

ARKANSAS HIGHER EDUCATION INSURANCE CONSORTIUM

**Request for Proposal (RFP)
No. 18-001**

Benefits Consulting and Brokerage Services

PROPOSAL RELEASE DATE: 8/1/2018

PROPOSAL DUE DATE: 9/1/2018

PROPOSAL DUE TIME: 5:00 p.m.

**SUBMIT ALL PROPOSALS TO: Ozarka College
Attn: Human Resources
P.O. Box 10
Melbourne, AR 72556**

SECTION 1 - GENERAL INSTRUCTIONS AND INFORMATION

- *Do not provide responses to items in this section unless specifically and expressly required.*

1.1 **PURPOSE**

This Request for Proposal (RFP) is issued by the Arkansas Higher Education Insurance Consortium to request proposals from a qualified insurance consulting/brokerage firm to provide a full range of consulting and actuarial services for its employee benefits programs.

1.2 **COOPERATIVE PURCHASING**

Any contract resulting from this solicitation will be for the use of the Consortium. In addition, with the consent of the successful respondent, the resultant contract from this solicitation may be made available to other public agencies including State and local governmental entities, public and private primary, secondary and higher education entities and nonprofit entities. Appropriate cooperative purchasing agencies' purchasing laws, rules and regulations **must** apply to the purchases made under the resultant contract.

1.3 **BID OPENING LOCATION**

Proposals will be opened at the following location:

1.4 **ACCEPTANCE OF REQUIREMENTS**

- A. A Prospective Contractor **shall** unconditionally accept all Requirements in the Requirements Section(s) of this RFP to be considered a responsive Prospective Contractor.
- B. A Prospective Contractor's proposal will be disqualified if a Prospective Contractor takes exceptions to any Requirements in the Requirements Section(s) of this RFP.

1.5 **CLARIFICATION OF BID SOLICITATION**

- A. Submit any questions requesting clarification of information contained in this *Bid Solicitation* in writing via email by 4:00 p.m., Central Time on or before August 15, 2018 to DeEdra Steed (the Consortium contact). For each question submitted, Prospective Contractor should reference the specific solicitation item number to which the question refers.
- B. Prospective Contractors' written questions will be consolidated and responded to by the Consortium.
- C. The Prospective Contractor should notify the Consortium contact of any term, condition, etc., that precludes the Prospective Contractor from submitting a compliant, responsive proposal. Prospective Contractors should note that it is the responsibility of the Prospective Contractor to seek resolution of all such issues, including those relating to the terms and conditions of the contract, prior to the submission of a proposal.
- D. Prospective Contractors may contact the Consortium contact with non-substantive questions at any time prior to the bid opening.
- E. An oral statement by the Consortium contact will not be part of any contract resulting from this solicitation and may not reasonably be relied on by any Prospective Contractor as an aid to interpretation.

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- F. Prospective Contractors entering into a contract with the Consortium shall comply with all the terms and conditions contained herein.

1.6 SUBCONTRACTORS

- A. Prospective Contractor should complete, sign and submit the *Proposed Subcontractors Form* included in the addendum.
- B. Any proposed subcontractor is subject to prior approval by the State agency.
- C. Pricing and fees from subcontractors are to be borne by the Prospective Contractor.

1.7 CONFLICT OF INTEREST AFFIDAVIT

Prospective Contractor **shall** provide a completed and signed *Conflict of Interest Affidavit* located in the addendum.

1.8 PRICING

- A. Prospective Contractor(s) **shall** include all pricing in a separate Bid Price sheet.
- B. To allow time to evaluate proposals, prices **must** be valid for 120 days following the bid opening.
- C. The proposed prices **must** include all services and requirements described in the RFP.
- D. The Consortium **shall not** pay any costs the Prospective Contractor fails to include on the *Official Bid Price Sheets* such as, but not limited to, the following:
1. All fees charged by third parties including any subcontractors of the Contractor.
 2. Printing and mailing expenses.
 3. All expenses associated with the education and/or enrollment sessions provided to agencies.
 4. All travel costs associated with providing the services specified in this RFP including meals, lodging, and airfare.
- E. For all required services, the Contractor **shall** bear all costs not included on the Bid Price Sheet but subsequently incurred in order to achieve successful operation.
- F. The Bid Price sheet and Pricing CD's or flash drive's, including the hard copy and electronic copy, **must** be separately sealed from the remainder of the response and should be clearly marked as "Pricing".

1.9 PRIME CONTRACTOR RESPONSIBILITY

- A. A single Prospective Contractor **must** be identified as the prime Contractor.
- B. The prime Contractor **shall** be responsible for the contract and jointly and severally liable with any of its subcontractors, affiliates, or agents to the Consortium for the performance thereof.

1.10 INDEPENDENT PRICE DETERMINATION

By submission of this proposal, the Prospective Contractor certifies that the prices in the proposal have been arrived at independently, without collusion, as that term is defined in Arkansas Code Annotated § 19-11-240.

