b>Item</b>	<b>Description</b>	<b>Unit Price</b>
00001	5-Person Recertification Team	\$ 42,500.00
00002	4-Person Recertification Team	\$ 35,000.00
00003	3-Person Recertification Team	\$ 26,500.00
00004	2-Person Recertification Team	\$ 19,000.00
00005	1-Person Recertification Team	\$ 8,950.00
00006	2-Person Validation Team	\$ 19,000.00
00007	1-Person Validation Team	\$ 10,750.00
00008	3-Person Complaint Team	\$ 23,000.00
00009	2-Person Complaint Team	\$ 17,750.00
00010	1-Person Complaint Team	\$ 9,750.00
00011	3-Person Revisits Team	\$ 19,500.00

00012	2-Person Revisits Team	\$ 13,500.00
00013	1-Person Revisits Team	\$ 7,000.00
00014	Individual RN Surveyor (per person/per s	\$ 9,750.00
00015	4-Person Initial Survey Team	\$ 32,000.00
00016	3-Person Initial Survey Team	\$ 25,000.00
00017	2-Person Initial Survey Team	\$ 17,000.00
00018	2-Person In-field Surveyor Team	\$ 22,000.00
00019	1-Person In-field Surveyor Team	\$ 11,500.00
00020	2-Person Certificate of Waiver (COW) Tea	\$ 9,000.00
00021	1-Person Certificate of Waiver (COW) Tea	\$ 4,750.00
00022	1-Person Proficiency Testing Team	\$ 1,300.00
00023	2-Person Certificate of Compliance Team	\$ 6,750.00
00024	1-Person Certificate of Compliance Team	\$ 3,750.00
00025	2-Person Accreditation Certificate Team	\$ 12,000.00
00026	1-Person Accreditation Certificate Team	\$ 6,500.00
00027	2-Person Certificate of Registration Tea	\$ 12,000.00
00028	1-Person Certificate of Registration Tea	\$ 6,500.00

**Contract Number:** 4400031035

**Awarded To:** HEALTHCARE MANAGEMENT SOLUTIONS LLC (7000240432)  
1000 TECHNOLOGY DRIVE, SUITE 1310  
FAIRMONT WV 26554

**Evaluated Amount:** \$ 261,400.00

**Total Potential Value:** \$ 1,470,686.00

**Maximum Contract Period:** February 21, 2023 through February 20, 2025

<b>Item</b>	<b>Description</b>	<b>Unit Price</b>
00001	5-Person Recertification Team	\$ 38,000.00
00002	4-Person Recertification Team	\$ 30,400.00
00003	3-Person Recertification Team	\$ 23,000.00
00004	2-Person Recertification Team	\$ 15,500.00
00005	1-Person Recertification Team	\$ 7,900.00
00008	3-Person Complaint Team	\$ 22,500.00
00009	2-Person Complaint Team	\$ 13,000.00
00010	1-Person Complaint Team	\$ 7,000.00
00011	3-Person Revisits Team	\$ 17,700.00
00012	2-Person Revisits Team	\$ 12,000.00
00013	1-Person Revisits Team	\$ 6,000.00
00014	Individual RN Surveyor (per person/per s	\$ 7,900.00
00015	4-Person Initial Survey Team	\$ 27,000.00
00016	3-Person Initial Survey Team	\$ 20,500.00
00017	2-Person Initial Survey Team	\$ 13,000.00

**Procurement Officer**

WHITNEY CARSWELL *wpc*



# Exhibit 7

### CONTRACT MODIFICATION SUBMITTAL CHECKLIST

**Contractor/Subrecipient Name:** CertiSurv LLC

For Purchasing &  
Contract Unit Use Only

(Verify that the name on all Contract occurrences and Secretary of State Status Summary Page match exactly)

**Modification Routing #:** 2022\*3465      **Original Routing #:** 2022\*3465  
Amendment #1

**CMS Number, if required:** XXXXXXXXXX      **CORE # (if applicable):** 2022\*3465

**Modification Start Date:** 10/1/2022      **Modification End Date:** 9/30/2023

**SOW Modification Pre-approval - PCS Request Site Approval # (if applicable):** \_\_\_\_\_ **Approved by** Wendy

**PCS Request Site Modification Contract Routing & Tracking Request Number:** \_\_\_\_\_ **Enter Request ID #** \_\_\_\_\_

**Division Acronym:** HFEMDS      **Unit Acronym:** \_\_\_\_\_

**Submitter Name:** Travis Howell      **Phone:** \_\_\_\_\_

**SOW Delegate Name:** Wendy Mallari      **Phone:** \_\_\_\_\_

**Purpose(s) of Modification: (Select all that apply)**

**Scope of Work Modification**   
  **Budget Modification**   
  **Renewal**   
  **No Cost Modification**   
  **Assignment**  
 **Other** If "Other", describe: \_\_\_\_\_

<b>Modification Document Type</b> (select one only)		A	B	C	D
A	<input type="checkbox"/> <b>Amendment:</b> Two (2) each with original signatures	<input checked="" type="checkbox"/>			
B	<input type="checkbox"/> <b>Grant Funding Letter:</b> Two (2) letters, each with original signatures		<input type="checkbox"/>		
C	<input type="checkbox"/> <b>Option Letter:</b> Two (2) agreements, each with original signatures			<input type="checkbox"/>	
D	<input type="checkbox"/> <b>Assignment:</b> Two (2) agreements, each with original signatures				<input type="checkbox"/>

<b>Modification: ATTACHMENTS – REQUIREMENTS – CERTIFICATIONS</b>		A	B	C	D
Enter "X" for all that apply; Enter requested information in shaded fields; <b>Attach forms/documentation</b>					
1.	<b>The first (cover) page of the original contract document (Attach)</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.	<b>For Subrecipient Only (Renewal required each year)</b> Enter Pre-Award Financial Risk Assessment number (See Internal Audit Site): _____	<input type="checkbox"/>		<input type="checkbox"/>	
3.	<b>Insurance Certificate(s)</b> (NOT required for Interagency Agreement or Intergovernmental Contract, <b>Insurance Policy Dates must be current on effective date of contract</b> ; if Assignment, COI for Assignee only) Applicable waiver(s) and description: <u>enter PCS Request Site</u>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
4.	<input type="checkbox"/> <b>Sole Source REVISION</b> (A modification is required when there is an increased amount, change in SOW or date change.) <u>New PCS Sole Source Request #:</u> _____ <u>New PCS Sole Source Term:</u> _____ to _____ Enter PCU Request #      Enter SS Term Dates <u>New NPSS1 Number:</u> _____ Enter NPPSS1#	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
5.	<b>Secretary of State Status Summary Page</b> (must state the entity is in "good standing") <b>Renewals ONLY</b> (NOT required for Interagency Agreement, Intergovernmental Contract; if Assignment, SOS for Assignee only)	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

**Date Stamp at bottom of page**

If DBA, Secretary of State Status Summary Page for <u>DBA</u>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
6. <b>Signature Authority Letter or Corporate Documentation</b> (If contract signed by other than the apparent authority) (See State of Colorado Procurement Manual, p. 18, Chapter IV, Section 21)	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
7. <b>S.A.M. Exclusion Summary Page (Record verified and no exclusions/restrictions)</b> ( <b>NOT</b> required for Interagency Agreement Contract or LPHA; if Assignment, SAM for Assignee only) ( see PCS Site: SAM Verification Guidance)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

CMS RECORD: <b>Required for contracts \$100,000 over the life of the contract</b>	(X) = Completed
1. <b>Record Type</b> – Record type chosen is “Modification”.	<input checked="" type="checkbox"/>
2. <b>Linked Record</b> – Record is linked to the Master Record ONLY.	<input checked="" type="checkbox"/>
3. <b>Record Title</b> - Title follows the naming convention for a Modification to a Master Record.	<input checked="" type="checkbox"/>
4. <b>Data Field: Vendor Name</b> – Has been selected in the ‘Contractor/Vendor’ field.	<input checked="" type="checkbox"/>
5. <b>Data Fields: If this Modification is to renew or extend a contract has the contractor’s work to date been certified as complying with the terms of the contract AND the Master CMS contract record updated?</b> Choose “Yes” when renewing or extending the expiration date and enter “Yes” in the corresponding field in the master record. If the modification is not to renew or extend, choose N/A and do not make any changes in the corresponding field in the master record.	<input type="checkbox"/>
6. <b>Data Field: Certification - If applicable, enter date of MOST RECENT annual certification of contractor work</b> – If the contract has been renewed or extended, enter the expiration date of the contract. We are using the expiration date of the contract to represent the last contractor performance evaluation of the contract period (quarterly or 3x per year). If the modification is not to renew or extend, leave the field blank. If the corresponding field in the master record is set to “Yes” as a result of a previous renewal/extension, do not change it.	<input type="checkbox"/>
7. <b>Data Fields:</b> All other relevant data fields are completed per CDPHE protocol.	<input checked="" type="checkbox"/>
8. <b>Update Master Record</b> – Cumulative Dollar Amount, Latest Performance End Date and Recertification data fields have been updated as applicable.	<input checked="" type="checkbox"/>

**NOTES:** ↓



Search All Words [e.g. 1606N020Q02]

Search Results Saved Searches

Actions

Select Domain All Domains

Filter By

Keyword Search For more information on how to use our keyword search, visit our help guide

Any Words All Words

Showing 1 - 1 of 1 results

CertiSurv, LLC Active Registration



Physical Address 112 W 7th St Ste C, Columbia, TX 78401 USA

Sort by Date Modified/Updated

Entity Expiration Date Feb 3, 2023 Purpose of Registration All Awards

1 of 1 Results per page 25

## Summary

Details			
<b>Name</b>	CertiSurv, LLC		
<b>Status</b>	Good Standing	<b>Formation date</b>	01/21/2022
<b>ID number</b>	██████████	<b>Form</b>	Foreign Limited Liability Company
<b>Periodic report month</b>	January	<b>Jurisdiction</b>	Tennessee
<b>Principal office street address</b>	112 W 7th St. Ste C, Columbia, TN 38401, United States		
<b>Principal office mailing address</b>	n/a		

Registered Agent	
<b>Name</b>	Registered Agent Solution Inc.
<b>Street address</b>	36 South 18th Ave, Suite D, Brighton, CO 80601, United States
<b>Mailing address</b>	n/a

[Filing history and documents](#)

[Get a certificate of good standing](#)

[Get certified copies of documents](#)

[File a form](#)

[Set up secure business filing](#)

[Subscribe to email notification](#)

[Unsubscribe from email notification](#)

**STATE OF COLORADO**  
**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT CONTRACT**  
**SIGNATURE AND COVER PAGE(S)**

<b>State Agency</b> Colorado Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, Colorado 80246	<b>Contractor</b> Certisurv LLC 112 W 7 <sup>th</sup> Street, Suite C Columbia TN 38401
<b>Original Contract Number</b> CT,FHMA,202200003465	<b>Contract Performance Beginning Date</b> <b>The later of the Effective date or March 1, 2022</b>
<b>Contract Maximum Amount</b> <b>Initial Term</b> 03/01/2022-09/30/2022                      \$716,350.00  <b>Contract Maximum Amount</b> \$716,350.00	<b>Contract Expiration Date</b> September 30, 2022  Except as stated in §2.D., the total duration of this Contract, including the exercise of any options to extend, shall not exceed 5 years from its Performance Beginning Date.
<b>Pricing/Funding</b> <b>Price Structure:</b> Cost Reimbursement <b>Contractor Shall Invoice:</b> Upon delivery and acceptance of performance <b>Funding Source:</b> Federal \$716,350.00	<b>Miscellaneous</b> Authority to enter into this Contract exists in: CRS 25-1.5-101 - CRS 25-1.5-113 Law-Specified Vendor Statute (if any): Enter Program specific  Procurement Method: Invitation For Bids (IFB) Solicitation Number (if any): ██████████
<b>State Representative</b> Jo Tansey Branch Chief Acute and Nursing Facilities Health Facilities and Emergency Medical Services Division Colorado Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246	<b>Contractor Representative</b> Robert Feurer CEO Certisurv LLC 112 W 7 <sup>th</sup> Street, Suite C Columbia, TN 38401 ██████████
<b>Exhibits</b> <b>The following Exhibits and Attachments are attached and incorporated into this Contract:</b> Exhibit A, Additional Provisions Exhibit B, Statement of Work Exhibit C, Budget	
<b>Contract Purpose</b> This project serves to conduct Long Term Care Survey Process (LTSCP) federal surveys to certify that nursing facilities in Colorado are complying with the Federal Requirements of Participation in the Medicaid/Medicare programs.	

