



# REQUEST FOR PROPOSALS

## MMIS Procurement Consulting Services

### RFP# 20111005

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Due Dates:

Questions via e-mail  
5:00 PM Central Daylight Savings Time, Friday, October 7, 2011

Answers Posted to Internet [www.medicaid.ms.gov](http://www.medicaid.ms.gov)  
12:00 PM Central Daylight Savings Time, Monday, October 10, 2011

Proposals due via e-mail [Melanie.wakeland@medicaid.ms.gov](mailto:Melanie.wakeland@medicaid.ms.gov)  
5:00 PM Central Daylight Savings Time, Monday, October 17, 2011

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## **1.0 SCOPE OF WORK**

### **1.1 Purpose**

The Mississippi Division of Medicaid (DOM) intends to release a Request for Proposals (RFP) in the near future to acquire an Enterprise solution comprised of a Medicaid Management Information System (MMIS), Pharmacy Benefits Management (PBM) and Decision Support System (DSS) as well as Fiscal Agent Services. Detailed requirements analyses have been conducted and a draft RFP, a draft Implementation Advanced Planning Document (IAPD), and a draft Proposal Evaluation Plan have been developed. Prior to release of the RFP, DOM must submit the RFP and IAPD to the Centers for Medicare and Medicaid Services (CMS) and receive approval of DOM's strategy and funding to proceed. The substantial delay between the RFP/IAPD development and the release of the RFP coupled with an ever changing landscape of technology, architecture and healthcare requirements compelled DOM to revisit the draft RFP and draft IAPD, conducting internal analysis and soliciting comments on the RFP through a Request for Information (RFI), due June 10, 2011. These steps were taken to ensure that the State of Mississippi acquires a system that meets the needs of DOM, complies with the intent of healthcare reform and conforms to the latest federal guidelines and requirements on health information technology.

As a result, DOM has determined that a gap analysis and associated updates and remediation of the draft RFP and draft IAPD are required before submission to CMS for approval and the subsequent release of the RFP. RFP #20111005 is requesting offers from responsible Contractors to assist DOM by 1) readying the draft RFP for public release in accordance with federal and state requirements; 2) reviewing and augmenting the draft IAPD to reflect the RFP revisions; 3) ensuring that the draft Proposal Evaluation Plan correlates appropriately to the RFP; and 4) leading, facilitating and documenting the proposal evaluation phase of the procurement as a subject matter expert throughout that process.

DOM envisions that the successful Contractor will complete the RFP/IAPD augmentation project by December 31, 2011.

### **1.2 Procurement Timetable**

The following is the timetable for the procurement process.

October 5, 2011	Release RFP
October 7, 2011 (5:00 p.m. CDT)	Deadline for Written Questions
October 10, 2011 (12:00 p.m. CDT)	Response to Questions Posted
October 17, 2011 (5:00 p.m. CDT)	Proposal Deadline
October 18, 2011	Evaluation of Technical Proposal
October 19, 2011	Evaluation of Business Proposal
October 20 - 24, 2011	Executive Approval and Award of Contract
November 1, 2011	Contract Start Date
December 31, 2011	RFP Remediation Completed
December 14, 2011	Submit RFP to CMS for Approval

December 31, 2011	Submit IAPD to CMS for Approval
February 12, 2012	Receive CMS Approval
February 14, 2012	Release Fiscal Agent RFP
June – July, 2012	Technical Evaluation of Offeror Proposals

### 1.2.1 Procedure for Submitting Questions

Multiple questions may be submitted using the template located at [www.medicaid.ms.gov/bids.aspx](http://www.medicaid.ms.gov/bids.aspx). Written responses will be available not later than 12:00 PM CDT, Monday, October 10, 2011, via DOM's procurement website, [www.medicaid.ms.gov/bids.aspx](http://www.medicaid.ms.gov/bids.aspx). Questions and answers will become a part of the final contract as an attachment. Written responses provided for the questions will be binding.

Questions should be sent to:

Melanie Wakeland  
 Procurement Officer  
 Division of Medicaid  
 Walter Sillers Building  
 550 High St., Suite 1000  
 Jackson, Mississippi 39201

OR EMAIL: [melanie.wakeland@medicaid.ms.gov](mailto:melanie.wakeland@medicaid.ms.gov)

### 1.2.2 Proposal Submission Requirements

Proposals must be in writing and must be submitted in two parts: Technical Proposal and Business Proposal. The format and content of each are specified in *Sections 5* and *6* of this RFP.

Technical Proposals for this RFP should be submitted electronically in a single document in a searchable Microsoft Word or Adobe Acrobat (PDF) format. Components of the RFP should be clearly tabbed and pages numbered. Business Proposals must be sent in a separate secure e-mail. Any proposal received after this date and time will be rejected. Proposals should be delivered to:

Proposals should be e-mailed to:

[Melanie.Wakeland@medicaid.ms.gov](mailto:Melanie.Wakeland@medicaid.ms.gov)

Offeror is responsible for ensuring that proposals are delivered in the required manner by the required time and at the required location. Offeror assumes all risks of delivery. No facsimile proposals will be accepted. The Business / Cost proposal must be signed in blue ink by an authorized official to bind the Offeror to the proposal provisions. Proposals and modifications thereof received by DOM after the time set for receipt or at any location other than that set forth above will be considered late and will not be considered for award.

**Offerors may designate those provisions of the proposal which contain trade secrets or other proprietary data which they believe may remain confidential in accordance with Section 25-61-9 and 79-23-1 of the Mississippi Code.**

### 1.3 Scope of Services

1. The Contractor shall provide services which include but are not limited to the following:
  - a. Assess the draft RFP located at:  
<http://www.medicaid.ms.gov/RfbRfp/MMISRFT/MSMMISdraftRFP.pdf>;
  - b. Consider comments received in response to the Request For Information submitted to DOM on 06/10/2011, as well as DOM comments and concerns; Comments are located at: <http://www.medicaid.ms.gov/RfbRfp/MMISRFT/RFIresponse.aspx>;
  - c. Analyze the impact of the Patient Protection and Affordable Healthcare Act (PPACA), Medicaid Information Technology Architecture (MITA), Health Information Technology initiative (HITECH), and other CMS/Office of the National Coordinator (ONC) guidelines, rules, regulations and updates issued subsequent to the RFP development;
  - d. Evaluate and incorporate requirements from other Health Information Technology initiatives that may have a direct impact on this mission critical project (e.g., the Health Information Exchange and the Health Insurance Exchange);
  - e. Utilize all available information and resources to edit the draft RFP and produce a finished RFP product that will meet CMS standards for enhanced funding approval.
2. The Contractor must adjust the draft Proposal Evaluation Plan as necessary to correspond with the final RFP, using their knowledge and expertise to ensure that the evaluation process is fair and defensible.
3. The Contractor is responsible for updating and augmenting the Implementation Advanced Planning Document (IAPD) to align with the final RFP and making the necessary modifications to secure enhanced funding approval for this project from the appropriate federal agencies.
4. The Contractor will respond to CMS questions/concerns, revise and resubmit the RFP and IAPD documents as required by CMS until CMS approval is achieved. The Contractor is responsible for ensuring that DOM fully complies with all pertinent Federal regulations by making sure all updates are submitted to CMS in a timely manner.
5. The Contractor must use their knowledge and expertise to lead DOM in accurately and fairly scoring all proposals received in response to the RFP and to assure that DOM is acquiring an Enterprise system that is technologically advanced, functionally sound and will meet all required state and federal mandates.
6. The Contractor will serve as an expert member of the proposal evaluation team and must lead, facilitate, and document the functional and technical evaluation of proposals received in response to the RFP. This task includes documenting the scoring of all responses along with justification of the scores, and participating in all meetings related to this activity. Historically, DOM has received from three to four proposals.
7. The Contractor must participate in any required reference checks, Contractor conferences, oral presentations, site visits or demonstrations. Some travel may be necessary.
8. The Contractor must use their knowledge and expertise to lead DOM in obtaining CMS approval for the award of the MMIS replacement (Enterprise) project

#### **1.4 General Requirements**

1. The Offeror must fully describe how they would undertake this project (approach, strategy, plan), providing sufficient detail to ensure that DOM recognizes the Offeror's understanding of the scope, complexity and intent of the project. For the proposal response, Offeror must provide DOM with examples of recent work products that are reflective of the Offeror's work quality as described in *Section 5.4.4*.
2. All findings, documentation, and other deliverables under this contract will become exclusive property of DOM. Any termination of consulting services will result in the project team using all deliverables to secure proposals from alternate consultants.
3. The Contractor will provide written status reports to DOM's Chief Information Officer on a regular basis to be agreed upon at project initiation. All reports must be produced using the Microsoft Office Suite of products and Microsoft Project.
4. The Contractor will work with DOM's Chief Information Officer at project initiation to finalize the proposed project plan, project schedule, statement of work, reporting requirements, etc.

#### **1.5 Office Accommodations**

1. Because it is necessary for the Contractor to work very closely with the State's team, office space, equipment and network connectivity for onsite Contractor staff members will be provided by DOM in Jackson, Mississippi. With the permission of DOM, certain work can be performed at the Contractor's site if it can be demonstrated that the off-site work provides a savings to the State, and the work done offsite does not interfere with or slow the progress of the project, or reduce the quality of the work product(s).
2. DOM will provide up to three Contractor staff with adequate accommodations for the purpose of performing their assigned duties. These accommodations include, but are not limited to, sufficient work space and resources, a telephone with local service, access to meeting rooms, printer, copier, usual and customary office supplies and limited access to the agency's network for Internet access via wireless or wired connections. Additional office accommodations that are deemed necessary to complete the assigned work must be prior approved by DOM.
3. DOM agrees to provide the Contractor access to the agency computer network for internet usage only. The contractor will be required to use their own laptops but must agree to comply with DOM and ITS security policy. DOM reserves the right to restrict usage at any time. In the case of office closure due to state holidays or non- working hours, the contractor must seek prior approval from DOM to be onsite at DOM facilities.

#### **1.6 Project Organization and Staffing**

1. The contractor must have the expertise necessary to guide DOM through this strategic procurement, ensuring that the final RFP is unbiased and specific enough to achieve DOM's goal of acquiring an Enterprise system that is technologically advanced, functionally and technically sound and that will meet all required state and federal mandates necessary to receive approval of enhanced match funding.
2. The Contractor must provide the services of one or more subject matter experts (SMEs) in MMIS, PBM, Eligibility and DSS systems and have extensive knowledge of CMS regulations related to the PPACA, MITA, Health Insurance Exchanges (HIX), Health Information Exchanges (HIE), Service Oriented Architecture (SOA) and Health Information Technology (HIT) to ensure the RFP is comprehensive and will result in viable offers.



3. The Offeror must propose an adequate level of qualified staff to ensure the successful completion of the project in the time frame as prescribed in *Section 1.2*. The proposed individuals should possess the necessary skills, experience and certifications for the roles they are filling. All individuals proposed must be proficient in written and spoken English.
4. The Offeror must provide an experienced and skilled Project Manager (PM) to lead this effort. This PM must be onsite as appropriate to the specific phase of the project and easily accessible to DOM staff for the duration of the project. The PM will be primarily responsible for managing onsite staff, maintaining the project plan and work schedule as well as establishing proper communication channels between DOM and Contractor staff. At its option, the State may conduct telephone interviews with the assigned Project Manager proposed by the Offeror.
5. The Offeror must disclose other projects to which the Project Manager is assigned and indicate the time allocated for each project. As stated above, it is the State's intent that the same individual(s) be available for the duration of this project.
6. All assigned staff for this project will be considered **key staff**. Therefore, as per the instructions in *Section 5.5*, all assigned staff to this project must be named, assigned to specific roles, and should have specific amounts of time assigned to this project.

