

Arkansas Health Insurance Marketplace

REQUEST FOR PROPOSALS:

NAVIGATORS FOR THE ARKANSAS HEALTH INSURANCE
MARKETPLACE

JULY 17, 2017



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1 INTRODUCTION & OVERVIEW

1.1 Purpose of Procurement

The Arkansas Health Insurance Marketplace (AHIM) issues this Request for Proposals (RFP) to obtain the services of qualified Navigator entities in the State of Arkansas to provide the Navigator services set out by 45 CFR § 155.215. AHIM intends to make at least two awards through this RFP process to result in geographic coverage for the entire State for the Individual Marketplace for Plan Year 2018.

1.2 Issuing Officer

Contact information for the issuing office has been provided below. This person will serve as the single point of contact for communication regarding this RFP.

Alicia McCoy
Director of Marketing & Communications
Arkansas Health Insurance Marketplace
221 West 2nd Street, Suite 700
Little Rock, AR 72201
Phone: (501) 313-4197

1.3 Use of Subcontractors

In the event a proposal is submitted that involves more than one organization, a single organization shall be designated as the Prime Bidder. All other bidders and participants shall be designated as subcontractors. All subcontractors shall be identified by name and for each proposed subcontractor, background information along with a description of the functions or tasks the subcontractor(s) would perform under this RFP must be included, consistent with instructions found elsewhere in this RFP. The Prime Bidder shall be wholly responsible for the entire performance whether subcontractors are used. The project leader (Project Manager) shall be an employee of the Prime Bidder. The Prime Bidder shall sign the contract with AHIM.

1.4 Overview

This RFP is composed of 8 sections, plus appendices:

Section 1: Introduction & Overview – Provides general information on the purpose of the RFP, the authorities relating to the issuance of the RFP and the organization of the RFP.

Section 2: RFP Schedule & Procurement Process – Provides information on the rules and schedules guiding this procurement.

Section 3: Background Information – Describes AHIM, partners and stakeholders with an interest in both the SHOP and Individual Marketplace, the outreach and education landscape, and guiding principles.

Section 4: Scope of Work – Provides information on the services to be provided under the contract.

Section 5: Technical Proposal Requirements – Provides an overview of the business and technical requirements that a Bidder must meet.

Section 6: Cost Proposal Requirements – Defines the requirements for Bidders' Cost Proposals and the information to be provided.

Section 7: Evaluation Process – Defines the evaluation process and gives an overview of the evaluation categories.

Section 8: Contract Terms & Conditions – Describes the terms and conditions under which the work shall be performed.

Appendices A through I have been included to support the information presented in Sections 1 through 8. The complete list of appendices can be found below.

- Appendix A: Vendor Information Sheet;
- Appendix B: Written Questions Template;
- Appendix C: Mandatory Requirements Checklist;
- Appendix D: Corporate References;
- Appendix E: Proposed Key Staff Resume Template;
- Appendix F: Proposed Key Staff References Template;
- Appendix G: Objections to Terms & Conditions;
- Appendix H: Insurance; and
- Appendix I: Federal Contract Clauses.

2 RFP SCHEDULE & PROCUREMENT PROCESS

2.1 Approach

AHIM intends to provide a fair and equitable process for the procurement of the services described in this RFP. Submission of a proposal in response to this RFP constitutes acceptance of the conditions governing the procurement process, including the evaluation factors contained in *Section 7: Evaluation Process*.

AHIM expressly reserves the right to not award a contract pursuant to this RFP. Contracts awarded pursuant to this RFP will not include minimum guarantees of funding and will include payments based on actual work performed as requested. AHIM reserves the right to:

- Waive any immaterial defect or informality in any response procedure;
- Reject any and all proposals;
- Request additional information and data from any or all respondents;
- Supplement, amend, or otherwise modify the RFP or cancel this request with or without the substitution of another RFP;
- Disqualify any Bidder who fails to provide information or data requested herein or who provides inaccurate or misleading information or data;
- Disqualify any Bidder on the basis of any real or apparent conflict of interest; and,
- Disqualify any Bidder on the basis of past performance on other projects.

2.2 RFP Timeline

The schedule set forth herein represents AHIM's anticipated schedule for this procurement. AHIM reserves the right to modify dates per extenuating circumstances. The procurement schedule is as follows:

Table 2-1: Procurement Schedule

| Activity | Date |
|--|-------------|
| Issue RFP | 7/17/17 |
| Submission of Written Questions | 7/19/17 |
| Written Responses to Questions and Addendum to RFP Posted (as necessary) | 7/21/17 |
| Proposals Due | 7/28/17 |
| Anticipated Dates of Interviews (if needed) | 7/31-8/4/17 |
| Anticipated Notice of Award | 9/15/17 |
| Anticipated Contract Execution | 10/1/17 |

2.3 Written Questions

AHIM will accept written questions related to this RFP until the date and times specified in *Table 2-1*. The written questions must reference the RFP section, and paragraph number in the format provided in *Appendix B: Written Questions Template* of this RFP.

Bidders may email written questions to the following procurement email address:
solicitations@ARMarketplace.com.

AHIM intends to respond to all written questions and issue addenda (if necessary) no later than the dates and times specified in *Table 2-1*. Only written responses to questions and information included in formal addenda to this RFP shall be considered as official.

2.4 Acceptance of Proposals

All proposals properly submitted will be accepted by AHIM. However, AHIM reserves the right to request necessary amendments from a Bidder, reject any or all proposals received, or cancel this RFP, according to the best interests of AHIM and the residents of the State of Arkansas.

AHIM also reserves the right to waive minor irregularities in proposals. In the event AHIM waives any minor irregularity in any Bidder's proposal, such waiver shall in no way modify the requirements of this RFP or excuse the Bidder from full compliance with the specifications of this RFP, or excuse the Bidder from any Contract requirement. At the discretion of AHIM, the RFP Issuing Officer or her designated agent may contact the Bidder to clarify irregularities or provide missing requirements. The Bidder is required to submit clarifications or missing requirements with a turnaround time to be determined by AHIM. AHIM reserves the right to exclude any and all non-responsive proposals from any consideration for Contract award.

2.5 Submission of Proposals

Proposals must conform to all proposal submission requirements as stated in *Section 5: Technical Proposal Requirements* of this RFP. Failure to meet all requirements will place the Bidder at risk, and AHIM may reject the entire proposal.

2.5.1 Cost of Preparing the Proposal

The cost of preparing the proposal will not be billed to AHIM.

2.6 Proposal Opening & Inspection

During the proposal evaluation and award recommendation period, proposals shall not be available for inspection. Proposals shall not be opened publicly, but shall be opened in the presence of 2 or more AHIM officials. The register of proposals and Bidders' proposals shall be open to public inspection after a contract has been awarded and executed by all parties.

2.7 Disqualification of Bidders

A Bidder may be disqualified and the proposal may be rejected for any one or more of the following reasons applicable to the Bidder or any proposed subcontractor:

- Delivery of proposal after the proposal due date;
- Proof of collusion among Bidders, in which case all bids involved in the collusive action shall be rejected and any participant to such collusion shall be barred from future bidding until reinstated as a qualified Bidder;
- Inappropriate or unauthorized communication with AHIM staff or Board of Directors, as outlined in AHIM's Procurement Rules;
- Being in arrears on existing contracts or having defaulted on previous contracts;
- Substandard performance relating to meeting the requirements from previous contracts;
- Failure to pay, or satisfactorily settle, all bills overdue for labor and material on former contracts at the time of issuance of this RFP;
- Lack of sufficient experience to perform the work contemplated;
- Lack of responsibility and cooperation as shown by past work or services;
- Lack of financial stability and viability;
- Lack of proper licensure to cover the type of work contemplated, if required; and
- Any noncompliance with applicable laws.

2.8 Irregular Proposals

Proposals may be considered irregular and rejected for the following reasons including but not limited to the following:

- If the Transmittal Letter is unsigned by a Bidder or does not include a certification of the authority of the officer submitting the proposal to submit such proposal;
- If the proposal shows any noncompliance with applicable law or contains any unauthorized additions or deletions, conditional bids, incomplete bids, or irregularities of any kind, which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning;
- If a Bidder includes any cost information in the Technical Proposal, AHIM reserves the right to reject the proposal; and,
- If a Bidder adds any provisions reserving the right to accept or reject an award or adds provisions contrary to those in the solicitation.

2.9 Cancellation of RFP Additional Materials & Documentation

The RFP may be cancelled and any or all proposals may be rejected in whole or in part, when it is determined to be in the best interest of AHIM. AHIM shall not be liable for any costs, expenses, loss of profits, or damages whatsoever incurred by the Bidder in the event this RFP is cancelled or a proposal is rejected.

2.10 Award Notice

Notification of intended contract award, if any, shall be provided to the selected Bidder on or about the date specified in *Table 2-1*. Such notification shall be subsequently confirmed in writing. The Contract award is subject to availability of funding.

The successful Bidder receiving award notification agrees to enter immediately into good faith contract negotiations consistent with procedures and processes as established by AHIM, including those described in *Section 2.11 Contract Negotiation Process*.

Neither AHIM nor the State of Arkansas is liable for any work, costs, expenses, loss of profits, or any damages whatsoever incurred by the Bidder prior to the official contract start date, and contract work prior to this date may result in no payment. AHIM reserves the right to modify this policy; any modification will be made in a written statement and signed by both AHIM and the Bidder.

2.11 Contract Negotiation Process

Upon completion of the evaluation process, AHIM will select two Bidders with which to negotiate contracts, based upon the evaluation, findings, and other criteria deemed relevant for ensuring that the decision is in the best interest of AHIM and the State of Arkansas. In the event that AHIM is not successful in negotiation a contract with a selected Bidder, AHIM reserves the option of negotiating with another Bidder.