**CONTRACT AMENDMENT #1****SIGNATURE AND COVER PAGE(S)**

State Agency: <b>Colorado Department Of Public Health and Environment 4300 Cherry Creek Drive South Denver, Colorado 80246</b>				Original Contract Number: <b>2022*3465</b>		
Contractor: <b>Certisurv LLC 112 West 7<sup>th</sup> Street, Suite C Columbia TN 38401</b>				Amendment Contract Number: <b>2022*3465 AMD1</b>		
Contract Performance Beginning Date: <b>March 28, 2022</b>				Current Contract Expiration Date: <b>September 30, 2023</b>		
<b>CONTRACT MAXIMUM AMOUNT TABLE</b>						
<b>Document Type</b>	<b>Contract Number</b>	<b>Federal Funding Amount</b>	<b>State Funding Amount</b>	<b>Other Funding Amount</b>	<b>Term (dates)</b>	<b>Total</b>
Original Contract	2022*3465	\$716,350.00	\$0.00	\$0.00	3/28/22 – 9/30/22	\$716,350.00
Amendment #1	2022*3465 AMD1	(\$716,350.00)	\$0.00	\$0.00	3/28/22 – 9/30/22	(\$716,350.00)
Amendment #1	2022*3465 AMD1	\$716,350.00	\$0.00	\$0.00	3/28/22 – 12/31/22	\$716,350.00
Amendment #1	2022*3465 AMD1	\$417,000.00	\$0.00	\$0.00	10/1/22 – 12/31/22	\$417,000.00
Amendment #1	2022*3465 AMD1	\$973,000.00	\$0.00	\$0.00	10/1/22 – 9/30/23	\$973,000.00
<b>Current Contract Maximum Cumulative Amount</b>						<b>\$2,106,350.00</b>

**SIGNATURE PAGE**

**THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT**

Each person signing this Amendment represents and warrants that he or she is duly authorized to execute this Amendment and to bind the Party authorizing his or her signature.

<p style="text-align: center;"><b>CONTRACTOR</b> <b>Certisurv LLC</b></p> <p>DocuSigned by: <i>Bob Feurer</i> C6EDEF5D4EA14DE...</p> <p>By: Signature</p> <p>Bob Feurer</p> <hr/> <p>Name of Person Signing for Contractor</p> <p>CEO</p> <hr/> <p>Title of Person Signing for Contractor</p> <hr/> <p>Date: 2022-09-15</p>	<p style="text-align: center;"><b>STATE OF COLORADO</b> <b>Jared S. Polis, Governor</b> Colorado Department of Public Health and Environment Jill Hunsaker Ryan, MPH, Executive Director</p> <p>DocuSigned by: <i>Lisa McGovern</i> 2EDEF870A1A7D4FC...</p> <p>By: Signature</p> <p>Lisa McGovern</p> <hr/> <p>Name of Executive Director Delegate</p> <p>Procurement &amp; Contracts Section Director ft</p> <hr/> <p>Title of Executive Director Delegate</p> <hr/> <p>Date: 2022-09-15</p>
---	---

In accordance with §24-30-202 C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.

**STATE CONTROLLER**  
**Robert Jaros, CPA, MBA, JD**

DocuSigned by:  
*Justin Weigle*  
C48A540EBA79405

By: Signature

Justin weigle

---

Name of State Controller Delegate

Health Divisions Controller

---

Title of State Controller Delegate

---

Amendment Effective Date: 2022-09-15

-- Signature and Cover Pages End --



1. **PARTIES**

This Amendment (the “Amendment”) to the Original Contract shown on the Signature and Cover Page for this Amendment (the “Contract”) is entered into by and between the Contractor, and the State.

2. **TERMINOLOGY**

Except as specifically modified by this Amendment, all terms used in this Amendment that are defined in the Contract shall be construed and interpreted in accordance with the Contract.

3. **AMENDMENT EFFECTIVE DATE AND TERM**

A. Amendment Effective Date

This Amendment shall not be valid or enforceable until the Amendment Effective Date shown under the State Controller Signature. The State shall not be bound by any provision of this Amendment before that Amendment Effective Date, and shall have no obligation to pay Contractor for any Work performed or expense incurred under this Amendment either before or after of the Amendment term shown in **§3.B** of this Amendment.

B. Amendment Term

The Parties’ respective performances under this Amendment and the changes to the Contract contained herein shall commence on the Amendment Effective Date shown under the State Controller Signature or **October 1, 2022**, whichever is later, and shall terminate on the termination of the Contract or **September 30, 2023**, whichever is earlier.

4. **PURPOSE**

The Parties entered into the agreement to conduct Long Term Care Survey Process (LTSCP) federal surveys to certify that nursing facilities in Colorado are complying with the Federal Requirements of Participation in the Medicaid/Medicare programs.

The Parties now desire to increase funding and change Statement of Work for the following reason: to increase the total number of Long Term Care Survey Process (LTSCP) federal surveys to certify that nursing facilities in Colorado are complying with the Federal Requirements of Participation in the Medicaid/Medicare programs.

5. **MODIFICATIONS**

The Contract and all prior amendments thereto, if any, are modified as follows:

- A. The Contract Maximum Amount table is deleted and replaced with the Current Contract Maximum Amount table shown on the Signature and Cover Page for this Amendment.
- B. The Contract Initial Contract Expiration Date on the Contract’s Signature and Cover Page is hereby deleted and replaced with the Current Contract Expiration Date shown on the Signature and Cover Page for this Amendment.
- C. The Parties now agree to modify Exhibit B, Statement of Work, of the agreement. Exhibit B, Statement of Work is deleted and replaced in its entirety with Exhibit B, , Statement of

Work, attached to this Amendment for the following reason: to increase the number of surveys as well as to extend the end date.

- D. The Parties now agree to modify Exhibit C, Budget, of the agreement. Exhibit C, Budget, is deleted and replaced in its entirety with Exhibit C, Budget, attached to this Amendment for the following reason: to increase the total dollar amount of the contract.

**6. LIMITS OF EFFECT AND ORDER OF PRECEDENCE**

This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments or other modifications to the Contract, if any, remain in full force and effect except as specifically modified in this Amendment. Except for the Special Provisions contained in the Contract, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Contract or any prior modification to the Contract, the provisions of this Amendment shall in all respects supersede, govern, and control. The provisions of this Amendment shall only supersede, govern, and control over the Special Provisions contained in the Contract to the extent that this Amendment specifically modifies those Special Provisions.

STATEMENT OF WORK  
To Original Contract Number CT, FHMA2022\*3465

**These provisions are to be read and interpreted in conjunction with the provisions of the contract specified above.**

This project serves to conduct up to forty (40) Long Term Care Survey Process (LTSCP) throughout the State of Colorado per year. This type of survey is a computer assisted long-term care survey process to determine if Medicare and Medicaid certified nursing homes meet the Federal requirements of participation State Operation Manual.

**I. Project Description:**

This project serves to conduct Long Term Care Survey Process (LTSCP) federal surveys to certify that nursing facilities in Colorado are complying with the Federal Requirements of Participation in the Medicaid/Medicare programs.

**II. Definitions:**

1. ACO – ASPEN Central Office
2. ASPEN – Automated Survey Processing Environment
3. CDPHE – Colorado Department of Public Health & Environment
4. CMS – Centers for Medicare & Medicaid Services
5. LTCSPS – Long Term Care Survey Process Survey
6. SMQT – Surveyor Minimum Qualification Test

**III. Work Plan:**

Goal # 1: Optimize the health, safety, and quality of life for Coloradoans living in nursing facilities.	
Objective #1: No later than the expiration date of the contract, the Contractor shall conduct LTSCP Federal surveys throughout the State of Colorado.	
Primary Activity #1	The contractor shall conduct LTCSP Federal Surveys throughout the State of Colorado to determine if Medicare and Medicaid certified nursing facilities comply with the Federal Requirements of Participation.
Sub Activities #1	<ol style="list-style-type: none"> <li>1. The Contractor shall establish a secure web portal to upload completed LTCSP Federal Surveys. The contractor shall provide a secure website, where the survey documents shall be placed and CDPHE staff will upload them into ACO.</li> <li>2. The Contractor shall provide access to the secure web portal for the CDPHE Nursing Facilities Section Manager and the CDPHE Field Training Supervisor.</li> <li>3. CDPHE will provide site locations, facility names, and contact information for the nursing facilities to be surveyed each month to the Contractor.</li> <li>4. The Contractor shall provide verification to CDPHE that each surveyor has the necessary credentials and training to conduct the required skilled nursing facilities surveys.</li> <li>5. The Contractor shall conduct up to forty (40) health recertification surveys per year.</li> <li>6. The Contractor shall conduct the extended survey portion of the LTCSP Federal Survey to determine the extent of substandard quality of care.</li> <li>7. The Contractor shall write a statement of deficiencies utilizing the “CMS Principles of Documentation” at the conclusion of the LTCSP survey.</li> <li>8. The Contractor shall include each of the following elements in the statement of deficiencies:</li> </ol>

	<ul style="list-style-type: none"> <li>a. Identify each requirement that is not met.</li> <li>b. Identify the specific deficient practices and the evidence concerning these practices.</li> <li>c. Identify the extent of the deficient practice, including systemic practices when appropriate.</li> <li>d. Identify the sources of the evidence (e.g. interview, observation, or record review).</li> <li>e. Identify the scope and severity of each deficiency written utilizing the “Assessment Factors Used to Determine the Seriousness of Deficiencies Matrix” found in Chapter seven (7) of the state Operations Manual produced by CMS (SOM).</li> </ul> <ul style="list-style-type: none"> <li>9. The Contractor shall document each deficiency using the CMS form 2567 within the LTCSP Federal survey.</li> <li>10. The contractor shall identify the scope and severity of each deficiency on the CMS Form 2567 within the LTCSP Federal Survey.</li> <li>11. The Contractor shall collect a list of staff working at the nursing facility when the survey is conducted.</li> <li>12. The Contractor shall collect a sample list of residents at the nursing facility when the survey is conducted.</li> <li>13. The Contractor shall collect any necessary documentation from the nursing facility to support the LTCSP Federal Survey findings.</li> <li>14. The Contractor shall upload the survey documentation to the secure web portal no later than noon (Mountain Time) on the sixth (6) business days after each LTCSP survey is completed.</li> <li>15. The Contractor shall ensure that surveyors are included in the ASPEN Central Office (ACO) of the ASPEN System to survey in Colorado.</li> <li>16. The Contractor shall provide a comprehensive response to requests for Informal Dispute Resolution (IDR) relevant to surveys that are conducted by the Contractor.</li> </ul>
<p>Standards and Requirements</p>	<ul style="list-style-type: none"> <li>1. CDPHE will provide site locations, nursing facility names, and contact information for the nursing facilities to be surveyed each month to the contractor via email within five (5) business days of the first of each month.</li> <li>2. CDPHE will review and approve all surveyors prior to each nursing facility survey.</li> <li>3. The Contractor shall use surveyors that are trained on the LTCSP Federal Survey that has been established by the U.S. Department of Health and Human Services.</li> <li>4. The Contractor shall have completed at least two (2) prior surveys with the LTCSP Federal Survey.</li> <li>5. The Contractor shall conduct all LTCSP Federal Surveys unannounced. The Contractor shall enter the nursing facility on the first day of the survey after 8:00 AM MST.</li> <li>6. The Contractor staff shall wear identification badges throughout the entire survey.</li> <li>7. The Contractor shall provide nursing facility management at each nursing facility surveyed with a letter from CDPHE Identifying the contractual relationship and who to contact at CDPHE if the nursing facility management has questions.</li> <li>8. The Contractor shall notify the CDPHE Branch Chief of Acute and Nursing Facilities or the Nursing Facilities Section Manager if substandard care or</li> </ul>

