



STATE OF ARIZONA
Department of Health Services
NOTICE OF REQUEST FOR PROPOSALS

**ARIZONA
DEPARTMENT OF
HEALTH SERVICES**
1740 West Adams Street
Phoenix, Arizona 85007
(602) 542-1040
(602) 542-1741 Fax

SOLICITATION NUMBER:

SOLICITATION NUMBER: HP841414

**SOLICITATION DUE
DATE/TIME:**

Solicitation Due Date: May 5, 2008 at 3:00 P.M. Local Time

SUBMITTAL LOCATION:

**Arizona Department of Health Services
Office of Procurement
1740 West Adams Street, Room 303
Phoenix, Arizona 85007**

DESCRIPTION:

Education Services

PRE-OFFER CONFERENCE

April 25, 2008 1:00 P.M.

**2500 East Van Buren Street
Conference Room B in the Hunt Building
Phoenix, Arizona 85008**

In accordance with A.R.S. § 41-2534, competitive sealed proposals for the services specified will be received by the Arizona Department of Health Services at the above specified location, until the time and date cited. Offers received by the correct time and date will be opened and the name of each offeror will be publicly read. To obtain a copy or review the solicitation, log onto www.azdhs.gov and click on the Quick Links Procurement site. If obtaining a copy via the internet, please check periodically for any updates to the above solicitation. Amendments may be issued to this solicitation at any time. It is the responsibility of the supplier/Offeror to routinely check the ADHS website for solicitation amendments.

Offers must be in the actual possession of the Arizona Department of Health Services on or prior to the time and date, and at the location indicated above. Late offers will not be considered.

Offers must be submitted in a sealed envelope or package with the solicitation number and the offeror's name and address clearly indicated on the envelope or package. All offers must be completed in ink or typewritten. Additional instructions for preparing an offer are included in this solicitation.

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

OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION

Solicitation Contact Person:

Tracy Chisler

Arizona Department of Health Services

(602) 542-1044

chislet@azdhs.gov

UNIFORM INSTRUCTIONS TO OFFERERS

Solicitation No. HP841414

1. **Definition of Terms.** As used in these Instructions, the terms listed below are defined as follows:
 - 1.2 *"Contract"*- the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments, and any terms applied by law.
 - 1.3 *"Contract Amendment"*- a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
 - 1.4 *"Contractor"*- any person who has a Contract with the State.
 - 1.5 *"Days"*- calendar days unless otherwise specified.
 - 1.6 *"Exhibit"*- any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
 - 1.7 *"Offer"* means bid, proposal or quotation.
 - 1.8 *"Offeror"*- a vendor who responds to a Solicitation.
 - 1.9 *"Procurement Officer"*- the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
 - 1.10 *"Solicitation"* - an Invitation for Bids ("IFB"), a Request for Proposals ("RFP"), or a Request for Quotations ("RFQ").
 - 1.11 *"Solicitation Amendment"*- a written document that is signed by the Procurement Officer and issued for the purpose of making changes to the Solicitation.
 - 1.12 *"Subcontract"* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
 - 1.13 *"State"*- the State of Arizona and Department or Agency of the State that executes the Contract.
2. **Inquiries**
 - 2.1 Duty to Examine. It is the responsibility of each Offeror to examine the entire Solicitation, seek clarification in writing (inquiries), and examine its' Offer for accuracy before submitting the Offer. Lack of care in preparing an Offer shall not be grounds for modifying or withdrawing the Offer after the Offer due date and time, nor shall it give rise to any Contract claim.
 - 2.2 Solicitation Contact Person. Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation shall be directed solely to the Solicitation contact person. The Offeror shall not contact or direct inquiries concerning this Solicitation to any other State employee unless the Solicitation specifically identifies a person other than the Solicitation contact person as a contact.
 - 2.3 Submission of Inquiries. The Procurement Officer or the person identified in the Solicitation as the contact for inquiries except at the Pre-Offer Conference, require that an inquiry be submitted in writing. Any inquiry related to a Solicitation shall refer to the appropriate Solicitation number, page and paragraph. Do not place the Solicitation number on the outside of the envelope containing that inquiry, since it may then be identified as an Offer and not be opened until after the Offer due date and time. The State shall consider the relevancy of the inquiry but is not required to respond in writing.
 - 2.4 Timeliness. Any inquiry or exception to the solicitation shall be submitted as soon as possible and should be submitted at least seven (7) days before the Offer due date and time for review and determination by the State. Failure to do so may result in the inquiry not being considered for a Solicitation Amendment.

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- 2.5 No Right to Rely on Verbal Responses. An offeror shall not rely on verbal responses to inquiries. A verbal reply to an inquiry does not constitute a modification of the solicitation.
- 2.6 Solicitation Amendments. The Solicitation shall only be modified by a Solicitation Amendment.
- 2.7 Pre-Offer Conference. If a pre-Offer conference has been scheduled under this Solicitation, the date, time and location shall appear on the Solicitation cover sheet or elsewhere in the Solicitation. Offerors should raise any questions about the Solicitation or the procurement at that time. An Offeror may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a written Solicitation Amendment.
- 2.8 Persons With Disabilities. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Solicitation contact person. Requests shall be made as early as possible to allow time to arrange the accommodation.
- 3. Offer Preparation**
- 3.1 Forms: No Facsimile, Telegraphic or Electronic Mail Offers. An Offer shall be submitted either on the forms provided in this Solicitation or their substantial equivalent. Any substitute document for the forms provided in this Solicitation must be legible and contain the same information requested on the forms, unless the solicitation indicates otherwise. A facsimile, telegraphic, mailgram or electronic mail Offer shall be rejected if submitted in response to requests for proposals or invitations for bids, unless the solicitation indicated otherwise.
- 3.2 Typed or Ink; Corrections. The Offer shall be typed or in ink. Erasures, interlineations or other modifications in the Offer shall be initialed in ink by the person signing the Offer. Modifications shall not be permitted after Offers have been opened except as otherwise provided under applicable law.
- 3.3 Evidence of Intent to be Bound. The Offer and Acceptance form within the Solicitation shall be submitted with the Offer and shall include a signature (or acknowledgement for electronic submissions, when authorized) by a person authorized to sign the Offer. The signature shall signify the Offeror's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate and complete. Failure to submit verifiable evidence of intent to be bound, such as an original signature, shall result in rejection of the Offer.
- 3.4 Exceptions to Terms and Conditions. All exceptions included with the Offer shall be submitted in a clearly identified separate section of the Offer in which the Offeror clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically accepted by the Procurement Officer in a written statement. The Offeror's preprinted or standard terms will not be considered by the State as a part of any resulting Contract.
- i. Invitation for Bids. An Offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, shall be rejected. (ALL)
- ii. Request for Proposals. All exceptions that are contained in the Offer may negatively affect the State's proposal evaluation based on the evaluation criteria stated in the Solicitation or result in rejection of the Offer. An offer that takes exception to any material requirement of the solicitation may be rejected.
- 3.5 Subcontracts. Offeror shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Offer.
- 3.6 Cost of Offer Preparation. The State will not reimburse any Offeror the cost of responding to a Solicitation.
- 3.7 Solicitation Amendments. Each Solicitation Amendment shall be signed with an original signature by the person signing the Offer, and shall be submitted no later than the Offer due date and time. Failure to return a signed (or acknowledgement for electronic submission, when authorized) copy of a Solicitation Amendment may result in rejection of the Offer.