1.11 PROPRIETARY INFORMATION

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- A. Submission documents pertaining to this *Bid Solicitation* become the property of the Consortium and may be subject to the Arkansas Freedom of Information Act (FOIA).
 - B. In accordance with FOIA and to promote maximum competition in the competitive bidding process, the Consortium may maintain the confidentiality of certain types of information described in FOIA. Such information may include trade secrets defined by FOIA and other information exempted from the Public Records Act pursuant to FOIA.
 - C. Prospective Contractor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by submitting a redacted copy of the response.
 - D. By so redacting any information contained in the response, the Prospective Contractor warrants that it has formed a good faith opinion having received such necessary or proper review by counsel and other knowledgeable advisors that the portions redacted meet the requirements of the Rules and Statutes set forth above.
 - E. Under no circumstances will price information be designated as confidential.
 - F. One (1) complete copy of the submission documents from which any proprietary information has been redacted should be submitted on a flash drive in the *Technical Proposal Packet*. A CD is also acceptable. Do not submit documents via email or fax.
 - G. Except for the redacted information, the redacted copy **must** be identical to the original hard copy, reflecting the same pagination as the original and showing the space from which information was redacted.
 - H. The Prospective Contractor is responsible for identifying all proprietary information and for ensuring the electronic copy is protected against restoration of redacted data.
 - I. The redacted copy may be open to public inspection under the Freedom of Information Act (FOIA) without further notice to the Prospective Contractor.
 - J. If a redacted copy of the submission documents is not provided with Prospective Contractor's response packet, a copy of the non-redacted documents, with the exception of financial data (other than pricing), will be released if it is determined to be responsive to any request made under the Arkansas Freedom of Information Act (FOIA).

1.12 CAUTION TO PROSPECTIVE CONTRACTORS

- A. Prior to any contract award, address all communication concerning this *Bid Solicitation* through the Consortium contact.
- B. Do not alter any language in any solicitation document provided by the Consortium.
- C. All official documents and correspondence related to this solicitation become part of the resultant contract.
- D. The Consortium has the right to award or not award a contract, if it is in the best interest of the Consortium to do so.
- E. As requested, provide clarification regarding Prospective Contractor's proposal response to the Consortium contact.
- G. Qualifications and proposed services **must** meet or exceed the required specifications as set forth in this *Bid Solicitation*.

H. Prospective Contractors may submit multiple proposals.

1.13 AWARD PROCESS

A. Successful Contractor Selection

The Grand Total Score for each Prospective Contractor, which is the sum of the Technical Score and Net Cost Score, will be used to determine the ranking of proposals. The Consortium may move forward to negotiations with those responsible Prospective Contractors determined, based on the ranking of the proposals, to be reasonably susceptible of being selected for award.

B. Negotiations

1. If the Consortium so chooses, negotiations may be conducted with the highest ranking Prospective Contractors. Negotiations are conducted at the sole discretion of the Consortium.
2. If negotiations fail to result in a contract, the Consortium may begin the negotiation process with the next highest ranking Prospective Contractor. The negotiation process may be repeated until the anticipated successful Contractor has been determined, or until such time the Consortium decides not to move forward with an award.

1.14 MINORITY AND WOMEN-OWNED BUSINESS POLICY

A. A minority-owned business is defined by Arkansas Code Annotated § 15-4-303 as a business owned by a lawful permanent resident of this State who is:

- African American
- American Indian
- Asian American
- Hispanic American
- Pacific Islander American
- A Service Disabled Veteran as designated by the United States Department of Veteran Affairs

B. A women-owned business is defined by Act 1080 of the 91st General Assembly Regular Session 2017 as a business that is at least fifty-one percent (51%) owned by one (1) or more women who are lawful permanent residents of this State.

C. The Arkansas Economic Development Commission conducts a certification process for minority-owned and women-owned businesses. If certified, the Prospective Contractor's Certification Number should be included on the *Proposal Signature Page*.

1.15 PROHIBITION OF EMPLOYMENT OF ILLEGAL IMMIGRANTS

A. Pursuant to Arkansas Code Annotated § 19-11-105, Prospective Contractor(s) **shall** certify that they do not employ or contract with illegal immigrants.

B. By signing and submitting a response to this *Bid Solicitation*, a Prospective Contractor agrees and certifies that they do not employ illegal immigrants. If selected, the Prospective Contractor certifies that they will not employ illegal immigrants during the aggregate term of a contract.

1.16 RESTRICTION OF BOYCOTT OF ISRAEL

A. Pursuant to Arkansas Code Annotated § 25-1-503, a public entity **shall not** enter into a contract with a company unless the contract includes a written certification that the person or company is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of Israel.

- B. This prohibition does not apply to a company which offers to provide the goods or services for at least twenty percent (20%) less than the lowest certifying business.
- C. By checking the designated box on the Proposal Signature Page of the response packet, a Prospective Contractor agrees and certifies that they do not, and will not for the duration of the contract, boycott Israel.

1.17 TECHNOLOGY ACCESS

- A. When procuring a technology product or when soliciting the development of such a product, the State of Arkansas is required to comply with the provisions of Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, which expresses the policy of the State to provide individuals who are blind or visually impaired with access to information technology purchased in whole or in part with state funds. The Prospective Contractor expressly acknowledges and agrees that state funds may not be expended in connection with the purchase of information technology unless that technology meets the statutory Requirements found in 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating ICSs) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (web-based intranet and internet information and applications), in accordance with the State of Arkansas technology policy standards relating to accessibility by persons with visual impairments.
- B. Accordingly, the Prospective Contractor expressly represents and warrants to the State of Arkansas through the procurement process by submission of a Voluntary Product Accessibility Template (VPAT) for 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating ICSs) and 36 C.F.R. § 1194.22, that the technology provided to the State for purchase is capable, either by virtue of features included within the technology, or because it is readily adaptable by use with other technology, of:
 - 1. Providing, to the extent required by Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, equivalent access for effective use by both visual and non-visual means.
 - 2. Presenting information, including prompts used for interactive communications, in formats intended for non-visual use.
 - 3. After being made accessible, integrating into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.
 - 4. Providing effective, interactive control and use of the technology, including without limitation the operating system, software applications, and format of the data presented is readily achievable by nonvisual means.
 - 5. Being compatible with information technology used by other individuals with whom the blind or visually impaired individuals interact, **must** meet all ADA requirements.
 - 6. Integrating into networks used to share communications among employees, program participants, and the public.
 - 7. Providing the capability of equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.
- C. State agencies cannot claim a product as a whole is not reasonably available because no product in the marketplace meets all the standards. Agencies **must** evaluate products to determine which product best meets the standards. If an agency purchases a product that

does not best meet the standards, the agency **must** provide written documentation supporting the selection of a different product, including any required reasonable accommodations.

