

Attachment J5 – CONSENT TO SUBCONTRACT CHECKLIST
RFP-CMS-2011-0048

- Subcontractor Proposal or price quote.
- Attachment A - Subcontractor Information
- Attachment B - Subcontractor Statement of Work or Services Agreement *(required for consultants)*.
- Attachment C – Information Required by FAR 52.244-2.
- Attachment D – Business Associate Provisions required for consultants
- Attachment E – Required FAR clauses
- Attachment F – “CURRICULUM VITAE” required for consultants

Subcontractor Proposal or price quote.

Attachment A
Subcontractor Information

1. **Business Size:** Large _____ Small _____
2. **Subcontract Type:** Cost _____ FFP _____
 T&M _____ LH _____
3. **Conflict of Interest Certificate:** Yes _____ No _____
4. **Subcontracting Plan:** Yes _____ No _____
 (15 USC 637(d)(3) as implemented by FAR 19.702(c))
5. **CCR Attached:** Yes _____ No _____
6. **Duns#:** _____
7. **ORCA:** Yes _____ No _____

Attachment B

Subcontractor Statement of Work or Services Agreement *(required for consultants)*.

Attachment C

Information required by FAR §52.244-2

Supplies or services to be subcontracted:

(Statement describing supplies or services)

Type of subcontract:

Proposed subcontractor:

Contractor Name

Address

City, State, & zip

(Phone number)

Proposed subcontract price:

The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions:

(Applicability)

The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract:

(Applicability)

A. Principal elements of subcontract price negotiations.

(Example - Comparison between vendors' products of costs versus features and performance).

B. Most significant considerations controlling establishment of initial or revised prices.

C. Reason cost or pricing data were or were not required.

(Example - The software license is a “commercial item” under FAR §2.101).

D. Extent, if any, to which (Contractor name) did not rely on the subcontractor’s cost or pricing data in determining the price objective and in negotiating the final price.

(Applicability)

E. Extent to which it was recognized in the negotiation that the subcontractor’s cost or pricing data were not accurate, complete, or current; the action taken by (Contractor name) and the subcontractor; and the effect of any such defective data on the total price negotiated

(Applicability)

F. Reasons for any significant difference between (Contractor name) price objective and the price negotiated.

(Applicability)

G. Complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(Applicability)

Attachment D

Business Associate Provisions to Consulting Agreement

1 Definitions

Terms used, but not otherwise defined, in these Provisions shall have the same meaning as those terms in the Privacy Rule.

1.1 Business Associate.

"Business Associate" shall mean (*Subcontractor Name*).

1.2 Covered Entity.

"Covered Entity" shall mean (*Contractor name*)

1.3 Individual.

"Individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

1.4 Privacy Rule.

"Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

1.5 Protected Health Information.

"Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

1.6 Required By Law.

"Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

1.7 Secretary.

"Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

2 Obligations and Activities of Business Associate

2.1

Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by these Provisions or as required by law.

2.2

Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by these Provisions.

2.3

Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of these Provisions.

2.4

Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by these Provisions of which it becomes aware.

2.5

Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through these Provisions to Business Associate with respect to such information.

2.6

Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Secretary, in a time and manner not to exceed ten days from the date of request by Covered Entity, or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

2.7

Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

2.8

Business Associate agrees to provide to Covered Entity or an Individual, in time and manner not to exceed ten days from the date of request by Covered Entity, information collected in accordance with Section 2.7 of these Provisions, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

3 Permitted Uses and Disclosures by Business Associate

Except as otherwise limited in these Provisions, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Consulting Agreement to which these Provisions are attached, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

4 Obligations of Covered Entity

4.1 Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

4.1.1

Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

4.1.2

Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

4.1.3

Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

4.2 Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

5 Term and Termination

5.1 Term.

The Term of these Provisions shall be effective as of the effective date of the Consulting Agreement to which they are attached, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

5.2 Termination for Cause.

Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Consulting Agreement and these

Provisions if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

2. Immediately terminate the Consulting Agreement and these Provisions if Business Associate has breached a material term of these Provisions and cure is not possible; or
3. If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.

5.3 Effect of Termination.

5.3.1

Except as provided in Section 5.3.2 of these Provisions, upon termination of the Consulting Agreement and these Provisions, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

5.3.2

In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon concurrence of Covered Entity and Business Associate that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of these Provisions to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

6 Miscellaneous

6.1 Regulatory References.

A reference in these Provisions to a section in the Privacy Rule means the section as in effect or as amended.

6.2 Amendment.

The Parties agree to take such action as is necessary to amend these Provisions from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

6.3 Survival.

The respective rights and obligations of Business Associate under Section 5.3 of these Provisions shall survive the termination of these Provisions.

6.4 Interpretation.

Any ambiguity in these Provisions shall be resolved to permit Covered Entity to comply with the Privacy Rule.

Attachment E
Section I Clauses

- 1.1. COMMON CLAUSES APPLICABLE TO COST, TIME AND MATERIAL (T&M)/LABOR HOUR AND FIRM FIXED-PRICE TYPE SUBCONTRACTS:**
- 1.2. CLAUSES APPLICABLE TO ONLY COST TYPE SUBCONTRACTS:**
- 1.3. CLAUSES APPLICABLE TO ONLY THE TIME AND MATERIAL (T&M)/LABOR HOUR SUBCONTRACTS:**
- 1.4. CLAUSES APPLICABLE TO ONLY FIRM-FIXED PRICE ORDERS SUBCONTRACTS**

Attachment F
"CURRICULUM VITAE" required for consultants