#### 1.7 Cost Information

1. It is the responsibility of the Offeror to clearly identify all costs associated with this RFP. The Offeror must include and complete all parts of the Cost Proposal in a clear and accurate manner. Omissions, errors, misrepresentations, or inadequate details in the Offeror's cost proposal may be grounds for rejection of the Offeror's proposal. **Costs that are not clearly identified will be borne by the Offeror.**
2. The Offeror must complete the **Budget Summary (Appendix A)** in this RFP which outlines the minimum requirements for providing cost information. The Offeror must provide a firm fixed price for each major component delineated on the **Budget Summary (Appendix A)**. The Offeror must supply supporting details as prescribed in *Section 6, Business/Cost Proposal*.
3. The amount payable by DOM to the Contractor under this contract shall be on a deliverables/milestone basis. Upon approval of each deliverable or milestone identified as a payment, Contractor shall submit an invoice and progress report to DOM for payment. Such invoice shall provide a description to sufficiently support payment by DOM.
4. The State, at its sole discretion, may employ the following mechanisms to mitigate project risk: progress payment plan with retainage, inclusion of liquidated damages, and withholding payment for all portions of the products/services acquired until final acceptance. To secure the Contractor's performance, DOM intends to exercise its option to hold back as retainage, fifteen percent (15 %) of each amount payable, including amounts payable under Change Orders. DOM will release the 15% retainage in two phases, upon final acceptance of the work product, predicated upon approval of the RFP/IAPD by CMS and upon successful completion of the contract, indicated by CMS approval of the RFP award.
5. All expenses associated with Change Orders, defined as work that is agreed upon as outside of the original scope, are subject to DOM pre-approval and will be negotiated at the time of the presentation of Change Order.
6. A price increase will not be accepted during the award period or the renewal period, unless stipulated in the contract. However, the State will always take advantage of price decreases.

## 2 AUTHORITY

This RFP is issued under the authority of Title XIX of the Social Security Act as amended, implementing regulations issued under the authority thereof and under the provisions of the Mississippi Code of 1972 as amended. All prospective contractors are charged with presumptive knowledge of all requirements of the cited authorities. The submission of a valid executed proposal by any prospective contractor shall constitute admission of such knowledge on the part of each prospective contractor. Any proposal submitted by any prospective contractor which fails to meet any published requirement of the cited authorities may, at the option of DOM, be rejected without further consideration.

Medicaid is a program of medical assistance for the needy administered by the states using state appropriated funds and federal matching funds within the provisions of Title XIX and Title XXI of the Social Security Act as amended.

In addition, Section 1902 (a) (30) (A) of the Social Security Act requires that State Medicaid Agencies provide methods and procedures to safeguard against unnecessary utilization of care and services and to assure "efficiency, economy and quality of care."

### 2.1 ORGANIZATIONS ELIGIBLE TO SUBMIT PROPOSALS

To be eligible to submit a proposal, an Offeror must provide documentation for each requirement as specified below:

1. The Offeror has not been sanctioned by a state or federal government within the last 10 years.
2. The Offeror must have experience in contractual services providing the type of services described in this RFP.
3. The Offeror must be able to provide each required component and deliverable as detailed in the Scope of Work.

**Offerors submitting proposals in response to this RFP will be prohibited from responding to the MMIS/PBM/DSS RFP to be released during 1<sup>st</sup> quarter 2012.**

### 2.2 PROCUREMENT APPROACH

The major steps of the procurement approach are described in detail in *Section 3* of this RFP. Proposals must be submitted in two parts: Technical Proposal and Business Proposal as described in *Section 1.2.2*. The format and content are each specified in *Sections 5* and *6* of this RFP.

### 2.3 ACCURACY OF STATISTICAL DATA

All statistical information provided by DOM in relation to this RFP represents the best and most accurate information available to DOM from DOM records at the time of the RFP preparation. DOM, however, disclaims any responsibility for the inaccuracy of such data and should any element of such data later be discovered to be inaccurate, such inaccuracy shall not constitute a basis for Contract rejection by any Offeror. Neither shall such inaccuracy constitute a basis for renegotiation of any payment rate after Contract award. Statistical information is available on the DOM web site.

## 2.4 ELECTRONIC AVAILABILITY

The materials listed below are on the Internet for informational purposes only. This electronic access is a supplement to the procurement process and is not an alternative to official requirements outlined in this RFP.

This RFP and RFP Questions and Answers (following official written release) will be posted on the bids/proposals page of the DOM web site [www.medicaid.ms.gov/bids.aspx](http://www.medicaid.ms.gov/bids.aspx).

Information concerning services covered by Mississippi Medicaid and a description of the DOM organization and functions can also be found on the bids/proposals page of the DOM web site.

DOM's website is <http://www.medicaid.ms.gov> and contains Annual Reports, Provider Manuals, Bulletins and other information.

The DOM Annual Report Summary provides information on beneficiary enrollment, program funding and expenditures broken down by types of services covered in the Mississippi Medicaid program for the respective fiscal years.

State financial information is available at <http://merlin.state.ms.us> under the Public Access query section.

The portal for the State of Mississippi is <http://www.mississippi.gov>

ITS website is <http://www.its.ms.gov>.

Regulations of the State Personnel Board/Personal Services Contract Review Board can be found at <http://www.mspb.ms.gov>.

Instructions for acquiring the Enterprise Security Policy can be found at:

[http://www.its.ms.gov/security/docs/confidentiality\\_agreement\\_for\\_its\\_esp\\_for\\_web.pdf](http://www.its.ms.gov/security/docs/confidentiality_agreement_for_its_esp_for_web.pdf).

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### **3 PROCUREMENT**

#### **3.1 APPROACH**

DOM intends to ensure the fair and equitable treatment of all persons and bidders in regards to the procurement process. The procurement process provides for the evaluation of proposals and selection of the winning proposal in accordance with federal law and regulations and state law.

Separate technical and business proposals must be submitted simultaneously but will be opened at different stages of the evaluation process. Technical Proposals will be thoroughly evaluated in order to determine point scores for each evaluation factor. The evaluation and selection process is described in more detail in *Section 7* of this RFP.

Submission of a proposal constitutes acceptance of the conditions governing the procurement, including the evaluation factors contained in *Section 7* of this RFP, and constitutes acknowledgment of the detailed descriptions of the Mississippi Medicaid Program.

No public disclosure or news release pertaining to this procurement shall be made without prior written approval of DOM. FAILURE TO COMPLY WITH THIS PROVISION MAY RESULT IN THE OFFEROR BEING DISQUALIFIED.

#### **3.2 QUALIFICATION OF OFFERORS**

Each corporation shall report its corporate charter number in its transmittal letter or, if appropriate, have attached to its transmittal letter a signed statement to the effect that said corporation is exempt from the above described, and set forth the particular reason(s) for exemption. All corporations shall be in full compliance with all Mississippi laws regarding incorporation or formation and doing business in Mississippi and shall be in compliance with the laws of the state in which they are incorporated, formed, or organized.

DOM may make such investigations as necessary to determine the ability and commitment of the Offeror to adhere to the requirements specified within this RFP and its proposal, and the Offeror shall furnish to DOM all such information and data for this purpose as may be requested. DOM reserves the right to inspect Offeror's physical facilities prior to award to satisfy questions regarding the Offeror's capability to fulfill the requirements of the contract. DOM reserves the absolute right to reject any proposal if the evidence submitted by, or investigations of, such Offeror fail to satisfy DOM that such Offeror is properly qualified to carry out the obligations of the contract and to complete the work or furnish the items contemplated.

Discussions may be conducted with Offerors who submit proposals determined to be reasonably susceptible of being selected for award. Proposals may also be accepted without such discussions. DOM reserves the right to request additional information or clarification of an Offeror's proposal. The Offeror's cooperation during the evaluation process in providing DOM staff with adequate responses to requests for clarification will be considered a factor in the evaluation of the Offeror's overall responsiveness. Lack of such cooperation or failure to provide the information in the manner required may, at DOM's discretion, result in the disqualification of the Offeror's proposal.

The State reserves the right to reject any and all proposals, to request and evaluate "Best and Final Offers" from some or all of the respondents, to negotiate with the best proposed offeror to address issues other than those described in the proposal, to award a contract to other than the low Offeror, or not to make any award if it is determined to be in the best interest of the State.

### **3.3 RULES OF PROCUREMENT**

To facilitate the DOM procurement, various rules have been established and are described in the following paragraphs.

#### **3.3.1 Restrictions on Communications with DOM Staff**

From the issue date of this RFP until a Contractor is selected and the contract is signed, Offerors and/or their representatives are not allowed to communicate with any DOM staff regarding this procurement except the RFP Issuing Officer, Melanie Wakeland.

For violation of this provision, DOM shall reserve the right to reject any proposal.

#### **3.3.2 Amendments**

DOM reserves the right to amend the RFP at any time prior to the date for proposal submission. All amendments will be posted to the DOM website at <http://www.medicaid.ms.gov>.

As part of the Transmittal Letter (refer to *Section 5.2*), Offeror shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the response, by identifying the amendment number and date by letter. The acknowledgment must be received by DOM by the time and at the place specified for receipt of bids.

#### **3.3.3 Cost of Preparing Proposal**

Costs of developing the proposals are solely the responsibility of the Offeror. DOM will provide no reimbursement for such costs

#### **3.3.4 Certification of Independent Price Determination**

The Offeror certifies that the prices submitted in response to the solicitation have been arrived at independently and without any consultation, communication, or agreement with any other bidder or competitor.

#### **3.3.5 Acceptance of Proposals**

After receipt of the proposals, DOM reserves the right to award the contract based on the terms, conditions, and premises of the RFP and the proposal of the selected Contractor without negotiation.

All proposals properly submitted will be accepted by DOM. However, DOM reserves the right to request necessary amendments from all Offerors, reject any or all proposals received, or cancel this RFP, according to the best interest of DOM.

DOM also reserves the right to waive minor irregularities in bids providing such action is in the best interest of DOM.

Where DOM may waive minor irregularities as determined by DOM, such waiver shall in no way modify the RFP requirements or excuse the Offeror from full compliance with the RFP specifications and other contract requirements if the Offeror is awarded the contract.

DOM reserves the right to exclude any and all non-responsive proposals from any consideration for contract award. DOM will award a firm fixed price contract to the Offeror whose offer is responsive to the solicitation and is most advantageous to DOM in price, quality, and other factors considered. DOM reserves the right to make the award to an Offeror other than the Offeror bidding the lowest price when it can be demonstrated to the satisfaction of DOM, the

Governor, and to CMS, if necessary, that award to the low Offeror would not be in the best interest of DOM and the State of Mississippi.

### **3.3.6 Rejection of Proposals**

A proposal may be rejected for failure to conform to the rules or the requirements contained in this RFP. Proposals must be responsive to all requirements of the RFP in order to be considered for contract award. DOM reserves the right at any time to cancel the RFP, or after the proposals are received to reject any of the submitted proposals determined to be non-responsive. DOM further reserves the right to reject any and all proposals received by reason of this request. Reasons for rejecting a proposal include, but are not limited to

1. The proposal contains unauthorized amendments to the requirements of the RFP.
2. The proposal is conditional.
3. The proposal is incomplete or contains irregularities that make the proposal indefinite or ambiguous.
4. An authorized representative of the party does not sign the proposal.
5. The proposal contains false or misleading statements or references.
6. The Offeror is determined to be non-responsible as specified in Section 3-401 of the Personal Services Contract Review Board Regulations.
7. The proposal ultimately fails to meet the announced requirements of the State in some material aspect.
8. The proposal price is clearly unreasonable.
9. The proposal is not responsive, i.e., does not conform in all material respects to the RFP.
10. The supply or service item offered in the proposal is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the RFP.
11. The Offeror does not comply with the Procedures for Delivery of Proposal as set forth in the RFP.
12. The Offeror currently owes the State money.