- D. For purposes of this section, the phrase “equivalent access” means a substantially similar ability to communicate with, or make use of, the technology, either directly, by features incorporated within the technology, or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state and federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands or other means of navigating graphical displays, and customizable display appearance. As provided in Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, if equivalent access is not reasonably available, then individuals who are blind or visually impaired **shall** be provided a reasonable accommodation as defined in 42 U.S.C. § 12111(9), as it existed on January 1, 2013.
- E. If the information manipulated or presented by the product is inherently visual in nature, so that its meaning cannot be conveyed non-visually, these specifications do not prohibit the purchase or use of an information technology product that does not meet these standards.

SECTION 2 – REQUIREMENTS

2.1 INTRODUCTION

A. This Request for Proposal (RFP) is issued by the Arkansas Higher Education Insurance Consortium to request proposals from a qualified insurance consulting/brokerage firm to provide a full range of consulting services for its employee benefits programs. The Consortium health plan is a grandfathered, self-funded plan currently administered by QualChoice. A complete list of health benefits presently offered is attached as Appendix A.

The other benefit plans are fully insured. The benefits plan is administered by the AHEC Board members. Currently the Arkansas Higher Education Insurance Consortium is made up of eight (8) participating Arkansas Higher Education Institutions with approximately eight (8) participating individuals.

2.2 PROSPECTIVE CONTRACTOR QUALIFICATIONS

- A. Prior to contract award, Prospective Contractor **shall** be authorized to conduct business in the State of Arkansas, for all Major Service Components, as required by this RFP.
- B. At proposal submission, Prospective Contractor or its agent **shall** be licensed by the Arkansas Insurance Department and **shall** provide its National Association of Insurance Commissioner's (NAIC) code.
- C. Prospective Contractor **shall** have a minimum of five (5) years' experience of large group health insurance plan experience working with either State, Federal or Local Public Entities and **shall** be capable of serving the needs of a geographically diverse employer population.
- D. Prospective Contractor's experience requirements listed herein may be met by subcontractors. The subcontractor **shall** perform the specific service or function which relates to the required experience.
- E. Proposals **must** include a discussion of the firm's experience with **all** of the services included in the required elements of the proposal, detailed in Section 2.3.

2.3 **REQUIRED ELEMENTS OF PROPOSAL**

A. The Consortium is seeking proposals for a health benefit plan for its membership, which will: 1) provide benefits that are equal to or better than those of the existing plan; and 2) offset the administrative cost of the plan with the commissions received by the prospective contractor.

B. Proposals should, but are not required to, include a proposed plan for each service detailed below.

1. Health Plan Consulting/Brokerage Services
 - a. Data Mining
 - b. Wellness/Disease Management
 - c. Consumer Oriented Strategies
 - d. Physician/Facility Contracting
 - e. Analyses of Plan Expenses, Premiums and Reserves
2. Pharmacy Plan Consulting/Brokerage Services
 - a. Formulary Development
 - b. Value-based Benefit Design
 - c. Pharmacy Auditing
3. Life and Disability Plans Consulting
4. Annual Medical Plan Renewal Projection (including plan pricing and IBNR calculation)
5. GASB 45 Disclosure Requirements and Long-term Strategies for Liability Management
6. Retiree Benefits
7. Legal Consulting Services Regarding Employee Benefits and Health and Welfare Issues (including HIPAA compliance, tax issues associated with benefit plans and insurance regulation, along with "any willing provider" requirements and domestic partner coverage)
8. Voluntary Benefits Products Consulting
9. Analyses of Benefits Coordination and Effectiveness across All Benefits Offerings
10. Analyses of Benefits Delivery Models

C. Proposals for life and disability plans and voluntary benefit products are desired, but not required.

2.4 **CONFLICT OF INTEREST AND LITIGATION DISCLOSURES**

A. The Contractor **shall** adhere to the following conflict of interest disclosure requirements prior to and throughout the life of any awarded contract:

1. The Prospective Contractor **shall** disclose any actual and/or potential conflict(s) of interest pertaining to the Prospective Contractor's company. The conflict of interest disclosure requirement **shall** include but is not limited to:
 - a. Any contract and/or financial arrangement between the Prospective Contractor and any entity and/or subcontractor that impacts, has the potential to impact, and/or directly conflicts with the Prospective Contractor's ability to effectively and impartially honor the terms of the contract resulting from this RFP.
 - b. Throughout the term(s) of any resultant contract, the Contractor **shall** notify the Consortium immediately upon knowledge of any such conflict of interest.

B. Conflict of Interest Affidavit

1. As a Proposal Submission Requirement, the Prospective Contractor **shall** disclose any actual and/or potential conflict(s) of interest, pertaining to the Prospective Contractor's company by utilizing the *Conflict of Interest Affidavit* located in the addendum.
2. Should the Prospective Contractor have any actual and/or potential conflict(s) of interest, litigation (criminal or civil), and/or bankruptcy petition(s) disclosures to make, the Prospective Contractor **shall** submit an additional document, as an attachment to the *Conflict of Interest Affidavit*, explaining the actual and/or potential conflict(s) of interest.
3. The Consortium reserves the right, in its sole discretion, to determine if any actual and/or potential conflict(s) of interest disclosed with the *Conflict of Interest Affidavit* will directly conflict, impact, and/or prevent the Prospective Contractor from effectively and impartially honoring the terms of the contract resulting from this RFP. The Consortium reserves the right to disqualify the Prospective Contractor's proposal if such a conflict exists.