	<p>immediate jeopardy to nursing facility residents is identified on the date standard care is recognized and before the nursing facility is notified.</p> <p>9. The Contractor shall write deficiencies to the specification of the “CMS Principles of Documentation”. This document is incorporated and made part of the contract by reference and is accessible on the following website:  <a href="https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107_exhibit_007a.pdf">https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107_exhibit_007a.pdf</a>.</p> <p>10. The Contractor shall adhere to the LTCSP Federal Survey. This document is incorporated and made part of the contract by reference and is accessible on the following website: <a href="https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Downloads/LTCSP-Procedure-Guide.pdf">https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Downloads/LTCSP-Procedure-Guide.pdf</a>.</p> <p>11. The Contractor shall adhere to the CMS State Operations manual Appendix PP – Guidance to Surveyors: Long Term Care – (Rev 173, 11-22-17) This document is incorporated and made part of the contract by reference and is accessible on the following website. <a href="https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltcf.pdf">https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltcf.pdf</a>.</p> <p>12. The Contractor shall adhere to the CMS Quality Safety and Oversight memoranda, guidance, clarifications and instructions to State Survey Agencies and CMS Regional Offices for each survey. This document is incorporated and made part of the contract by reference and is accessible on the following website:  <a href="https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Policy-and-Memos-to-States-and-Regions">https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Policy-and-Memos-to-States-and-Regions</a>.</p> <p>13. The Contractor shall respond to each request for IDR via the secure web portal within five (5) calendar days of receiving notice.</p> <p>14. The Contractor shall not conduct surveys between September 20, 2022 and September 22, 2022.</p> <p>15. The content of electronic documents located on CDPHE and non-CDPHE websites and information contained on CDPHE and non-CDPHE websites may be updated periodically during the contract term. The Contractor shall monitor documents and website content for the updates and comply with all updates.</p>	
Expected Results of Activity(s)	1. All surveyed nursing facilities will comply with the Federal Requirements of Participation in the Medicaid/Medicare Programs.	
Measurement of Expected Results	1. Successful completion of assigned LTCSP surveys, all survey information uploaded and sent to CDPHE within designated timelines.	
Deliverables	1. The Contractor shall submit login information to the secure web portal for the CDPHE Nursing Facilities Section Manager and the CDPHE Field Training Supervisor via email.	Within five (5) business days of the execution of this contract.
	2. Completion of LTCSP surveys.	Within three-to-four (3-4) business days of site visit.

**EXHIBIT B**

	<p>3. Written deficiencies and survey documentation uploaded to secure web portal.</p>	<p>Within six (6) business days of site visit.</p>
	<p>4. QA review of deficiencies for accuracy and following the Principles of Documentation.</p>	<p>Within six (6) business days of site visit and prior to web portal upload.</p>

**IV. Monitoring:**

CDPHE’s monitoring of this contract for compliance with performance requirements will be conducted throughout the contract period by the Nursing Facilities Manager and the Acute Care and Nursing Facilities Branch Chief. Methods used will include a review of documentation determined by CDPHE to be reflective of performance to include progress reports, review of deficiencies written, responses to IDR requests and adherence to identified timelines. The Contractor’s performance will be evaluated at set intervals and communicated to the contractor. A Final Contractor Performance Evaluation will be conducted at the end of the life of the contract.

**V. Resolution of Non-Compliance:**

The Contractor will be notified in writing within five (5) calendar days of discovery of a compliance issue. Within five (5) calendar days of discovery, the Contractor and the State will collaborate, when appropriate, to determine the action(s) necessary to rectify the compliance issue and determine when the action(s) must be completed. The action(s) and timeline for completion will be documented in writing and agreed to by both parties. If extenuating circumstances arise that requires an extension to the timeline, the Contractor must email a request to the Acute Care and Nursing Facilities Branch Chief, and receive approval for a new due date. The State will oversee the completion/implementation of the action(s) to ensure timelines are met and the issue(s) is resolved. If the Contractor demonstrates inaction or disregard for the agreed upon compliance resolution plan, the State may exercise its rights under the provisions of this contract



Exhibit C

BUDGET

<b>Contractor Name</b>	CertiSurv, LLC					
<b>Budget Period</b>	March 28, 2022 - September 30, 2023					
<b>Project Name</b>	Long-Term Care Survey Process (LTSCP)					
Expenditure Categories						
Survey Completion						
Item	Description of Item	Rate	Quantity	Original Amount Requested from CDPHE	Amendment #1 Modification	Total Amount Requested from CDPHE
Four (4) or less complaints	Contractor shall complete LTSCP surveys, review documentation for deficiencies for accuracy and following Principals of Documentation, and upload to secure web portal. This is the rate if the facility has four (4) or less complaints resulting from the survey.	\$25,700.00	13	\$334,100.00	\$0.00	\$334,100.00
Five (5) or more complaints	Contractor shall complete LTSCP surveys, review documentation for deficiencies for accuracy and following Principals of Documentation, and upload to secure web portal. This is the rate if the facility has five (5) or more complaints resulting from the survey. <b>Additional Funds have become available.</b>	\$34,750.00	51	\$382,250.00	\$1,390,000.00	\$1,772,250.00
<b>Total</b>				<b>\$716,350.00</b>	<b>\$1,390,000.00</b>	<b>\$2,106,350.00</b>
Contractual (payments to third parties or entities)						
Item	Description of Item	Rate	Quantity			
N/A						
<b>Total Contractual</b>				<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>SUB-TOTAL BEFORE INDIRECT</b>				<b>\$716,350.00</b>	<b>\$1,390,000.00</b>	<b>\$2,106,350.00</b>
Indirect						
Item	Description of Item			Original Amount Requested from CDPHE	Amendment #1 Modification	Total Amount Requested from CDPHE
N/A						
<b>Total Indirect</b>				<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>TOTAL</b>				<b>\$716,350.00</b>	<b>\$1,390,000.00</b>	<b>\$2,106,350.00</b>

# Exhibit 8



**STATE OF IDAHO**  
**Department of Health and Welfare Contract**

**CONTRACT NO.** EC000400

**CONTRACTOR'S FEDERAL I.D. NO.** [REDACTED]

**CONTRACT NAME:** HEALTHCARE MANAGEMENT SOLUTIONS, LLC  
**CFDA NUMBER:**

This Contract is entered into by the State of Idaho, Department of Health and Welfare, hereinafter referred to as the **DEPARTMENT**, and **HEALTHCARE MANAGEMENT SOLUTIONS, LLC**, hereinafter referred to as the **CONTRACTOR**. This contract is anticipated to be effective as of **01/01/2020** and will expire on **12/31/2023**. As outlined in Paragraph II of the Contract Terms and Conditions, this Contract will not be effective until signed by all parties.

WITNESSETH: The DEPARTMENT enters into this Contract pursuant to authority granted to it in Title 56, Chapter 10, Idaho Code. The CONTRACTOR agrees to undertake performance of this Contract under the terms and conditions set forth herein.

The Contractor agrees to provide, and the Department agrees to accept the services detailed in the Scope of Work and generally described as follows:

Provide survey staff to conduct federal certification surveys.

The following Attachments are hereby incorporated and made a part of this Agreement:

General Terms and Conditions  
Riders  
Scope of Work  
Cost/Billing Procedure  
Reports

**TOTAL CONTRACT AMOUNT:** \$400,000.00

**CONTRACT MONITOR:** Debby Ransom

**CONTRACT MANAGER:** Tamara Prisock

## General Terms and Conditions

- I. DEFINITIONS. As used in the Contract, the following terms shall have the meanings set forth below:
  - A. Contract shall mean the Contract Cover Sheet, these General Terms and Conditions, and all Attachments identified on the Contract Cover Sheet. The Contract shall also include any negotiated and executed amendment to the Contract.
  - B. Contract Manager shall mean that person appointed by the Department to administer the Contract on behalf of the Department. "Contract Manager" includes, except as otherwise provided in the Contract, an authorized representative of the Contract Manager acting within the scope of his or her authority. The Department may change the designated Contract Manager from time to time by providing notice to the Contractor as provided in the Contract.
  - C. Contractor shall mean that individual, partnership, corporation, or other entity who executes the Contract or performs services under the Contract. Contractor shall include any subcontractor retained by the Contractor as permitted under the terms of the Contract.
  - D. Department shall mean the State of Idaho, Department of Health and Welfare, its divisions, sections, offices, units, or other subdivisions, and its officers, employees, and agents.
- II. CONTRACT EFFECTIVENESS. It is understood that this Contract or any Amendment is effective when it is signed by all parties, or at a later date if specified in the Contract or Amendment. The Contractor shall not render services to the Department until the Contract or Amendment has become effective. The Department will not pay for any services rendered prior to the effective date of the Contract or Amendment.
- III. RENEWAL. The Department reserves the right to extend this contract for additional periods, not anticipated to exceed a total of four (4) years, provided the Contractor has demonstrated satisfactory performance in the previous year. Any extension or amendment of this contract shall be in writing, signed by both parties.
- IV. INDEPENDENT CONTRACTOR STATUS.
  - A. Status The Contractor's status under the Contract shall be that of an independent contractor and not that of an agent or employee of the Department or the State of Idaho. The Contractor shall be responsible for paying all employment-related taxes and benefits, such as federal and state income tax withholding, social security contributions, worker's compensation and unemployment insurance premiums, health and life insurance premiums, pension contributions and similar items. The Contractor shall indemnify the Department and hold it harmless from any and all claims for taxes, including but not limited to social security taxes, penalties, attorneys' fees and costs that may be made or assessed against the Department arising out of the Contractor's failure to pay such taxes, fees or contributions.
  - B. Reassignment of Contractor Employees The Department shall have the right, after having consulted with the Contractor, to require the Contractor to reassign or otherwise remove from the contract any Contractor employee or subcontractor found in good faith to be unacceptable to the Department.

V. INDEMNIFICATION BY THE CONTRACTOR. The Contractor shall indemnify, defend and save harmless the State of Idaho, and the Department, its officers, agents, and employees, from and against all liability, claims, damages, losses, expenses, actions, attorney fees and suits whatsoever, including injury or death of others or any employee of the Contractor or subcontractor caused by or arising out of the Contractor's negligent or otherwise wrongful performance, act or omission under the Contract or the Contractor's failure to comply with any state, federal or local statute, law, regulation, or rule. Nothing in this provision shall extend the Contractor's indemnification of the Department beyond the liability of the Department provided in the Idaho Tort Claim's Act Idaho Code 6-901 et seq., the aggregate of which is limited to \$500,000 by Idaho Code 6-926.

VI. SUBCONTRACTING. Unless otherwise allowed by the State in the Contract, the Contractor shall not, without written approval from the State, enter into any subcontract relating to the performance of the Contract or any part thereof. Approval by the State of the Contractor's request to subcontract or acceptance of or payment for subcontracted work by the State shall not in any way relieve the Contractor of any responsibility under the Contract. The Contractor shall be and remain liable for all damages to the State caused by negligent performance or non-performance of work under the Contract by the Contractor's subcontractor. Subcontractor(s) must maintain the same types and levels of insurance as that required of the Contractor under the Contract unless the Contractor provides proof to the State's satisfaction that the subcontractor(s) are fully covered under the Contractor's insurance, or, except as otherwise authorized by the State.