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- 3.8 Federal Excise Tax. The State of Arizona is exempt from certain Federal Excise Taxes on manufactured goods. Exemption Certificates will be provided by the State.
- 3.9 Provision of Tax Identification Numbers. Offerors are required to provide their Arizona Transaction Privilege Tax Number and/or Federal Tax Identification number in the space provided on the Offer and Acceptance Form.
- 3.10 Employee Identification. Offeror agrees to provide an employee identification number or social security number to the State for the purposes of reporting to appropriate taxing authorities, monies paid by the State under this contract. If the federal identifier of the offeror is a social security number, this number is being requested solely for tax reporting purposes and will be shared only with appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.
- 3.11 Identification of Taxes in Offer. The State of Arizona is subject to all applicable state and local transaction privilege taxes. All applicable taxes shall be identified as a separate item offered in the solicitation when applicable, the tax rate and amount shall be identified on the price sheet. At all times, payment of taxes and the determination of applicable taxes is the sole responsibility of the contractor.
- 3.12 Disclosure. If the firm, business or person submitting this Offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any Federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall include a letter with its Offer setting forth the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.
- 3.13 Solicitation Order of Precedence. In the event of a conflict in the provisions of this Solicitation, the following shall prevail in the order set forth below:
- 3.13.1 Special Terms and Conditions;
 - 3.13.2 Uniform Terms and Conditions;
 - 3.13.3 Statement or Scope of Work;
 - 3.13.4 Specifications;
 - 3.13.5 Attachments;
 - 3.13.6 Exhibits;
 - 3.13.7 Special Instructions to Offerors;
 - 3.13.8 Uniform Instructions to Offerors.
 - 3.13.9 Other documents referenced or included in the Solicitation.
- 3.14 Delivery. Unless stated otherwise in the Solicitation, all prices shall be F.O.B. Destination and shall include all freight, delivery and unloading at the destination(s).

4. Submission of Offer

- 4.1 Sealed Envelope or Package. Except for electronic submissions, when authorized, each Offer shall be submitted to the submittal location identified in this Solicitation. Offers should be submitted in a sealed envelope or container. The envelope or container should be clearly identified with name of the Offeror and Solicitation number. The State may open envelopes or containers to identify contents if the envelope or container is not clearly identified.
- 4.2 Offer Amendment or Withdrawal. An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.
- 4.3 Public Record. All Offers submitted and opened are public records and must be retained by the State. Offers shall be open to public inspection after Contract award, except for such Offers deemed to be confidential by the State. If an Offeror believes that information in its Offer should remain confidential, it shall indicate as confidential the

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specific information and submit a statement with its Offer detailing the reasons that the information should not be disclosed. Such reasons shall include the specific harm or prejudice which may arise. The State shall determine whether the identified information is confidential pursuant to the Arizona Procurement Code.

- 4.4 Non-collusion, Employment, and Services. By signing the Offer and Acceptance Form or other official contract form, the Offeror certifies that:

4.4.1i. The Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and

4.4.2ii. The Offeror does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable Federal, state and local laws and executive orders regarding employment.

5. Evaluation

- 5.1 Unit Price Prevails. In the case of discrepancy between the unit price or rate and the extension of that unit price or rate, the unit price or rate shall govern.
- 5.2 Taxes. Arizona transaction privilege and use taxes shall not be considered for evaluation.
- 5.3 Late Offers. An Offer submitted after the exact Offer due date and time shall be rejected.
- 5.4 Disqualification. A Offeror (including any of its' principals) who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity shall have its offer rejected.
- 5.5 Offer Acceptance Period. An Offeror submitting an Offer under this Solicitation shall hold its Offer open for the number of days from the Offer due date that is stated in the Solicitation. If the Solicitation does not specifically state a number of days for Offer acceptance, the number of days shall be one hundred-twenty (120). If a Best and Final Offer is requested pursuant to a Request for Proposals, an Offeror shall hold its Offer open for one hundred-twenty (120) days from the Best and Final Offer due date.
- 5.6 Waiver and Rejection Rights. Notwithstanding any other provision of the Solicitation, the State reserves the right to:
- 5.6.1 Waive any minor informality;
 - 5.6.2 Reject any and all Offers or portions thereof; or
 - 5.6.3 Cancel the Solicitation

6. Award

- 6.1 Number or Types of Awards. The State reserves the right to make multiple awards or to award a Contract by individual line items or alternatives, by group of line items or alternatives, or to make an aggregate award, or regional awards, whichever is most advantageous to the State. If the Procurement Officer determines that an aggregate award to one Offeror is not in the State's best interest, "all or none" Offers shall be rejected.
- 6.2 Contract Inception. An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the Procurement Officer's signature on the Offer and Acceptance Form. A notice of award or of the intent to award shall not constitute acceptance of the Offer.
- 6.3 Effective Date. The effective date of this Contract shall be the date that the Procurement Officer signs the Offer and Acceptance form or other official contract form, unless another date is specifically stated in the Contract.

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7. Protests

A protest shall comply with and be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9 and rules adopted thereunder. Protests shall be in writing and be filed with both the Procurement Officer of the purchasing agency and with the State Procurement Administrator. A protest of a Solicitation shall be received by the Procurement Officer before the Offer due date. A protest of a proposed award or of an award shall be filed within ten (10) days after the protester knows or should have known the basis of the protest. A protest shall include:

- 7.1 The name, address and telephone number of the protester;
- 7.2 The signature of the protester or its representative;
- 7.3 Identification of the purchasing agency and the Solicitation or Contract number;
- 7.4 A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- 7.5 The form of relief requested.

8. Comments Welcome

The State Procurement Office periodically reviews the Uniform Instructions to Offerors and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 104, Phoenix, Arizona, 85007.