### **3.3.7 Alternate Proposals**

Each Offeror, its subsidiaries, affiliates or related entities shall be limited to one proposal which is responsive to the requirements of this RFP. Failure to submit a responsive proposal will result in the rejection of the Offeror's proposal. Submission of more than one proposal by an Offeror will result in the summary rejection of all proposals submitted. An Offeror's proposal shall not include variable or multiple pricing options.

### **3.3.8 Proposal Amendments and Withdrawal**

Prior to the proposal due date, a submitted proposal may be withdrawn by submitting a written request for its withdrawal to DOM, signed by the Offeror.

An Offeror may submit an amended proposal before the due date for receipt of proposals. Such amended proposal must be a complete replacement for a previously submitted proposal and must be clearly identified as such in the Transmittal Letter. DOM will not merge, collate, or assemble proposal materials.

Unless requested by DOM, no other amendments, revisions, or alterations to proposals will be accepted after the proposal due date.

Any submitted proposal shall remain a valid proposal for 180 days from the proposal due date.

Unsolicited clarifications and updates submitted after the deadline for proposals will be accepted or rejected at the sole discretion of DOM.

### **3.3.9 Disposition of Proposals**

The proposal submitted by the successful Offeror shall be incorporated into and become part of the resulting contract. All proposals received by DOM shall upon receipt become and remain the property of DOM. DOM will have the right to use all concepts contained in any proposal and this right will not affect the solicitation or rejection of the proposal.

### **3.3.10 Responsible Contractor**

DOM shall contract only with a responsible contractor who possesses the ability to perform successfully under the terms and conditions of the proposed procurement and implementation. In letting the contract, consideration shall be given to such matters as Contractor's integrity, performance history, financial and technical resources, and accessibility to other necessary resources.

### **3.3.11 Subcontractors**

Copies of any agreements to be executed between the Offeror and any subcontractors must be included in the Offeror's proposal.

### **3.3.12 Assignment**

Should an Offeror wish to assign payment of any or all charges resulting from this contract to a third party, Offeror must disclose that fact in his/her proposal, along with the third party's name, address, nature of business, and relationship to the Offeror, the reason for and purpose of the assignment, and all conditions of the assignment, including but not limited to a copy of an assignment document to be executed by the State, the Offeror and the third party. Such assignments will be accepted or rejected at the sole discretion of the State. Offeror must clearly and definitively state in his/her proposal whether the proposal is contingent upon the requested assignment of payments. Whenever any assignment of payment is requested, the proposal, contract, and assignment document must include language specifically guaranteeing that the Offeror is solely and fully liable and responsible for the performance of its obligations under the subject contract. No assignment of payment will be considered at the time of purchase unless such assignment was fully disclosed in the Offeror's proposal and subsequently accepted by the State.

### **3.3.13 Best and Final Offers**

The Executive Director of DOM may make a written determination that it is in the State's best interest to conduct additional discussions or change the State's requirements and require submission of best and final offers. The determination to request best and final offers is optional and totally at the discretion of the Executive Director. The Procurement Officer shall establish a date and time for the submission of best and final offers. Otherwise, no discussion of or changes in the proposals shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

## **4 TERMS AND CONDITIONS**

### **4.1 GENERAL**

The contract between the State of Mississippi and the Contractor shall consist of 1) the contract and any amendments thereto; 2) this request for proposals (RFP) and any amendments thereto; 3) the Contractor's proposal submitted in response to the RFP by reference and as an integral part of this contract; 4) written questions and answers. In the event of a conflict in language among the four documents referenced above, the provisions and requirements set forth and/or referenced in the contract and its amendments shall govern. In the event that an issue is addressed in one document that is not addressed in another document, no conflict in language shall be deemed to occur.

However, DOM reserves the right to clarify any contractual relationship in writing, and such written clarification shall govern in case of conflict or ambiguity with the applicable requirements stated in the RFP or the Contractor's proposal. In all other matters not affected by the written clarification, if any, the RFP and its amendments shall govern.

No modification or change of any provision in the contract shall be made, or construed to have been made, unless such modification or change is mutually agreed upon in writing by the Contractor and DOM. The agreed upon modification or change will be incorporated as a written contract amendment and processed through DOM for approval prior to the effective date of such modification or change. In some instances, the contract amendment must be approved by CMS before the change becomes effective.

The only representatives authorized to modify this contract on behalf of DOM and the Contractor are shown below:

Contractor: Person(s) designated by the Contractor

Division of Medicaid: Executive Director

### **4.2 PERFORMANCE STANDARDS, ACTUAL DAMAGES, LIQUIDATED DAMAGES, AND RETAINAGE**

DOM reserves the right to assess actual or liquidated damages, upon the Contractor's failure to provide timely services required pursuant to this contract. Actual or liquidated damages for failure to meet specific performance standards as set forth in the scope of work may be assessed as specifically set forth in each performance standard. The Contractor shall be given 15 days notice to respond before DOM makes the assessment. The assessments will be offset against the subsequent monthly payments to the Contractor. Assessment of any actual or liquidated damages does not waive any other remedies available to DOM pursuant to this contract or state or federal law. If liquidated damages are known to be insufficient then DOM has the right to pursue actual damages.

If the Contractor's failure to perform satisfactorily exposes DOM to the likelihood of contracting with another person or entity to perform services required of the Contractor under this contract, upon notice setting forth the services and retainage, DOM may withhold from the Contractor payments in an amount commensurate with the costs anticipated to be incurred. If costs are incurred, DOM shall account to the Contractor and return any excess to the Contractor. If the retainage is not sufficient, the Contractor shall immediately reimburse DOM the difference or DOM may offset from any payments due the Contractor. The Contractor will cooperate fully with the retained Contractor and provide any assistance it needs to implement the terms of its agreement for services for retainage.



To secure the Contractor's performance, DOM intends to exercise its option to hold back as retainage, fifteen percent (15 %) of each amount payable, including amounts payable under Change Orders. DOM will release the 15% retainage in two phases, upon final acceptance of the work product, predicated upon approval of the RFP/IAPD by CMS and upon successful completion of the contract, indicated by CMS approval of the RFP award.

#### **4.3 TERM OF CONTRACT**

DOM will award a Contract based on proposals. The Contract period begins November 1, 2011, or when the contract is executed by both parties, and shall terminate upon award of the MMIS/PBM/DSS Contract. The evaluation of proposals is expected to be completed by July 31, 2012, followed by a 90 day warranty period. However, DOM may have, under the same terms and conditions as the existing contract, an option for a twelve (12) month extension.

##### **4.3.1 Stop Work Order**

1. Order to Stop Work - DOM Contract Administrator may, by written order to the Contractor at any time and without notice to any surety, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding ninety (90) days after the order is delivered to the Contractor, unless the parties agree to an extension. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allowable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within an extension to which the parties shall have agreed, the Contract Administrator shall either
  - a. Cancel the stop work order; or
  - b. Terminate the work covered by such order as provided in the "Termination for Default Clause" or the "Termination for Convenience Clause" of this contract.
2. Cancellation or Expiration of the Order - If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, only if
  - a. The stop work order or extension results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
  - b. The Contractor asserts a claim for such an adjustment within 30 days after the end of the stop work order or extension.
3. Termination of Work - If a stop work order or extension is not canceled and the work covered by such stop work order or extension is terminated for default or convenience, adjustment to the contract price will be negotiated between DOM and the Contractor.

##### **4.3.2 Termination of Contract**

The Contract resulting from this RFP may be terminated by DOM as follows:

1. For default by the Contractor
2. For convenience
3. For the Contractor's bankruptcy, insolvency, receivership, liquidation

#### 4. For non-availability of funds

At DOM's option, termination for any reason listed herein may also be considered termination for convenience.

##### **4.3.2.1 Termination for Default by the Contractor**

DOM may immediately terminate this contract in whole or in part whenever DOM determines that the Contractor has failed to satisfactorily perform its contractual duties and responsibilities and is unable to resolve such failure within a period of time specified by DOM, after considering the gravity and nature of the default. Such termination shall be referred to herein as "Termination for Default."

Upon determination by DOM of any such failure to satisfactorily perform its contractual duties and responsibilities, DOM may notify the Contractor of the failure and establish a reasonable time period in which to resolve such failure. If the Contractor does not resolve the failure within the specified time period, DOM will notify the Contractor that the contract in full or in part has been terminated for default. Such notices shall be in writing and delivered to the Contractor by certified mail, return receipt requested, or in person.

If, after Notice of Termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or make progress in performance was due to causes beyond the control and without error or negligence on the part of the Contractor or any subcontractor, the Notice of Termination shall be deemed to have been issued as a termination for the convenience of DOM, and the rights and obligations of the parties shall be governed accordingly.

In the event of Termination for Default, in full or in part as provided by this clause, DOM may procure, upon such terms and in such manner as DOM may deem appropriate, supplies or services similar to those terminated, and the Contractor shall be liable to DOM for any excess costs for such similar supplies or services for the remainder of the contract period. In addition, the Contractor shall be liable to DOM for administrative costs incurred by DOM in procuring such similar supplies or services.

In the event of a termination for default, the Contractor shall be paid for those deliverables which the Contractor has delivered to DOM. Payments for completed deliverables delivered to and accepted by DOM shall be at the contract price.

The rights and remedies of DOM provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

##### **4.3.2.2 Termination for Convenience**

DOM may terminate performance of work under the contract in whole or in part whenever for any reason DOM shall determine that such termination is in the best interest of DOM.

In the event that DOM elects to terminate the contract pursuant to this provision, it shall notify the Contractor by certified mail, return receipt requested, or delivered in person. Termination shall be effective as of the close of business on the date specified in the notice, which shall be at least 30 days from the date of receipt of the notice by the Contractor.

Upon receipt of Notice of Termination for convenience, the Contractor shall be paid the following:

1. The contract price(s) for completed deliverables delivered to and accepted by DOM;
2. A price commensurate with the actual cost of performance for partially completed

deliverables.

#### **4.3.2.3 Termination for the Contractor Bankruptcy**

In the event that the Contractor shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or its assets, or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of the rights of creditors, DOM may, at its option, terminate this contract in whole or in part.

In the event DOM elects to terminate the contract under this provision, it shall do so by sending Notice of Termination to the Contractor by certified mail, return receipt requested, or delivered in person. The date of termination shall be the close of business on the date specified in such notice to the Contractor. In the event of the filing of a petition in bankruptcy by or against a principal subcontractor, the Contractor shall immediately so advise DOM.