VII. ASSIGNMENT.

A. Obligations. The Contractor shall not assign this Contract, or its rights, obligations, or any other interest arising from the Contract, or delegate any of its performance obligations, without the express written consent of the Administrator of the Division of Purchasing and the Idaho Board of Examiners. Transfer without such approval shall cause the annulment of the Contract, at the option of the State. All rights of action, however, for any breach of the Contract are reserved to the State (Idaho Code Section 67-9230).

B. Right to Payment. Notwithstanding the foregoing, and to the extent required by applicable law (including Idaho Code Section 28-9-406), the Contractor may assign its right to payment on an account provided that the State shall have no obligation to make payment to an assignee until thirty (30) days after the Contractor (not the assignee) has provided the responsible State procurement officer with (a) proof of the assignment, (b) the identity of the specific state contract to which the assignment applies, and (c) the name of the assignee and the exact address to which assigned payments should be made. The State may treat violation of the provision as an event of default.

VIII. RECORDS AND DATA.

A. Records Maintenance The Contractor shall maintain all records and documents relevant to the Contract for three (3) years from the date of final payment to the Contractor. If an audit, litigation or other action involving records is initiated before the three (3) year period has expired, the Contractor shall preserve and secure records until all issues arising out of such actions are resolved, or until an additional three (3) year period has passed, whichever is later. If the Contract is terminated for convenience, for cause, or by bankruptcy all records and documents related to the Contract in the Contractor's possession shall at the election of the Department, be immediately delivered to the Contract Monitor or Department designee.

- B. Records Review All records and documents relevant to the Contract, shall be subject to inspection, review or audit, and copying by the Department and other personnel duly authorized by the Department, and by federal inspectors or auditors. The Contractor shall make all records relevant to this Contract available to such parties at all reasonable times, at either the Contractor's principal place of business or upon premises designated by the Department.
- IX. CONFIDENTIALITY. The Contractor shall comply with all applicable state and federal laws, rules, and regulations concerning confidentiality. The Department will furnish the Contractor with copies of applicable statutes, rules, and regulations upon receipt of a written request from the Contractor. Pursuant to the Contract, the Contractor may collect, or the State may disclose to the Contractor, financial, personnel, or other information that the State regards as proprietary or confidential ("Confidential Information"). Such Confidential Information shall belong solely to the State. The Contractor shall use such Confidential Information only in the performance of its services under the Contract and shall not disclose Confidential Information or any advice given by it to the State to any third party, except with the State's prior written consent or under a valid order of a court or governmental agency of competent jurisdiction and then only upon timely notice to the State. Confidential Information shall be returned to the State upon termination or expiration of the Contract. Confidential Information shall not include data or information that:
- A. Possession of the Contractor Possession of the Contractor. Is or was in the possession of the Contractor before being furnished by the State, provided that such information or other data is not known by the Contractor to be subject to another confidentiality agreement with or other obligation of secrecy to the State;
- B. Available to the Public Available to the Public. Becomes generally available to the public other than as a result of disclosure by the Contractor; or
- C. Available to the Contractor Available to the Contractor. Becomes available to the Contractor on a non-confidential basis from a source other than the State, provided that such source is not known by the Contractor to be subject to a confidentiality agreement with or other obligation of secrecy to the State.
- X. PUBLIC RECORDS.
- A. Open to Public Open to Public. Pursuant to Idaho Code Section 74-101. Et seq., information or documents received by the State will be open to public inspection and copying unless the material is exempt from disclosure under applicable law. The person or entity submitting the material must clearly designate specific information within the document as "exempt," if claiming any exemption and indicate the basis for such exemption (e.g. Trade Secret). The State will not accept the marking of an entire document as exempt; or a legend or statement on one page that all, or substantially all, of the document is exempt from disclosure.
- B. Failure to Designate Failure to Designate. The Contractor shall indemnify and defend the State against all liability, claims, damages, losses, expenses, actions, attorney fees, and suits whatsoever for honoring such a designation or for the Contractor's failure to designate specific information within the document as exempt. The Contractor's failure to designate as exempt any document or portion of a document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by and such release. If the State receives a request for materials claimed exempt by the Contractor, the Contractor shall provide the legal defense for such claim.

- XI. AUDIT EXCEPTIONS. If a federal or state audit indicates that payments made to the Contractor for goods or services that do not comply with the terms of the Contract or applicable federal or state laws, rules or regulations, the Contractor shall refund any compensation paid to the Contractor arising from such noncompliance.
- XII. COMPLIANCE WITH CERTAIN LAWS, LICENSING, AND CERTIFICATIONS. The Contractor shall comply with ALL requirements of federal, state, and local laws and regulations applicable to the Contractor pursuant to the Contract. For the duration of the Contract, the Contractor shall maintain in effect and have in its possession all licenses and certifications required by federal, state, and local laws and rules, including but not limited to:
- A. Nondiscrimination The Contractor shall provide all services funded through or affected by the Contract without discrimination on the basis of race, color, national origin, religion, sex, age, and physical or mental impairment, and shall comply with all relevant sections of the following: Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; The Age Discrimination Act of 1975; and, The Americans with Disabilities Act of 1990. The Contractor shall comply with pertinent amendments to such laws made during the term of the Contract and with all federal and state rules and regulations implementing such laws.
- B. HIPAA The Contractor acknowledges that it may have an obligation, independent of this contract, to comply with the Health Insurance Portability and Accountability Act (HIPAA), Sections 262 and 264 of Public Law 104-191, 42 USC Section 1320d, and federal regulations at 45 CFR Parts 160, 162 and 164. If applicable, the Contractor shall comply with all amendments to the law and federal regulations made during the term of the Contract.
- C. Lobbying
1. The Contractor certifies that none of the compensation under the Contract has been paid or will be paid by or on behalf of the Contractor to any person for influencing or attempting to influence an officer or employee of any governmental agency, a member, officer or employee of Congress or the Idaho Legislature in connection with the awarding, continuation, renewal, amendment, or modification of any contract, grant, loan, or cooperative agreement.
  2. If any funds, other than funds provided by the Contract, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any governmental agency, a member, officer or employee of Congress or the State Legislature in connection with the Contract, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and submit a copy of such form to the Department.
  3. The Contractor shall require that the language of this certification be included in any subcontract, at all tiers, (including grants, subgrants, loans, and cooperative agreements) entered into as a result of the Contract, and that all sub-recipients shall certify and disclose as provided herein.
  4. The Contractor acknowledges that a false certification may be cause for rejection or termination of the Contract, subject the Contractor to a civil penalty, under 31 U.S.C. Section 1352, of not less than \$10,000.00 and not more than \$100,000.00 for each such false

statement, and that the Contractor's execution of the Contract is a material representation of fact upon which the Department relied in entering the Contract.

D. Qualification The Contractor certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from performing the terms of the Contract by a government entity (federal, state or local);
2. Have not, within a three (3) year period preceding the Contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offenses enumerated in paragraph 2 of this certification; and
4. Have not within a three (3) year period preceding the Contract had one or more public transactions (federal, state, or local) terminated for cause or default.
5. The Contractor acknowledges that a false statement of this certification may be cause for rejection or termination of the Contract and subject the Contractor, under 18 U.S.C. Section 1001, to a fine of up to \$10,000.00 or imprisonment for up to five (5) years, or both.

E. Faith-Based Organization If the Contractor is a faith-based organization, the Contractor and all approved subcontractors shall:

1. Segregate contract funds in a separate account.
2. Serve all participants without regard to religion, religious belief, refusal to hold a religious belief, or refusal to actively participate in a religious practice.
3. Ensure that Department-referred clients' participation in religious activities, including worship, scripture study, prayer or proselytization, is only on a voluntary basis.
4. Notify participants of the religious nature of the organization, their right to be served without religious discrimination, their right not to take part in religious activities, their right to request an alternative provider and the process for doing so.
5. Ensure that contract funds are not expended on inherently religious activities.

6. Comply with applicable terms of 42 CFR Parts 54, 54a, and 45 CFR Parts 260 and 1050.

- F. Tribes If the Contractor is a Tribe, the Contractor and Department recognize that services performed pursuant to this Contract by the Contractor and all approved subcontractors within reservation boundaries are subject to applicable laws, ordinances and regulations of the Tribe. Nothing in this Contract should be construed as a waiver of sovereign immunity.
- G. Illegal Aliens The Contractor warrants that the contract is subject to Executive Order 2009-10 ([http://gov.idaho.gov/mediacenter/execorders/eo09/eo\\_2009\\_10.html](http://gov.idaho.gov/mediacenter/execorders/eo09/eo_2009_10.html)); it does not knowingly hire or engage any illegal aliens or persons not authorized to work in the United States; it takes steps to verify that it does not hire or engage any illegal aliens or persons not authorized to work in the United States; and that any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and shall be cause for the imposition of monetary penalties up to five percent (5%) of the contract price, per violation, and or termination of its contract.
- H. Single Audit Act The Contractor acknowledges that it may have an obligation; independent of this contract, to comply with the terms of the "Single Audit Act" of 1984. Funds provided under the Contract may be used to pay for compliance with this act in proportion to other funding sources available to the Contractor for the services provided pursuant to the Contract.
- I. Local Contribution To Funding If funding for the Contract is tied to a local contribution or match: (1) The Contractor certifies that none of the local contribution or match funds are federal funds, are derived from or are in lieu of federal funds, and none of said funds have been used, or have been substituted for funds used, to earn other federal funds. (2) The Contractor further certifies that any costs incurred by the Contractor prior to the Contract will not be allowable to or included as a cost of any other state or federally financed program in either the current period or any prior period.

### XIII. CONFLICT OF INTEREST.

- A. Public Official No official or employee of the State of Idaho or the United States government who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the Contract shall, prior to the termination of the Contract, voluntarily acquire any personal interest, direct or indirect, in the Contract.
- B. Contractor The Contractor and its agents shall have no present or future interest, direct or indirect, that would conflict in any manner or degree with the performance of the services provided pursuant to this Contract.

### XIV. REMEDIES.

- A. Remedial Action If any of the Contractor's responsibilities do not conform to Contract requirements, the Department shall consult with the Contractor and may at its sole discretion require any of the following remedial actions, taking into account the nature of the deficiency: (1) require the Contractor to take corrective action to ensure that performance conforms to Contract requirements; (2) reduce payment to reflect the reduced value of services received; (3) require the Contractor to subcontract all or part of the service at no additional cost to the Department; or (4) terminate the Contract.

- B. Mutual Termination for Convenience Either party may cancel the Contract at any time, without cause, upon written notice to the other party specifying the date of termination which shall not be less than thirty (30) calendar days; provided however, the Department must approve Contractor's date of termination and shall not exceed a reasonable timeframe to ensure continuity of business upon termination of the Contract.
  
- C. Termination for Cause Either party may terminate the Contract (and/or any order issued pursuant to the Contract) when either party has been provided written notice of default or noncompliance and has failed to cure the default or noncompliance within a reasonable time, not to exceed thirty (30) calendar days. If the Contract is terminated for default or noncompliance by the Department, the Contractor shall be responsible for any costs resulting from the Department's award of a new contract and any damages incurred by the Department. The Department, upon termination for default or noncompliance, reserves the right to take any legal action it may deem necessary including, without limitation, offset of damages against payment due.
  
- D. Effect of Termination Upon termination by either party, the Contractor shall: (a) promptly discontinue all work, unless the termination notice directs otherwise; (b) promptly return to the Department any property provided by the Department pursuant to the Contract; and, (c) deliver or otherwise make available to the Department all data, reports, estimates, summaries and such other information and materials as may have been accumulated by the Contractor in performing the Contract, whether completed or in process.
  