SPECIAL INSTRUCTIONS TO OFFERERS Solicitation No. HP841414

A. Definition of Terms. As used in these Instructions, the terms listed below are defined as follows:

1. *"Hospital"* means the Arizona State Hospital where the services will be provided.
2. *"Arizona Community Protection and Treatment Center" ("ACPTC")* means the area of the Hospital where sexually violent persons are committed.
3. *"Joint Commission on Accreditation of Healthcare Organizations" ("JCAHO")* means the independent, not-for-profit organization, which sets standards and accrediting for health care, focusing on improving the quality and safety of care provided to patients by health care organizations.
4. *"Arizona Department of Health Services" ("ADHS")* means the State Agency who is offering the RFP and will enter in to the contract for the stated services.
5. *"Centers for Medicare and Medicaid Services ("CMS")* mean the Federal Agency within the Department of Health and Human Services ("DHHS") that establishes the conditions of participation that must be met by providers and suppliers participating in Medicare and Medicaid programs. CMS is designated to administer standard compliance by the Secretary of DHHS.
6. *"Assurance and Licensure"* means the Agency within the Arizona Department of Health Services that oversees licensing rules and regulations.

SPECIAL INSTRUCTIONS TO OFFERERS

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1. BACKGROUND

It is the intention of ADHS to seek proposals, and to enter into a contract for Education Services for the Arizona State Hospital, otherwise known as the Hospital.

2. PRE-OFFER CONFERENCE

Prospective Offerors are invited to attend a pre-offer conference which will include a facility tour. The date, time and location of this conference are indicated below. The purpose of this conference shall be to clarify the contents of this RFP in order to prevent any misunderstanding of the State's position. Any doubt as to the requirements of this RFP or any apparent omission or discrepancy should be presented to the State at this conference. The State will then determine the appropriate action necessary, if any, and may issue a written amendment to the RFP. Oral statements or instructions shall not constitute an amendment to this RFP. The tour will take place after the pre-offer conference. This shall be the only opportunity for Offerors to tour the Hospital facility and grounds.

Conference date: **April 25, 2008**

Conference time: 1:00 P.M.

Conference location: Arizona State Hospital, 2500 East Van Buren Street, Phoenix, AZ 85008, Conference Room B in the Hunt Building

3. PROPOSAL FORMAT

One (1) original and five (5) copies of each proposal shall be submitted in the format specified in the RFP. The original copy of the proposal should be clearly labeled "ORIGINAL", and all copies shall clearly state "COPY". Each proposal shall include table of contents, and tabs for each response section. The State shall not provide any reimbursement for the cost of developing or presenting proposals in response to this RFP. Failure to include the requested information may have a negative impact on the evaluation of the Offeror's proposal. The proposal shall include at least the following information:

A. EXPERIENCE AND EXPERTISE

1. Summary. A summary of the offeror's experience and expertise regarding the services offered. Summary shall not exceed five (5) pages, including but not limited to company history, number of years in business, types of services provided, number of full- and part-time employees, number and type of clients for the last two years.
2. Background Information. Reports prepared for clients and information regarding past or current projects shall be submitted. Background information shall relate to the services described in the Scope of Work. The Offeror shall submit examples of prior work activities, similar to those listed in the RFP service categories, provided within the last three (3) years.
3. Resource Capacity and Effectiveness. Offeror shall provide a description of financial and staff resources available to provide the service as described in Special Terms and Conditions, including but not limited to number of employees, years of experience, certification, and specialized training or education.
4. Resumes. Include resumes of key persons responsible for the delivery of services being offered. If any part of the offerors work on any contract awarded pursuant to this RFP is to be performed by subcontractors or consultants, the offeror shall identify such parties and describe their functions, as well as the contractual agreements with said parties.
5. References. Offeror shall submit names and telephone numbers of prior or current customers who have received similar services from the Offeror. The references shall include dates and descriptions of services provided. At least three (3) references must be submitted for each service in which you intend to submit an offer. If possible, at least one (1) reference should be located in Arizona and/or the Phoenix area.

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6. Offeror may provide additional information regarding skills, training, unique situations encountered related to their professional experiences, and a description of the process used to resolve any conflicts or problems.

B. METHOD OF APPROACH

The Offeror shall prepare and submit a written narrative of the Method of Approach to be utilized in performance of the services required by this RFP. This should include a written narrative describing how the Offeror will provide the service for which they are submitting an offer. This should include a description of staff organization and staff resources, to include method of service delivery, and expected outcomes for completing tasks (not to exceed 10 pages). The Offeror shall submit the narrative in the format listed in the Scope of Work, under services to be provided by contractor by listing each task and addressing how it will be fulfilled.

C. SIGNED OFFER AND ACCEPTANCE DOCUMENT BY AUTHORIZED PERSON

D. COST, COMPLETED PRICE SHEET

4. PROPOSAL OPENING

Proposals shall be opened publicly at the time and place designated on the cover page of this document. The name of each Offeror shall be read publicly and recorded. Prices will NOT be read. Proposals will not be subject to public inspection until after contract awards.

5. EVALUATION CRITERIA

In accordance with A.R.S. § 41-2534, competitive sealed proposals, awards shall be made to the offeror whose proposal is determined in writing to be the most advantageous to the State based upon the evaluation criteria listed below. The Evaluation Factors are listed in their relative order of importance.

- Experience and Expertise.
- Method of Approach.
- Cost.

6. DISCUSSIONS

In accordance with A.R.S. §41-2534, after the initial receipt of proposals, the State reserves the option to conduct discussions with those offeror's that submit proposals determined by the State to be reasonably susceptible of being selected for a contract award.

7. SUBMISSION OF PROPOSAL

Proposal packages should be organized and submitted in the following sequence:

- Signed Offer and Acceptance Document;
- Signed Solicitation Amendments, if applicable;
- Experience and Expertise items, as described in Special Instructions to Offerors, Paragraph (3), Section (A).

SPECIAL INSTRUCTIONS TO OFFERERS Solicitation No. HP841414

- Method of Approach for service as described in Special Instructions to Offerors, Paragraph (3), Section (B).
- Completed Price Sheet, submit monthly pricing.
- Any other documentation that pertains to completing the services outlined in the Scope of Work.

8. OFFSHORE PERFORMANCE OF WORK PROHIBITED

Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers. Offerors shall declare all anticipated offshore services in the proposal.