2.11.1 No Commitment to Contract

AHIM is not required to contract with a vendor because of this RFP.

2.12 Protest Policy & Procedure

The Bidders who submit proposals in response to this RFP may protest the award of the contract resulting from this RFP. A Notice of Intent to Protest must be made in writing to the Issuing Officer and must be received no later than 3 working days from the notice of non-award. If no such Intent is timely filed, the Bidder forgoes its ability to pursue a protest.

A Protest Notification must be made in writing to the Issuing Officer and must be received no later than 7 days from the notice of non-award. The Protest Notification must contain specific grounds for the protest. Supporting documentation must be included with the protest. A protest must state all grounds upon which the protesting party asserts that the solicitation or award was improper. Issues not raised by the protesting party in the protest are deemed waived.

Only the following are acceptable grounds for protest:

- Failure to follow AHIM procedures established in the RFP or AHIM rules of procurement;
- Errors in computing scores which contributed to the incorrect selection of a Bidder; and,
- Bias, discrimination, or conflict of interest on the part of an evaluator.

Disallowed grounds include:

- Evaluator qualifications;
- The professional judgment of the reviewers; and,
- AHIM's assessment of its own needs regarding the solicitation.

A protest that is incomplete or not submitted within the prescribed time limits will be summarily dismissed.

2.13 Contract Period

The contract term shall begin upon execution of the Contract and shall continue its initial term for 1 year. At the discretion of AHIM, this contract may be extended for 3 subsequent 1-year periods on a year-to-year basis.

The Contractor acknowledges that other unanticipated uncertainties may arise that may require an increase or decrease in the original scope of services from the Contractor awarded this contract. If there is a need to modify the Contract resulting from an increase or decrease of services, then the Contractor agrees to negotiate in good faith with AHIM for the change in scope. The amendment to the Contract may also include a respective increase or decrease in compensation.

2.14 Evaluation of Proposals

Detailed information on the Evaluation of Proposals can be found in *Section 7: Evaluation Process*. Any submitted proposal shall remain a valid proposal for 180 days from the proposal due date.

Proposals that are submitted in a timely manner and meet the mandatory submittal requirements of this RFP will be reviewed and evaluated in accordance with *Section 7: Evaluation Process* of this RFP.

A Proposal Review Team will be charged with evaluating proposals based on the criteria put forth in *Section 7: Evaluation Process*. During the evaluation process, the Issuing Officer or designated agent may contact a Bidder for the purpose of obtaining clarification of its proposal. AHIM may at its discretion, select finalists who would be required to travel to Little Rock, Arkansas (at their own expense) to provide a presentation to a group as selected by AHIM. See *Section 7: Evaluation Process* for more detailed information about the evaluation process.

2.15 Qualification of Bidder

Qualified bidders for this RFP must have demonstrable work experience in the health care or health insurance field with a preference for work in relation to the Patient Protection and Affordable Care Act (ACA). Additionally, bidders must demonstrate proven experience in consumer outreach and assistance in the State of Arkansas, compliance with Federal and State standards in relation to Navigator licensing and training requirements and all other qualifications pursuant to 45 CFR § 155.210 and § 155.215.

3 BACKGROUND INFORMATION

3.1 Arkansas Health Insurance Marketplace

The Arkansas Health Insurance Marketplace (AHIM) was established as a result of Act 1500, which was passed by the 89th General Assembly of Arkansas during the 2013 Regular Session. Act 1500 was codified as Arkansas Code Annotated § 23-61-801 *et seq.* AHIM is responsible for complying with the mandates required within the Patient Protection and Affordable Care Act (ACA), including the administration of a Health Insurance Marketplace to facilitate access to affordable health insurance coverage for all legal residents of the State of Arkansas.

AHIM currently manages the Individual Marketplace under a model known as a State Based Marketplace on the Federal Platform (SBM-FP).

3.2 Arkansas Insurance Department

The Arkansas Insurance Department (AID) is an Executive Department of the State of Arkansas established by Arkansas Act 190 of 1917. AID is responsible for the regulation of Qualified Health Plans (QHPs) and Carriers of insurance policies in the State. AID is responsible for licensing all agents and brokers in the State. AID performs a review of all health insurance plans sold in the State of Arkansas.

3.3 Arkansas Department of Human Services

The Arkansas Department of Human Services (DHS) is the State's largest agency and is the single state agency responsible for the administration of the Arkansas Medicaid program. Arkansas expanded its Medicaid Program through the Health Care Independence Act, Arkansas Act 1498 of 2013. The Act created a model known as the Private Option through which Medicaid funds were used to purchase QHPs for individuals eligible for coverage. The program was the first of its kind and was approved through a Section 1115 Demonstration Waiver. As part of the Medicaid expansion, DHS created a Modified Adjusted Gross Income (MAGI) rules engine to determine eligibility for the program.

In 2016, the 90th General Assembly passed enabling legislation for the program that would replace the Private Option. Known as Arkansas Works, the new program continues the use of the State's innovative individual plan premium assistance approach for most eligible individuals while adding premium requirements, wellness requirements, incentive benefits, and work referrals.

3.4 Affordable Care Act

On March 23, 2010, the Health Care and Education Reconciliation Act of 2010 was signed into law. Collectively, these laws are referred to as the Affordable Care Act (ACA). The ACA encompasses laws designed to broaden access to health care for all Americans by expanding health insurance coverage, providing more health care choices, enhancing the quality of care for

all Americans, holding providers and delivery systems more accountable for health outcomes, and lowering overall health care costs.

Among the provisions of the ACA, each state has the opportunity to establish a Health Benefit Marketplace that serves to:

- Facilitate the individual purchase of Qualified Health Plans (QHPs);
- Facilitate the enrollment by qualified employers and their employees in qualified health plans offered through the SHOP Marketplace; and
- Meet all requirements specified in the ACA.

4 SCOPE OF WORK

The following section provides the Bidder with an understanding of the specific needs and expectations as well as requirements a Bidder must address in their proposal. It is important that Bidders demonstrate their understanding of the current environment in the State of Arkansas and an understanding of AHIM operations and stakeholders.

4.1 Overview

The Navigator Program is federally mandated for all state health exchanges. Navigators are Certified Enrollment Counselors that assist Consumers through a variety of outreach, education, enrollment, post enrollment, and renewal support services. Pursuant to 45 CFR § 155.210 and § 155.215, AHIM's Navigator Program is a partnership with community organizations across the state.

The Scope of Work includes:

1. Navigator Duties and
2. Reporting Requirements.

4.2 Goals for this Procurement

It is the goal of AHIM to select vendors that have a demonstrated ability to perform the following:

- Inform eligible consumers of the availability and benefits of obtaining health care coverage;
- Promote the value of purchasing health care coverage;
- Help consumers to shop and compare plans;
- Facilitate enrollment into health insurance plans through the AHIM operated exchange; and,
- Provide the most cost-effective activities.

4.3 Navigator Duties

The requirements for Navigators are found in 45 CFR § 155.210 and § 155.215. Navigators must perform the following duties:

- Maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about the Marketplace.
- Provide information and services in a fair, accurate, and impartial manner, which includes providing information that assists consumers with submitting the eligibility application; clarifying the distinctions among health coverage options, including QHPs; and helping consumers make informed decisions during the health coverage selection process. Such information must discuss other health programs such as Medicaid and CHIP.
- Facilitate selection of a QHP.
- Provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under Section 2793 of the PHS Act, or any other

appropriate state agency or agencies, for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage.

- Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Marketplace, including individuals with limited English proficiency, and ensure accessibility and usability of Navigator tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.
- Fully comply with all statutory and regulatory requirements, including but not limited to the conflict-of-interest and training standards set forth in 45 CFR § 155.215.
- Ensure that applicants:
 - Are informed, prior to receiving assistance, of the functions and responsibilities of Navigators, including that Navigators are not acting as tax advisors or attorneys when providing assistance as Navigators and cannot provide tax or legal advice within their capacity as Navigators;
 - Provide authorization in a form and manner as determined by AHIM prior to a Navigator's obtaining access to an applicant's personally identifiable information, and that the Navigator maintains a record of the authorization provided in a form and manner as determined by AHIM. Navigators must maintain these records for a retention period of no less than six years, unless a different and longer retention period has already been provided under applicable Federal law; and
 - May revoke at any time the authorization provided the Navigator pursuant to this section.
- Maintain a physical presence in the Exchange service area, so that face-to-face assistance can be provided to applicants and enrollees.
- Provide targeted assistance to serve underserved and vulnerable populations.
- Be responsible for performing all other duties and requirements as stated in federal and state laws.

4.4 Reporting Requirements

The selected Bidders shall provide reports in the form and format as determined by AHIM and that include but are not limited to the following metrics:

- Number of consumers directly assisted with application, enrollment, and general inquiries;
- Any and all events and marketing or promotion activities;
- Enrollment counselor or broker appointments made;
- Enrollment, outreach and education, and payroll/personnel activities;
- Descriptions on best practices and compliance practices that align with the requirements listed under *Section 4.3: Navigator Duties*;
- Updates to any of the above reported items; and
- Any additional reporting information as specified by AHIM or as required by federal and state laws.

4.5 Performance

Each successful Bidder(s) is responsible for oversight of its employees and will ensure that all Navigator employees meet the requirements in this RFP and perform Navigator duties. Should AHIM determine that performance is below expectations or does not meet the requirements, then the Navigator shall submit and follow a 30-day corrective action plan.

4.5.1 Communication and Materials

Outreach and education materials must be approved by AHIM prior to use.