- E. Survival of Terms Any termination, cancellation, or expiration of the Contract notwithstanding, provisions which are intended to survive and continue shall survive and continue, including, but not limited to, the provisions of Sections IV (Independent Contractor Status), V (Indemnification by the Contractor), VIII (Records and Data), XI (Audit Exceptions), and XII(Compliance with Certain Laws, Licensing, and Certifications).

#### XV. MISCELLANEOUS.

- A. Disposition of Property At the termination of the Contract, the Contractor shall comply with relevant federal and state laws, rules and regulations and, as applicable, 2 CFR §§ 200.310-316 concerning the disposition of property purchased wholly or in part with funds provided under the Contract.
  
- B. Governing Law The Contract shall be governed by and construed under the laws of the State of Idaho.
  
- C. Officials Not Personally Liable In no event shall any official, office, employee or agent of the State of Idaho or of the Department be liable or responsible for any representation, statement, covenant, warranty or obligation contained in, or made in connection with, the Contract, express or implied.
  
- D. Time of Performance Time is of the essence with respect to the obligations to be performed under the Contract; therefore, the parties shall strictly comply with all times for performance.



- E. Notices Any notice given in connection with the Contract shall be given in writing and shall be delivered electronically or by hard copy.
1. Notice to the Department shall be as designated by the Department.
  2. Notice to the Contractor shall be as designated by the Contractor.
- F. Attorney Fees In the event of a legal proceeding of any kind instituted under the Contract or instituted to obtain performance or to remedy a default under the Contract, the prevailing party shall be awarded reasonable fees and costs.
- G. Appropriation by Legislature Required The State reserves the right to terminate this Agreement in whole or in part (or any order placed under it) if, in its sole judgment, the Legislature of the State of Idaho or the federal government if applicable, fails, neglects, or refuses to appropriate sufficient funds as may be required for the State to continue such payments, or rescinds or requires any return or "give-back" of funds required for the State to continue payments, or if the Executive Branch mandates any cuts or holdbacks in spending. All affected future rights and liabilities of the parties hereto shall thereupon cease within ten (10) calendar days after notice to the Contractor.
- H. Nonwaiver of Breach The failure of the Department to require strict performance of any term or condition of the Contract, or to exercise any option herein, in any one or all instances shall not be construed to be a waiver or relinquishment of any such term or condition. The same shall be and remain in full force and effect unless there is a prior written waiver by the Department.
- I. Complete Statement of Terms The Contract constitutes the entire agreement between the parties and shall supersede all previous proposals, negotiations, representations commitments, and all other communications between the parties. The Contract may not be released, discharged, changed, extended, modified, subcontracted or assigned in whole or in part, and no claim for additional services not specifically provided herein will be allowed by the Department, except to the extent provided by an instrument in writing signed by a duly authorized representative of the Department and the Contractor.
- J. Priority of Contract Documents The Contract consists of and precedence is established by the order of the documents as listed on the Contract Cover Sheet.
- K. Severability If any term or provision of the Contract is held by the court to be illegal or unenforceable, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- L. Headings The captions and headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of the Contract.

IN WITNESS WHEREOF, the parties have executed this agreement.

CONTRACTOR:

HEALTHCARE MANAGEMENT SOLUTIONS,  
LLC

Name of Organization

Leah Heimbach

Name of Signature Authority (printed)

President

Title

Leah Heimbach

Signature

12/24/19

Date

Mailing Address:

1000 Technology Dr. Ste. 1310

Fairmont WV 26554

[REDACTED]

Email Address

[REDACTED]

Telephone No.

Contract Number: EC000400

STATE OF IDAHO:

Department of Health and Welfare

Name of Organization

Valarie Carlson, Division of Operational  
Services

Name of Signature Authority (printed)

Grants/Contracts Management Supervisor

Title

Valarie Carlson

Signature

12/30/19

Date

Mailing Address:

P.O. Box 83720

Boise, ID 83720-0036

[REDACTED]

Telephone No.

## **Insurance**

For the term of the Contract and until all services specified in the Contract are completed, the Contractor shall maintain in force, at its own expense, the following insurance.

- Commercial General Liability Insurance and, if necessary, Commercial Umbrella Liability Insurance with a limit of not less than one million dollars (\$1,000,000) each occurrence. Insurance required by this section shall name the State of Idaho, Department of Health and Welfare as an additional insured.
- Professional Liability Insurance with a limit of not less than one million dollars (\$1,000,000) each occurrence.
- Workers' Compensation Insurance which includes Employer Liability Insurance and shall comply with Idaho Statutes regarding Workers' Compensation in the amount of: \$100,000 per accident; \$500,000 disease policy limit; and \$100,000 disease, each employee.

If any of the liability insurance required for this contract is arranged on a "claims-made" basis, "tail coverage" will be required at the completion or termination of this contract for a duration of twenty-four (24) months thereafter. Continuous "claims-made" coverage will be acceptable in lieu of "tail-coverage" provided the retroactive date is on or before the effective date of this contract, or twenty-four (24) months "prior acts" coverage is provided. Contractor will be responsible for furnishing certification of "tail coverage" or continuous "claims-made" coverage. Prior to performing any services, the Contractor shall provide certificates of insurance to the Department. The Contractor is also required to maintain current certificates on file with the Department and to provide updated certificates upon request. Failure to provide the required certificates of insurance shall constitute a default under this Contract and upon such failure the Department may, at its option, terminate the Contract. Insurance required by this section shall be policies or contracts of insurance issued by insurers approved by the Department. Should any of above described policies be cancelled before the expiration date thereof, notice shall be delivered in accordance with the policy provision. The Contractor shall further ensure that all policies of insurance are endorsed to read that any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverage(s) provided to the State of Idaho, Department of Health and Welfare.

**Email updated certificates to:** [REDACTED]

**Or mail to: Idaho Department of Health and Welfare  
Contracting & Procurement Services Unit -- 9th Floor  
450 West State Street  
Boise, ID 83702**

## Scope of Work

### I. General Requirements

- A. The Contractor must comply with the rules, regulations, and policies as provided by the Department.
- B. The Contractor must provide its staff with the equipment and tools required to complete the survey work, specifically, Appendices P, PP, Q, J and Exhibit 355 of the current version of the State Operations Manual (SOM) issued by the Centers for Medicare and Medicaid (CMS).
- C. Federal certification requirements are established in the Federal Code of Regulations (CFR) and interpreted by surveyors using the CMS State Operations Manual for Survey and Certification. Federal certification surveys are conducted in Idaho using the CMS Traditional Survey Method.

### II. Hire and Train Survey Staff

- A. The Contractor must provide Surveyor Minimum Qualifications Test (SMQT) qualified staff to investigate and ensure compliance with Medicare/Medicaid regulations following the traditional survey process outlined in Appendices P, PP, Q, J, and Exhibit 355 in the SOM for Long Term Care (LTC) facilities and Intermediate Care Facilities for Intellectually Disabled (ICF/IIDs). This process must include:
  - 1. assessing the number and quality of staff;
  - 2. related policies and procedures;
  - 3. ensuring that quality health care is provided for residents in the facility; and
  - 4. determining compliance by the providers.
- B. The Contractor must provide surveyors to work on survey teams comprised of Department and Contractor survey staff. The Contractor must provide qualified ICF/IID surveyors to conduct recertification and follow-up surveys to Condition level findings and complaint investigation at the Department's Southwest Idaho Treatment Center (SWITC). The survey teams must conduct recertification and follow-up surveys and complaint investigations in LTC facilities in Idaho.
- C. The Contractor must ensure that the surveyors they provide have the following qualifications:
  - 1. Licensed Registered Nurse.
    - a. The Department may consider Registered Dietitians and Licensed Social Workers, depending on the need. For ICF/IID surveys, Qualified Intellectual Disabilities Professionals (QIDPs).
  - 2. SMQT certified by the CMS. QIDPs must have successfully completed the CMS basic course for ICF/IID.

### III. Conduct Surveys

- A. The Contractor must ensure that their surveyors actively participate as members of Department survey teams to determine the compliance of LTC facilities in meeting federal certification requirements for Medicare and Medicaid. The Contractor must ensure their ICF/IID surveyors conduct recertification and follow-up surveys to Condition level findings

and complaint investigation to determine the compliance of SWITC ICF/IID surveys must be conducted as required by Appendix J and Exhibit 355 in meeting federal certification requirements for Medicaid.

1. Survey teams travel to facilities to conduct the surveys which can span two (2) to five (5) working days.
- B. The Contractor's surveyors are subject to the same confidentiality of the survey schedule as required by the CFR and SOM.
- C. The Contractor must ensure surveyors disclose any potential conflict of interest for any assigned survey.
- D. The Department will provide the pre-survey documents required for a specific scheduled survey to the assigned surveyors by Wednesday of the week prior to the scheduled survey.
1. Surveyors must be available for the pre-survey prep by telephone the Thursday and Friday preceding the survey.

IV. Write Survey Reports

- A. The Contractor must ensure surveyors write citations that meet the CMS Principles of Documentation.
1. The report findings are due to the Bureau of Facility Standards staff no later than close of business the Wednesday following the survey. See Report section of this contract for report requirements.
- B. Each surveyor is responsible for their own findings. The Contractor must ensure surveyors are available by e-mail or phone to answer questions about the survey findings.
- C. The Contractor must ensure that scanned surveyor files are available no later than two (2) business days after the survey/complaint findings are sent to the Department.
- D. The Contractor must ensure surveyors are available to testify in any Administrative Law Judge (ALJ) case in which they participated in the survey, if requested. The Contractor must be available to provide information including testimony in any State administrative process.
- E. The Contractor must notify the Bureau of Facility Standards as soon as possible if a surveyor will not be available as scheduled.
- F. The Department will complete survey schedule by the fifteenth (15th) of the preceding month.

V. Quality Assurance Plan

- A. The Contractor must provide the Department, within thirty (30) calendar days of contract execution, a quality assurance plan that assesses each component of the work, including identification of complaints, problems, and solutions. The quality assurance plan must be subject to acceptance by the Department within fourteen (14) working days of receiving the proposed plan.

VI. Transition Plan

- A. The Contractor must maintain a transition plan that complies with the requirements of this contract. The objectives of the transition plan are to minimize disruption of services provided to the Department and to provide for an orderly and controlled transition of the Contractor's responsibilities to a successor at the conclusion of the contract period or for any other reason the Contractor cannot complete the responsibilities of the contract. The Contractor must

submit an updated transition plan to the Department within ninety (90) calendar days prior to the conclusion of the contract. The transition plan should include:

1. A description of the process for ensuring smooth transition of program services, transfer of program materials and documentation either to the Department or to another contractor upon termination or expiration of the contract.
2. Cutoff date for accepting new work; and
3. Identify the proposed length of the close-out transition period.

## Cost/Billing Procedure

### **COST:**

This is a FIXED RATE plus COST REIMBURSEMENT, *INDEFINITE QUANTITY* contract.

The Department will pay up to the total outlined below for services satisfactorily performed and authorized under the contract.

### **Cost Matrix 01/01/2020 - 12/31/2021**

ITEM	UNIT	COST/UNIT
Senior Surveyor Salary (includes travel time, onsite and report writing)	Per Hour*	\$94.00
Surveyor Salary (includes travel time, onsite and report writing)	Per Hour*	\$79.00
Surveyor Salary for ICF/IID Surveys and Complaint Investigations (includes travel time, onsite and report writing)	Per Hour*	\$94.00

### **Cost Matrix 01/01/2022 - 12/31/2023**

ITEM	UNIT	COST/UNIT
Senior Surveyor Salary (includes travel time, onsite and report writing)	Per Hour*	\$96.82
Surveyor Salary (includes travel time, onsite and report writing)	Per Hour*	\$81.37
Surveyor Salary for ICF/IID Surveys and Complaint Investigations (includes travel time, onsite and report writing)	Per Hour*	\$96.82

### **Project Budget**

ITEM	Estimated Budget
Travel Expenses (includes airline ticket, car rental, lodging, meals)	<b>\$120,000.00</b>

<b>Maximum Contract Value</b>	<b>\$400,000.00</b>
-------------------------------	---------------------

\* Hourly rates will be negotiated in good faith, at the time the contract is extended.