9. FEDERAL IMMIGRATION AND NATIONALITY ACT

By submission of the offer, the Offeror warrants that the Offeror and all proposed subcontractors are and shall remain in compliance with all federal, state and local immigration laws and regulations relating to the immigration status of their employees. The State may, at its sole discretion require evidence of compliance. The Offeror shall have five (5) days from receipt of the request to supply adequate information. Failure to comply with this instruction or failure to supply requested information within the timeframe specified shall result in the offer not being considered for contract award.

10. SINGLE AWARD CONTRACT

This is an all or nothing proposal. All items within this solicitation have been grouped together for purposes of obtaining these items or services collectively from a single source. To be considered for award of this solicitation, the offeror is required to provide prices on all items within this proposal. Failure to provide the requested information in Special Instructions, pages 8 and 9, paragraph 3, sections A through D may result in the offeror being declared non-responsive and ineligible to receive an award.

UNIFORM TERMS AND CONDITIONS

Solicitation No. HP841414

1 Definition of Terms. As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

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

2 Contract Interpretation

- 2.1 Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
- 2.2 Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3 Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
 - 2.3.1 Special Terms and Conditions;
 - 2.3.2 Uniform Terms and Conditions;
 - 2.3.3 Statement or Scope of Work;
 - 2.3.4 Specifications;
 - 2.3.5 Attachments;
 - 2.3.6 Exhibits;
 - 2.3.7 Documents referenced or included in the Solicitation.

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- 2.4 Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5 Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6 No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7 No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3 Contract administration and operation.

- 3.1 Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2 Non-Discrimination. The Contractor shall comply with State Executive Order No. 99-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3 Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4 Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5 Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6 Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7 Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

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- 3.8 Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, tradename, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor (s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

4 Costs and Payments

- 4.1 Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2 Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3 Applicable Taxes.
- 4.3.1 Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
- 4.3.2 State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 4.3.3 Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- 4.3.4 IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
- 4.4 Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- 4.5 Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:
- 4.5.1 Accept a decrease in price offered by the contractor;
- 4.5.2 Cancel the Contract
- 4.5.3 Cancel the contract and re-solicit the requirements.

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5 Contract changes

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

6 Risk and Liability

- 6.1 Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2 Indemnification
- 6.2.1 Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its' departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its' departments, agencies, boards and commissions shall be responsible for its' own negligence. Each party to this contract is responsible for its' own negligence.
- 6.2.2 Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its' officers, officials, agents, employees, or volunteers."
- 6.3 Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.
- 6.4 Force Majeure.
- 6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

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6.4.2 Force Majeure shall not include the following occurrences:

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

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

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

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

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

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

7 Warranties

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

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

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

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

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

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

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

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

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

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7.5 Year 2000.

7.5.1 Notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that all products delivered and all services rendered under this Contract shall comply in all respects to performance and delivery requirements of the specifications and shall not be adversely affected by any date-related data Year 2000 issues. This warranty shall survive the expiration or termination of this Contract. In addition, the defense of *force majeure* shall not apply to the Contractor's failure to perform specification requirements as a result of any date-related data Year 2000 issues.

7.5.2 Additionally, notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that each hardware, software, and firmware product delivered under this Contract shall be able to accurately process date/time data (including but not limited to calculation, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology utilized by the State in combination with the information technology being acquired under this Contract properly exchanges date-time data with it. If this Contract requires that the information technology products being acquired perform as a system, or that the information technology products being acquired perform as a system in combination with other State information technology, then this warranty shall apply to the acquired products as a system. The remedies available to the State for breach of this warranty shall include, but shall not be limited to, repair and replacement of the information technology products delivered under this Contract. In addition, the defense of *force majeure* shall not apply to the failure of the Contractor to perform any specification requirements as a result of any date-related data Year 2000 issues.

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

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

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

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

8 **State's Contractual Remedies**

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

8.2 Stop Work Order.

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

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

8.3 Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

8.4 Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.5 Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9 Contract Termination

9.1 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

9.2 Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

9.3 Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

9.4 Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the State without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5 Termination for Default.

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

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- 9.5.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.
- 9.5.3 The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.
- 9.6 Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 10 Contract Claims. All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.
- 11 Arbitration. The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).
- 12 Comments Welcome. The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 104, Phoenix, Arizona 85007.

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1. PURPOSE

Pursuant to provisions of the Arizona Procurement Code, A.R.S. § 41-2501 Et Seq., Arizona Department of Health Services (ADHS) intends to establish a Contract for Education Services for the Arizona State Hospital (Hospital) in accordance with the terms and conditions outlined in this RFP.

2. TERM OF CONTRACT (3 YEARS)

The term of the resultant Contract shall commence upon July 1, 2008, or the award date on the Offer and Acceptance form, whichever is later, and shall remain in effect for three (3) years, unless terminated, canceled, or extended as otherwise provided herein.

3. CONTRACT EXTENSIONS (2 YEAR MAXIMUM)

The Department may, by mutual written Contract amendment, extend any resultant Contract in twelve (12) month increments for a maximum of two (2) years. The Contract term shall not exceed a total of five (5) years from the date of Contract award.

4. CONTRACT TYPE

☒ Fixed Price

5. PRICE INCREASE/PRICE DECREASE

Contractor prices accepted and subsequently awarded by a Contract in response to this RFP shall remain in effect for a minimum of one (1) year. The Contractor may request a price adjustment, but the State will not review or approve an increase until the Contract has been in effect for one (1) year. The Hospital and the State Procurement Office will review any requested rate increase to determine whether such request is reasonable in relation to increased supplier or material costs. Contractor shall provide written justification for any price adjustment requested. Any price increase adjustment, if approved, will be effective upon execution of a written Contract amendment. Likewise, the Contractor shall offer the State a price adjustment reduction concurrent with reduced costs from their suppliers. Price reductions will become effective upon execution of a Contract amendment.

6. TAX EXEMPTION

The Hospital is exempt from sales tax. In accordance with the State of Arizona Transaction Privilege and Use Tax Audit, the Contractor agrees that it will not charge sales tax for this project. A copy will be provided at Contract award.

7. KEY PERSONNEL

It is essential that the Contractor provide qualified and competent personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract. The Contractor must agree to assign specific individuals to the key positions. The Contractor agrees that, once assigned to work under this Contract, key personnel shall not be removed or replaced without written notice to the Hospital. If key personnel are not available for work under this Contract for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the Hospital, and shall, subject to the concurrence of the state, replace such personnel with personnel of substantially equal ability and qualifications.

Contractor shall submit the name(s) and local telephone number(s) of specific key personnel that will be assigned to the Hospital. Key contact (responsible for communication with the Hospital's Contract Manager) shall be physically located in the Phoenix Metropolitan area.