The Contractor shall ensure and shall satisfactorily demonstrate to DOM that all tasks related to the subcontract are performed in accordance with the terms of this contract

#### **4.3.2.4 Availability of Funds**

It is expressly understood and agreed that the obligation of DOM to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide or the State of Mississippi to appropriate funds, or the discontinuance, or material alteration of the program under which the funds were provided or if funds are not otherwise available to the State, the State shall have the right upon 10 working days written notice to the Contractor, to terminate this agreement without damage, penalty, cost, or expense to the State of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

#### **4.3.3 Procedure on Termination**

##### **4.3.3.1 Contractor Responsibilities**

Upon delivery by certified mail, return receipt requested, or in person to the Contractor a Notice of Termination specifying the nature of the termination, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective, the Contractor shall:

1. Stop work under the contract on the date and to the extent specified in the Notice of Termination;
2. Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work in progress under the contract until the effective date of termination;
3. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
4. Deliver to DOM within the time frame as specified by DOM in the Notice of Termination, copies of all data and documentation in the appropriate media and make available all records required to assure continued delivery of services to beneficiaries and providers at no cost to DOM;
5. Complete the performance of the work not terminated by the Notice of Termination;

6. Take such action as may be necessary, or as DOM 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 DOM has or may acquire an interest;
7. Fully train DOM staff or other individuals at the direction of DOM in the operation and maintenance of the process;
8. Promptly transfer all information necessary for the reimbursement of any outstanding claims; and
9. Complete each portion of the Turnover Phase after receipt of the Notice of Termination. The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any allowable delay in determining or adjusting the amount of any item of reimbursable price under this clause.
10. The Contractor has an absolute duty to cooperate and help with the orderly transition of the duties to DOM or its designated contractor following termination of the contract for any reason.

#### **4.3.3.2 DOM Responsibilities**

Except for Termination for Contractor Default, DOM will make payment to the Contractor on termination and at contract price for completed deliverables delivered to and accepted by DOM. The Contractor shall be reimbursed for partially completed deliverables at a price commensurate with actual cost of performance.

In the event of the failure of the Contractor and DOM to agree in whole or in part as to the amounts to be paid to the Contractor in connection with any termination described in this RFP, DOM shall determine on the basis of information available the amount, if any, due to the Contractor by reason of termination and shall pay to the Contractor the amount so determined.

The Contractor shall have the right of appeal, as stated under Disputes (Paragraph 4.9.6) from any such determination made by DOM.

#### **4.3.4 Assignment of the Contract**

No assignment of payment will be considered at the time of purchase unless such assignment was fully disclosed in the Offeror's proposal and subsequently accepted by the State. Except as provided in the previous sentence, the Contractor shall not sell, transfer, assign, or otherwise dispose of the contract or any portion thereof or of any right, title, or interest therein without written consent of DOM. Any such purported assignment or transfer shall be void. If approved, any assignee shall be subject to all terms and conditions of this contract. No approval by DOM of any assignment may be deemed to obligate DOM beyond the provisions of this contract. This provision includes reassignment of the contract due to change in ownership of the Contractor. DOM shall at all times be entitled to assign or transfer its rights, duties, and/or obligations under this contract to another governmental agency in the State of Mississippi upon giving prior written notice to the Contractor.

#### **4.3.5 Excusable Delays**

The Contractor and DOM shall be excused from performance under this contract for any period that they are prevented from performing any services under this Contract as a result of an act of God, war, civil disturbance, epidemic, court order, government act or omission, or other cause beyond their reasonable control.

#### **4.3.6 Applicable Law**

The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflict of law provisions, and any litigation with respect thereto shall be brought in the courts of the State of Mississippi. The Contractor shall comply with applicable federal, state and local laws and regulations.

#### **4.4 NOTICES**

Whenever, under this RFP, one party is required to give notice to the other, except for purposes of Notice of Termination under Section 4.3, such notice shall be deemed given upon delivery, if delivered by hand, or upon the date of receipt or refusal, if sent by registered or certified mail, return receipt requested or by other carriers that require signature upon receipt. Notice may be delivered by facsimile transmission, with original to follow by certified mail, return receipt requested, or by other carriers that require signature upon receipt, and shall be deemed given upon transmission and facsimile confirmation that it has been received. Notices shall be addressed as follows:

In case of notice to the Contractor:

Project Manager  
Contractor  
Street Address  
City, State Zip Code

In case of notice to DOM:

Executive Director  
Division of Medicaid  
550 High St., Suite 1000  
Jackson, Mississippi 39201

Copy to Contract Administrator, DOM

#### **4.5 COST OR PRICING DATA**

Pricing proposed by the Offeror may not be increased during the negotiation of the contract.

#### **4.6 SUBCONTRACTING**

The Contractor is solely responsible for fulfillment of the Contract terms with DOM. The contractor will be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

The Contractor must acknowledge and agree that in matters of proposals, clarifications, negotiations, contracts and resolution of issues and/or disputes, the Contractor represents all contractors, third parties and/or subcontractors the Contractor has assembled for this project. The Contractor's commitments are binding on all such parties and consequently the State is only required to negotiate with the Contractor.

Furthermore, the Contractor acknowledges and agrees to pass all rights and/or services related to all general consulting, services leasing, software licensing, warranties, hardware maintenance and/or software support to the State from any contractor, third party or subcontractor without the State having to negotiate separately or individually with any such parties for these terms or conditions.

Unless provided in the contract, the Contractor shall not contract with any other party for furnishing any of the contracted work or services without the consent, guidance, and written approval of the State. If the contractor finds it necessary to subcontract after contract award, the Contractor shall notify DOM not less than thirty (30) days in advance of its desire to subcontract and include a copy of the proposed subcontract with the proposed subcontractor. DOM reserves the right of refusal and the right to request replacement of a subcontractor due to unacceptable work or conduct. This provision should not be interpreted as requiring the approval of individual contracts of employment between the Contractor and personnel assigned for services under the contract.

In order to protect the State's interest, DOM reserves the right to attempt to resolve the contractual disagreements that may arise between the Contractor and its subcontractor after award of the contract.

All references in the RFP to "Contractor" or "Offeror" shall be construed to encompass both the Contractor and its subcontractors.

The Contractor shall give DOM immediate written notice by certified mail, facsimile, or any other carrier that requires signature upon receipt of any action or suit filed and prompt notice of any claim made against the Contractor or Contractor which in the opinion of the Contractor may result in litigation related in any way to the Contract with DOM.

#### **4.7 PROPRIETARY RIGHTS**

##### **4.7.1 Ownership of Documents**

Where activities supported by this contract produce original writing, sound recordings, pictorial reproductions, drawings, or other graphic representation and works of any similar nature, DOM shall have the right to use, duplicate, and disclose such materials in whole or in part, in any manner, for any purpose whatsoever and to have others do so. If the material is qualified for copyright, the Contractor may copyright such material, with approval of DOM, but DOM shall reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such materials, in whole or in part, and to authorize others to do so.

##### **4.7.2 Ownership of Information and Data**

DOM, The Department of Health and Human Services (DHHS), The Centers for Medicare and Medicaid Services (CMS), the State of Mississippi, and/or their agents shall have unlimited rights to use, disclose, or duplicate, for any purpose whatsoever, all information and data developed, derived, documented, or furnished by the Contractor under any contract resulting from this RFP.

The Contractor agrees to grant in its own behalf and on behalf of its agents, employees, representatives, assignees, and contractors to DOM, DHHS, CMS and the State of Mississippi and to their officers, agents, and employees acting in their official capacities a royalty-free, non-exclusive, and irrevocable license throughout the world to publish, reproduce, translate, deliver, and dispose of all such information now covered by copyright of the proposed Contractor.

Excluded from the foregoing provisions in this Section 4.7.2, however, are any pre-existing, proprietary tools owned, developed, or otherwise obtained by Contractor independently of this Contract. Contractor is and shall remain the owner of all rights, title and interest in and to the Proprietary Tools, including all copyright, patent, trademark, trade secret and all other proprietary rights thereto arising under federal and state law, and no license or other right to the Proprietary Tools is granted or otherwise implied. Any right that DOM may have with respect to the Proprietary Tools shall arise only pursuant to a separate written agreement between the parties.

#### **4.7.3 Public Information**

Offerors must bind separately those provisions of the proposal which contain trade secrets or other proprietary data which they believe may remain confidential in accordance with Sections 25-61-9 and 79-23-1, et seq. of the Mississippi Code Annotated of 1972, as amended.

#### **4.7.4 Right of Inspection**

DOM, the Mississippi Department of Audit, The Department of Health and Human Services (DHHS), The Centers for Medicare and Medicaid Services (CMS), the Office of Inspector General (OIG), the General Accounting Office (GAO), or any other auditing agency prior-approved by DOM, or their authorized representative shall, at all reasonable times, have the right to enter onto the Contractor's premises, or such other places where duties under this contract are being performed, to inspect, monitor, or otherwise evaluate (including periodic systems testing) the work being performed. The Contractor must provide access to all facilities and assistance for DOM and Mississippi Audit Department representatives. All inspections and evaluations shall be performed in such a manner as will not unduly delay work. Refusal by the Contractor to allow access to all documents, papers, letters or other materials, shall constitute a breach of contract. All audits performed by persons other than DOM staff will be coordinated through DOM and its staff.

#### **4.7.5 Licenses, Patents and Royalties**

DOM does not tolerate the possession or use of unlicensed copies of proprietary software. The Contractor shall be responsible for any penalties or fines imposed as a result of unlicensed or otherwise defectively titled software.

The Contractor, without exception, shall indemnify, save, and hold harmless DOM and its employees from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or non-patented invention, process, or article manufactured by the Contractor. The Contractor has no liability when such claim is solely and exclusively due to the combination, operation or use of any article supplied hereunder with equipment or data not supplied by the Contractor or is based solely and exclusively upon DOM's alteration of the article. DOM will provide prompt written notification of a claim of copyright or patent infringement.

Further, if such a claim is made or is pending, the Contractor may, at its option and expense, procure for DOM the right to continue use of, replace or modify the article to render it non-infringing. If none of the alternatives is reasonably available, the Contractor agrees to take back the article and refund the total amount DOM has paid the Contractor under this contract for use of the article.

If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the proposed prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

#### **4.7.6 Records Retention Requirements**

The Contractor shall maintain detailed records evidencing all expenses incurred pursuant to the Contract, the provision of services under the Contract, and complaints, for the purpose of audit and evaluation by DOM and other federal or State personnel. All records, including training records, pertaining to the Contract must be readily retrievable within three (3) workdays for review at the request of DOM and its authorized representatives. All records shall be maintained and available for review by authorized federal and State personnel during the entire term of the Contract and for a period of five (5) years thereafter, unless an audit is in progress. When an

audit is in progress or audit findings are unresolved, records shall be kept for a period of five (5) years or until all issues are finally resolved, whichever is later.

#### **4.8 REPRESENTATION REGARDING CONTINGENT FEES**

The Contractor represents by executing this contract that it has not retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee except as disclosed in the contractor's bid or proposal.

#### **4.9 INTERPRETATIONS/CHANGES/DISPUTES**

In the event of a conflict in language among any of the components of the contract, the RFP shall govern. DOM reserves the right to clarify any contractual relationship in writing and such clarification will govern in case of conflict with the requirements of the RFP. Any ambiguity in the RFP shall be construed in favor of DOM.

The contract represents the entire agreement between the Contractor and DOM and it supersedes all prior negotiations, representations, or agreements, either written or oral between the parties hereto relating to the subject matter hereof.

##### **4.9.1 Conformance with Federal and State Regulations**

The Contractor shall be required to conform to all federal and state laws, regulations, and policies as they exist or as amended.

In the event that the Contractor requests that the Executive Director of DOM or his/her designee issue policy determinations or operating guidelines required for proper performance of the contract, DOM shall do so in a timely manner. The Contractor shall be entitled to rely upon and act in accordance with such policy determinations and operating guidelines unless the Contractor acts negligently, maliciously, fraudulently, or in bad faith.

##### **4.9.2 Waiver**

No covenant, condition, duty, obligation, or undertaking contained in or made a part of this contract will be waived except by the written agreement of the parties, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply; and until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.

##### **4.9.3 Contract Variations**

If any provision of the contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both DOM and the Contractor shall be relieved of all obligations arising under such provision; if the remainder of the contract is capable of performance, it shall not be affected by such declaration or funding and shall be fully performed.