5 TECHNICAL PROPOSAL REQUIREMENTS

5.1 Introduction

Bidders should submit Proposals that respond to each RFP section completely and should not reference other sections of the Proposal to supplement their responses as each section will be scored independently. Any entity may appear on only one Proposal, either as the lead or as a subcontractor. Therefore, the maximum number of Proposals that an entity may appear on is one (1). In the event that an entity submits its Proposal prior to the due date, the entity may later revise its Proposal so long as the revision is received by the due date. When submitting the revised Proposal, the revised document will completely replace the prior submission. Bidders must re-submit their Proposal in its entirety; replacement pages will not be accepted.

At the sole discretion of AHIM, AHIM may request written clarification to any Bidder's response in the Technical Proposal to better assist the Proposal Review Team members in evaluating any Bidder's response and intent.

5.2 Format of Proposal

Bidders' Proposals must include the components detailed in this section. No partial bids will be accepted. Any bids submitted that are deemed to be incomplete may be rejected by AHIM. Bidders' Proposals must be received by AHIM by the date and time specified in *Table 2-1*.

Table 5 – 1: Formatting Requirements

| Subject | Requirement |
|---------------------|--|
| Paper Size | 8 ½ X 11 inch paper (letter size) and double-sided. While the appearance of proposals is important, the use of non-recycled, non-recyclable or glossy materials is discouraged. |
| Font | Text font must be no smaller than 12 points. Tables and Figures may be in smaller font but must be legible. |
| Spacing | Proposals must be single-spaced. |
| Cover Page | The cover page of each Proposal document must include the following information; <ul style="list-style-type: none">• Name and address of the Bidder;• Date of submission; and,• Title. |
| Binding | Three-ring binder(s) of appropriate size(s) for bidder's proposal. |
| Page Limit | Although there are no page limits, Bidder should limit the amount of extra material they submit. |
| Number of Proposals | Bidder will submit two (2) Proposals including; <ul style="list-style-type: none">• One (1) Technical Proposal• One (1) Cost Proposal |
| Number of Copies | Technical Proposal: |

| Subject | Requirement |
|------------------------------------|--|
| | <ul style="list-style-type: none"> • One (1) original hard copy and two (2) identical copies of the original, each in a three-ring binder with tabbed sections • Ten (10) electronic copies (flash drive) <p>Cost Proposal</p> <ul style="list-style-type: none"> • One (1) original hard copy and two (2) identical copies of the original, each in a three-ring binder with tabbed sections • One (1) electronic copy (flash drive) |
| Shipment | <p>All Proposals must be sealed and addressed to:</p> <p>Alicia McCoy Director of Marketing & Communications Arkansas Health Insurance Marketplace 221 West 2nd St., Suite 700 Little Rock, AR 72201</p> |
| Delivery Method | <p>The following hard copy Proposal delivery methods are acceptable:</p> <ul style="list-style-type: none"> • U.S. Mail: Bidders are cautioned that it is their responsibility to mail Proposals in sufficient time to ensure receipt by AHIM prior to the Proposal due date and time. • Express Delivery: If bids are being sent via an express delivery service, Bidders are responsible for clearly designating the Proposal delivery contact and address, including telephone number, on the outside of the delivery envelope or box. • Hand Delivery: Hand-carried bids shall be delivered to Alicia McCoy at the address above prior to the Proposal due date and time. <p>AHIM will not accept Bidder Proposals submitted by email or fax.</p> |
| Envelope Contents and Labeling | <p>Technical Proposals and Cost Proposals must be sealed in separate envelopes or boxes within the "Sealed Bid." Proposals should be clearly marked "SEALED BID" and should include the following items:</p> <ul style="list-style-type: none"> • Indicate if it is the Technical or Cost Proposal; • Title; • Proposal Due Date; and, • Name of the Bidder. |
| Flash Drive | <p>The Technical Proposal and Cost Proposal must be provided on separate flash drives; they must be placed in the envelope with the original copy of each Proposal.</p> <p>The Technical Proposal must be submitted as Microsoft Office (Word, Excel, and PowerPoint) format or Portable Document Format (PDF) files. Files shall not be password-protected or saved with restrictions that prevent copying, saving, highlighting, or reprinting of the contents.</p> |
| Request for Confidential Treatment | <p>Requests for confidential treatment of any information in a Proposal must be communicated in writing to AHIM by providing a redacted copy of the Bidder's proposals. The Cost Proposal will be part of the ultimate contract entered into with any successful Bidder(s), so pricing information may not be designated as confidential material.</p> |

| Subject | Requirement |
|------------------------------------|---|
| Exception to RFP/Contract Language | If any Bidder(s) objects to any term or condition of the RFP, exceptions must be submitted on the form in <i>Appendix G: Objection to Terms and Conditions</i> and noted in the <i>Transmittal Letter</i> . |

5.3 Tab 1 – Transmittal Letter

To be considered, any Proposal must be accompanied by a Transmittal Letter on company letterhead, signed in blue ink by an official of the bidding organization authorized to bind the Bidder to the provisions of the proposal. The signed Transmittal Letter must be included in the proposal marked ORIGINAL. It must include a statement that any contract terms spelled out in this RFP would be acceptable if a contract were awarded. The Transmittal Letter shall also include:

1. A statement indicating that the Bidder is a corporation or other legal entity;
2. A statement confirming that the Bidder is registered to do business in the State of Arkansas and providing its corporate charter number to work in the State of Arkansas;
3. A statement identifying the Bidder's federal tax identification number;
4. A statement that not attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not to submit a proposal;
5. A statement that the Bidder has or has not retained any person or agency to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or other contingent arrangement except as disclosed in the Bidder's proposal;
6. A statement of Affirmative Action, that the Bidder 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;
7. A statement to detail any current pending or past (3 years) litigation;
8. A statement that no cost or pricing information has been included in the Transmittal Letter or any other part of the Technical Proposal;
9. If issued, a statement identifying by number, date, and acceptance of all amendments to this RFP issued by AHIM that have been received by the Bidder;
10. A statement that the Bidder has read, understands, and agrees to all provisions of this RFP without reservation;
11. Certification that the Bidder's offer will be firm and binding for 180 days from the proposal due date;
12. A statement naming any outside firms responsible for writing the proposal;
13. All proposals submitted by corporations must contain certifications by the secretary, or other appropriate corporate official other than the corporate official signing the Technical Proposal, that the corporate official signing the Technical Proposal has the full authority to obligate and bind the corporation to the terms, conditions, and provisions of the Technical Proposal;
14. All proposals submitted must include a statement that the Bidder presently has no interest and shall not acquire any interest, direct or indirect, that 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,
15. If the proposal deviates from the detailed specifications and requirements of this RFP, the Transmittal Letter must identify and explain these deviations. AHIM reserves the right to

reject any Technical Proposal containing such deviations or to require modifications by the Bidder before acceptance.

The Transmittal Letter must also be accompanied by *Appendix A: Vendor Information Sheet* containing the following:

- Name of the company or individual;
- Mailing address;
- Street address (for FEDEX or other mail service);
- Name and title of person who would sign the contract;
- Name and title of the company contact person (if different); and,
- Contact person; direct telephone number, fax number, and email address.

The Transmittal Letter must also be accompanied by a letter from each subcontractor, signed by an individual with the authority to bind the company, that 1) affirms the subcontractor's participation in the bid as a subcontractor, 2) describes the subcontractor's understanding of their role(s) and responsibilities, and 3) estimates the amount of revenue that will flow to the subcontractor if the Bidder's Proposal is accepted.

5.4 Tab 2 – Mandatory Requirements Checklist

Bidders must complete and submit the Technical Proposal Submission Requirements Checklist. The template for the Mandatory Technical Proposal Requirements Checklist is included in *Appendix C: Mandatory Requirements Checklist*.

5.5 Tab 3 – Executive Summary

The Executive Summary shall clearly and concisely summarize and highlight relevant contents of the Proposal to provide AHIM and the Proposal Review Team with a broad understanding of the Bidder's Technical Proposal.

Bidders should summarize how their Proposal meets the requirements of this RFP, how the Bidder's Proposal is best suited to meet the goals and objectives of AHIM as understood by the Bidder, and why the Bidder is best qualified to perform the work required. The Executive Summary shall highlight the Bidder's:

- Understanding of the project, project management approach, and commitment to successfully performing all project activities;
- Qualifications to serve as a Contractor for the project;
- Project challenges, risks, and suggested mitigation strategies; and,
- Summary of the contents of the Proposal.

5.6 Tab 4 – Corporate Experience

This section will provide a description of the content that must be contained in the Company Background section of the Technical Proposal. This description will include:

- Company Background;
- Company Experience;
- Corporate References; and,
- Company Financial Condition.

Bidders must provide a detailed summary of Bidder and subcontractor experience including company background. The Bidder must provide a concise, but thorough description of its relevant experience, capabilities, and verifiable successes. The Bidder must also provide this information for its subcontractors as well. The material shall be presented for the Bidder first and subsequently for any subcontractor(s) in order of the size (i.e., revenue) of their role in the project.

Bidders are asked to complete *Appendix D: Corporate References* in providing corporate references.

5.7 Tab 5 – Organization & Staffing Plan

The Organization and Staffing Plan shall describe the following:

- Organizational Budget;
- Project team organization;
- Organizational services, number of individuals served, and geographic areas served including a listing of counties served;
- Experience of the organization with outreach and education activities including examples of collaborative efforts with other community organizations;
- Ways the organization will focus on hard to reach populations that the organization serves;
- Plan to issue timely, detailed, and accurate activity reporting and invoicing to AHIM on a monthly basis;
- Populations, specific number of individuals, and geographic areas the organization proposes to serve with AHIM outreach and education services with an explanation of how the organization is qualified to serve those populations and areas;
- Projected number of enrollments resulting from the plan;
- Activities, presentations, local events, dissemination for AHIM-product materials, or other strategies planned;
- Previous activities that resulted in enrollments with AHIM; and,
- Any additional information the organization may desire to submit for consideration.