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All Contractor employees shall be required to attend Hospital new employee orientation training prior to beginning any work at the Hospital.

8. POLICIES AND PROCEDURES

The Contractor is required to have a Policies and Procedures manual acceptable to ADHS that pertains to the services that are to be provided to the Hospital. Additional Policies and Procedures may need to be developed for these services. After Contract award the Contractor shall work with the Hospital to develop any that may be required. In the event that the Contractor and ADHS do not agree, ADHS shall stipulate the Policies and Procedures required.

9. NON-EXCLUSIVE CONTRACT

The State reserves the right to obtain like goods or services from another source when necessary, or when determined to be in the best interest of the State.

10. RESERVED

11. PAYMENT/INVOICING

The Contractor will be paid in accordance with the proposed Contract amount, as accepted by the Arizona Department of Health Services, and the Arizona State Hospital. The Contractor's sole compensation will be from the proposed amounts annotated on the pricing sheet. The State will not pay for services and/or products in advance. Payments will be made monthly, for completion of services as shown by an itemized invoice, submitted by the Contractor by the 30th day of the month following service. Payments will not be authorized if the invoice submitted is incomplete or does not contain the necessary information needed to properly review. Payment for items not authorized under this Contract will be rejected.

12. AUTHORIZATION FOR PROVISION OF SERVICES

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

13. VENDOR REGISTRATION

Prior to issuance of a Purchase Order and subsequent payment and/or formal award, the Contractor shall have a completed STATE OF ARIZONA SUBSTITUTE W-9 FORM on file with the State. No payments shall be made until the form is on file. The STATE OF ARIZONA SUBSTITUTE W-9 FORM will be provided to the Contractor at the time of Award and must be completely filled out and returned prior to the start of any project for the State.

14. VENDOR PERFORMANCE REPORTS

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

15. INFORMATION DISCLOSURE

The Contractor shall establish and maintain procedures and controls that are acceptable to the State for the

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

16. FEDERAL IMMIGRATION LAWS, COMPLIANCE BY STATE CONTRACTORS

By entering into the Contract, the Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. The Contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the Contract. I-9 forms are available for download at USCIS.GOV

The State may request verification of compliance for any Contractor or subcontractor performing work under the Contract. Should the State suspect or find that the Contractor or any of its subcontractors are not in compliance, the State may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

17. OFFSHORE PERFORMANCE OF WORK PROHIBITED

Due to security and identity protection concerns, direct services under this Contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of the Contract. This provision applies to work performed by subcontractors at all tiers.

18. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) OF 1996

The Contractor warrants that it is familiar with the requirements of HIPAA and HIPAA's accompanying regulations and will comply with all applicable HIPAA requirements in the course of this Contract. Contractor warrants that it will cooperate with the Arizona Department of Health Services (ADHS) in the course of performance of the Contract so that both the ADHS and Contractor will be in compliance with HIPAA, including cooperation and coordination with the ADHS Privacy Officer and other compliance officials required by HIPAA and its regulations. Contractor will sign any documents that are reasonably necessary to keep the ADHS and Contractor in compliance with HIPAA, including, but not limited to, business associate agreements.

If requested by the ADHS, Contractor agrees to sign the "Arizona Department of Health Services Pledge to Protect Confidential Information" and to abide by the statements addressing the creation, Use and Disclosure of confidential information, including information designated as protected health information and all other confidential or sensitive information as defined in policy. In addition, if requested, Contractor agrees to attend or participate in HIPAA training offered by the ADHS or to provide written verification that the Contractor has attended or participated in job related HIPAA training that is: (1) intended to make the Contractor proficient in HIPAA for purposes of performing the services required and (2) presented by a HIPAA Privacy Officer or other person or program knowledgeable and experienced in HIPAA and who has been approved by the ADHS HIPAA Compliance Officer.

19. HIPAA BUSINESS ASSOCIATE AGREEMENT

Included as an attachment to this Contract is a Health Insurance Portability and Accountability Act of 1996 (HIPAA)

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Business Associate Agreement (HIPAA BAA). Before the general Contract may be awarded to the Contractor or approved for execution by the State the Contractor must agree to execute the attached agreement or negotiate and agree to execute an agreement with terms that, in the minimum meet the requirements of the Privacy and Security Regulations, 45 CFR 164.504(e)(2) and 164.314(2)(i), and that are approved by ADHS . This Agreement binds the Contractor to comply with the requirements of HIPAA in safeguarding protected health information that is disclosed, used, created or received by the Contractor for or on behalf of the ADHS. If the Contractor violates the HIPAA BAA during the term of this Contract, the Contractor will be in default under the terms of this Contract, and the State may exercise any of its rights and remedies available to it.

20. INDEMNIFICATION CLAUSE

Contractor shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State of Arizona.

This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

21. INSURANCE REQUIREMENTS

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The *insurance requirements* herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below.

1. **Commercial General Liability – Occurrence Form**

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

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Blanket Contractual Liability – Written and Oral	\$1,000,000
• Fire Legal Liability	\$ 50,000
• Each Occurrence	\$1,000,000

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- a. The policy shall be endorsed to **include coverage for sexual abuse and molestation.**
- b. The policy shall be endorsed to include the following additional insured language: ***"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor".***
- c. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2. **Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: ***"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor".***

3. **Worker's Compensation and Employers' Liability**

- Workers' Compensation Statutory
- Employers' Liability
 - Each Accident \$ 500,000
 - Disease – Each Employee \$ 500,000
 - Disease – Policy Limit \$1,000,000

- a. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

- b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

4. **Professional Liability (Errors and Omissions Liability)**

- Each Claim \$1,000,000
- Annual Aggregate \$2,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
- b. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required such additional insured

SPECIAL TERMS AND CONDITIONS

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shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.

2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to **The Arizona Department of Health Services-Office of Procurement, 1740 West Adams Street, Room 303, Phoenix, Arizona, 85007** and shall be sent by certified mail, return receipt requested.

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to **The Arizona Department of Health Services-Office of Procurement, 1740 West Adams Street, Room 303, Phoenix, Arizona**. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.**

F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

G. **APPROVAL:** Any modification or variation from the *insurance requirements* in this Contract shall be made by the Department of Administration, Risk Management Section, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

H. **EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

22. PANDEMIC CONTRACTUAL PERFORMANCE

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

- a. Key succession and performance planning if there is a sudden significant decrease in contractor's workforce.

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- b. Alternative methods to ensure there are products in the supply chain.
- c. An up to date list of company contacts and organizational chart.