SECTION 3 - CRITERIA FOR SELECTION

- **Do not provide responses to items in this section.**

3.1 PROPOSAL SCORE

- A. The Consortium will review each Proposal to verify submission Requirements have been met. Proposals that do not meet submission *Requirements* will be disqualified and will not be evaluated.
- B. The Consortium's Board will evaluate and score qualifying Proposals.

Quality Rating	Quality of Response	Description	Confidence in Proposed Approach
5	Excellent	When considered in relation to the RFP evaluation factor, the proposal squarely meets the requirement and exhibits outstanding knowledge, creativity, ability or other exceptional characteristics. Extremely good.	Very High
4	Good	When considered in the relation to the RFP evaluation factor, the proposal squarely meets the requirement and is better than merely acceptable.	High
3	Acceptable	When considered in relation to the RFP evaluation factor, the proposal is of acceptable quality.	Moderate
2	Marginal	When considered in relation to the RFP evaluation factor, the proposal's acceptability is doubtful.	Low
1	Poor	When considered in relation to the RFP evaluation factor, the proposal is inferior.	Very Low
0	Unacceptable	When considered in relation to the RFP evaluation factor, the proposal clearly does not meet the requirement, either because it was left blank or because the proposal is unresponsive.	No Confidence

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1. Members of the Board will individually review and evaluate proposals and complete an Individual Score Worksheet for each proposal. Individual scoring for each Evaluation Criteria will be based on the above Scoring Description.
 2. After initial individual evaluations are complete, the Board members will meet to discuss their individual ratings. At this consensus scoring meeting, each member will be afforded an opportunity to discuss his or her rating for each evaluation criteria.
 3. After Board members have had an opportunity to discuss their individual scores with the committee, the individual Board members will be given the opportunity to change their initial individual scores, if they feel that is appropriate.
 4. The final individual scores of the evaluators will be recorded on the Consensus Score Sheets and averaged to determine the group or consensus score for each proposal.
 5. Other agencies, consultants, and experts may also examine documents at the discretion of the Consortium.

C. The Information for Evaluation section has been divided into the following sub-sections:

Information for Evaluation Sub-Sections	Maximum Points Possible
1 – Prospective Contractor Experience	75
2 – Health Plan Consulting/Brokerage Proposed Plan	200
3 – Pharmacy Consulting/Brokerage Proposed Plan	150
4 – Life Insurance and Voluntary Products Proposal	50
5 – Actuarial/Legal Services Proposal	25

MAXIMUM POSSIBLE SCORE

500

SECTION 4 – GENERAL CONTRACTUAL ITEMS

- **Do not provide responses to items in this section.**

4.1 GENERAL INFORMATION

A. The Consortium will not:

1. Lease any equipment or software for a period of time which continues past the end of a Fiscal Year unless the contract allows for cancellation by the State Procurement Official upon a 30 day written notice to the Contractor/lessor in the event funds are not appropriated.
 2. Contract with another party to indemnify and defend that party for any liability and damages.
 3. Pay damages, legal expenses or other costs and expenses of any other party.
 4. Continue a contract once any equipment has been repossessed.
 5. Agree to any provision of a contract which violates the laws or constitution of the State of Arkansas.
 6. Enter a contract which grants to another party any remedies other than the following:
 - i. The right to possession.
 - ii. The right to accrued payments.
 - iii. The right to expenses of deinstallation.
 - iv. The right to expenses of repair to return the equipment to normal working order, normal wear and tear excluded.
 - v. The right to recover only amounts due at the time of repossession and any unamortized nonrecurring cost as allowed by Arkansas Law.
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- B. Any litigation involving the Consortium **must** take place in Pulaski County, Arkansas.
 - C. The laws of the State of Arkansas govern this contract.
 - D. A contract is not effective prior to award being made by a Consortium Procurement Official.
 - E. In a contract with another party, the Consortium will accept the risk of loss of the equipment or software and pay for any destruction, loss or damage of the equipment or software while the Consortium has such risk, when:
 - 1. The extent of liability for such risk is based upon the purchase price of the equipment or software at the time of any loss, and
 - 2. The contract has required the Consortium to carry insurance for such risk.

4.2 CONDITIONS OF CONTRACT

- A. Observe and comply with federal and State of Arkansas laws, local laws, ordinances, orders, and regulations existing at the time of, or enacted subsequent to the execution of a resulting contract which in any manner affect the completion of the work.
- B. Indemnify and save harmless the Consortium and all its officers, representatives, agents, and employees against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order or decree by an employee, representative, or subcontractor of the Contractor.

4.3 SET-OFF

The parties agree that the Consortium, in its sole discretion, **shall** have the right to set-off any money Contractor owes the Consortium from the Consortium's payment to Contractor under this contract.

4.4 DISPUTES

In the event of any dispute concerning any performance by the EBD under the contract, the Contractor **shall** notify the Consortium in writing. The Consortium Procurement Director or a designee, prior to commencement of an action in court or any other action provided by law, will attempt to negotiate a settlement of the dispute with the parties in accordance with A.C.A. § 19-11-246. If the claim or controversy is not resolved by mutual agreement, and after reasonable notice to the parties in accordance with A.C.A. § 19-11-246 (c) (1), the State Procurement Director or his designee **shall** promptly issue a decision in writing stating the reason for the actions taken and a copy of the decision **shall** be mailed or otherwise furnished to the Contractor. This decision will be final and conclusive. Pending final determination of any dispute hereunder, the Contractor **shall** proceed diligently with the performance of the contract and in accordance with the Consortium's instructions.