Bidders shall acknowledge the requirement that certain key personnel are required to be located in Little Rock, Arkansas during major reporting instances, and at the reasonable requires of AHIM staff.

5.8 Tab 6 – Work Plan

Bidders must provide a Work Plan and Schedule that includes:

- Detailed descriptions of the major activities, tasks, and subtasks necessary to accomplish the requirements of this RFP;
- Identification of the responsible party (AHIM or Bidder) for each major task and activity; and,
- Discussion of the flexibility of the Work Plan to meet changes in program requirements and cope with delays should they occur.

5.8.1 Monitoring & Evaluation

Bidders must describe the planned monitoring and evaluation approach by answering the following:

- What techniques has the organization used in the past in measuring the impact and success of a Work Plan?
- What techniques has the organization previously used in recalibrating an initial proposal based on evaluation results?
- What details does the organization intend to present to AHIM demonstrating project progress?

5.9 Tab 7 – Assumptions, Qualifiers, & Constraints

Bidders must indicate any assumptions made in submitting their Proposal. If no assumptions are included, the Bidder shall make a statement to that effect.

6 COST PROPOSAL REQUIREMENTS

6.1 General Overview

Provide a good faith estimate of the projected costs associated with the activities and services requested in this RFP. Please use the following format and distinguish between activity costs and costs associated with non-activity support services, describing the services that fall into the latter category.

Table 6 – 1: Price Sheet

| Activities and Projected Costs | Amount |
|--|--------|
| Scope of Work Activities and Costs | |
| 1 | \$ |
| 2 | \$ |
| 3 | \$ |
| 4 | \$ |
| Etc... | \$ |
| Subtotal Activity Costs | \$ |
| | |
| Non-Activity Service Costs (with description) | |
| 1 | \$ |
| 2 | \$ |
| 3 | \$ |
| Etc... | \$ |
| Subtotal Non-Activity Costs | \$ |
| | |
| Total Projected Costs | \$ |

For each category of expense provide the cost and the rationale for including the expense. For non-activity service costs, if you are proposing a fixed hourly rate, state the rate.

6.1.1 Cost Schedule Instructions

Proposals should include an intended payment approach and structure during any Contract term. Depending upon the methodology and work plan proposed by Bidders, this schedule may be subject to change.

7 EVALUATION PROCESS

7.1 Evaluation Approach

AHIM will conduct a comprehensive, fair, and impartial evaluation of proposals in response to this RFP. AHIM will select the successful Bidders through a formal evaluation process established prior to the opening and evaluation of proposals. The process will remain fixed throughout the procurement cycle.

Consideration will be given to capabilities and advantages which are clearly described in each proposal, confirmed by oral presentations/interviews if scheduled, and verified by information from reference and other sources contacted by AHIM. AHIM reserves the right to contact any individuals, entities, or organizations who have had recent contracts or relationships with the Bidder to fully ascertain the Bidder's ability to execute the scope of work described in this RFP.

7.1.1 Consideration of Outside Information

AHIM reserves the right to consider information not contained in the response to this RFP in the evaluation of vendors.

7.2 Evaluation Committee

AHIM will select a Proposal Review Team that will evaluate the Technical and Cost Proposals. The Proposal Review Team will provide a recommendation based on its review of the responses to the AHIM Board of Directors.

7.3 Evaluation of Proposals

AHIM reserves the right to reject any or all proposals received or to cancel this RFP, if it is in the best interest of AHIM. AHIM reserves the right to request clarifications or enter into discussions with a Bidder. AHIM also reserves the right to waive minor irregularities in proposals, if such action is deemed to be in the best interest of AHIM. Where AHIM may waive minor irregularities, such waiver shall in no way modify RFP requirements or excuse the Bidder from full compliance with RFP specifications and other contract requirements if the Bidder is awarded the contract.

All proposals submitted will become the property of AHIM and will be considered a matter of public record after Contract negotiations are complete.

7.3.1 Phase One – Mandatory Requirements Evaluation

In this phase, each proposal will be assessed to determine if the proposal is sufficiently responsive. This process will verify that Bidder proposals were received by the specified date and time. Proposals received in a timely and appropriate manner will then be opened and reviewed. Each proposal will be evaluated to determine if it is complete and whether it responds to the mandatory terms and conditions in the RFP. A responsive proposal shall comply with all instructions listed in this

RFP, specifically in Section 2: RFP Schedule and Procurement Process, Section 5: Technical Proposal Requirements, and Section 6: Cost Proposal Requirements.

Each proposal that is incomplete will be declared non-responsive and may be rejected with no further evaluation. AHIM will determine if an incomplete proposal is sufficiently responsive to continue to Phase Two.

7.3.2 Phase Two – Technical Proposal Evaluation

Only those proposals that pass the requirements of Phase One will be considered in Phase Two. AHIM reserves the right to waive minor variances or reject any or all proposals.

Proposals will be evaluated, observing the weighted categories as shown in the following table:

Table 8-1: Evaluation Process

| Proposal Category | Evaluation Proportion |
|--------------------------------|------------------------------|
| Bidder Background & Experience | 30% |
| Work Plan | 40% |
| Projected Costs | 30% |
| Total Proposal | 100% |

The highest ranked bidder will be determined based on the consensus of the reviewers' analysis, factoring in the weighting levels stated above.

7.4 Contract Approvals

AHIM will require that the selected Bidder(s) participate in contract negotiations regarding the terms and conditions of the contract. Upon resolution of the final negotiations, AHIM will prepare a final contract. If for any reason AHIM and the apparent successful Bidder(s) are unable to reach agreement of the terms and conditions of a contract, AHIM may then proceed to negotiate a contract with the Bidder(s) with the next highest rated proposal. AHIM may cancel negotiations entirely at any time at the exclusive direction of AHIM.

Every effort will be made by AHIM, both before and after selection, to facilitate rapid approval.

8 CONTRACT TERMS & CONDITIONS

8.1 General Overview

Any Contract(s) awarded at the end of this process shall be governed by and construed in accordance with the laws of the State of Arkansas. Any Contract(s) will include, in part, certain terms and conditions required by the Centers for Medicare & Medicaid Services (CMS), whether or not expressly set forth in the Contract provisions. All contractual provisions required by CMS and the ACA (including any future changes) are hereby incorporated by reference into any Contract(s) awarded pursuant to this RFP. Anything to the contrary notwithstanding, all CMS and ACA mandated terms will be deemed to control in the event of a conflict with other provisions contained in any Contract(s). Any Contract(s) will also be subject to any financial assistance agreement between AHIM and CMS, and all laws, regulations, guidelines, and provisions of the financial assistance agreement will apply to any Contract(s) and are hereby incorporated therein by reference.

8.2 Applicable Law

Any Contract(s) awarded pursuant to this RFP shall be governed by and construed in accordance with the laws of the State of Arkansas, excluding its conflict of law provisions, and any litigation shall be brought in the courts of the State of Arkansas. The Contractor(s) shall comply with applicable federal, state, and local laws and regulations.

8.2.1 Conformance with Federal & State Regulations

Any Contractor(s) will be required to conform to all federal and state laws, regulations, and policies as they exist or as amended, and will be required to indemnify AHIM against any claims made against AHIM arising from the Contractor(s)'s non-compliance.

Any provision of any Contract(s) that conflicts with federal ACA statutes, regulations, or CMS policy guidance is hereby amended to conform to the provisions of those laws, regulations, and federal policy. Such amendment of any Contract(s) will be effective on the effective date of the statutes or regulations necessitating it, and will be binding on the parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties.

8.3 Terms of Contract

Any Contract term shall begin upon execution of the Contract and shall continue its initial term for 1 year. At the discretion of AHIM, a Contract may be extended 3 subsequent 1-year periods on a year-to-year basis.

Commented [AHIM1]: To be confirmed by Board

The Contractor acknowledges that other unanticipated uncertainties may arise that may require a termination of or an increase or decrease in the original scope of services from the Contractor awarded the Contract. If there is a need to terminate or modify the Contract resulting from an increase or decrease of services, then the Contractor agrees to negotiate in good faith with AHIM

for the change in scope. The amendment to the Contract may also include a respective increase or decrease in compensation including, without limitation, a complete cessation of all payment obligations in the event AHIM terminates the Contract(s).

8.3.1 Stop Work Order

The Executive Director of AHIM 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 related to the performance of the Contract. For purposes of this Section, performance will be defined as meeting detailed requirements in *Section 4: Scope of Work* of this RFP. The terms listed in *Section 4: Scope of Work* do not represent an exclusive list of contractual performance pieces. This order shall be for a specified period not exceeding ninety (90) days after the date in which AHIM delivers the order by certified mail to the Contractor.

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 comply with its terms and take all reasonable steps to mitigate the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Executive Director shall either:

- Cancel the stop work order; or
- Terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience Clause of the Contract entered into by the parties pursuant to this RFP.

8.3.2 Cancellation or Expiration of the Order

If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, then the Contractor shall have the right to resume work within 3 business days. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, reflecting the new delivery dates and the Contract shall be modified in writing accordingly, if:

- The stop work order results in an increase in the time required for the performance of any part of the Contract or performance in connection with any part of the Contract; or
- The Contractor asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Executive Director decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under the Contract.

If a stop work order is not cancelled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

8.3.3 Termination of the Contract

The Contract may be terminated for the reasons below.

Bankruptcy or Insolvency. AHIM may terminate the Contract, in whole or in part, 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.