### **BILLING PROCEDURE:**

The Contractor shall provide a monthly invoice, receipts for cost reimbursement items, and the respective reports as required in the report section of this contract within ten (10) working days of the end of the billing period. No invoice shall be accepted or paid without receipts and required reports.

The invoice shall include, but not be limited to:

1. All contract services delivered during the billing period, identified by each item as reflected in the cost matrix and project budget and the total for each.
2. Total amount billed for the billing period.
3. Contract number.

Invoices and reports are to be submitted to:

Debby Ransom  
Division of Licensing and Certification  
Idaho Department of Health and Welfare  
3232 Elder Street  
Boise, ID 83705



## Reports

**Report Description:**

Survey Report: CMS Form 2567

**Report Format:**

Word and saved in rich text format with the following naming convention: CCN#, exit date and initials.  
The body of the text shall include the F-tag location for the finding and name of the author.

**Report Due Date:**

No later than the close of business the Wednesday following the survey.

**Report Description:**

Survey Time Report: CMS Form 670

**Report Format:**

Form provided by the Department

**Report Due Date:**

Completed Form 670 shall be e-mailed to [REDACTED] when the surveyor has completed all survey related task but no later than two (2) days after notification of report completion.

# Exhibit 9



# State of Minnesota Professional and Technical Services Contract

SWIFT Contract Number: 216258

This Contract is between the State of Minnesota, acting through its Commissioner of Minnesota Department of Health ("State") and Health Management Solutions, LLC (HMS) whose designated business address is 1000 Technology Dr. #1310, Fairmont, WV 26554 ("Contractor"). State and Contractor may be referred to jointly as "Parties."

## Recitals

---

1. State issued a solicitation identified as Contracted Federal Recertification Surveys on January 31, 2022 for Federally certified nursing home surveyors. ("Solicitation");
2. Contractor provided a response to the Solicitation indicating its interest in and ability to provide the goods or services requested in the Solicitation; and
3. Subsequent to an evaluation in accordance with the terms of the Solicitation and negotiation, the Parties desire to enter into a contract.

Accordingly, the Parties agree as follows:

## Contract

---

### 1. Term of Contract

- 1.1 Effective date. July 1, 2022, or the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later. The Contractor must not begin work under this Contract until this Contract is fully executed and the Contractor has been notified by the State's Authorized Representative to begin the work.
- 1.2 Expiration date. June 30, 2024, or until all obligations have been satisfactorily fulfilled, whichever occurs first. The contract may be extended for up to an additional 3 years, in increments as determined by the State, through a duly executed amendment.

### 2. Contractor's Duties

The Contractor shall perform all duties described in this Contract to the satisfaction of the State.

The Contractor, who is not a State employee, shall:

-Provide Minnesota Department of Health (MDH) with proposed HMS survey schedule so MDH is able to coordinate with the State's Life Safety Cod (LSC) survey team.

-Conduct recertification surveys for Long Term Care (LTC) facilities consistent with the Federal Long Term Care Survey Processes (LTCSP). This includes complaint investigations during recertification. The LTCSP can be found here: [LTCSP Procedure Guide \(cms.gov\)](https://www.cms.gov/Regulatory-and-Compliance/LTCSP)

-Notify MDH supervisor identified at time of schedule by telephone or email, of any concerns during survey to determine whether harm level or immediate jeopardy findings are identified in order to implement decisions based on MDH processes.

-Document survey findings in the federal computer program Aspen which you have confirmed your federally qualified surveyors have access to, and zip file completed survey findings, and supporting investigation documentation, within 5 business days of completion of the survey to MDH supervisor identified prior to survey for review.

-Communicate with MDH team members and supervisor assigned to the survey, in person, by telephone, or by email to discuss questions that arise prior to finalization of the federal findings required to be documented on the federal form 2567 statement of deficiencies on a weekly basis.

-Provide all investigative survey documents to MDH for electronic storage.

-Conduct review of the emergency preparedness (EP) tag reviews in accordance with the Federal Requirements of Appendix Z found here: [som107ap z emergprep.pdf \(cms.gov\)](https://www.cms.gov/Regulatory-and-Compliance/LTCSP) , except for EP tag 42 CFR 483.73, which the State's LSC team will be responsible to review.

-HMS and MDH will meet monthly to review status of surveys, status of completion, and to discuss satisfaction with all aspects of survey process, documentation and completion.

### 3. Representations and Warranties

3.1 Under Minn. Stat. §§ 15.061 and 16C.03, subd. 3, and other applicable law the State is empowered to engage such assistance as deemed necessary.

3.2 Contractor warrants that it is duly qualified and shall perform its obligations under this Contract in accordance with the commercially reasonable standards of care, skill, and diligence in Contractor's industry, trade, or profession, and in accordance with the specifications set forth in this Contract, to the satisfaction of the State.

3.3 Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind Contractor to its terms.

**4. Time**

The Contractor must comply with all the time requirements described in this Contract. In the performance of this Contract, time is of the essence.

**5. Consideration and Payment**

Consideration. The State will pay for performance by the Contractor under this Contract as follows:

5.1.1 Compensation. The Contractor will be paid in accordance with the breakdown of costs as set forth in Exhibit D

5.1.2 Total obligation. The total obligation of the State for all compensation and reimbursements to the Contractor under this Contract will not exceed \$2,723,230.00.

**5.2 Payment.**

5.2.1 Invoices. The State will promptly pay the Contractor after the Contractor presents an itemized invoice for the goods received or services actually performed, and the State's Authorized Representative accepts the invoiced goods or services. Invoices must be submitted timely and according to the following schedule: The Contractor shall present invoices for services performed on a monthly basis, as incurred.

5.2.2 Retainage. Under Minn. Stat. § 16C.08, subd. 2 (10), no more than 90 percent of the amount due under this Contract may be paid until the final product of this Contract has been reviewed by the State. The balance due will be paid when the State determines that the Contractor has satisfactorily fulfilled all the terms of this Contract.

5.2.3 Conditions of payment. All services delivered by the Contractor under this Contract must be performed to the State's satisfaction and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations including business registration requirements of the Office of the Secretary of State. The Contractor will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

**6. Authorized Representative**

The State's Authorized Representative is Maria King, Division Director, 87 E 7<sup>th</sup> Place, St. Paul, 55101, [REDACTED], or his/her successor or delegate, and has the responsibility to monitor the Contractor's performance.

Contractor's Authorized Representative. The Contractor's Authorized Representative is Leah Heimbach at the following business address and telephone number: 1000 Technology Dr. #1310, Fairmont, WV 26554, [REDACTED], or his/her successor. If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify the State.

**7. Exhibits**

The following Exhibits are attached and incorporated into this Contract. In the event of a conflict between the terms of this Contract and its Exhibits, or between Exhibits, the order of precedence is first the Contract, and then in the following order:

- Exhibit A: Contract Terms
- Exhibit B: Insurance Terms
- Exhibit C: Specifications, Duties, and Scope of Work
- Exhibit D: Price and Payment Schedule
- Exhibit E: Use of Federal Funds

**1. State Encumbrance Verification**

*Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05*

Print Name: Sarah Martin

Signature: Sarah Martin Digitally signed by Sarah Martin  
Date: 2022.08.08 12:14:06 -05'00'

Title: Accounting Officer Date: 8/8/2022

SWIFT Contract No. [REDACTED] 8

**2. Contractor**

*The Contractor certifies that the appropriate person has executed the Contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.*

Print Name: Laura Reeder

Signature: Laura Reeder DocuSigned by:  
98C2CCE97EEF428...

Title: CEO Date: 8/8/2022 | 2:14:03 PM PDT

**3. State Agency**

*With delegated authority*

Print Name: Jeffery Colonna

Signature: Jeffery Colonna DocuSigned by:  
F35E8532D94404...

Title: Purchasing Supervisor Date: 8/8/2022 | 8:12:42 PM

**4. Commissioner of Administration**

*As delegated to The Office of State Procurement*

Print Name: Haylie Heil

Signature: Haylie Heil DocuSigned by:  
4A84CCB119DA413...

Title: contracts Specialist Date: 8/12/2022 | 1:40:33 PM

Admin ID: [REDACTED] 9

## Exhibit A: Contract Terms

### 1. Prompt Payment and Invoicing.

1.1 Prompt Payment. The State will pay the Contractor pursuant to Minn. Stat. § 16A.124, which requires payment within 30 days following receipt of an undisputed invoice, or merchandise or service, whichever is later. Terms requesting payment in less than 30 days will be changed to read "Net 30 days." Notwithstanding the foregoing, the State may pay the Contractor in advance for purchases as allowed pursuant to Minn. Stat. §16A.065.

The payment for each order will only be made for goods received or services actually performed that have been accepted by the ordering entity, and meet all terms, conditions, and specifications of the Contract and the ordering document.

1.2 Invoicing. The invoice must be in the same format as the sample invoice form approved as Exhibit D, Supplement 1 with the Contract, unless an alternative format is approved in writing by the State Authorized Representative, or delegate. See Exhibit D, Supplement 1 for a list of minimum invoice requirements.

### 2. Assignment, Amendments, Waiver, and Contract Complete.

2.1 Assignment. The Contractor may neither assign nor transfer any rights or obligations under this Contract without the prior consent of the State and a fully executed assignment agreement, executed and approved by the authorized parties or their successors.

2.2 Amendments. Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the authorized parties or their successors.

2.3 Waiver. If the State fails to enforce any provision of this Contract, that failure does not waive the provision or its right to enforce it.

2.4 Contract Complete. This Contract contains all negotiations and agreements between the State and the Contractor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

### 3. Termination.

3.1 Termination for Convenience. The State or Commissioner of Administration may cancel this Contract at any time, with or without cause, upon 30 days' written notice to the Contractor. Upon termination for convenience, the Contractor will be entitled to payment, determined on a pro rata basis, for services or goods satisfactorily performed or delivered.

3.2 Termination for Breach. The State may terminate this Contract, with cause, upon 30 days' written notice to Contractor of the alleged breach and opportunity to cure. If after 30 days, the alleged breach has not been remedied, the State may immediately terminate the Contract.

3.3 Termination for Insufficient Funding. The State may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services addressed within this Contract. Termination must be by written notice to the Contractor. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that dedicated funds are available. The



State will not be assessed any penalty if the Contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Contractor notice of the lack of funding. This notice will be provided within a reasonable time of the State's receiving notice.

**4. Force Majeure.**

Neither party shall be responsible to the other or considered in default of its obligations within this Contract to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot, disruption of government, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party relying on this provision to excuse performance must provide the other party prompt written notice of the inability to perform and take all necessary steps to bring about performance as soon as practicable.

**5. Indemnification.**

5.1 In the performance of this Contract, the Indemnifying Party must indemnify, save, and hold harmless the State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the State, to the extent caused by Indemnifying Party's:

- Intentional, willful, or negligent acts or omissions; or
- Actions that give rise to strict liability; or
- Breach of contract or warranty.

The Indemnifying Party is defined to include the Contractor, Contractor's reseller, any third party that has a business relationship with the Contractor, or Contractor's agents or employees, and to the fullest extent permitted by law. The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the State's sole negligence. This clause will not be construed to bar any legal remedies the Indemnifying Party may have for the State's failure to fulfill its obligation under this Contract.

5.2 Nothing within this Contract, whether express or implied, shall be deemed to create an obligation on the part of the State to indemnify, defend, hold harmless or release the Indemnifying Party. This shall extend to all agreements related to the subject matter of this Contract, and to all terms subsequently added, without regard to order of precedence.