4.5 COMPLIANCE WITH APPLICABLE LAW

The Contractor agrees to deliver the services authorized by this contract in accordance with all applicable laws and regulations.

4.6 NOTICES

All demands, notices and communications hereunder **must** be in writing and **must** be deemed to have been duly given if sent to either party postage prepaid, via U.S. mail, certified and return receipt requested to the addresses below. Notices will be effective on the date of delivery indicated on the return receipt. Notices may also be given by courier or express mail service (e.g. Federal Express):

(address)

Attention:

(name of contractor contact person or such other
name or address as may hereafter be furnished to
Consortium in writing by the Contractor)

Notices to the Consortium should be mailed to:

Ozarka College
Attn: Human Resources
P.O. Box 10
Melbourne, AR 72556

4.7 STATEMENT OF LIABILITY

- A. Subject to Section 4.3, Contractor **shall** indemnify and hold the Consortium free and harmless to the full extent permitted by law or in equity, for and from any and all losses, obligations, liabilities, damages, costs, expenses, claims, actions, judgments, attorneys' fees and attachments, joint or several, arising from or in connection with claims under this Agreement or any claim, matter or transaction related to Contractor's Services hereunder, but only to the extent the same **shall** be determined in a final judgment by a court of competent jurisdiction to have resulted from actions taken or omitted due to Consultant's willful misconduct, gross negligence or knowing violation of law.
- B. Indemnification: With respect to loss, expense, damage, liability, claims or demands, either at law or in equity, for actual or alleged personal injuries or property damage arising from the work performed under this agreement by the Contractor and its employees, agents, or subcontractors, and for any additional costs of alternatively accomplishing the goals of the contract, as well as any liability, including liability for costs or fees, which the Consortium may sustain as a result of the Contractor's performance or lack of performance, Contractor agrees that it will cooperate with the Consortium in the defense of any action or claim brought against the Consortium seeking the foregoing damages or relief; it will in good faith cooperate with the Consortium should the Consortium present any claims of the foregoing nature against Contractor to the Claims Commission of the State of Arkansas; it will not take any action to frustrate or delay the prompt hearing on claims of the foregoing nature by the said Claims Commission and will make reasonable efforts to expedite said hearing; provided, however, Contractor reserves its right to assert in good faith all claims and defenses available to it in any proceeding in said Claims Commission or other appropriate forum. The foregoing indemnification clause **shall** take precedent over any conflicting indemnification clause in this contract. Contractor **shall** be solely responsible for all claims of any nature arising out of its wrongful acts, negligence, breach of statutory or regulatory requirements, or breach of contract with regards to unauthorized access or use of protected health information and Contractor **shall** hold harmless and indemnify the Consortium for all such claims and all costs associated thereto including but not limited to all fees, fines, penalties, and reasonable attorney fees arising therefrom.
- C. The Consortium will demonstrate reasonable care but will not be liable in the event of loss, destruction or theft of Contractor-owned equipment or software and technical and business or operations literature to be delivered or to be used in the installation of deliverables and services. The Contractor will retain total liability for Contractor's equipment, software and technical and business or operations literature. The Consortium will not at any time be responsible for or accept liability for any Contractor-owned items.
- D. Language in these terms and conditions **shall not** be construed or deemed as the Consortium's waiver of its right of sovereign immunity, to the extent applicable. The Contractor

agrees that any claims against the Consortium, whether sounding in tort or in contract, may be brought before the Arkansas Claims Commission as provided by Arkansas law, and governed accordingly.

4.8 RECORD RETENTION

- A. The Contractor agrees to retain all records for five (5) years after final payment is made under this Contract or any related subcontract. In the event any audit, litigation or other action involving these records is initiated before the end of the five (5) year period, the Contractor agrees to retain these records until all issues arising out of the action are resolved or until the end of the five (5) year period, whichever is later. The Contractor agrees to retain all protected health information as defined by the Privacy Rule promulgated pursuant to HIPAA for six (6) years or as otherwise required by HIPAA.
- B. The Contractor will grant access to its records upon request by state or federal government entities or any of their duly authorized representatives. Access will be given to any books, documents, papers or records of the Contractor which are related to any services performed under the contract. The Contractor additionally consents that all subcontracts will contain adequate language to allow the same guaranteed access to the records of subcontractors.
- C. Other sections of this *Bid Solicitation* may contain additional Requirements regarding record retention.

4.9 PRICE ESCALATION

- A. Price increases will be considered at the time of contract renewal.
- B. The Contractor **must** provide to Consortium a written request for the price increase. The request **must** include supporting documentation demonstrating that the increase in contract price is based on an increase in market price. Consortium has the right to require additional information pertaining to the requested increase.
- C. Increases will not be considered to increase profit or margins.
- D. Consortium has the right to approve or deny the request.