Default. AHIM may terminate the Contract, in whole or in part, whenever AHIM determines that the Contractor has failed to satisfactorily perform its contractual duties and responsibilities. The Contractor may be given the opportunity to cure the default with the expressed written consent of AHIM.

Convenience. AHIM may terminate the Contract, in whole or in part, whenever for any reason AHIM deems such termination is in the best interest of AHIM.

Non-availability of Funds. The parties understand that AHIM is an independent body corporate and politic established by Arkansas Code § 23-61-801 *et seq.* The obligations of AHIM are not those of the State of Arkansas. AHIM may terminate the Contract if sufficient funds are not received as anticipated by AHIM.

8.3.4 Force Majeure

If the Contractor is prevented from performing any of its obligations, in whole or in part, as a result of major epidemic, act of God, war, civil disturbance, court order or any other cause beyond the Contractor's control, the Contractor shall make a good faith effort to perform such obligations through its then-existing facilities and personnel; and such non-performance shall not be grounds for termination for default.

Neither party to the Contract shall be responsible for delays or failures in performance resulting from the acts as set forth above or any unforeseen events beyond the control of either party.

Nothing in this section shall be construed to prevent AHIM from terminating the Contract for reasons other than default during the period of events set forth above, or for default if such default occurred prior to such event.

8.4 Payment

AHIM shall pay the Contractor's invoices within forty-five (45) days of AHIM's written acceptance of the deliverables associated with any such invoice, provided that AHIM shall have received and approved of the deliverable prior to any termination of the Contract(s). If AHIM is unable to pay because of cash flow limitations, this period shall be extended. AHIM shall provide written notice to the Contractor of the delay 3 business days before the expiration of the 45-day time period from the acceptance of Contractor's invoice.

The Contractor shall submit an original invoice and one copy for services performed to:

Tony Beeler

Director of Finance
Arkansas Health Insurance Marketplace
221 West 2nd Street, Suite 700
Little Rock, AR 72201

8.4.1 Payment for Deliverables

Prices and payment will be based on the Bidder's Cost Proposal as finalized in the Contract resulting from this procurement.

8.4.2 Other Payments

No other payments will be made for deliverables or services provided under the Contract without an expressed written amendment of the Contract executed by the parties. No separate payment will be made for Project Initiation or Services.

8.5 Performance Standards and Associated Liquidated Damages

8.5.1 Performance Damages

AHIM will pay a firm fixed price upon completion of specified performance under the Contract. AHIM's approval of each payment deliverable listed in *Payment Schedule* (see *Section 6: Cost Proposal Requirements*) is to be based on the *Price Sheet* in the *Contractor's Cost Proposal* as finalized in the Contract resulting from this procurement. For each day that any work shall remain uncompleted beyond the time(s) specified elsewhere in the Contract (including dates for deliverables and milestones found in the Work Plan provided in the Technical Proposal as finalized in the Contract resulting from this procurement), the Contractor shall be liable for liquidated damages in the amount(s) of \$1,000 per calendar day. Any liquidated damage amounts due and payable by the Contractor pursuant to any paragraph of the Contract shall be payable, not as a penalty, but as liquidated damages, estimated at the time of the executed Contract, representing an estimate of damages likely to be sustained by AHIM.

8.5.2 Actual Damages & Liquidated Damages

AHIM reserves the right to assess actual or liquidated damages upon the Contractor's failure to provide timely services required pursuant to the Contract. The Contractor shall be given fifteen (15) days' notice to respond before AHIM makes the assessment. Any assessment will be offset against the subsequent scheduled deliverables payment to the Contractor. If liquidated damages are known to be insufficient, then AHIM has the right to pursue actual damages. Assessment of any actual or liquidated damages does not waive any other remedies available to AHIM pursuant to the Contract and state or federal law.

8.5.3 Other Damages

If the Contractor fails to perform satisfactorily as defined in *Section 4: Scope of Work*, then AHIM is required to contract with another person or entity to perform services required of the Contractor

under the Contract. Upon notice setting forth the services and liquidated damages, AHIM may retain from Contractor payment(s) in an amount commensurate with the costs anticipated to be incurred, as described above. AHIM shall account to the Contractor for costs incurred and return any excess amount to the Contractor. If the amount withheld is not sufficient, the Contractor shall immediately reimburse AHIM the difference or AHIM may offset from any payment(s) due the Contractor. The Contractor will cooperate fully with the supplemental Contractor and provide any necessary assistance to implement the terms of its agreement for services with the supplemental contractor.

8.6 Cost or Pricing Data

The Contractor certifies that the prices submitted in response to this RFP have been arrived at independently.

8.7 Publicity Policy

News release(s), media interviews or other publicity by a Vendor pertaining to this RFP or any portion of the project shall not be made without the expressed prior written consent of AHIM. Failure to comply with this requirement is deemed to be a valid reason for disqualification of the Vendor's proposal.

The Contractor agrees not to use AHIM's name, trademark, service marks, type treatment, or any data arising or resulting from this RFP or the Contract as part of any commercial advertising or proposal without the expressed prior written consent of AHIM in each and every instance.

8.8 Subcontracting

To the fullest extent practicable, the Contractor shall enter into contracts with Arkansas businesses, and shall employ citizens of Arkansas to staff and provide support and other services to AHIM.

The Contractor is solely responsible for the fulfillment of the Contract terms with AHIM. AHIM will make payments only to Contractor. The Contractor will include all proposed subcontractors in its response to this RFP.

The Contractor may negotiate and enter into contracts or agreements with subcontractors to the benefit of the Contractor and the State as long as the subcontractors meet all established criteria and provide the services in a manner consistent with the minimum standards specified. All such agreements shall be in writing and shall specify the activities and responsibilities delegated to the subcontractor. The subcontracts must also include provisions for revoking delegation or imposing other sanctions if the subcontractor's performance is inadequate. AHIM reserves the right to approve any subcontractor utilized by the Contractor. AHIM reserves the right to inspect all subcontract agreements at any time during the contract period. Any subcontract may be subject to AHIM's prior review and approval. The Contractor's subcontractor shall submit evidence or other documentation from the Arkansas State Tax Commission, showing all delinquent taxes, if any, levied or accrued under State law against the subcontractor have been paid.

No subcontract or agreement the Contractor enters into with respect to the performance under the Contract shall in any way relieve the Contractor of any responsibility for any performance required of it by the Contract. The Contractor shall provide, within 3 business days to AHIM, notice in writing by registered or certified mail of any action or suit filed against it by any subcontractor or provider. Furthermore, the Contractor shall make prompt notice of any claim against it or one that might result in litigation related in any way to the Contract with the State of Arkansas. The Contractor shall designate itself as the sole point of recovery for any subcontractor.

Any use of subcontractors by the Contractor will not obligate AHIM as a party to the subcontract, nor create any right, claim, or interest for the subcontractor against AHIM, its agents, employees, representatives, or successors.

8.8.1 Anti-Assignment

The Contractor shall not sell, transfer, assign, or otherwise dispose of its benefits, duties, or obligations of the Contract (whether by operation of law, reorganization, reverse triangular merger, or otherwise) without the expressed written consent of AHIM.

8.9 Ownership Rights

8.9.1 Ownership of Proposal

AHIM shall have the right to use, monetize, license, seek patent protection for and otherwise exploit in any manner any and all ideas presented in any proposal unless a Bidder presents a statement of objection in its proposal. In no event will such objections be considered as valid with respect to the exploitation of such ideas that; 1) are not the proprietary information of the Bidder as evidenced by a filed United States patent application with a filing date that predates the date of the RFP and is so identified in its proposal; or 2) were known to AHIM before submission of such proposal; or 3) properly became known to AHIM thereafter through other sources or through acceptance of the Bidder's proposal.

8.9.2 Ownership of Documents

Where activities supported by the Contract produce original writings, sound recordings, pictorial reproductions, drawings, or other tangible embodiments of creative ideas and works of any similar nature, AHIM shall own all right, title, and interest in and to such, including all intellectual property rights, and Contractor hereby assigns and agrees to assign to AHIM any and all right and title in and to such that Contractor may have. Contractor may retain a limited, revocable, personal, non-sub licensable, royalty-free license under AHIM's copyrights to use such materials, with the prior written consent of AHIM. Contractor must adhere to all applicable federal and state confidentiality laws and any information deemed confidential by AHIM.

8.9.3 Ownership of Information & Data

All data, electronic or otherwise, collected by the Contractor and all documents, notes, programs, databases (and all applications thereof), files, reports, studies, code, software, domain names,

trademarks, source identifiers, trade secrets, works of authorship and/or other material authored, invented, conceived, reduced to practice, collected or prepared by the Contractor or its agents, employees, delegates or subcontractors in connection with the Contract, whether completed or in progress (collectively, the "Materials"), shall be the property of AHIM. The Contractor hereby assigns and agrees to assign to AHIM any and all right and title in and to such Materials that Contractor may possess. Accordingly, Contractor shall obtain from all persons engaged or employed by Contractor under the Contract to perform or create any Materials an assignment of intellectual property rights. AHIM hereby reserves all rights to the databases and all applications thereof and to any and all information and/or materials prepared in connection with the Contract. The Bidder and Contractor are prohibited from use of the above described information and/or materials without the express written consent of AHIM.

8.10 Interpretations / Changes / Disputes

8.10.1 Amendment or Modification

Any amendment or modification of the Contract must be written and signed by both parties.

8.10.2 Conflict of Language

In the event of a conflict in language among any of the components of the Contract, this RFP shall govern. AHIM reserves the right to clarify any contractual relationship in writing and such clarification will govern in case of conflict with the requirements of this RFP. Any ambiguity in this RFP and/or any Contract(s) shall be construed in favor of AHIM.

8.10.3 Waiver

No covenant, condition, duty, obligation, or undertaking contained in or made a part of the Contract will be waived except by the expressed written consent 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 covenant, 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.