##### **4.9.4 Headings**

The headings used throughout the contract are for convenience only and shall not be resorted to for interpretation of the contract.



#### **4.9.5 Change Orders and/or Amendments**

The Executive Director of DOM or designated representative may, at any time, by written order delivered to the Contractor at least thirty (30) days prior to the commencement date of such change, make administrative changes within the general scope of the contract. If any such change causes an increase or decrease in the cost of the performance of any part of the work under the contract an adjustment commensurate with the costs of performance under this contract shall be made in the contract price or delivery schedule or both. Any claim by the Contractor for equitable adjustment under this clause must be asserted in writing to DOM within thirty (30) days from the date of receipt by the Contractor of the notification of change. Failure to agree to any adjustment shall be a dispute within the meaning of the Dispute Clause (Section 4.9.6) of this Contract. Nothing in this case, however, shall in any manner excuse the Contractor from proceeding diligently with the contract as changed.

If the parties are unable to reach an agreement within thirty (30) days of DOM receipt of the Contractor's cost estimate, the Executive Director of DOM shall make a determination of the revised price, and the Contractor shall proceed with the work according to a schedule approved by DOM subject to the Contractor's right to appeal the Executive Director's determination of the price pursuant to the Disputes Section. Nothing in this clause shall in any manner excuse the Contractor from proceeding diligently with the contract as changed.

The rate of payment for changes or amendments completed per contract year shall be at the rates specified by the Contractor's proposal.

At any time during the term of this contract, DOM may increase the quantity of goods or services purchased under this contract by sending the Contractor a written amendment or modification to that effect which references this contract and is signed by the Executive Director of DOM. The purchase price shall be the lower of the unit cost identified in the Contractor's proposal or the Contractor's then-current, published price. The foregoing shall not apply to services provided to DOM at no charge. The delivery schedule for any items added by exercise of this option shall be set by mutual agreement.

#### **4.9.6 Disputes**

Any dispute concerning the contract which is not disposed of by agreement shall be decided by the Executive Director of DOM who shall reduce such decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Executive Director shall be final and conclusive unless within thirty (30) days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Attorney General a written request to render an interpretation addressed to the Office of the Attorney General, 550 High St., Suite 1200, Jackson, Mississippi 39205. The interpretation of the Attorney General or his duly authorized representative shall be final and conclusive. The Contractor and DOM shall be afforded an opportunity to be heard and to offer evidence in support of their interpretations. Nothing in this paragraph shall be construed to relieve the Contractor of full and diligent performance of the contract.

#### **4.9.7 Cost of Litigation**

In the event that DOM deems it necessary to take legal action to enforce any provision of the contract, the Contractor shall bear the cost of such litigation, as assessed by the court, in which DOM prevails. Neither the State of Mississippi nor DOM shall bear any of the Contractor's cost of litigation for any legal actions initiated by the Contractor against DOM regarding the provisions of the contract. Legal action shall include administrative proceedings.

#### **4.9.8 Attorney Fees**

The Contractor agrees to pay reasonable attorney fees incurred by the State and DOM in enforcing this agreement or otherwise reasonably related thereto.

#### **4.10 INDEMNIFICATION**

The Contractor agrees to indemnify, defend, save, and hold harmless DOM, the State of Mississippi, their officers, agents, employees, representatives, assignees, and contractors from any and all claims and losses accruing or resulting to any and all the Contractor employees, agents, subcontractors, laborers, and any other person, association, partnership, entity, or corporation furnishing or supplying work, services, materials, or supplies in connection with performance of this contract, and from any and all claims and losses accruing or resulting to any such person, association, partnership, entity, or corporation who may be injured, damaged, or suffer any loss by the Contractor in the performance of the contract.

The Contractor agrees to indemnify, defend, save, and hold harmless DOM, the State of Mississippi, their officers, agents, employees, representatives, assignees, and contractors against any and all liability, loss, damage, costs or expenses which DOM may sustain, incur or be required to pay: 1.) by reason of any person suffering personal injury, death or property loss or damage of any kind either while participating with or receiving services from the Contractor under this contract, or while on premises owned, leased, or operated by the Contractor or while being transported to or from said premises in any vehicle owned, operated, leased, chartered, or otherwise contracted for or in the control of the Contractor or any officer, agent, or employee thereof; or 2.) by reason of the Contractor or its employee, agent, or person within its scope of authority of this contract causing injury to, or damage to the person or property of a person including but not limited to DOM or the Contractor, their employees or agents, during any time when the Contractor or any officer, agent, employee thereof has undertaken or is furnishing the services called for under this contract.

The Contractor agrees to indemnify, defend, save, and hold harmless DOM, the State of Mississippi, their officers, agents, employees, representatives, assignees, and contractors against any and all liability, loss, damages, costs or expenses which DOM or the State may incur, sustain or be required to pay by reason of the Contractor, its employees, agents or assigns: 1.) failing to honor copyright, patent or licensing rights to software, programs or technology of any kind in providing services to DOM, or 2.) breaching in any manner the confidentiality required pursuant to federal and state law and regulations.

The Contractor agrees to indemnify, defend, save, and hold harmless DOM, the State of Mississippi, their officers, agents, employees, representatives, assignees, and contractors from all claims, demands, liabilities, and suits of any nature whatsoever arising out of the contract because of any breach of the contract by the Contractor, its agents or employees, including but not limited to any occurrence of omission or commission or negligence of the Contractor, its agents or employees.

If in the reasonable judgment of DOM a default by the Contractor is not so substantial as to require termination and reasonable efforts to induce the Contractor to cure the default are unsuccessful and the default is capable of being cured by DOM or by another resource without unduly interfering with the continued performance of the Contractor, DOM may provide or procure such services as are reasonably necessary to correct the default. In such event, the Contractor shall reimburse DOM for the reasonable cost of those services. DOM may deduct the cost of those services from the Contractor's monthly administrative invoices. The Contractor shall cooperate with DOM or those procured resources in allowing access to facilities, equipment, data or any other Contractor resources to which access is required to correct the default. The Contractor shall remain liable for ensuring that all operational performance standards remain satisfied.

#### **4.10.1 No Limitation of Liability**

Nothing in this contract shall be interpreted as excluding or limiting any liability of the Contractor for harm caused by the intentional or reckless conduct of the Contractor, or for damages incurred in the negligent performance of duties by the Contractor, or for the delivery by the Contractor of products that are defective, or for breach of contract or any other duty by the Contractor. Nothing in the contract shall be interpreted as waiving the liability of the Contractor for consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense related to the Contractor's conduct or performance under this contract.

#### **4.11 STATUS OF THE CONTRACTOR**

##### **4.11.1 Independent Contractor**

It is expressly agreed that the Contractor is an independent Contractor performing professional services for DOM and is not an officer or employee of the State of Mississippi or DOM. It is further expressly agreed that the contract shall not be construed as a partnership or joint venture between the Contractor and DOM.

The Contractor shall be solely responsible for all applicable taxes, insurance, licensing and other costs of doing business. Should the Contractor default on these or other responsibilities jeopardizing the Contractor's ability to perform services effectively, DOM, in its sole discretion, may terminate this contract.

The Contractor shall not purport to bind DOM, its officers or employees nor the State of Mississippi to any obligation not expressly authorized herein unless DOM has expressly given the Contractor the authority to do so in writing.

The Contractor shall give DOM immediate notice in writing of any action or suit filed, or of any claim made by any party which might reasonably be expected to result in litigation related in any manner to this contract or which may impact the Contractor's ability to perform.

No other agreements of any kind may be made by the Contractor with any other party for furnishing any information or data accumulated by the Contractor under this contract or used in the operation of this program without the written approval of DOM. Specifically, DOM reserves the right to review any data released from reports, histories, or data files created pursuant to this Contract.

In no way shall the Contractor represent itself directly or by inference as a representative of the State of Mississippi or the Division of Medicaid except within the confines of its role as a contractor for the Division of Medicaid. DOM's approval must be received in all instances in which the Contractor distributes publications, presents seminars, presents workshops, or performs any other outreach.

The Contractor shall not use DOM's name or refer to the contract directly or indirectly in any advertisement, news release, professional trade or business presentation without prior written approval from DOM.

##### **4.11.2 Employment of DOM Employees**

The Contractor shall not knowingly engage on a full-time, part-time, or other basis during the period of the contract, any professional or technical personnel who are or have been at any time during the period of the contract in the employ of DOM, without the written consent of DOM. Further, the Contractor shall not knowingly engage in this project, on a full-time, part-time, or other basis during the period of the contract, any former employee of DOM who has not been separated from DOM for at least one year, without the written consent of DOM.

The Contractor shall give priority consideration to hiring interested and qualified adversely affected State employees at such times as requested by DOM to the extent permitted by this contract or state law.

#### **4.11.3 Conflict of Interest**

No official or employee of DOM and no other public official of the State of Mississippi or the Federal Government who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of the project, voluntarily acquire any personal interest, direct or indirect, in the contract or proposed contract. A violation of this provision shall constitute grounds for termination of this contract. In addition, such violation will be reported to the State Ethics Commission, Attorney General, and appropriate federal law enforcement officers for review.

The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants that in the performance of the contract no person having any such known interests shall be employed including subsidiaries or entities that could be misconstrued as having a joint relationship, and to employment by the Contractor of immediate family members of Medicaid providers.

#### **4.11.4 Personnel Practices**

Employees of the Contractor shall receive all benefits afforded to other similarly situated employees of the Contractor.

The Contractor must agree to sign the Drug Free Workplace Certificate (Exhibit 1).

#### **4.11.5 No Property Rights**

No property rights inure to the Contractor except for compensation for work that has already been performed.

#### **4.12 EMPLOYMENT PRACTICES**

The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, age, marital status, political affiliations, or disability. The Contractor must act affirmatively to ensure that employees, as well as applicants for employment, are treated without discrimination because of their race, color, religion, gender, national origin, age, marital status, political affiliation, or disability.

Such action shall include, but is not limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment notices setting forth the provisions of this clause.

The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age, marital status, political affiliation, or disability, except where it relates to a bona fide occupational qualification or requirement.

The Contractor shall comply with the non-discrimination clause contained in Federal Executive Order 11246, as amended by Federal Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex, or national origin, and the

implementing rules and regulations prescribed by the Secretary of Labor and with Title 41, Code of Federal Regulations, Chapter 60. The Contractor shall comply with related state laws and regulations, if any.

The Contractor shall comply with the Civil Rights Act of 1964, and any amendments thereto, and the rules and regulations thereunder, and Section 504 of Title V of the Rehabilitation Act of 1973, as amended, and the Mississippi Human Rights Act of 1977.

If DOM finds that the Contractor is not in compliance with any of these requirements at any time during the term of this contract, DOM reserves the right to terminate this contract or take such other steps as it deems appropriate, in its sole discretion, considering the interests and welfare of the State.

#### **4.13 RISK MANAGEMENT**

The Contractor may insure any portion of the risk under the provision of the contract based upon the Contractor's ability (size and financial reserves included) to survive a series of adverse experiences, including withholding of payment by DOM, or imposition of penalties by DOM.

On or before beginning performance under this Contract, the Contractor shall obtain from an insurance company, duly authorized to do business and doing business in Mississippi, insurance as follows:

##### **4.13.1 Workers' Compensation**

The Contractor shall take out and maintain, during the life of this contract, workers' compensation insurance for all employees employed at the project in Mississippi. Such insurance shall fully comply with the Mississippi Workers' Compensation Law. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Workers' Compensation Statute, the Contractor shall provide adequate insurance satisfactory for protection of his or her employees not otherwise protected.