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

- d. After the official declaration of a pandemic, the State may temporarily void the contract(s) in whole or specific sections, if the contractor cannot perform to the standards agreed upon in the initial terms.
- e. The State shall not incur any liability if a pandemic is declared and emergency procurements are authorized by the Director as per A.R.S. 41-2537 of the Arizona Procurement Code.
- f. Once the pandemic is officially declared over and/or the contractor can demonstrate the ability to perform, the State, at its sole discretion, may reinstate the temporarily voided contract(s).

23. TRANSITION ACTIVITIES

- a. Upon termination of this Contract, if ADHS anticipates a continued need for the Contract Services specified herein and a contract is awarded to a new Contractor, there shall be a transition of services period of not less than thirty (30) days. During this period, the existing Contractor shall work closely with the new Contractor, or Contractors, personnel and/or staff to ensure a smooth and complete transfer of duties and responsibilities.
- b. An authorized representative from the Hospital shall coordinate all transition activities. A transition plan will be developed in conjunction with the outgoing Contractor to assist the new Contractor, or Contractors, personnel and/or staff to implement the transfer of duties.
- c. ADHS reserves the right to determine which projects nearing completion will remain with the current Contractor of record.
- d. All records (electronic or otherwise) will be preserved and provided to the new Contractor.

SCOPE OF WORK

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1. BACKGROUND

The Arizona State Hospital (Hospital) is a unit of the Division of Behavioral Health Services (BHS) of the Arizona Department of Health Services (ADHS). It is established and operated under A.R.S. 36-202 "for the care and treatment of persons with mental disorders and persons with other personality disorders or emotional conditions who will benefit from care and treatment."

The Hospital's Mission Statement: "To restore and enhance the mental health of persons requiring psychiatric services in a safe and therapeutic environment" encompasses all aspects of the patient's daily life, treatment, and environment. The Contract is a key component to ensure that the Mission Statement is fulfilled. The successful Contractor shall demonstrate in its Proposal and contract execution, the same level of caring and attention to detail to the patient's health and comfort that the Hospital staff exhibits on a daily basis.

The Hospital provides treatment and rehabilitative services to the most severely mentally ill persons in the state. This is a court-ordered, civil, and forensic committed treatment center. Individuals must be suffering from a behavioral health illness, which has severely impaired their functioning and ability to live within their family and community. The Hospital's current population is approximately 275 patients.

The Arizona State Legislature enacted A.R.S. 36-3701 in the 1997 legislative session requiring the housing of "sexually violent persons" (SVP) at the Arizona State Hospital in the Arizona Community Protection and Treatment Center (ACPTC) program.

ACPTC provides for a secure treatment environment for sexually violent persons ("residents") who have been determined to have a mental disorder and need to be committed to protect the health and safety of others in the community. The ACPTC's current population is approximately 100 residents.

The Hospital and ACPTC are located at 2500 East Van Buren Street, Phoenix, Arizona 85008. The Hospital operates twenty-four hours (24) per day, three hundred sixty-five (365) days per year.

The Nueva Vista School (School) is located on the grounds of the Arizona State Hospital (Hospital), 2500 E. Van Buren St., Phoenix, AZ 85008. The Adolescent Treatment Unit is located just off 24th St., next to Maricopa County Medical Center. The adolescents are housed in a separate complex, and are not permitted contact with adult patients. According to state law there must be a sight sound barrier between adolescent and adult patients.

The Arizona State Hospital, Nueva Vista School, is a free standing school in the eyes of Arizona Department of Education (ADE), with a CTDS number. The Hospital provides the Contractor with classroom space as required by law; consumable supplies and materials needed to facilitate instruction, as well as other needed therapies and services that are required for students (i.e. speech and occupational therapy, psychological services, and individual counseling). In addition, there will be a minimum of one unit counselor to monitor and provide assistance with critical student behaviors.

Hospital staff will inform the Contractor of the admission and discharge of students in a timely manner. The Hospital will provide two (2) staff members to escort students to and from the classroom and the Adolescent Treatment Unit during school hours.

2. OBJECTIVE

To provide necessary Educational Program Services to Hospital patients in a manner consistent with Hospital Policy and Procedure and in accordance with state and federal education laws.

- a. Target Group: All adolescents up to eighteen (18) years of age will be serviced (maximum count of sixteen adolescents). This target group will also include consenting adult patients from eighteen (18) up to twenty-two (22) years of age, who are eligible for Special Education services.

SCOPE OF WORK

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3. SCOPE OF SERVICE

Educational Services: This service is to provide instruction according to curriculum standards set by Arizona Department of Education and according to requirements set in a Special Education student's current Individual Education Plan (IEP).

4. SERVICES TO BE PROVIDED BY CONTRACTOR

The Contractor shall:

- a. Provide a two-hundred and twenty (220) day calendar with a start date of July 1, 2008 to be approved by the Hospital's co-coordinator of Patient Education Services.
- b. Develop a curriculum according to standards set by Arizona Department of Education to be approved by the Hospital's co-coordinator of Patient Education Services.
- c. Provide two (2) teachers: One (1) regular education, high school, and one (1) special education.
- d. Hire, supervise, and evaluate all instructional staff with input from the Hospital's co-coordinator of Patient Education Services.
- e. Schedule meetings, as needed, as determined by the teacher and the Hospital's co-coordinator of Patient Services, with parents to review progress.
- f. Develop and review IEP's within the time lines and guidelines specified by the Arizona Department of Education and the U.S. Department of Education, for all Special Education student services. If an incoming student is not identified as a special education student, the Contractor will work with the Hospital psychologist and team to determine if the Child Find procedures should be employed.
- g. Provide daily individualized instruction for students according to weekly lesson plans that are developed by the teacher. This will be done according to State standards. Student progress will be monitored and documented by the Contractor.
- h. Obtain and administer State and mandatory testing for students.
- i. Publish progress reports and graded report cards every nine (9) weeks for students enrolled in the program.
- j. Provide a minimum of four (4) hours of classroom instruction per day, excluding State and Federal holidays and weekends.
- k. Inform appropriate treatment unit staff of any significant behavior observed while the student is in the classroom, such as physical or verbal outburst, attention span problems or inability to process basic information or directions.
- l. Attend Treatment Planning Conferences for each student and also provide input on assigned students by writing Progress Notes on the Medical Record.
- m. Attend other designated Hospital meetings, trainings, patient staffing, and patient rounds with the psychiatrist and Management team, to provide the necessary patient educational and behavioral information to the treatment team, to receive information from the unit team, and to report on school functions. These meetings may be held on or off Hospital grounds.