4.10 CONFIDENTIALITY

- A. In connection with this contract, the Contractor will receive certain Confidential Information relating to Consortium members. For purposes of this contract, any information furnished or made available to the Contractor relating to Consortium members, the financial condition, results of operation, business, customers, properties, assets, liabilities or information relating to Recipients including but not limited to protected health information as defined by the Privacy Rule promulgated pursuant to the Health Insurance Portability and Accountability Act (HIPAA) of 1996, is collectively referred to as "Confidential Information". The Contractor **shall** comply with all Consortium policies governing privacy and security of Confidential Information, including the Consortium's designation of the Confidential Information as required by the Arkansas Data and System Security Classification Standards, and **shall** implement and maintain reasonable security procedures and practices appropriate to the nature of the Confidential Information as required by A.C.A. § 4-4-104, the Personal Information Protection Act ("the Act"). In addition, the Contractor **shall** comply with the Business Associate Agreement between the parties, incorporated herein by reference, and **shall** disclose any breaches of privacy or security by contacting the EBD Compliance Officer within one (1) business day of the breach by notification to the following e-mail address:
- B. The Contractor **shall** treat all Confidential Information which is obtained by it through its performance under the contract as Confidential Information as required by State and federal law and **shall** not use any information so obtained in any manner except as necessary for the

proper discharge of its obligations. The parties acknowledge that the disclosure of Confidential Information in contravention of the provisions hereof would damage the party to whom the information disclosed relates and such party has the right to seek all remedies at law or equity to minimize such damage and to obtain compensation therefore. The Contractor agrees to retain all protected health information as defined by the Privacy Rule promulgated pursuant to HIPAA for six (6) years or as otherwise required by HIPAA. The Contractor **shall** safeguard the use and disclosure of information concerning applicants for or recipients of Title XIX services in accordance with 42 CFR Part 431, Subpart F, and **shall** comply with 45 CFR Parts 160 and 164 and **shall** restrict access to and disclosure of such information in compliance with State and federal laws and regulations.

C. Substantial, consistent, and/or uncorrected breaches of confidentiality may constitute grounds for cancellation of a resulting contract, and the State has the right to cancel the contract on these grounds.

D. Previous sections of this *Bid Solicitation* may contain additional confidentiality Requirements.

4.11 CONTRACT INTERPRETATION

Should the State and Contractor interpret specifications differently, either party may request clarification. However, if an agreement cannot be reached, the determination of the State is final and controlling.

4.12 ORDER OF PRECEDENCE

The Contract (if any) resulting from this solicitation consists of this RFP (including, without limitation, its conditions, terms, specifications, amendments, and its attachments, if any), mirror terms in the accepted proposal (if any proposal is accepted), any written amendments to the Contract signed by the parties, and any Purchase Orders issued pursuant to the Contract. All parts of the Contract are intended to be complementary and what is set forth in any one document is as binding as it set forth in each document. In the event of any conflict, discrepancy, error or omission among any parts of the Contract, either party may immediately notify the other and seek to reach a mutually acceptable amendment to address the issue by agreement. If the Parties cannot resolve any such conflict, discrepancy, error or omission by mutual agreement, the matter may be submitted for resolution as a dispute in accordance with 4.5 Disputes. Subject to the preceding three sentences, should there be a discrepancy between the RFP, accepted proposal, and any written amendments signed by the parties (the "Primary Contract") and a Purchase Order, the provisions of the Primary Contract control.

4.13 CANCELLATION

A. For Cause. The Consortium may cancel any contract resulting from this solicitation for cause when the Contractor fails to perform its obligations under it by giving the Contractor written notice of such cancellation at least thirty (30) days prior to the date of proposed cancellation. In any written notice of cancellation for cause, the Consortium will advise the Contractor in writing of the reasons why the Consortium is considering cancelling the contract and provide the Contractor with an opportunity to avoid cancellation for cause by curing any deficiencies identified in the notice of cancellation for cause prior to the date of proposed cancellation. To the extent permitted by law and at the discretion of the parties, the parties may agree to minor amendments to the contract and avoid the cancellation for cause upon mutual agreement.

B. For Convenience. The Consortium may cancel any contract resulting from the solicitation by giving the Contractor written notice of such cancellation sixty (60) days prior to the date of cancellation.

4.14 EXPIRATION OR TERMINATION OF RESULTING CONTRACT/TRANSITION

A. In the event the contract should be terminated, cancelled, or expired, the following applies:

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1. Contractor **shall** execute a successful and orderly transition of Services and data to the new Contractor to ensure the continuity of those Services in a manner that will not negatively impact the care of the Recipient(s).
 2. All data, records, files and other information relating to the Programs are the property of Consortium and **must** be released to Consortium in a format and timeframe determined by Consortium.
 3. Contractor **shall** deliver to Consortium or its designee all records, documentation, reports, data, recommendations, or printing elements, etc., which are produced under the terms of the resulting contract. This requirement does not refer to the Contractor's intellectual property.
 4. All information relating to membership information **must** be made available to EBD in both a secure electronic and/or printed format to be determined by EBD. Electronic format means both electronic images of paper documentation and data extract.
 5. Provision of the above items **must** be within seven (7) business days of EBD's request.
- B. Except for as specifically agreed to by the Consortium, the Consortium 's main role in the transition **will** be supervisory to ensure that all of the Consortium's needs are sufficiently and successfully met.
- C. Contractor **shall** stop work under the contract on the date and to the extent specified on the Notice of Termination.
- D. Contractor **shall not** place further orders or enter in any additional subcontracts for services.
- E. Contractor **shall** terminate all orders and subcontractors to the extent that they relate to the performance of work terminated by the Notice of Termination.
1. Contractor **shall** assign to the Consortium, in the manner and to the extent directed by the contract administration, all of the right, title, and interest of the Contractor in the orders or subcontracts so terminated. The Consortium has the right, in its discretion, to settle or pay any and all claims arising out of the termination of such orders and subcontracts.
- F. With the approval or ratification of the Consortium, Contractor **shall** settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable, in whole or part, in accordance with the provisions of this contract.
- G. Contractor **shall** transfer title to the Consortium and deliver in the manner, at the time, and extent directed by the Consortium all files, data, information, manuals, or other documentation or property, in any form whatsoever, that relate to the work terminated by the Notice of Termination.
- H. Contractor **shall** complete the performance of any outstanding items that have not been completed by the termination date noted on the Notice of Termination. The Consortium will have final determination of the completion of all outstanding items.
- I. Contractor **shall** take such action as may be necessary, or as the Consortium may direct, for the protection and preservation of the property related to the contract which is in the possession of the Contractor and in which the Consortium has or may acquire an interest.