##### **4.13.2 Liability**

The Contractor shall ensure that professional staff and other decision making staff shall be required to carry professional liability insurance in an amount commensurate with the professional responsibilities and liabilities under the terms of this RFP.

The Contractor shall obtain, pay for and keep in force during the contract period general liability insurance against bodily injury or death in an amount commensurate with the responsibilities and liabilities under the terms of this RFP; and insurance against property damage and fire insurance including contents coverage for all records maintained pursuant to this contract in an amount commensurate with the responsibilities and liabilities under the terms of this RFP. The Contractor shall furnish to DOM certificates evidencing such insurance is in effect on the first working day following contract signing.

#### **4.14 CONFIDENTIALITY OF INFORMATION**

##### **4.14.1 Confidentiality of Beneficiary Information**

All information as to personal facts and circumstances concerning Medicaid beneficiaries obtained by the Contractor shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of DOM and the written consent of the enrolled beneficiary, his attorney, or his responsible parent or guardian, except as may be required by DOM.

The use or disclosure of information concerning beneficiaries shall be limited to purposes directly connected with the administration of the contract.

All of the Contractor officers and employees performing any work for or on the contract shall be instructed in writing of this confidentiality requirement and required to sign such a document upon employment and annually thereafter.

The Contractor shall notify DOM promptly of any unauthorized possession, use, knowledge or attempt thereof, of DOM's data files or other confidential information. The Contractor shall promptly furnish DOM full details of the attempted unauthorized possession, use or knowledge, and assist in investigating or preventing the recurrence thereof.

#### **4.14.2 Confidentiality of Proposals and Contract Terms**

After award of the contract, all Offeror's proposals, including those terms bid in the Business Proposal, are subject to disclosure under the State's Access to Public Records Act and the Federal Freedom of Information Act. Information specified by an Offeror as proprietary information shall be available for disclosure as provided by State statute.

In addition, a fully executed copy of the resultant contract shall be posted to the State of Mississippi's accountability website at <https://merlin.state.ms.us>, in accordance with the Mississippi Accountability and Transparency Act of 2008, Section 27-104-151, et seq., of the Mississippi Code of 1972, as amended; the American Accountability and Transparency Act of 2009 (P.L. 111-5), where applicable, and Section 31-7-13 of the Mississippi Code of 1972, as amended, where applicable.

In the event that either party to this agreement receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information, that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by State law. This provision shall survive termination or completion of this agreement. The parties agree that this provision is subject to and superseded by Miss. Code Ann. Section 25-61-1, et seq. regarding Public Access to Public Records.

#### **4.15 CONTRACTOR COMPLIANCE ISSUES**

The Contractor agrees that all work performed as part of this contract will comply fully with administrative and other requirements established by federal and state laws, regulations and guidelines, and assumes responsibility for full compliance with all such laws, regulations and guidelines, and agrees to fully reimburse DOM for any loss of funds, resources, overpayments, duplicate payments or incorrect payments resulting from noncompliance by the Contractor, its staff, or agents, as revealed in any audit.

##### **4.15.1 Federal, State, and Local Taxes**

Unless otherwise provided herein, the contract price shall include all applicable federal, state, and local taxes.

The Contractor shall pay all taxes lawfully imposed upon it with respect to this contract or any product delivered in accordance herewith. DOM makes no representation whatsoever as to exemption from liability to any tax imposed by any governmental entity on the Contractor.

#### **4.15.2 License Requirements**

The Contractor shall have, or obtain, any license/permits that are required prior to and during the performance of work under this contract.

#### **4.15.3 HIPAA Compliance**

The Contractor must ensure that all work supports the HIPAA Security Rules and sign a HIPAA Business Associate Agreement.

#### **4.15.4 Site Rules and Regulations**

The Contractor shall use its best efforts to ensure that its employees and agents, while on DOM premises, shall comply with site rules and regulations.

#### **4.15.5 Environmental Protection**

The Contractor shall be in compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (45 USC 1857 [h]), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulation (40 CFR Part 15) which prohibit the use under non-exempt federal contracts, grants, or loans of facilities included on the EPA list of Violating Facilities. The Contractor shall report violations to the applicable grantor federal agency and the U. S. EPA Assistant Administrator for Enforcement.

#### **4.15.6 Lobbying**

The Contractor certifies, to the best of its knowledge and belief, that no federal appropriated funds have 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 agency, a member 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.

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, 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 Contractor shall complete and submit "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance is placed when entering into this contract. Submission of this certification is a prerequisite for making or entering into this contract imposed under Title 31, Section 1352, U.S. Code. Failure to file the required certification shall be subject to civil penalties for such failure.

The Contractor shall abide by lobbying laws of the State of Mississippi.

#### **4.15.7 Bribes, Gratuities and Kickbacks Prohibited**

The receipt or solicitation of bribes, gratuities and kickbacks is strictly prohibited.

No elected or appointed officer or other employee of the Federal Government or of the State of Mississippi shall benefit financially or materially from this contract. No individual employed by the State of Mississippi shall be permitted any share or part of this contract or any benefit that might arise there from.

The Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibitions against gratuities set forth in Section 7-204 (Gratuities) of the Mississippi Personal Service Contract Procurement Regulations.

#### **4.15.8 Small and Minority Businesses**

DOM encourages the employment of small business and minority business enterprises. Therefore, the Contractor shall report, separately, the involvement in this contract of small businesses and businesses owned by minorities and women. Such information shall be reported on an invoice annually on the contract anniversary and shall specify the actual dollars contracted to-date with such businesses, actual dollars expended to date with such businesses, and the total dollars planned to be contracted for with such businesses on this contract.

#### **4.15.9 Suspension and Debarment**

The Contractor certifies that it is not suspended or debarred under federal law and regulations or any other state's laws and regulations.

#### **4.15.10 Compliance with the Mississippi Employment Protection Act**

The Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act (Senate Bill 2988 from the 2008 Regular Legislative Session) and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State. Contractor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Contractor understands and agrees that any breach of these warranties may subject Contractor to the following: (a) Termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public, or (b) The loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) Both.

In the event of such termination/cancellation, Contractor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

The Contractor certifies that it is not suspended or debarred under federal law and regulations or any other state's laws and regulations.

#### **4.15.11 Compliance with Enterprise Security Policy**

Any solution proposed in response to this RFP must be in compliance with the State of Mississippi's Enterprise Security Policy. The Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines and covers the following topics: web servers, email, virus prevention, firewalls, data encryption, remote access, passwords, servers, physical access, traffic restrictions, wireless, laptop and mobile devices, disposal of hardware/media, and application assessment/certification. Given that information security is an evolving technology practice, the State reserves the right to introduce new policy during the term of the contract resulting from this RFP and require the Contractor to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.



The Enterprise Security Policy is available to third parties on a need-to-know basis and requires the execution of a non-disclosure agreement prior to accessing the policy. The Contractor may request individual sections of the Enterprise Security Policy or request the entire document. Prior to the Contractor receiving the requested policy information, the Contractor must sign and submit the non-disclosure agreement found on the ITS website, <http://www.its.ms.gov>, as follows: click on the "ITS Services" button on the left of the screen; select "Information Security", scroll to the bottom of the page, and click on the link "Enterprise Security Policy" under "Policies and Plans". The form can be found at the "Enterprise Security Policy" link under the "Third Party" heading. The complete web address is shown below:

[http://www.its.ms.gov/security/docs/confidentiality\\_agreement\\_for\\_its\\_esp\\_for\\_web.pdf](http://www.its.ms.gov/security/docs/confidentiality_agreement_for_its_esp_for_web.pdf)

Contractor must provide contact information (name, email address, phone number) that can be used to coordinate the secure delivery of the requested information.

#### **4.16 PROJECT WORK SCHEDULE**

During the project initiation, Contractor and State will develop a mutually agreed upon work schedule including the division of responsibility between State's staff and Contractor's staff. It is understood by the parties that the project work schedule must be in place prior to any work being performed. Once this mutually agreed upon work schedule, which will identify specific time frames and deliverable target dates for this project, has been developed, it will be incorporated into and made a part of the contract. The dates in the work schedule will define the agreed upon period of performance. The parties acknowledge that the work schedule will evolve and change from time to time upon the mutual written agreement of both parties. The parties agree that the deliverables and schedule set forth in the latest version of the work schedule will take precedence over any prior plans.

#### **4.17 WARRANTY**

Contractor represents and warrants that all work performed hereunder, including but not limited to consulting, conversion, training, technical support, and maintenance, shall be performed by competent personnel, shall be of professional quality consistent with generally accepted industry standards for the performance of such services, and shall comply in all respects with the requirements of the RFP. For any breach of this warranty, the Contractor shall, for a period of ninety (90) days from the performance of service, perform the services again at no cost to the State, or if the Contractor is unable to perform the services as warranted, the Contractor shall reimburse the State the fees paid to the Contractor for the unsatisfactory services.

#### **4.18 PERSONNEL ASSIGNMENT GUARANTEE**

Contractor guarantees that the personnel assigned to this project will remain a part of the project throughout the duration of the contract, as long as the personnel are employed by the Contractor or unless DOM has asked for replacement of a staff member. Contractor further agrees that the assigned personnel will function in the capacity for which their services were acquired throughout the life of the contract, and any failure by Contractor to so provide these persons shall entitle DOM to terminate this contract for cause. Contractor agrees to pay DOM fifty percent (50%) of the total contract amount if any of the assigned personnel is removed from the project prior to the ending date of the contract for reasons other than departure from Contractor's employment or replacement at State's request. Subject to DOM's written approval, the Contractor may substitute qualified persons in the event of the separation of the incumbents therein from employment with Contractor or for other compelling reasons that are acceptable to DOM and may assign additional staff to provide technical support to State. The replacement personnel shall have equal or greater ability, experience, and qualifications than the departing personnel and shall be subject to the

prior written approval of DOM. The Contractor shall not permanently divert any staff member from meeting work schedules developed and approved under this Agreement, unless approved in writing by DOM. In the event of Contractor personnel loss or redirection, the services performed by the Contractor shall be uninterrupted and the Contractor shall report in required status reports its efforts and progress in finding replacements and the effect of the absence of those personnel.

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## 5 TECHNICAL PROPOSAL

### 5.1 INTRODUCTION

The Technical Proposal must include the following sections:

1. Transmittal Letter
2. Executive Summary
3. Corporate Background and Experience
4. Project Organization and Staffing
5. Methodology
6. Project Management and Control
7. Work Schedule

Items to be included under each of these headings are identified in the paragraphs below. Each section within the Technical Proposal should include all items listed in the paragraphs below. The evaluation of proposals will be done on a section-by-section basis.

Offeror response should follow the layout of the RFP. The Offeror may intersperse their response following each RFP specification but must not otherwise alter or rekey any part of the original text of this RFP. If DOM determines that the Offeror has altered any language in the RFP, DOM may, in its sole discretion, disqualify the Offeror from further consideration. The RFP issued by DOM is the official version and will supersede any conflicting RFP language submitted by the Offeror.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

The Offeror must conform to the following standards in the preparation of the Offeror's proposal:

1. If the Offeror does not agree with any item in any section, then the Offeror must list the item on the **Proposal Exception Summary Form (Appendix B)**.
2. Where an outline point asks a question or requests information, the Offeror must respond with the specific answer or information requested.
3. When an outline point/attachment is a statement provided for the Offeror's information only, the Offeror need only read that point. The Offeror acknowledges having read and accepting, or taken exception to, all sections by signing the **Transmittal Letter** defined in *Section 5.2* and providing a **Proposal Exception Summary Form (Appendix B)**.
4. The Offeror must fully respond to each requirement within the Technical Proposal by fully describing the manner and degree by which the proposal meets or exceeds said requirements.