**6. Governing Law, Jurisdiction, and Venue.**

Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

**7. Foreign Outsourcing of Work Prohibited.**

All services under this contract shall be performed within the borders of the United States. All storage and processing of information shall be performed within the borders of the United States. This provision also applies to work performed by all subcontractors.

**8. Subcontracting and Subcontract Payment.**

8.1 Subcontracting Allowed. A subcontractor is a person or company that has been awarded a portion of the Contract by Contractor. Only subcontractors that have been approved by the State's Authorized Representative can be used for this Contract.

After the effective date of the Contract, the Contractor shall not, without prior written approval of the State's Authorized Representative, subcontract for the performance of any of the Contractor's obligations that were

not already approved for subcontracting when the Contract was awarded. During this Contract, if an approved subcontractor is determined to be performing unsatisfactorily by the State's Authorized Representative, the Contractor will receive written notification that the subcontractor can no longer be used for this Contract.

The provisions of the Contract shall apply with equal force and effect to all approved subcontractors engaged by the Contractor. Notwithstanding approval by the State, no subcontract shall serve to terminate or in any way affect the primary legal responsibility of the Contractor for timely and satisfactory performances of the obligations contemplated by the Contract.

8.2 Subcontractor Payment. Contractor must pay any subcontractor in accordance with Minn. Stat. § 16A.1245.

#### **9. Data Disclosure.**

Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and Minnesota tax identification number, already provided to the State, to federal and state agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Contractor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

#### **10. Government Data Practices.**

The Contractor and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (or, if the State contracting party is part of the Judicial Branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this clause, the Contractor must immediately notify and consult with the State's Authorized Representative as to how the Contractor should respond to the request. The Contractor's response to the request shall comply with applicable law.

#### **11. Intellectual Property Rights.**

11.1 Definitions. For the purpose of this Section, the following words and phrases have the assigned definitions:

11.1.1 "Documents" are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Contractor, its employees, agents, or subcontractors, in the performance of this Contract.

11.1.2 "Pre-Existing Intellectual Property" means intellectual property developed prior to or outside the scope of this Contract, and any derivatives of that intellectual property.

11.1.3 "Works" means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Contractor, its employees,

agents, and subcontractors, either individually or jointly with others in the performance of this Contract. "Works" includes Documents.

11.2 Ownership. The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents created and paid for under this Contract. The Documents shall be the exclusive property of the State and all such Documents must be immediately returned to the State by the Contractor upon completion or cancellation of this Contract. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Contractor assigns all right, title, and interest it may have in the Works and the Documents to the State. The Contractor must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the Works and Documents.

11.3 Pre-existing Intellectual Property. Each Party shall retain ownership of its respective Pre-Existing Intellectual Property. The Contractor grants the State a perpetual, irrevocable, non-exclusive, royalty free license for Contractor's Pre-Existing Intellectual Property that are incorporated in the products, materials, equipment, deliverables, or services that are purchased through the Contract.

11.4 Obligations.

11.4.1 Notification. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Contractor, including its employees and subcontractors, in the performance of this Contract, the Contractor will immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the State's Authorized Representative with complete information and/or disclosure thereon.

11.4.2 Representation. The Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State, and that neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Contractor represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities.

11.4.3 Indemnification. Notwithstanding any other indemnification obligations addressed within this Contract, the Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Contractor's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Contractor's or the State's opinion is likely to arise, the Contractor must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing works or documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

## **12. Copyright.**

The Contractor shall save and hold harmless the State of Minnesota, its officers, agents, servants and employees, from liability of any kind or nature, arising from the use of any copyrighted or noncopyrighted compositions, secret process, patented or nonpatented invention, article or appliance furnished or used in the performance of the Contract.

## **13. Contractor's Documents.**

Any licensing and maintenance agreement, or any order-specific agreement or document, including any pre-installation, linked or "click through" agreement that is allowed by, referenced within or incorporated within the Contract whenever the Contract is used for a State procurement, whether directly by the Contractor or through a Contractor's agent, subcontractor or reseller, is agreed to only to the extent the terms within any such agreement or document do not conflict with the Contract or applicable Minnesota or Federal law, and only to the extent that the terms do not modify, diminish or derogate the terms of the Contract or create an additional financial obligation to the State. Any such agreement or document must not be construed to deprive the State of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applicable to this Contract or afforded to the State by Minnesota law. A State employee's decision to choose "accept" or an equivalent option associated with a "click-through" agreement does not constitute the State's concurrence or acceptance of terms, if such terms are in conflict with this section.

## **14. State Audits.**

Under Minn. Stat. § 16C.05, subd. 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by the State, the State Auditor, or Legislative Auditor, as appropriate, for a minimum of six years from the expiration or termination of this Contract.

## **15. Diverse Spend Reporting.**

If the total value of the Contract may exceed \$500,000, including all extension options, Contractor must track and report, on a quarterly basis, the amount paid to diverse businesses both: 1) directly to subcontractors performing under the Contract, and 2) indirectly to diverse businesses that provide supplies/services to your company (in proportion to the revenue from this Contract compared to Contractor's overall revenue). When this applies, Contractor will register in a free portal to help report the Tier 2 diverse spend, and the requirement continues as long as the Contract is in effect.

## **16. Publicity and Endorsement.**

16.1 Publicity. Any publicity regarding the subject matter of this Contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, information posted on corporate or other websites, research, reports, signs, and similar public notices prepared by or for the Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

16.2 Endorsement. The Contractor must not claim that the State endorses its products or services.

## **17. Debarment by State, its Departments, Commissions, Agencies, or Political Subdivisions.**

Contractor certifies that neither it nor its principals is presently debarred or suspended by the Federal government, the State, or any of the State's departments, commissions, agencies, or political subdivisions. Contractor's certification is a material representation upon which the Contract award was based. Contractor shall provide immediate written notice to the State's Authorized Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

## 18. Federal Funds.

- 18.1 Compliance with Federal Requirements. Federal money will be used or may potentially be used to pay for all or part of the goods, construction or services under the Contract. The Contractor is responsible for compliance with all federal requirements imposed on the funds and accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements.
- 18.2 Certification regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion. Federal money will be used or may potentially be used to pay for all or part of the work under the Contract, therefore Contractor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. Contractor's certification is a material representation upon which the Contract award was based.

## 19. Contingency Fees Prohibited.

Pursuant to Minn. Stat. § 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

## 20. Certification of Nondiscrimination (in accordance with Minn. Stat. § 16C.053).

If the value of this Contract, including all extensions, is \$50,000 or more, Contractor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

## 21. Non-discrimination (in accordance with Minn. Stat. § 181.59).

The Contractor will comply with the provisions of Minn. Stat. § 181.59.

## 22. E-Verify Certification (in accordance with Minn. Stat. § 16C.075).

For services valued in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of the State, Contractor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify Program for all newly hired employees in the United States who will perform work on behalf of the State. Contractor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

## 23. Affirmative Action Requirements

The State intends to carry out its responsibility for requiring affirmative action by its contractors.

- 23.1 Covered Contracts and Contractors. If the Contract exceeds \$100,000 and the Contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600.
- 23.2 General. Minn. R. 5000.3400-5000.3600 implements Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or

rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, Minn. R. 5000.3420-5000.3500 and 5000.3552-5000.3559.

- 23.3 Disabled Workers. The Contractor must comply with the following affirmative action requirements for disabled workers.

#### AFFIRMATIVE ACTION FOR DISABLED WORKERS

23.3.1 The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

23.3.2 The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

23.3.3 In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

23.3.4 The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

23.3.5 The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

- 23.4 Consequences. The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Contract by the Commissioner or the State.

- 23.5 Certification. The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

#### 24. Equal Pay Certification.

If required by Minn. Stat. §363A.44, the Contractor must have a current Equal Pay Certificate prior to Contract execution. If Contractor's Equal Pay Certificate expires during the term of this Contract, Contractor must promptly re-

apply for an Equal Pay Certificate with the Minnesota Department of Human Rights and notify the State's Authorized Representative once the Contractor has received the renewed Equal Pay Certificate. If Contractor claims to be exempt, the State may require Contractor to verify its exempt status.

**25. IT Accessibility Standard.**

Contractor acknowledges and is fully aware that the State of Minnesota (Executive branch state agencies) has developed IT Accessibility Standard effective September 1, 2010. The standard entails, in part, the Web Content Accessibility Guidelines (WCAG) and Section 508 which can be viewed at: <https://mn.gov/mnit/government/policies/accessibility/>.

The Standards apply to web sites, software applications, electronic reports and output documentation, training delivered in electronic formats (including, but not limited to, documents, videos, and webinars), among others. As upgrades are made to the software, products, or subscriptions available through this Contract, the Contractor agrees to develop functionality which supports accessibility. If any issues arise due to nonconformance with the above-mentioned accessibility Standards, the Contractor agrees to provide alternative solutions upon request at no additional charge to the State.

When updates or upgrades are made to the products or services available through this Contract, the Contractor agrees to document how the changes will impact or improve the product's or service's accessibility and usability. This documentation, upon request, must be provided to the State in advance of the change, occurring within an agreed upon timeframe sufficient for the state to review the changes and either approve them or request a remediation plan from the Contractor. Contractor warrants that its Products comply with the above-mentioned accessibility Standards and agrees to indemnify, defend, and hold harmless the State against any claims related to non-compliance of Contractor's Product with the above-mentioned accessibility Standards. If agreed-upon updates fail to improve the product or service's accessibility or usability as planned, the failure to comply with this requirement may be cause for contract cancellation or for the State to consider the Contractor in default.

**26. Nonvisual Access Standards.**

Pursuant to Minn. Stat. § 16C.145, the Contractor must comply with the following nonvisual technology access standards to the extent required by law:

- That the effective interactive control and use of the technology, including the operating system applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;
- That the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;
- That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and
- That the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired; and
- Executive branch state agencies subject to Section 16E.03, subdivision 9, are not required to include nonvisual technology access standards developed under this Section in contracts for the procurement of information technology.

These standards do not require the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

**27. Survival of Terms.**

The following clauses survive the expiration or cancellation of this Contract: Indemnification; State Audits; Government Data Practices; Intellectual Property; Publicity and Endorsement; Governing Law, Jurisdiction, and Venue; and Data Disclosure. Any other Contract term that expressly states or by its nature shall survive, shall survive.

## **Exhibit B: Insurance Requirements**

### **1. Notice to Contractor.**

- 1.1 The Contractor is required to submit Certificates of Insurance acceptable to the State as evidence of insurance coverage requirements prior to commencing work under this Contract.
- 1.2 Contractor shall not commence work under the contract until they have obtained all the insurance described below and the State has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of this Contract, unless otherwise specified in this Contract
- 1.3 The failure of the Contractor to provide a Certificate of Insurance, for the policies required under this Contract or renewals thereof, or failure of the insurance company to notify the State of the cancellation of policies required under this Contract shall not constitute a waiver by the State to the Contractor to provide such insurance.
- 1.4 The State reserves the right to immediately terminate this Contract if the Contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Contractor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's Authorized Representative upon written request.

### **2. Notice to Insurer.**

- 2.1 The Contractor's insurance company(ies) waives its right to assert the immunity of the State as a defense to any claims made under said insurance.
- 2.2 Insurance certificate holder should be addressed as follows: Maria King, Division Director, 87 E 7<sup>th</sup> Place, St. Paul, MN, 55101.

### **3. Additional Insurance Conditions. The following apply to the Contractor, or the Contractor's subcontractor:**

- 3.1 Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State with respect to any claim arising out of Contractor's performance under this Contract.
- 3.2 If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State within five (5) business days with a copy of the cancellation notice, unless Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State;
- 3.3 Contractor is responsible for payment of Contract related insurance premiums and deductibles;
- 3.4 If Contractor is self-insured, a Certificate of Self-Insurance must be attached;
- 3.5 Contractor's policy(ies) shall include legal defense fees in addition to its policy limits with the exception of professional liability.
- 3.6 Contractor's insurance companies must either (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota or (2) be domiciled in the State of Minnesota and have a Certificate of Authority/Compliance from the Minnesota Department of Commerce if they are not rated by AM Best.