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- J. Contractor **shall** submit all billing invoices within sixty (60) days of the expiration of the contract. Any billings for services rendered during a particular State Fiscal Year which are not submitted within ninety (90) days of the end of the Fiscal Year will not be paid.
- K. The Consortium will proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item or reimbursable price under this clause.

4.15 ASSIGNMENT RESTRICTIONS

Except as expressly provided in this Agreement, neither Party may assign, or otherwise transfer, its rights or delegate its obligations under this Agreement without prior written consent of the other Party.

4.16 RELINQUISHMENT

The failure of the Consortium to insist upon the performance of any of the conditions in any one or more instances **shall not** be construed as a waiver or relinquishment of the future benefit of said condition.

4.18 ENTIRE CONTRACT

The parties acknowledge that each have read this RFP, understand it, and agree to be bound by its terms and conditions. The parties further agree that the Contract is the complete and exclusive statement of the agreement of the parties with respect to its subject matter and that it supersedes all prior proposals, representations, arrangements, understandings, and agreements, whether oral or written, between the parties with respect to its subject matter.

This Contract may not be modified, amended, or in any way altered except by a written agreement duly executed by the parties and approved in accordance with the laws and established procedures of the State of Arkansas.

4.19 SURVIVAL OF RIGHTS AND OBLIGATIONS

The Contract (if any) resulting from this solicitation **shall** be binding upon and inure to the benefit of the parties thereto and on their respective permitted successors, heirs, and assigns.

SECTION 5 – STANDARD TERMS AND CONDITIONS

1. **GENERAL:** Any special terms and conditions included in this solicitation **shall** override these Standard Terms and Conditions. The Standard Terms and Conditions and any special terms and conditions **shall** become part of any contract entered into if any or all parts of the bid are accepted by the Consortium.
2. **ACCEPTANCE AND REJECTION:** The State **shall** have the right to accept or reject all or any part of a bid or any and all bids, to waive minor technicalities, and to award the bid to best serve the interest of the State.
3. **BID SUBMISSION:** Original Proposal Packets **must** be submitted to the Office of State Procurement on or before the date and time specified for bid opening. The Proposal Packet **must** contain all documents, information, and attachments as specifically and expressly required in the *Bid Solicitation*. The bid **must** be typed or printed in ink. The signature **must** be in ink. Unsigned bids **shall** be disqualified. The person signing the bid should show title or authority to bind his firm in a contract. Multiple proposals **must** be placed in separate packages and should be completely and properly identified. Late bids **shall not** be considered under any circumstances.
4. **PRICES:** Bid unit price F.O.B. destination. In case of errors in extension, unit prices **shall** govern. Prices **shall** be firm and **shall not** be subject to escalation unless otherwise specified in the *Bid Solicitation*. Unless otherwise specified, the bid **must** be firm for acceptance for thirty days from the bid opening date. "Discount from list" bids are not acceptable unless requested in the *Bid Solicitation*.

5. **QUANTITIES:** Quantities stated in a *Bid Solicitation* for term contracts are estimates only, and are not guaranteed. Contractor **must** bid unit price on the estimated quantity and unit of measure specified. The State may order more or less than the estimated quantity on term contracts. Quantities stated on firm contracts are actual Requirements of the ordering agency.
6. **BRAND NAME REFERENCES:** Unless otherwise specified in the *Bid Solicitation*, any catalog brand name or manufacturer reference used in the *Bid Solicitation* is descriptive only, not restrictive, and used to indicate the type and quality desired. Bids on brands of like nature and quality will be considered. If bidding on other than referenced specifications, the bid **must** show the manufacturer, brand or trade name, and other descriptions, and should include the manufacturer's illustrations and complete descriptions of the product offered. The State **shall** have the right to determine whether a substitute offered is equivalent to and meets the standards of the item specified, and the State may require the Contractor to supply additional descriptive material. The Contractor **shall** guarantee that the product offered will meet or exceed specifications identified in this *Bid Solicitation*. Contractors not bidding an alternate to the referenced brand name or manufacturer **shall** be required to furnish the product according to brand names, numbers, etc., as specified in the solicitation.
7. **GUARANTY:** All items bid **shall** be newly manufactured, in first-class condition, latest model and design, including, where applicable, containers suitable for shipment and storage, unless otherwise indicated in the *Bid Solicitation*. The Contractor hereby guarantees that everything furnished hereunder **shall** be free from defects in design, workmanship and material, that if sold by drawing, sample or specification, it **shall** conform thereto and **shall** serve the function for which it was furnished. The Contractor **shall** further guarantee that if the items furnished hereunder are to be installed by the Contractor, such items **shall** function properly when installed. The Contractor **shall** guarantee that all applicable laws have been complied with relating to construction, packaging, labeling and registration. The Contractor's obligations under this paragraph **shall** survive for a period of one year from the date of delivery, unless otherwise specified herein.
8. **SAMPLES:** Samples or demonstrators, when requested, **must** be furnished free of expense to the State. Each sample should be marked with the Contractor's name and address, bid or contract number and item number. If requested, samples that are not destroyed during reasonable examination will be returned at Contractor's expense. After reasonable examination, all demonstrators will be returned at Contractor's expense.
9. **TESTING PROCEDURES FOR SPECIFICATIONS COMPLIANCE:** Tests may be performed on samples or demonstrators submitted with the bid or on samples taken from the regular shipment. In the event products tested fail to meet or exceed all conditions and Requirements of the specifications, the cost of the sample used and the reasonable cost of the testing **shall** be borne by the Contractor.
10. **AMENDMENTS:** Contractor's proposals cannot be altered or amended after the bid opening except as permitted by regulation.
11. **TAXES AND TRADE DISCOUNTS:** Do not include State or local sales taxes in the bid price. Trade discounts should be deducted from the unit price and the net price should be shown in the bid.
12. **AWARD:** Term Contract: A contract award will be issued to the successful Contractor. It results in a binding obligation without further action by either party. This award does not authorize shipment. Shipment is authorized by the receipt of a purchase order from the ordering agency. Firm Contract: A written State purchase order authorizing shipment will be furnished to the successful Contractor.
13. **DELIVERY ON FIRM CONTRACTS:** This solicitation shows the number of days to place a commodity in the ordering agency's designated location under normal conditions. If the Contractor cannot meet the stated delivery, alternate delivery schedules may become a factor in an award. The Office of State Procurement **shall** have the right to extend delivery if reasons appear valid. If the date is not acceptable, the agency may buy elsewhere and any additional cost **shall** be borne by the Contractor.
14. **DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without written approval of the Office of State Procurement. Delivery **shall** be made during agency work hours only 8:00 a.m. to 4:30 p.m. Central Time, unless prior approval for other delivery has been obtained from the agency. Packing memoranda **shall** be enclosed with each shipment.