8.10.4 Severability

If any provision of any Contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both AHIM 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.

AHIM may at any time, by written order delivered to the Contractor at least fifteen (15) days prior to the commencement date of such change, make administrative changes within the general scope of the Contract. If such change(s) 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 change in the cost

of performance under the Contract will be made in the Contract price or delivery schedule, or both. Any claim by the Contractor for adjustment under this clause must be asserted in writing to AHIM within fifteen (15) days from the date of receipt by the Contractor of the notification of change. Failure of the parties to agree to any adjustment will be a dispute within the meaning of Section 8.10.5 herein. Nothing in this case, however, will in any manner excuse the Contractor from proceeding diligently with the Contract as changed.

8.10.5 Disputes

If a dispute arises between the parties regarding their rights or obligations under the Contract, the parties shall first attempt to settle the dispute by direct discussions. If the dispute is not settled by the parties by direct discussions, then the parties agree to endeavor to settle the dispute in an amicable manner by mediation administered by the American Arbitration Association under its Commercial Mediation Rules. Thereafter, any unresolved dispute arising from or relating to a breach of the Contract shall be resolved as provided by the Contract and by applicable law. The federal and state courts of Arkansas have exclusive jurisdiction and venue for litigation and all other proceedings shall be located in Pulaski County, Arkansas.

8.10.6 Cost of Litigation

If AHIM deems it necessary to take legal action to enforce any provision of the Contract, then the Contractor shall bear the cost of such litigation, as assessed by any court, in which AHIM prevails. AHIM shall not bear any of the Contractor's attorney's fees or other cost of litigation for any legal actions initiated by the Contractor against AHIM regarding the provisions of the Contract if AHIM prevails in litigation. Legal action shall include administrative proceedings. Please note, this provision only contemplates scenarios in which AHIM prevails in litigation.

8.10.7 Attorney Fees

The Contractor agrees to pay reasonable attorney fees incurred by AHIM in enforcing this agreement or otherwise reasonably related.

8.11 Status of the Contractor

8.11.1 Independent Contractor

Contractor's status under the Contract shall be that of an independent contractor and not that of an employee of AHIM. Nothing contained in the Contract shall be deemed or construed to create a partnership or joint venture between the parties, an employer-employee relationship or any other relationship between the parties that could result in any liability of AHIM for any indebtedness, liabilities, or obligations of the Contractor except as expressly provided in the Contract.

- A. **Supervision of the Contractor:** In accordance with the Contractor's status as an independent contractor, AHIM shall not have the right to control the means or methods by which the Contractor performs the services, as set forth in the Contract. Notwithstanding the foregoing, AHIM shall have the right to control or direct the

Contractor as to the result to be accomplished under the Contract and with respect to the services provided.

- B. **As an Independent Contractor:** The Contractor shall be solely responsible for all federal, state, and local payments, withholding, and filing requirements for payroll, income, self-employment, retirement, disability, unemployment taxes, assessments, or regulations. The Contractor shall be ineligible for any vacation, sick leave, pension, bonus, insurance, or other benefit now or in the future established by AHIM for employees of AHIM. All applicable tax payments and withholdings, if any, with respect to services rendered under this Agreement are the sole responsibility of Contractor, which responsibility Contractor agrees to carry out as required by applicable law. Contractor shall indemnify and hold AHIM harmless from any and all loss or liability arising from Contractor's failure to make any appropriate income tax payments, self-employment tax payments or other payment required on behalf of the Contractor.

8.11.2 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 shall comply with the non-discrimination clause contained in Federal Executive Order 11246, as amended by Federal Executive Order 11375, relative to the Equal Employment Opportunity law created for all persons without regard to race, color, religion, sex, or national origin. Further, the Contractor shall comply with all rules and regulations, prescribed by the Secretary of Labor, as located in Title 41, Code of Federal Regulations, Chapter 60. The Contractor shall also comply with the Civil Rights Act of 1964 and related state laws and regulations, if any.

If AHIM finds that the Contractor is not in compliance with any of these requirements at any time during the term of the Contract, AHIM reserves the right to terminate, at its sole discretion, the Contract or take such other steps as it deems appropriate.

8.11.3 Conflict of Interest

A bid shall not be considered for award if the price in the bid was not arrived at independently without collusion, consultation, communication, or agreement as to any matter relating to such prices with any other Bidder or with any competitor.

A bidder shall include a certified statement in the proposal certifying that the bid was arrived at without any conflict of interest, as described above. Should a conflict of interest be detected at any time during the term of the Contract, the Contract shall be null and void and the Bidder shall assume all costs of this project until such time that a new Bidder is selected.

8.12 Risk Management

8.12.1 Indemnification

The Contractor agrees to indemnify, defend, save, and hold harmless AHIM (specifically staff and Board members), AHIM's officers, agents, employees, representatives, assignees, and contractors from any and all claims, costs, liabilities, losses, actual damages and consequential damages caused by losses accruing from or resulting from any and all Contractor's 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 the Contract, and from any and all claims, costs, liabilities, losses, actual damages and consequential damages 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 connection with the performance of the Contract.

The Contractor agrees to indemnify, defend, save, and hold harmless AHIM, its officers, agents, employees, representatives, assignees, and other contractors against any and all liability, loss, damages, costs or expenses which AHIM 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 AHIM; and/or 2) breaching in any manner the confidentiality of privacy obligations required pursuant to federal and state law and regulations, including but not limited to HIPAA or ACA.

The Contractor agrees to indemnify, defend, save, and hold harmless AHIM, their officers, agents, employees, representatives, assignees, and other contractors from all claims, demands, liabilities, and suits of any nature whatsoever arising out of or in connection to the performance 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 its employees.

If AHIM reasonably determines: 1) a default by the Contractor is not so substantial as to require termination; 2) reasonable efforts to induce the Contractor to cure the default are unsuccessful; 3) and the default is capable of being cured by AHIM or by another resource without unduly interfering with the continued performance of the Contractor, then AHIM may provide or procure such services as are reasonably necessary to correct the default. If this is the case, the Contractor shall reimburse AHIM for the cost of those services. AHIM may deduct the cost of those services from the Contractor's monthly administrative invoices. The Contractor shall cooperate with AHIM 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 regardless of which subcontractor provides services to correct the default.

8.12.2 Insurance

Contractor shall provide the Insurance described in *Appendix H*.

8.13 Confidentiality of Information

The Contractor shall comply with all obligations of privacy or confidentiality that may arise from any State and federal privacy laws. No information, documents or other material provided to or prepared by the Contractor deemed confidential by AHIM pursuant to state and federal privacy laws, shall be made available to any person or organization without the prior approval of AHIM. Any liability resulting from the wrongful disclosure of confidential information on the part of the Contractor shall rest with the Contractor.

8.14 Right of Inspection

AHIM, CMS, the U.S. Department of Health and Human Services (DHHS), the General Accounting Office (GAO), the Comptroller General of the United States, the Office of the Inspector General (OIG), or their authorized representatives shall, during normal business hours, have the right to enter into the premises of a Bidder and/or all subcontractors and providers, or such other places where duties under the contract are being performed, to inspect, monitor, or otherwise evaluate the work being performed. The Bidder must provide access and assistance as required by AHIM, and refusal by the Bidder to allow access to all such documents, papers, letters, electronic files, or any and all other materials will constitute a breach of any resulting contract. All inspections and evaluations shall be performed in such a manner as to not unduly delay the Contractor's work.

8.15 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 AHIM 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.

8.15.1 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. AHIM makes no representation whatsoever as to exemption from liability to any tax imposed by any governmental entity on the Contractor.

8.15.2 License Requirements

AHIM does not tolerate the possession or use of unlicensed copies of proprietary software. Contractor warrants that it has or shall obtain any license/permits that are required prior to and during the performance of work under this Contract. The Contractor shall be responsible for any penalties or fines imposed as a result of unlicensed or otherwise defectively titled software or other third-party intellectual property.

The Contractor, without exception, shall indemnify, defend and hold harmless AHIM and its agents, officers, attorneys, directors, and employees from liability of any nature or kind, including cost and expenses for or on account of any claim or allegation that any of the Materials infringe the intellectual property rights of any third party. AHIM will provide prompt written notification of any such claim.

Further, if such a claim is made or is pending, the Contractor shall procure for AHIM the right to continue use of, replace, or modify the implicated Material(s) to render it (them) non-infringing while retaining satisfactory functionality, as determined by AHIM. If none of the alternatives are reasonably available, the Contractor agrees to take back the Material(s) and refund the total amount AHIM has paid the Contractor under this Contract for preparation or use of such Material(s).

If the Contractor purports or proposes to use any third-party intellectual property in the performance of its duties under the Contract, it is mutually agreed and understood without exception that the proposed prices for Contract performance shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work. This shall be without prejudice to AHIM's right to full intellectual property indemnification hereunder.

8.15.3 Records Retention and Destruction 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 AHIM 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 AHIM 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 or there is pending litigation. When an auditor pending litigation has not been completed at the end of the five (5) year period, records shall be retained until all issues are finally resolved.

8.15.4 HIPAA and HITECH Compliance

The Contractor must ensure that all of its work complies with federal and state HIPAA laws, HITECH, and privacy and security rules, as applicable, and at AHIM's request, any Contractor shall enter into a Business Associate agreement or a Data Sharing Agreement in favor of AHIM to evidence the Contractor's obligations.

8.15.5 Bribes, Gratuities, and Kickbacks Prohibited

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

No elected or appointed officer or other employee of the federal government, the State of Arkansas or the AHIM Board of Directors or staff shall benefit financially or materially from this Contract. No individual employed by AHIM, no member of the AHIM Board of Directors, or no employee or officer of the State of Arkansas shall be permitted any share or part of this Contract or any benefit that might arise therefrom.