5. RESPONSIBILITIES OF THE HOSPITAL

The Hospital will:

- a. Maintain school records for students.
- b. Provide a hospital coordinator to the Contractor for program support.
- c. Write grants and perform other administrative functions for the school operations.
- d. Receive voucher monies for special education students enrolled in school.
- e. Provide on-line IEP program.
- f. Provide a staff psychologist.
- g. Provide classroom areas to accommodate for the number of students enrolled in school.
- h. Provide work areas for the instructors and students in the classroom areas.
- i. Provide any supplies or equipment required for the instruction of the students enrolled in school.

SCOPE OF WORK

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6. COMPLIANCE

- a. Contractor shall comply with all requirements of the U.S. Department of Education, Arizona Department of Education, HIPAA – regarding Protected Health Information, No Child Left Behind, Individuals with Disabilities Act (IDEA)
- b. Contractor shall review and follow Hospital Policies and Procedures.
- c. Contractor shall comply with all requirements of applicable Standards of Joint Commission on Accreditation of Healthcare Organization (JCAHO), Center for Medicare/Medicaid Services (CMS) and any other Federal, State and Local regulatory agencies and provide documentation of compliance.
- d. Contractor shall provide Plan of Correction as requested by the Quality Resource Management Director or within thirty (30) days when deficiencies have been identified by the Hospital or an external regulator.
- e. Contractor shall develop Quality Assurance, Quality Control, and Performance Improvement Indicators given by the Performance Improvement committee.
- f. Contractor shall provide periodic reports to Hospital Staff and Federal or State regulators upon request.

7. REQUIREMENTS

- a. Adhere to and comply with Federal, State, County, City, and HIPAA rules, regulations, and standards.
- b. No cameras, including cell phones with cameras, are permitted on Hospital property.
- c. The Hospital grounds are drug-, alcohol-, and tobacco-free.
- d. No firearms are permitted on Hospital property.
- e. Provide proof of license or certification when submitting an offer to ADHS.

8. ADDITIONAL REQUIREMENTS AT CONTRACT AWARD

Items to be provided by the Contractor as required within ten (10) days of Contract award, and upon request through the term of the Contract.

- a. Certificate of Liability Insurance
- b. HIPAA Business Associate Agreement (BAA) - Attachment A
- c. State of Arizona Substitute W-9 form

9. STATE PROVIDED ITEMS

Arizona State Hospital will provide the following:

- a. Necessary procedural and policy manual

10. NOTICES, CORRESPONDENCE, REPORTS, INVOICES AND PAYMENTS

- a. Invoices shall be submitted to the Hospital Business Manager on a monthly basis within thirty (30) days after the end of each month. The invoices shall be sent to the following address:

Arizona State Hospital
Business Manager
2500 East Van Buren Street
Phoenix, Arizona 85008

- b. Invoices shall be paid by ADHS within thirty (30) days following receipt of the invoice. In the case of any dispute regarding part of any invoice, ADHS shall pay the undisputed part according to the payment terms described above.

SCOPE OF WORK Solicitation No. HP841414
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- c. Notices, Correspondence, Reports and Payments from The Hospital to the Contractor shall be sent to:

Name:

Address:

City, State, Zip Code:



OFFER AND ACCEPTANCE

Solicitation No.: HP841414

ARIZONA DEPARTMENT OF
HEALTH SERVICES
1740 W. Adams, Room 303
Phoenix, Arizona 85007
(602) 542-1040
(602) 542-1741 Fax

Submit this form with an original signature to the:

Arizona Department of Health Services
Office of Procurement
1740 West Adams, Room 303
Phoenix, Arizona 85007

The Undersigned hereby offers and agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications and amendments in the Contract.

Arizona Transaction (Sales) Privilege Tax License
No.:

For clarification of this Offer, contact:

Name:

Federal Employer Identification No.:

Telephone
number:

Fax number:

Company Name

Signature of Person Authorized to Sign Offer

Address

Printed Name

City, State, Zip Code

Title

OFFER ACCEPTANCE AND CONTRACT AWARD (For State of Arizona Use Only)

Your Offer is hereby accepted as described in the Notice of Award. The Contractor is now bound to perform based upon the Contract and the Contractor's Offer as accepted by the State.

This Contract shall henceforth be referred to as Contract Number: **HP841414**

The Contractor is hereby cautioned not to commence any billable work or provide any material, service or construction under this contract until the Contractor receives an executed purchase order or contract release document or written notice to proceed, if applicable.

State of Arizona Awarded this _____ day of _____ 2008

CHIEF PROCUREMENT OFFICER

PRICE SHEET Solicitation No. HP841414
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EDUCATION SERVICES

SERVICE	UNIT TYPE	PRICE
EDUCATION SERVICES – July 1 through June 30 (220 day calendar)	Monthly	

The Contractor's sole compensation will be from the rates indicated on the price sheet for services rendered. Additional expenses for travel will not be allowed. Monthly service rate shall be inclusive of all costs to provide the education services required as described in the scope of work. No additional compensation will be provided.

**HEALTH INSURANCE PORTABILITY & ACCOUNTABILITY ACT OF 1996 (“HIPAA”)
BUSINESS ASSOCIATE AGREEMENT (“AGREEMENT”)**

The Arizona Department of Health Services or an Arizona Department of Health Services’ Division, Bureau, Office, or Program and Business Associate hereby enter into this Agreement. The date when this Agreement is effective (“Effective Date”) shall be determined according to Sections 164.534, 164.532(d), and 164.532(e) of the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and Part 164, Subparts A and E (“Privacy Standards”). This Agreement supplements any service agreement(s) (“Service Agreement(s)”) between ADHS Covered Component and Business Associate relating to the disclosure of Protected Health Information (“PHI”). In the event of conflicting terms or conditions, this Agreement shall supersede the Service Agreement(s).

The ADHS Covered Component and Business Associate intend to comply with the Privacy Standards; the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C (“Security Standards”); HIPAA; and other applicable federal and state laws, in order to protect the privacy of PHI in any form and to safeguard the confidentiality, integrity, and availability of Electronic PHI (“ePHI”) related to this Agreement.