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15. **STORAGE:** The ordering agency is responsible for storage if the Contractor delivers within the time required and the agency cannot accept delivery.
16. **DEFAULT:** All commodities furnished **shall** be subject to inspection and acceptance of the ordering agency after delivery. Back orders, default in promised delivery, or failure to meet specifications **shall** authorize the Office of State Procurement to cancel this contract or any portion of it and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to the defaulting Contractor. The Contractor **must** give written notice to the Office of State Procurement and ordering agency of the reason and the expected delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the Contractors list or suspension of eligibility for award.
17. **VARIATION IN QUANTITY:** The State assumes no liability for commodities produced, processed or shipped in excess of the amount specified on the agency's purchase order.
18. **INVOICING:** The Contractor **shall** be paid upon the completion of all of the following: (1) submission of an original and the specified number of copies of a properly itemized invoice showing the bid and purchase order numbers, where itemized in the *Bid Solicitation*, (2) delivery and acceptance of the commodities and (3) proper and legal processing of the invoice by all necessary State agencies. Invoices **must** be sent to the "Invoice To" point shown on the purchase order.
19. **CONSORTIUM PROPERTY:** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the Contractor hereunder or in contemplation hereof or developed by the Contractor for use hereunder **shall** remain property of the Consortium, **shall** be kept confidential, **shall** be used only as expressly authorized, and **shall** be returned at the Contractor's expense to the F.O.B. point provided by the agency or by OSP. Contractor **shall** properly identify items being returned.
20. **PATENTS OR COPYRIGHTS:** The Contractor **must** agree to indemnify and hold the Consortium harmless from all claims, damages and costs including attorneys' fees, arising from infringement of patents or copyrights.
21. **ASSIGNMENT:** Any contract entered into pursuant to this solicitation **shall not** be assignable nor the duties thereunder delegable by either party without the written consent of the other party of the contract.
22. **CLAIMS:** Any claims the Contractor may assert under this Agreement **shall** be brought before the Arkansas State Claims Commission ("Commission"), which **shall** have exclusive jurisdiction over any and all claims that the Contractor may have arising from or in connection with this Agreement. Unless the Contractor's obligations to perform are terminated by the State, the Contractor **shall** continue to provide the Services under this Agreement even in the event that the Contractor has a claim pending before the Commission.
23. **CANCELLATION:** In the event, the Consortium no longer needs the commodities or services specified for any reason, (e.g., program changes; changes in laws, rules or regulations; relocation of offices; lack of appropriated funding, etc.), the Consortium **shall** have the right to cancel the contract or purchase order by giving the Contractor written notice of such cancellation thirty (30) days prior to the date of cancellation.
- Any delivered but unpaid for goods will be returned in normal condition to the Contractor by the Consortium. If the Consortium is unable to return the commodities in normal condition and there are no funds legally available to pay for the goods, the Contractor may file a claim with the Arkansas Claims Commission under the laws and regulations governing the filing of such claims. If upon cancellation the Contractor has provided services which the Consortium has accepted, the Contractor may file a claim. **NOTHING IN THIS CONTRACT SHALL BE DEEMED A WAIVER OF THE CONSORTIUM'S RIGHT TO SOVEREIGN IMMUNITY.**
24. **DISCRIMINATION:** In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the Contractor agrees that: (a) the Contractor **shall not** discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin; (b) in all solicitations or advertisements for employees, the Contractor **shall** state that all qualified applicants **shall** receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the Contractor will furnish such relevant information and reports as requested by the Human Resources Commission for the purpose of determining compliance with the statute; (d) failure of the Contractor to comply with the statute, the rules and

regulations promulgated thereunder and this nondiscrimination clause **shall** be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part; (e) the Contractor **shall** include the provisions of above items (a) through (d) in every subcontract so that such provisions **shall** be binding upon such subcontractor or Contractor.

25. CONTINGENT FEE: The Contractor guarantees that he has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the Contractor for the purpose of securing business.

26. ANTITRUST ASSIGNMENT: As part of the consideration for entering into any contract pursuant to this solicitation, the Contractor named on the *Proposal Signature Page* for this solicitation, acting herein by the authorized individual or its duly authorized agent, hereby assigns, sells and transfers to the State of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or produced by this State pursuant to this contract.

27. DISCLOSURE: Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, **shall** be a material breach of the terms of this contract. Any Contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy **shall** be subject to all legal remedies available to the agency.