8.15.6 Small and Minority Businesses

AHIM 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.

8.15.7 Suspension and Debarment

At the time of entering into the Contract, the Contractor will certify that it is not suspended or debarred under federal law and regulations or any other State's laws and regulations. The Contractor shall notify AHIM of any suspension or disbarment proceedings taken against it during the Contract term.

8.15.8 Litigation

During the course of the Contract term, the contractor will notify AHIM within 3 business days of receipt of any served complaint or receipt of any cease and desist correspondence.

8.16 Project Work Schedule

During the project initiation, Contractor and AHIM will develop a mutually agreed upon work schedule including the division of responsibility between AHIM'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.

8.17 Warranty

Contractor represents and warrants that all work performed pursuant to any Contract(s) awarded pursuant to this RFP, including but not limited to Marketplace technology solution services, consulting, conversion, training, and technical support 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 this RFP and CMS. 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 AHIM, or if the Contractor is unable to perform the services as warranted, the Contractor shall reimburse AHIM the fees paid to the Contractor for the unsatisfactory services.

8.17.1 Warranty of Fiscal Integrity

The Contractor warrants that it is of sufficient financial solvency to assure AHIM of its ability to perform the requirements of the contract. The Contractor shall provide sufficient financial data and information to prove its financial solvency pursuant to *Section 5: Technical Proposal Requirements*.

8.17.2 Warranty of Solution

The Contractor shall provide a warranty on the implemented solution. The warranty shall encompass correction of defective software, functionality, and procedures that were considered to be within the scope of this procurement at no additional cost to AHIM. The warranty period will begin upon AHIM's Final Acceptance of the implemented solution for a period of three (3) years.

8.18 Federal Contract Clauses

The required Federal Contract Clauses for Expenditure of Federal Grant Funds is attached as Appendix M and are incorporated by reference into this Agreement. To the extent the terms in the body of this Agreement directly conflict with any provision of the Federal Contract Clauses, the body of this Agreement shall govern.

APPENDIX A: VENDOR INFORMATION SHEET

| |
|---|
| Name of the company or individual: |
| |
| Mailing address: |
| |
| Street address (for FEDEX or other mail service): |
| |
| Name and title of person who would sign the contract: |
| |
| Name and title of the company contact person (if different): |
| |
| Contact person (direct telephone number, fax number & email address): |
| |

APPENDIX B: WRITTEN QUESTIONS TEMPLATE

Bidder Name:

Date Submitted:

| Question # | RFP Section # | RFP Page # | Paragraph # | Question |
|------------|---------------|------------|-------------|----------|
| | | | | |
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APPENDIX C: MANDATORY REQUIREMENTS CHECKLIST

| Mandatory Technical Proposal Submission Requirements Checklist | | Completed |
|--|--|------------------|
| Format of Proposal: Table 6-1 (Formatting Requirements); and Table 2-1 (Proposals received on date and time specified). | | |
| Tab 1 | Transmittal Letter – Section 5.3, p. 21 | |
| Tab 2 | Mandatory Requirements Checklist – Section 5.4, p. 23 | |
| Tab 3 | Executive Summary – Section 5.5, p. 23 | |
| Tab 4 | Corporate Experience: Company Background; Company Experience; Corporate References, and Company Financial Condition – Section 5.6, p. 24 | |
| Tab 5 | Organization and Staffing Plan: Organization, Responsibilities, Resumes, and Staff References – Section 5.7, p. 24 | |
| Tab 6 | Work Plan – Section 5.8, p. 25 | |
| Tab 7 | Assumptions, Qualifiers, and Constraints – Section 5.9, p. 25 | |
| Vendor Information Sheet – Appendix A, p. 49 | | |
| Cost Proposal – Section 6, p. 26 (In a separately sealed envelope) | | |

APPENDIX D: CORPORATE REFERENCES

The Bidder must confirm and describe their experience as it relates to the requirements outlined in this RFP, providing a minimum of three corporate references.

Each reference should include the client's name, address, current telephone number and e-mail address of the client's responsible project administrator or of a senior official of the client who is familiar with the Bidder's performance.

| | | |
|--|--|--|
| Client: | | |
| Project Name: | Beginning Date of Project: Month/Year | Ending Date of Project: Month/Year |
| Name Prime Vendor and All Subcontractors and Role of Bidder: | | |
| Funded Contract Cost: | | |
| 1. Client References Name: Position: Client: Address: Email: Phone: | 2. Client References Name: Position: Client: Address: Email: Phone: | 3. Client References Name: Position: Client: Address: Email: Phone: |
| Description of Work Performed: | | |

APPENDIX E: PROPOSED KEY STAFF RESUME TEMPLATE

The Bidder must submit resumes of all proposed key staff personnel identified in its proposal. All Bidders are required to use the template below when providing the resumes of proposed key staff personnel. Information that is included as a part of this template should be relevant to the services requested in this RFP and should outline the individual's knowledge and experience working with Health Insurance Exchanges. Each project referenced in a resume 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.

| | |
|---|--|
| Key Staff Member Name | |
| Title, Company | |
| Summary | |
| Relevant Project Experience (order in reverse chronological order – most recent first) | |
| 1. Insert Client Name Here | Mm/yyyy— mm/yyyy (Project Lifespan) Mm/yyyy— mm/yyyy (Individual assignment if different) |
| Insert Project Name Here | |
| Title on Project: | Your title on the project here |
| Project Description: | The overall description of the project here |
| Responsibilities: | Your responsibilities on the project here |
| 2. Insert Client Name Here | Mm/yyyy— mm/yyyy (Project Lifespan) Mm/yyyy— mm/yyyy (Individual assignment if different) |
| Insert Project Name Here | |

APPENDIX F: PROPOSED KEY STAFF REFERENCES TEMPLATE

The Bidder is required to provide a minimum of three (3) references for each proposed key personnel. Bidders must use the template below for each staff reference.

| | | |
|--|--|---------------------------------------|
| Key Personnel's Name: | | |
| Reference #1 | | |
| Project Name: | Beginning Date of Project: Month/Year | Ending Date of Project: Month/Year |
| Staff References: Name, Position: Client: Address: Email: Phone: | | |
| Description of Work Performed: | | |
| | | |
| Reference #2 | | |
| Project Name: | Beginning Date of Project: Month/Year | Ending Date of Project: Month/Year |
| Staff References: Name, Position: Client: Address: Email: Phone: | | |
| Description of Work Performed: | | |
| | | |
| Reference #3 | | |
| Project Name: | Beginning Date of Project: Month/Year | Ending Date of Project: Month/Year |
| Staff References: Name, Position: Client: Address: Email: Phone: | | |
| Description of Work Performed: | | |

APPENDIX G: OBJECTIONS TO TERMS & CONDITIONS

The Bidder shall be presumed to be in agreement with the terms and conditions of the RFP unless the Bidder has specific objections.

THE BIDDER IS CAUTIONED THAT BY TAKING ANY EXCEPTION THEY MAY BE MATERIALLY DEVIATING FROM THE RFP SPECIFICATIONS. IF THE BIDDER MATERIALLY DEVIATES FROM A RFP SPECIFICATION, ITS PROPOSAL MAY BE REJECTED.

A material deviation is an exception to a specification which 1) affords the Bidder taking the exception a competitive advantage over other Bidders, or 2) gives the State something significantly different than the State requested.

INSTRUCTIONS: The Bidder must explicitly list all objections to AHIM terms and conditions (Reference the actual number of AHIM's term, condition and page number for which an objection(s) is being taken). If no objections exist, state "NONE" specifically on the form below. Whether or not objections are taken, the Bidder must sign and date this form and submit it as part of their Proposal. (Add additional pages if necessary.)

| | |
|------------------------------------|--------------|
| Bidder Name: | |
| Term & Condition Number/Provision: | Explanation: |

By signing this form, I acknowledge that the above named Bidder accepts, without qualification, all terms and conditions stated in this RFP except those clearly outlined as objections above.

Signature _____ Title _____ Date _____

APPENDIX H: INSURANCE

REQUIRED COVERAGES. For the Duration and for a period of three (3) years thereafter, Contractor shall procure and maintain, at its sole cost and expense, at least the following types and amounts of insurance coverage:

- Commercial general liability with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, including bodily injury and property damage and products and completed operations and advertising liability. The commercial general liability coverage shall also:
- Include contractual liability coverage insuring the activities of Contractor under this Agreement, including without limitation Contractor's indemnification obligations provided in the Agreement.
- Require the insurance carrier to give the Marketplace at least thirty (30) days' prior written notice of cancellation or non-renewal.
- Name the Marketplace and the Marketplace's board members, employees, volunteers, and other agents, including, in each case, all successors and permitted assigns, as additional insureds.
- Provide that the coverage is primary insurance and any similar insurance in the name of or for the benefit of the Marketplace or the Marketplace's board members, employees, volunteers, or other agents shall be excess and non-contributory.
- Waive any right of subrogation of the insurers against the Marketplace or the Marketplace's board members, employees, volunteers, or other agents.
- Worker's compensation with (i) limits no less than the minimum amount required by law and (ii) a waiver of any subrogation right of the insurers against the Marketplace or the Marketplace's board members, employees, volunteers, or other agents.
- Errors and omissions with limits no less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate.
- Data breach and cyber liability with limits no less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate.
- Umbrella follow-form coverage for the coverages listed above with limits of no less than \$10,000,000. The umbrella follow-form coverage shall also:
- Name the Marketplace and the Marketplace's board members, employees, volunteers, and other agents, including, in each case, all successors and permitted assigns, as additional insureds.
- Provide that the policy is primary insurance and any similar insurance in the name of or for the benefit of the Marketplace or the Marketplace's board members, employees, volunteers, or other agents shall be excess and non-contributory.