### 5.2 TRANSMITTAL LETTER

The Transmittal Letter shall be in the form of a standard business letter on letterhead of the proposing company and shall be signed by an individual authorized to legally bind the Offeror. It shall be included in each Technical Proposal. The letter should identify all material and enclosures being submitted in response to the RFP. The transmittal letter shall include

1. A statement indicating that the Offeror is a corporation or other legal entity;
2. A statement confirming that the Contractor is registered to do business in Mississippi and providing their corporate charter number to work in Mississippi, if applicable;
3. A statement identifying the Offeror's Federal tax identification number;
4. A statement that the Contractor agrees that any lost or reduced federal matching money resulting from unacceptable performance of a contractor task or responsibility, as defined in this RFP, shall be accompanied by reductions in state payments to the Contractor;
5. A statement that no attempt has been made or will be made by the Offeror to induce any other person or firm to submit or not to submit a proposal;
6. A statement that the Contractor has or has not (*use applicable word*) retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.
7. A statement that the Contractor has not retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee except as disclosed in the contractor's bid or proposal.
8. A statement that the Contractor has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 7-204 of the Mississippi Personal Service Contract Procurement Regulations.
9. A statement of Affirmative Action, that the Offeror does not discriminate in its employment practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin, or disability;
10. A statement that no cost or pricing information has been included in this letter or any other part of the technical proposal;
11. A statement identifying all amendments to this RFP issued by DOM which have been received by the Offeror. If no amendments have been received, a statement to that effect should be included;
12. A statement that the Offeror has read, understands and agrees to all provisions of this RFP without reservation;
13. Certification that the Offeror's offer will be firm and binding for 180 days from the proposal due date;
14. A statement naming any outside firms responsible for writing the proposal;
15. A statement agreeing that the Contractor and all subcontractors will sign the Drug Free Workplace Certificate (Exhibit 1);
16. A statement that the Offeror has included the signed DHHS Certification Regarding Debarment, Suspension, and Other Responsibility Matters for Primary Covered Transactions (Exhibit 2) with the Transmittal letter;
17. All proposals submitted by corporations must contain certifications by the secretary or other appropriate corporate official other than the corporate official signing the corporate proposal that the corporate official signing the corporate proposal has the full authority to obligate and bind the corporation to the terms, conditions, and provisions of the proposal;
18. All proposals submitted must include a statement that the Offeror presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services under this contract, and it shall not employ, in the performance of this contract, any person having such interest; and,
19. If the proposal deviates from the detailed specifications and requirements of the RFP, the transmittal letter must identify and explain these deviations. DOM reserves the right to

reject any proposal containing such deviations or to require modifications before acceptance.

### **5.3 EXECUTIVE SUMMARY**

The Executive Summary shall condense and highlight the contents of the Technical Proposal in such a way as to provide a broad understanding of the entire proposal. The Executive Summary shall include:

1. A summary of the proposed technical approach and strategy, project management controls and approach to quality assurance;
2. The proposed staffing and management structure; and,
3. The proposed work schedule.

The Executive Summary should be no more than five single-spaced typed pages in length.

### **5.4 CORPORATE BACKGROUND AND EXPERIENCE**

The Corporate Background and Experience Section shall include for the Offeror details of the background of the company, its size and resources, details of corporate experience relevant to the proposed contract, financial statements, and a list of all current or recent Medicaid or related projects. The time frame to be covered should begin, at a minimum, in January 2007 through present date.

#### **5.4.1 Corporate Background**

The details of the background of the corporation, its size, and resources, shall cover:

1. Date established;
2. Location of the principal place of business;
3. State of incorporation;
4. Ownership (e.g.: public company, partnership, subsidiary);
5. Average numbers of employees for the last three years;
6. Number of personnel currently engaged in project operations;
7. Performance history and reputation;
8. Current products and services; and
9. Professional accreditations pertinent to the services provided by this RFP

#### **5.4.2 Financial Statements**

Financial statements for the contracting entity shall be provided for each of the last five (5) years, including at a minimum:

1. Statement of income;
2. Balance sheet;
3. Statement of changes in financial position during the last five (5) years;
4. Statement of cash flow;
5. Auditors' reports;

6. Notes to financial statements; and,
7. Summary of significant accounting policies

DOM reserves the right to request any additional information to assure itself of an Offeror's financial status.

#### 5.4.3 Corporate Experience

The corporate experience section must present the details of the Offeror's Medicaid project experience and RFP and IAPD project experience. A minimum of three corporate references are required for each of these types of projects. DOM will check references at its option. Each reference must include the client's name and address and the current telephone number of the client's responsible project administrator or of a senior official of the client who is familiar with the Offeror's performance and who may be contacted by DOM during the evaluation process. DOM reserves the right to contact officials of the client other than those indicated by the Offeror. Overlapping responsibilities on the same client's contract should be depicted so that they are easily recognized.

The Offeror must provide for each Medicaid project experience and each RFP/IAPD project experience (minimum of 3 of each):

1. Customer name;
2. Customer contact information (including phone numbers);
3. Project title/description of the work performed;
4. Time period of contract;
5. Staff months expended;
6. Personnel requirements (skills and roles);
7. Full-Time Equivalents (FTEs) assigned;
8. Publicly funded contract cost; and
9. Any contractual termination within the past five (5) years.

#### 5.4.4 Product Sample

The Offeror must provide a recent, appropriately redacted, CMS-approved RFP and IAPD, produced by the Offeror, for DOM evaluation. Offeror should denote whether staff proposed for this project contributed to the authorship of the sample product(s).

### 5.5 PROJECT ORGANIZATION AND STAFFING

The Project Organization and Staffing section shall provide:

1. Project team organization depicted by a chart of proposed personnel and their position within the corporation as well as their assigned role both within the project;
2. Responsibilities and estimates of the staff-hours by major task(s) to be provided by proposed positions;
3. Résumés of all management and **key staff** as required in this RFP. As noted in *Section 1.7.5*, all staff assigned to this project are considered **key staff**, including staff that is internal

to the project team and those that reside in the Corporate organization outside of the team;  
and

4. For each individual included in the Offeror's proposal, the Offeror will be required to:
  - a. Provide a direct telephone number at which the individual may be contacted for a telephone interview. DOM will pay toll charges in the continental United States. The Offeror must arrange a toll-free number for all other calls;
  - b. Certify that the individual is proficient in spoken and written English;
  - c. Certify that the individual is a U.S. citizen or that the individual meets and will maintain employment eligibility requirements in compliance with all INS regulations. The Offeror must provide evidence of identification and employment eligibility prior to the award of a contract that includes any personnel who are not U. S. citizens; and
  - d. Certify that the personnel assigned to this project will remain a part of the project throughout the duration of the contract as long as the personnel are employed by the Contractor, unless replaced by the Contractor at the request of DOM. This requirement includes the responsibility for ensuring all non-citizens maintain current INS eligibility throughout the duration of the contract.

#### **5.5.1 Organization**

The organization charts shall show staff organizational structure, including the project team reporting structure and the reporting structure inside the Corporate organization for the members of the proposed project team including **key staff** and other resources

1. Organization and staffing during each phase as described in the RFP;
2. Full-time, part-time and temporary status of all employees; and
3. Planned use of subcontractors.

#### **5.5.2 Responsibilities**

This section should discuss the anticipated roles of personnel during all phases of the contract. All proposed key technical team leaders, including definitions of their responsibilities during each phase of the contract, should be included.

#### **5.5.3 Résumés**

Offerors must submit résumés of all proposed key staff members. All staff assigned to this project are considered **key staff**, including staff that is internal to the project team and those that reside in the Corporate organization outside of the team.

Experience narratives shall be attached to the résumés describing specific experience with Medicaid projects and RFP/IAPD projects, and professional credentials, including any degrees, licenses and recent and relevant continuing education. Each project referenced in a résumé should include the customer name, the time period of the project, and the time period the person performed, as well as a brief description of the project and the person's responsibilities.

The résumés of proposed personnel shall include:

1. experience with Offeror;
2. experience in working with the Medicaid program;
3. experience in developing RFP's and IAPD's and gaining CMS approval;
4. relevant education and training, including college degrees, dates of completion, and institution name and address; and

The résumés of proposed managers shall include:

1. experience in managing large-scale contractual services projects;
2. other management experience; and
3. supervisory experience including details and number of people supervised.

#### **5.5.4 Staff References**

Offerors must submit three project references for each proposed **key staff** member. Each reference should be prepared to give information on the individual's experience and competence. Reference must include the name of the contact person, position, current address, telephone number and date and description of the service provided. Current DOM staff shall not be submitted for any reference for the above requirements.

The references must be indicated in the **Experience Workbook (Appendix C)**, along with the experience of each **key staff** member as it pertains to the services being proposed in response to this RFP.

#### **5.5.5 Backup Personnel Plan**

If during the course of the project additional staff is required to perform the functions of the contract, the Contractor should outline specifically its plans and resources for adapting to these situations. The Contractor should also address plans to ensure the longevity of staff in order to allow for effective DOM support.

### **5.6 METHODOLOGY**

The Methodology Section should describe the Contractor's approach to providing the services described in the Scope of Work, *Section 1*, of this RFP. This section should contain a comprehensive description of the proposed project as outlined in the Scope of Work. The narrative descriptions shall encompass the requirements of this RFP and must describe the methodology to be followed in sufficient detail to demonstrate the Offeror's direction and understanding of this RFP.

### **5.7 PROJECT MANAGEMENT AND CONTROL**

The Project Management and Control Section shall include details of the methodology to be used in management and control of the project, project activities, and progress reports. This section should indicate whether the Offeror has a Project Management Office (PMO) that will be engaged in this project. This section covers:

1. Project management approach;
2. Management of performance standards, milestones and/or deliverables;
3. Communication strategy/plan;
4. Internal quality control monitoring; and



5. Approach to problem identification and resolution.

## **5.8 WORK SCHEDULE**

The proposed work schedule must be presented by the Offeror in the proposal, but must be approved by DOM before it can be used to execute the project. The Work Schedule must include:

1. A detailed breakdown of tasks and subtasks and a schedule for the performance of each task, with critical path identified. Breakdown should be presented in Microsoft Office or comparable tool;
2. All responsibilities, milestones, and deliverables proposed for this solution;
3. A summary of how State of Mississippi agency staff will be used as resources in this project. It is DOM's desire that agency staff be included in all aspects of the engagement;
4. Any assumptions or constraints identified by the Offeror, both in developing the work schedule and in completing the work schedule;
5. Person-days of effort for each task or subtask, showing Contractor personnel and DOM personnel efforts separately;
6. A network diagram, showing the planned start and end dates for all tasks and subtasks, indicating the interrelationships of all tasks and subtasks, and identifying the critical path;
7. A Gantt chart, showing the planned start and end dates of all tasks and subtasks; and
8. A schedule for all deliverables providing a minimum of five (5) days review time by DOM.

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## 6 BUSINESS/COST PROPOSAL

### 6.1 GENERAL

All Offerors must certify in the transmittal letter that their offer shall be binding upon the Offeror for a period of 180 days following the proposal due date. Pricing will be considered as a separate criteria of the overall bid package.

Offerors must propose a firm fixed price for each of the components contained in the **Budget Summary (Appendix A)**.