3.7 An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor’s policy limits to satisfy the full policy limits required by the Contract.

4. **Coverages. Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:**

4.1 **Commercial General Liability Insurance.** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor under the contract. Insurance minimum limits are as follows:

- \$2,000,000 – per occurrence
- \$2,000,000 – annual aggregate
- \$2,000,000 – annual aggregate – applying to Products/Completed Operations

The following coverages shall be included:

- Premises and Operations Bodily Injury and Property Damage
- Personal and Advertising Injury
- Blanket Contractual Liability
- Products and Completed Operations Liability
- Other; if applicable, please list \_\_\_\_\_
- **State of Minnesota named as an Additional Insured**, to the extent permitted by law

4.2 **Commercial Automobile Liability Insurance.** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this contract, and in case any work is subcontracted the contractor will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance minimum limits are as follows:

\$1,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included: Owned, Hired, and Non-owned Automobile.

Evidence of Subcontractor insurance shall be filed with the Contractor.

4.3 **Workers’ Compensation Insurance.** [This is a statutorily required clause and must remain in the contract. Do not remove.] Statutory Compensation Coverage. Except as provided below, Contractor must provide Workers’ Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers’ Compensation insurance in accordance with the statutory requirements of the State, including Coverage B, Employer’s Liability. Insurance **minimum** limits are as follows:

- \$100,000 – Bodily Injury by Disease per employee
- \$500,000 – Bodily Injury by Disease aggregate
- \$100,000 – Bodily Injury by Accident

If Minn. Stat. § 176.041 exempts Contractor from Workers’ Compensation insurance or if the Contractor has no employees in the State, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers’ Compensation requirements.

If during the course of the contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation Insurance requirements herein and provide the State with a certificate of insurance.

**4.4 Professional Liability, Errors, and Omissions.** This policy will provide coverage for all claims the contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Contractor's professional services required under the contract. Insurance **minimum** limits are as follows:

\$2,000,000 - per claim or event

\$2,000,000 - annual aggregate

Any deductible will be the sole responsibility of the Contractor and may not exceed \$50,000 without the written approval of the State. If the Contractor desires authority from the State to have a deductible in a higher amount, the Contractor shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that the State can ascertain the ability of the Contractor to cover the deductible from its own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and Contractor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement.

**4.5 Network Security and Privacy Liability Insurance (or equivalent).** The coverage may be endorsed on another form of liability coverage or written on a standalone policy. Contractor shall maintain insurance to cover claims which may arise from failure of Contractor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data including but not limited to confidential or private information, transmission of a computer virus or denial of service. Insurance minimum limits are as follows:

\$2,000,000 per occurrence

\$2,000,000 annual aggregate

The following coverage shall be included: State of Minnesota named as an Additional Insured unless the coverage is written under a Professional Liability policy.

**4.6 Privacy Liability Insurance (or equivalent).** The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The Contractor shall maintain insurance to cover claims which may arise from failure of the Contractor to ensure the security of not public data stored on the State's documents, including but not limited to paper, microfilms, microfiche, magnetic computer tapes, cassette tapes, photographic negatives, photos, hard disks, floppy disks, and carbon sheets, while in the Contractor's care, custody, and control. Insurance minimum limits are as follows:

\$2,000,000 - Per Occurrence

\$2,000,000 - Annual Aggregate

The following coverage shall be included: State of Minnesota named as an Additional Insured unless the coverage is written under a Professional Liability policy.

**4.7 Property of Others Insurance (or equivalent).** The Contractor shall maintain a Property insurance policy covering "All Risk" of direct physical loss or damage, or equivalent, including the perils of theft, flood, transit, earthquake, and pollution clean-up expense for property owned by the state that is in the Contractor's care, custody, and control. Any deductible shall be the sole responsibility of the Contractor. Insurance **minimum** limits are as follows: The Contractor is solely responsible for the coverage equal to that of the actual cash value of state-owned property in the Contractor's care, custody, and control at any given point in time.

**Exhibit C: Specifications, Duties, and Scope of Work**

Intentionally left blank.

**1. Exhibit D: Price and Payment Schedule**

**Healthcare Management Solutions LLC**

**Price and Payment Schedule**

<b>Recertification Survey Team (5 People, 4 Days)</b>	
<b>Total Cost Per Survey</b>	<b>\$ 43,335.00</b>

<b>Recertification Survey Team (4 People, 4 Days)</b>	
<b>Total Cost Per Survey</b>	<b>\$ 34,804.00</b>

<b>Recertification Survey Team or Augmentation of a State Survey Team (3 People, 4 Days)</b>	
<b>Total Cost Per Survey</b>	<b>\$ 26,274.00</b>

<b>Complaint Investigation or Augmentation of a State Survey Team (1 Person, 4 Days)</b>	
<b>Total Cost Per Survey</b>	<b>\$ 9,071.00</b>

<b>Complaint Investigation or Augmentation of a State Survey Team (2 People, 4 Days)</b>	
<b>Total Cost Per Survey</b>	<b>\$ 17,601.00</b>

**Exhibit D, Supplement 1**  
**Sample Invoice and Quote**

Contractor can use their own invoice as long as customer name, service description, detailed explanation of work, and contract number fields are included.

Contractor Name (Item 1)	Customer Name
Contractor Address (Item 2)	Contract Number
Contractor City/State/Zip (Item 3)	Contract Start Date
Contractor Phone (Item 4)	Contract End Date
Contractor Email (Item 5)	Contract Description
Contractor Website (Item 6)	Contract Value
Contractor Tax ID (Item 7)	Contract Status
Contractor License (Item 8)	Contract Notes
Contractor Insurance (Item 9)	Contract Terms
Contractor Bond (Item 10)	Contract Conditions
Contractor References (Item 11)	Contract Attachments
Contractor Signature (Item 12)	Contract Date
Contractor Seal (Item 13)	Contract Location
Contractor Stamp (Item 14)	Contract Version
Contractor Logo (Item 15)	Contract History
Contractor Profile (Item 16)	Contract Details
Contractor Contact (Item 17)	Contract Summary
Contractor Information (Item 18)	Contract Overview
Contractor Data (Item 19)	Contract Report
Contractor Details (Item 20)	Contract Analysis
Contractor Summary (Item 21)	Contract Review
Contractor Review (Item 22)	Contract Approval
Contractor Approval (Item 23)	Contract Execution
Contractor Execution (Item 24)	Contract Completion
Contractor Completion (Item 25)	Contract Finalization
Contractor Finalization (Item 26)	Contract Archiving
Contractor Archiving (Item 27)	Contract Retention
Contractor Retention (Item 28)	Contract Disposal
Contractor Disposal (Item 29)	Contract Termination
Contractor Termination (Item 30)	Contract Renewal
Contractor Renewal (Item 31)	Contract Extension
Contractor Extension (Item 32)	Contract Modification
Contractor Modification (Item 33)	Contract Amendment
Contractor Amendment (Item 34)	Contract Addendum
Contractor Addendum (Item 35)	Contract Schedule
Contractor Schedule (Item 36)	Contract Budget
Contractor Budget (Item 37)	Contract Risk
Contractor Risk (Item 38)	Contract Compliance
Contractor Compliance (Item 39)	Contract Security
Contractor Security (Item 40)	Contract Privacy
Contractor Privacy (Item 41)	Contract Accessibility
Contractor Accessibility (Item 42)	Contract Usability
Contractor Usability (Item 43)	Contract Reliability
Contractor Reliability (Item 44)	Contract Scalability
Contractor Scalability (Item 45)	Contract Flexibility
Contractor Flexibility (Item 46)	Contract Portability
Contractor Portability (Item 47)	Contract Interoperability
Contractor Interoperability (Item 48)	Contract Compatibility
Contractor Compatibility (Item 49)	Contract Integration
Contractor Integration (Item 50)	Contract Migration
Contractor Migration (Item 51)	Contract Upgrade
Contractor Upgrade (Item 52)	Contract Patch
Contractor Patch (Item 53)	Contract Update
Contractor Update (Item 54)	Contract Patch
Contractor Patch (Item 55)	Contract Update
Contractor Update (Item 56)	Contract Patch
Contractor Patch (Item 57)	Contract Update
Contractor Update (Item 58)	Contract Patch
Contractor Patch (Item 59)	Contract Update
Contractor Update (Item 60)	Contract Patch

## **Exhibit E**

### **Use of Federal Funds**

Federal Funds: Payments under this Contract will be made from Federal Funds obtained by the State from the CARES Act through Center for Medicare and Medicaid Services. The Contractor is responsible for compliance with all Federal requirements imposed on these funds and accepts full financial responsibility for requirements imposed by the Contractor's failure to comply with Federal requirements.

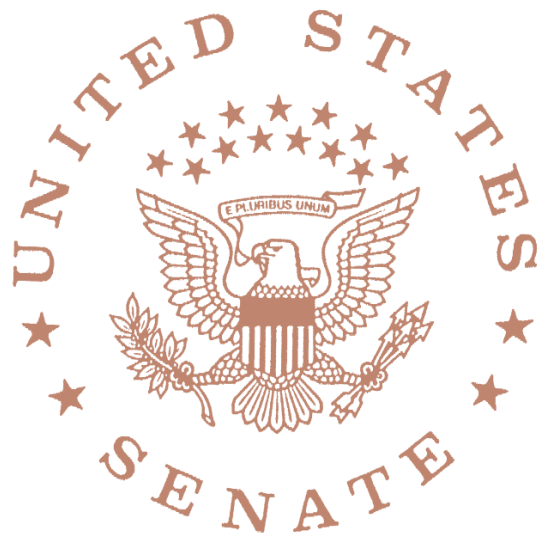
Page 22 of 22

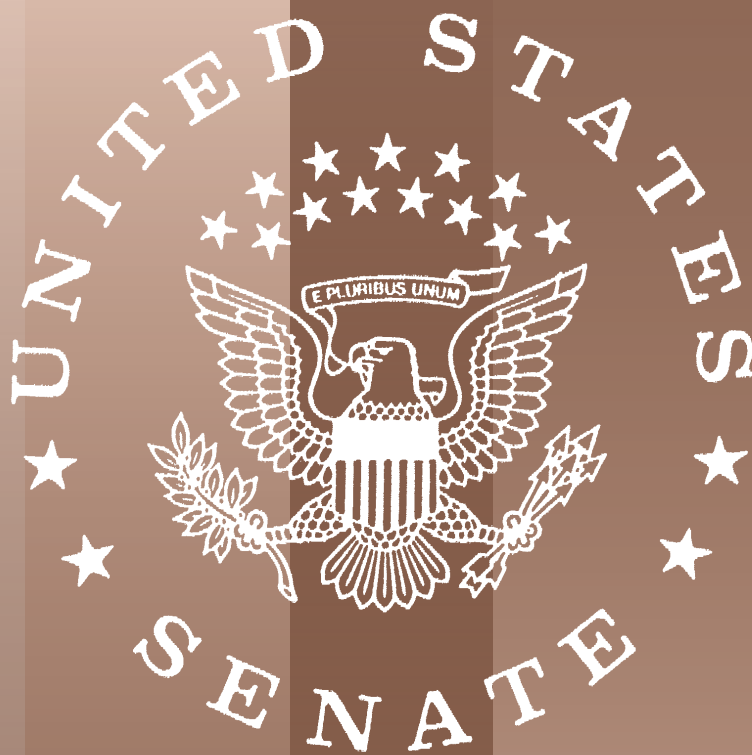
Page 22 of 22

Faint, illegible text, likely bleed-through from the reverse side of the page.









**A REPORT BY THE  
MAJORITY STAFF OF THE  
U.S. SENATE SPECIAL  
COMMITTEE ON AGING**