ADDITIONAL INSURANCE REQUIREMENTS. Each insurance policy required pursuant to this Appendix shall be issued by insurance companies with a Best's Rating of no less than A-.

CERTIFICATIONS OF COVERAGE. Contractor shall provide the Marketplace with copies of the certificates of insurance and policy endorsements for all insurance coverage required herein, and shall not do anything to invalidate such insurance. Insurance coverage shall not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations imposed

under this Agreement, including without limitation the indemnification obligations provided in the Agreement.

APPENDIX I: FEDERAL CONTRACTS CLAUSE

The following clauses govern contracts between Arkansas Health Insurance Marketplace (“AHIM”) and other parties (each a “Contractor”) when federal grant funds are used to pay Contractor.

1. **REMEDIES.**

- a. Continued Performance. Unless otherwise directed by AHIM, Contractor shall continue performance under this contract while matters in dispute are being resolved.
- b. Notice of Injury. Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents, or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- c. Governing Law. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to the laws of the State of Arkansas.
- d. Remedies Cumulative. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by AHIM or Contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

2. **TERMINATION.**

- a. Termination for Convenience. AHIM may terminate this contract, in whole or in part, at any time by written notice to Contractor. For a cost-based contract, Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. For a service contract, AHIM shall be liable only for payment under the payment provisions of the Contract for services rendered before the effective date of termination. If termination occurs before payment would be due under the Contract, Contractor shall be entitled to the reasonable compensation for services accepted through the effective date of termination. Contractor shall promptly submit its termination claim to AHIM to be paid to Contractor. If Contractor has any property in its possession belonging to AHIM, Contractor will account for the same and return it or dispose of it in any manner AHIM directs.
- b. Termination for Breach. Either party may terminate for failure of the other party to fulfill its obligations, as set forth within a specific contract. Reasonable allowances will be made for circumstances beyond the control of Contractor or AHIM. Written notice of the intent to terminate is required and shall specify the reasons supporting termination.
- c. Termination for Default. If Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, Contractor fails to perform in the manner called for in the contract, or if Contractor fails to comply with any other provisions of the contract, AHIM may terminate this contract for default. Termination shall be effected by serving a notice of termination on Contractor setting forth the manner in which Contractor is in default. Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by AHIM that Contractor had an excusable reason for not performing,

such as a strike, fire, or flood, events which are not the fault of or are beyond the control of Contractor, AHIM, after setting up a new delivery of performance schedule, may allow Contractor to continue work, or treat the termination as a termination for convenience.

- d. Termination Opportunity to Cure. AHIM in its sole discretion may, in the case of a termination for breach or default, allow Contractor ten (10) days in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to AHIM's satisfaction the breach or default of any of the terms, covenants, or conditions of this contract within t e n (10) days after receipt by Contractor of written notice from AHIM setting forth the nature of said breach or default, AHIM shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude AHIM from also pursuing all available remedies against Contractor and its sureties for said breach or default.
 - e. Non-Waiver of Remedies. In the event that AHIM elects to waive its remedies for any breach by Contractor of any covenant, term, or condition of this contract, such waiver by the AHIM shall not limit the AHIM's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.
3. **CIVIL RIGHTS (TITLE VI, EEO).** During the performance of this contract, Contractor, for itself, its assignees, and successors in interest, agrees as follows:
- a. Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. 2000d, Title IX of the Education Amendments of 1972, as amended, Section 303 of the Age Discrimination Act of 1975, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, and 42 U.S.C. 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132, Contractor agrees that it will not (i) discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability or (ii) operate any programs or activities for AHIM in a manner that limits participation or access or otherwise discriminates against any person on the basis of race, color, creed, national origin, sex, age, or disability. In addition, Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements HHS may issue, including any certifications of compliance required as a condition of using federal grant funds to pay Contractor.
 - b. Equal Employment Opportunity. Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in the U.S. Department of Labor (DOL) regulations, 41 C.F.R. 60 et seq.
 - c. Subcontractor Selection. In the event AHIM permits Contractor to contract with any third party to perform any of Contractor's obligations to AHIM, Contractor must make positive efforts to use small businesses, minority-owned firms, and women-owned businesses as sources of goods and services whenever possible. To this end, Contractor must place qualified small, minority- owned, and women-owned business enterprises on solicitation lists; ensure that small, minority- owned, and women-owned business enterprises are solicited whenever they are potential sources; consider contracting with consortia of small, minority-owned, or women-owned business enterprises when an intended contract is too large for any one such firm to handle on its own or, if economically feasible, divide larger requirements into smaller

transactions for which such organizations might compete; make information on contracting opportunities available and establish delivery schedules that encourage participation by small, minority-owned, and women-owned business enterprises; and use the services and assistance of the Small Business Administration and the Minority Business Development Agency, as appropriate.

4. **COPELAND ANTI-KICKBACK ACT.** Contractor agrees to comply with the Copeland Anti-Kickback Act, as amended, 18 U.S.C. 874, et seq., as supplemented in the DOL regulations 29 C.F.R. Part 3, which are hereby incorporated by reference.
5. **DAVIS-BACON ACT.** If Contractor performs more than \$2,000 in construction, alteration, or repair services on public buildings or public works on behalf of AHIM, it must comply with the Davis-Bacon Act, 40 U.S.C. 3141 et seq., and implementing DOL regulations, 29 C.F.R. 5. The Davis-Bacon Act requires Contractors to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. The Davis-Bacon Act also requires Contractors to pay wages not less than once per week.
6. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.** If Contractor performs more than \$2,000 in construction, alteration or repair services for AHIM, or more than \$2,500 for other contracts which involve the employment of mechanics or laborers, then Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327-330, and as supplemented by DOL regulations, 29 C.F.R. Part 5.
 - a. **Overtime Requirements.** No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.
 - b. **Violation, Liability for Unpaid Wages, Liquidated Damages.** In the event of any violation of this section Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth above.
 - c. **Withholding for Unpaid Wages.** Contractor shall upon its own action or upon written request of an authorized representative of the DOL withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this Section 9.5.
7. **PERTAINING TO REPORTING. NOTICE OF AWARDDING AGENCY REQUIREMENTS AND REGULATIONS PERTAINING TO REPORTING.** AHIM shall monitor Contractor's

activities, and Contractor shall cooperate with AHIM and furnish all information necessary to fulfill all reporting requirements imposed upon AHIM under 45 C.F.R. 92.40 and 92.41. Contractor shall inform AHIM as soon as the following types of conditions become known: (i) problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Contract, and (ii) favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated, or producing more beneficial results than originally planned. Contractor shall permit AHIM and any appropriate Federal agency to make site visits as warranted by program needs.

8. **PATENT RIGHTS.** Irrespective of the status of the Contractor (for example, a large business, small business, state government, state instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, individual, and so forth), Contractor agrees to comply with HHS requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under the Contract.
9. **COPYRIGHTS AND RIGHTS IN DATA.** This Contract is governed by the requirements of Federal law and regulations concerning ownership and licensing of copyrights and rights in data. Pursuant to 45 C.F.R. 92.36, HHS reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and authorize others to use, for Federal Government purposes: (i) the copyright of any work developed under this Contract or any subcontract thereunder, and (ii) any rights of copyright to which AHIM or Contractor purchases ownership of with Federal grant support. If, for any reason, the project is not completed, all data developed under the project is required to be delivered as AHIM or HHS may direct.
10. **ACCESS TO RECORDS AND RETENTION.** Contractor agrees to develop and retain records identifying the basis for determining the valuation of personal services, materials, equipment, buildings, and land.
 - a. **Inspection of Records.** Contractor agrees that the relevant books, documents, papers, and records of the Contractor which are directly pertinent to the Contract shall be subject to inspection, examination, review, audit, transcription and summarization by AHIM, HHS, the Comptroller General of the United States, or any of their duly authorized representatives. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. This right of access shall last as long as the records are retained by Contractor in accordance with 45 C.F.R. 92.42.
 - b. **Maintenance of Records.** Contractor agrees to maintain all books, records, accounts, and reports related to Contractor's work for AHIM for a period of not less than three (3) years after the date of termination or expiration of this contract, except that in the event of litigation or settlement of claims arising from the performance of this contract, Contractor agrees to maintain same for any longer period required for AHIM, HHS, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.
11. **CLEAN AIR ACT, CLEAN WATER ACT AND EPA REGULATIONS.** Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to: (i) the Clean Air Act, as amended, 42 U.S.C. 1875(h), et seq.; (ii) the Clean Water Act, as amended, 33 U.S.C. 1368, et seq.; and (iii) Executive Order 11738 and Environmental Protection Agency regulations, as amended, 40 C.F.R. Part 15. Contractor agrees to

report each violation to AHIM and understands and agrees that AHIM will, in turn, report each violation as required to assure notification to HHS and the appropriate EPA Regional Office. Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by HHS.

12. **GOOD STANDING.** Contractor certifies, by signing this Contract, that neither Contractor nor Contractor's principals are presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, "Debarment and Suspension," 28 C.F.R. 67.510, and any relevant program-specific regulations. Contractor shall require this certification from every subcontractor receiving any payment in whole or in part from federal funds.
13. **SUBCONTRACTS.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this Exhibit and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these terms, and any other clauses required by federal statute or executive order, and their implementing regulations.
14. **COST PRINCIPLES.** If the agreement between AHIM and Contractor is a "cost-type" contract, then allowable costs will be determined in accordance with the appropriate cost principles required as a condition of using federal grant funds, as set forth in the HHS Grants Policy Statement or other federal regulations, policies, or agreements between AHIM and the applicable federal funding agency.