### 6.2 PROPOSAL MODIFICATION IN THE EVENT OF A FEDERAL AND/OR STATE LAW, REGULATION OR POLICY

In the event any change occurs in federal law, federal regulations, state law, state regulations, state policies, or state Medicaid plan coverage, and DOM determines that these changes impact materially on proposal pricing, DOM reserves the right to require the Offerors to amend their proposals. The failure of an Offeror to negotiate these required changes will exclude such Offeror from further consideration for contract award. All proposals shall be based upon the provisions of federal and state laws and regulations and DOM's approved Medicaid State Plan coverage in effect on the issuance date of this RFP, unless this RFP is amended in writing to include changes prior to the closing date for receipt of proposals.

### 6.3 PROPOSAL CONTENT

The Business Proposal shall include the following:

1. A worksheet showing the detailed composition of the firm fixed cost items that are requested in the **Budget Summary (Appendix A)**;
2. In support of the Budget Summary, Offeror must submit a project schedule with appropriate deliverables/payment milestones denoted by anticipated delivery date. Payments associated with deliverables and milestones should be directly correlated to the level of effort expended in the production of the deliverable and its associated importance to the project.
3. The Contractor must also include a rate schedule listing the fully-loaded hourly rate for all roles that are proposed for the project. The pricing should be based on a fully-loaded hourly rates (i.e. a rate which includes all travel and overhead expenses) of the proposed staff. No itemized travel or overhead expense may be submitted for payment by DOM. A **Budget Summary (Appendix A)** signed in blue ink and dated by an authorized corporate official;
4. All proposals submitted by corporations must contain certification by the secretary or other appropriate corporate official, other than the signer of the corporate proposal, that the corporate official signing the corporate proposal has the authority to obligate and bind the corporation to the terms, conditions and provisions of the proposal.

Proposals received that do not include the above items will be rejected. Proposals that contain any material other than the above will be rejected.

## **7 PROPOSAL EVALUATION**

### **7.1 GENERAL**

An Evaluation Committee comprised of DOM staff will be established to judge the merits of eligible proposals. The committee will be appointed by the Executive Director of the Division of Medicaid and will include members who have extensive experience in the Medicaid program. The committee will be responsible for the evaluation of the technical and business proposals.

### **7.2 EVALUATION OF PROPOSALS**

A standard evaluation form will be utilized by the evaluation committee to ensure consistency in evaluation criteria.

A maximum of 1,000 points will be available for each proposal which shall be comprised of a technical and a business proposal. The points awarded per phase by the evaluation committee will be totaled to determine the points awarded per proposal.

Evaluation of eligible proposals will be conducted in five phases. The Procurement Officer will complete Phase One, the technical proposal evaluation committee will complete Phase Two, and the business proposal evaluation committee will complete Phase Three. In Phase Four, the Procurement Officer will compile the results of the technical and business evaluations and make a recommendation to the Executive Director of Medicaid based on the results of the evaluation. The fifth phase is the award decision of the Executive Director.

At its option, DOM may request an interview from Offerors in a competitive range in the evaluation. Offerors must be prepared to meet with DOM staff within five (5) days of notification. All costs associated with the interview will be the responsibility of the Offeror. For the purposes of this project, a telephone interview of the Offeror would be appropriate.

At its option, DOM may conduct telephone interviews with the assigned Project Manager proposed by the Offeror.

#### **7.2.1 Phase 1 - Evaluation of Offeror's Response to RFP**

In this phase, the Procurement Officer reviews each proposal to determine if each proposal is sufficiently responsive. Each proposal will be evaluated to determine if it is complete and whether it complies with the instructions to Offerors in the RFP. Each proposal that is incomplete will be declared non-responsive and may be rejected with no further evaluation.

The Procurement Officer will determine if an incomplete proposal is sufficiently responsive to continue to Phase Two.

#### **7.2.2 Phase 2 - Evaluation of Technical Proposal**

Only those proposals which meet the requirements in Phase One will be considered in Phase Two.

Any technical proposal that is incomplete or in which there are significant inconsistencies or inaccuracies may be rejected by the Division of Medicaid. The Division of Medicaid reserves the right to waive minor variances or reject any or all proposals. In addition, the Division of Medicaid reserves the right to request clarifications or enter into discussions with all Offerors.

The evaluation committee will review the Offeror's response to each requirement in order to determine if the bidder sufficiently addresses all of the requirements and that the bidder has developed a specific approach to meeting each requirement.

Maximum number of points that may be awarded for the technical evaluation:

<u>Maximum Points per Section</u>	
1. Corporate Background and Experience	100
2. Organization and Staffing	200
3. Methodology	125
4. Project Management and Control	100
5. Work Schedule	<u>175</u>
Total Points	700

Proposals must score a minimum of 70% (490 points) of the total score in order to proceed to the Business/Cost phase of the evaluation. Proposals receiving less than 70% will not be considered for the Business/Cost evaluation or contract award.

#### **7.2.2.1 Executive Summary**

The Evaluation Committee will review the Executive Summary to determine if it provides all information and conforms to the requirements listed in *Section 5.3* of this RFP.

#### **7.2.2.2 Corporate Background and Experience**

The Evaluation Committee will evaluate the experience, performance on similar contracts, resources, and qualifications of the Offeror to provide the services required by the RFP. The evaluation criteria will address:

1. Experience of Offeror in providing the requested services;
2. Corporate experience providing similar services;
3. Amount and level of resources proposed by the Offeror;
4. Specific qualifications that evidence the Offeror's ability to provide the services requested;
5. Current financial position and cash flow of the Offeror and evidence that the Offeror has a history of financial solvency; and
6. Any contract terminations or non-renewals within the past five years.

#### **7.2.2.3 Organization and Staffing**

The Evaluation Committee will review this section of the Offeror's proposal to determine if the proposed organizational structure and staffing level are sufficient to accomplish the requirements of the RFP. The evaluation criteria will address:

1. the organizational chart(s);
2. the time lines;
3. the job descriptions including job qualifications;
4. the resumes of staff and their qualifications for the positions they will hold;
5. the relationship of their past experience to their proposed responsibilities; and
6. staff references.

The committee will evaluate the explanation of the Offeror regarding the relationship between the

Offeror and the Project Manager to determine if they will have sufficient autonomy/authority to make management decisions to improve the Offeror's delivery of services to DOM.

#### **7.2.2.4 Methodology**

The Evaluation Committee will evaluate the approach and process offered to provide services as required by this RFP. In addition to the information required in *Section 1.0* of this RFP, the evaluation criteria will address at a minimum the following (if applicable):

1. Processes and requirements for completion of the project;
2. Data management plan, including hardware, software, communications links, and data needs and proposed coordination plan;
3. Processes for maintaining confidentiality of protected health information;
4. Processes for development and submission of required deliverables;
5. Scope of services provided through partnerships or subcontractors and the accompanying agreements as required in *Section 3.3.11*;
6. Relevant experience that indicates your organizational qualifications for the performance of the potential contract; and
7. Quality Assurance processes.

#### **7.2.2.5 Project Management and Control**

The evaluation committee will evaluate the Offeror's proposal to determine if the elements required by *Section 5.7* of this RFP are sufficiently addressed. Specifically, the committee will evaluate:

1. the Offeror's approach to the management of the project and ability to keep the project on target and to ensure that the requested services are provided;
2. the Offeror's control of the project to ensure that all requests are being met and that the Offeror is able to identify and resolve problems which occur;
3. the Offeror's methods for estimating and documenting personnel hours spent by staff on project activities to be sure they are sound and fair;
4. the Offeror's plans to comply with the reporting requirements of the contract, including the provision of status reports to DOM, and whether the reports are appropriate and sufficient to keep DOM informed of all aspects of the implementation and operation of the project; and
5. the Offeror's understanding of the importance of interacting with DOM management staff and their proposed communication plan/strategy.

#### **7.2.2.6 Work Schedule**

The committee will review and evaluate the proposed work schedule to determine if all tasks are included and whether a timeline and an identification of staff responsible for the task's accomplishment are indicated. The work schedule must provide a logical sequence of tasks and a sufficient amount of time for their accomplishment.

### 7.2.3 Phase 3 - Evaluation of Business/Cost Proposal

Only those proposals that satisfactorily completed Phase 2 will be considered for Phase 3. DOM reserves the right to waive minor variances or reject any or all proposals.

Any proposal price determined by DOM to be unrealistically or unreasonably low may not be considered acceptable, as such a proposal has a high probability of not being accomplished for the cost proposed. The Offeror may be required to produce additional documentation to authenticate the proposal price.

The maximum 300 points will be assigned to the lowest and best acceptable proposal. All other proposals will be assigned points based on the following formula:

$$\frac{X}{Y} * 300 = Z$$

X = lowest price

Y = Offeror's price

Z = assigned points

### 7.3 SELECTION

After the evaluation committee has completed the evaluation of the proposals, a summary report including all evaluations will be submitted to the Executive Director of DOM. The Executive Director will make the final decision regarding the winning proposal.

### 7.4 AWARD NOTICE

The notice of intended contract award shall be sent by e-mail with reply confirmation to the winning Offeror. Unsuccessful Offerors will be notified in the same manner after the award has been accepted or declined.

Consistent with existing state law, no Offeror shall infer or be construed to have any rights or interest to a contract with DOM until final approval is received from all necessary entities and until both the Offeror and DOM have executed a valid contract.

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**Appendix A - Budget Summary**

Section 6.0 addresses submission of the Budget Summary. Failure to follow the submittal instructions will immediately disqualify the Offeror

<p><b>Budget Summary</b>  <b>MMIS Procurement Consulting Services</b>  <b>RFP# 20111005</b></p>			
Offeror:			
Total Number of Proposed FTEs:			
Contract Phase	Cost	15% Retainage	Payment
RFP Update Cost			
IAPD Update Cost			
Proposal Evaluation Cost			
<b>Total Contract Price:</b>			
I certify that I am legally obligating the above named Offeror to the conditions of this contract			
Signature:		Date:	
Printed Name:		Title:	

Note: All payments by DOM will be subject to a 15% retainage.

Note: Offeror must attach a worksheet showing the detailed composition of the firm fixed cost items that are requested in this **Budget Summary** (Appendix A).

**Appendix B – Proposal Exception Summary Form**

<b>DOM RFP Reference</b>	<b>Offeror Proposal Reference</b>	<b>Brief Explanation of Exception</b>	<b>DOM Acceptance (sign here only if accepted)</b>
(Reference specific outline point to which exception is taken)	(Page, section, items in Offeror's proposal where exception is explained)	(Short description of exception being made)	



**Appendix C – Experience Workbook**

## EXHIBIT 1

### DHHS CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS:

#### GRANTEES OTHER THAN INDIVIDUALS

##### Instructions for Certification

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

1) This certification is required by regulations implementing the Drug-Free Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990, Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

2) Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

3) Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

4) If the workplace identified to DOM changes during the performance of the grant, the grantee shall inform DOM of the change(s), if it previously identified the workplaces in question (see above).

5) Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including (i) all direct charge employees; (ii) all indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by

a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

b) Establishing an ongoing drug-free awareness program to inform employees about

1) The dangers of drug abuse in the workplace; 2) the grantee's policy of maintaining a drug-free workplace; 3) any available drug counseling, rehabilitation, and employee assistance programs; and 4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will

1) Abide by the terms of the statement; and 2) notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

e) Notifying DOM in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted:

1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or 2) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments if needed):

Place of Performance (street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

---->NOTE: Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For HHS, the central receipt point is Division of Grants Management and Oversight, Office of Management and Acquisition, HHS, Room 517-D, 200 Independence Ave, S.W., Washington, D.C. 20201

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Organization

EXHIBIT 2

DHHS Certification Regarding Debarment, Suspension, and Other Responsibility Matters  
Primary Covered Transactions  
45 CFR Part 76, Appendix A

(1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
- b. Have not within a three-year period preceding this proposal 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;
- c. 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 (1)(b) of this certification; and
- d. Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Organization