- A. **DEFINITIONS.** Capitalized terms not otherwise defined in this Agreement shall have the same meaning as in the Privacy Standards and the Security Standards.
- B. **PERMITTED USES AND DISCLOSURES OF PHI.** Business Associate will Use and disclose PHI only for those purposes necessary to perform functions, activities, or services for, or on behalf of, ADHS Covered Component as specified in the underlying Service Agreement(s) and this Agreement, provided that any Use or Disclosure would not violate: the Privacy Standards, the Security Standards, or HIPAA, if done by ADHS Covered Component; or ADHS Covered Component’s policies and procedures for using or disclosing only the Minimum Necessary PHI.
1. **Business Activities of Business Associate.** Business Associate may use PHI for the necessary management and administration of Business Associate, or to carry out the legal responsibilities of Business Associate if:
 - a. The disclosure is Required by Law; or
 - b. Business Associate obtains reasonable assurances from the person receiving the PHI that the person will:
 - (1) Maintain the Confidentiality of the PHI,
 - (2) Use or disclose the PHI only as Required by Law or for the purpose for which the PHI was disclosed to the person, and
 - (3) Notify Business Associate when the person becomes aware that PHI confidentiality has been breached.
 2. **Aggregation of PHI.** Business Associate may aggregate the PHI in its possession with the PHI of other Covered Entities that Business Associate has in its possession through its capacity as a Business Associate of the other Covered Entities, provided that the purpose of the aggregation is to provide ADHS Covered Component with data analyses relating to the Health Care Operations of ADHS Covered Component. Business Associate shall not disclose PHI between or among Covered entities, unless ADHS Covered Component specifically authorizes the disclosure.
 3. **De-Identification of PHI.** Under 45 CFR 164.502(d) (2), de-identified information does not constitute PHI and is not subject to the terms of this Agreement. Business Associate may de-identify any and all PHI, provided:
 - a. The de-identification conforms to the requirements of 45 CFR Section 164.514(b),
 - b. Business Associate maintains the documentation required by 45 CFR Section 164.514(b), and
 - c. Business Associate gives written assurance to ADHS Covered Component that Business Associate appropriately maintains the documentation required by 45 CFR Section 164.514(b).

C. **OBLIGATIONS OF BUSINESS ASSOCIATE REGARDING PHI IN ANY FORM.**

1. **Safeguards.** Business Associate shall use appropriate safeguards to prevent any Use or Disclosure of PHI not otherwise permitted in this Agreement.
2. **Reporting Impermissible Use or Disclosure.** Recipient shall promptly report to the designated individual specified in the Notice Provision number “G” of this agreement. Any Use or Disclosure of any PHI not permitted by this Agreement or the Privacy Standards (“Impermissible Use or Disclosure”), upon becoming aware of such Use or Disclosure. Recipient agrees to mitigate, to the extent practicable, any harmful effect from an Impermissible Use or Disclosure known to Recipient or its agents or subcontractors.
3. **Agents and Subcontractors.** Business Associate shall ensure that any agent or subcontractor to whom Business Associate provides PHI agrees to all the PHI-related restrictions and conditions that apply to Business Associate through this Agreement. Business Associate shall maintain an accounting of all disclosures of PHI to agents or subcontractors as provided in this Agreement.
4. **Personnel.** Business Associate shall appropriately inform all of its employees, agents, representatives, and members of its workforce (“Personnel”), whose services may be used to satisfy Business Associate’s obligations under this Agreement and the Service Agreement(s), of the terms of this Agreement. Business Associate represents and warrants that the Personnel are under sufficient legal obligation to Business Associate for Business Associate to fully comply with the provisions of this Agreement.
5. **Access to PHI.** Within five (5) business days after a written request by ADHS Covered Component for access to PHI held by Business Associate in a Designated Record Set, Business Associate shall make the requested PHI available to ADHS Covered Component. If the requested PHI is stored off site, Business Associate shall make the PHI available to ADHS Covered Component within ten (10) business days, to allow ADHS Covered Component time to respond to a request for access by an Individual within 60 calendar days.

If an Individual requests access to PHI directly from Business Associate, Business Associate shall provide or deny access according to 45 CFR 164.524, unless otherwise directed by ADHS Covered Component. Business Associate shall notify ADHS Covered Component of the action taken in writing within five (5) business days after the action.

6. **Amendment of PHI.** Within five (5) business days after an Individual’s request to ADHS Covered Component to amend the Individual’s PHI held by Business Associate in a Designated Record Set, Business Associate shall provide the Individual’s PHI to ADHS Covered Component for amendment. If ADHS Covered Component requests Business Associate to amend an Individual’s PHI, Business Associate shall incorporate into the Individual’s PHI the amendment, any statements of disagreement, and/or rebuttals within a reasonable time, as required by 45 CFR Section 164.526.

If an Individual requests amendment of PHI directly from Business Associate, Business Associate shall amend or deny amendment according to 45 CFR 164.526, unless otherwise directed by ADHS Covered Component. Business Associate shall notify ADHS Covered Component of the action taken in writing within five (5) business days after the action.

7. **Documentation of Disclosures.** Business Associate agrees to document all Disclosures of PHI made by Business Associate as required for ADHS Covered Component to respond to a request by an Individual for an accounting of Disclosures of PHI according to 45 CFR Section 164.528. At a minimum, the documentation related to Business Associate’s Disclosure of PHI shall include:
 - a. The date of Disclosure;
 - b. The name of the PHI recipient and, if known, the address of the PHI recipient;
 - c. A brief description of the PHI disclosed; and
 - d. A brief statement of the purpose of the disclosure that reasonably informs the Individual of the basis for the Disclosure, or a copy of the Individual’s authorization, or a copy of the written request for Disclosure.
8. **Accounting of Disclosures.** Within ten (10) business days after notice by ADHS Covered Component to Business

Associate that ADHS Covered Component has received a request for an accounting of Disclosures of an Individual's PHI, Business Associate shall provide ADHS Covered Component with the Disclosure records stated in the notice. Business Associate shall provide Disclosure records for the six years before the date on which the Individual requested the accounting, but not for a date earlier than April 14, 2003, unless otherwise Required by Law.

If an Individual requests an accounting of Disclosures directly from Business Associate, Business Associate shall, within sixty (60) business days, provide or deny an accounting according to 45 CFR 164.528, unless otherwise directed by ADHS Covered Component. Business Associate shall notify ADHS Covered Component of the action taken in writing within five (5) business days after the action. The accounting of Disclosures shall include all PHI Disclosures for the six years before the date on which the Individual requested the accounting, but not for a date earlier than April 14, 2003, unless otherwise Required by Law. If Business Associate is unable to provide the accounting of Disclosures within the allowed time, Business Associate shall provide ADHS Covered Component with a written statement of the reason for delay and the date Business Associate will provide the accounting.

9. **Governmental Access to Records.** For the purpose of determining ADHS Covered Component's compliance with the Privacy Standards, Business Associate shall make available to ADHS Covered Component or to the Secretary:
- a. Business Associate's internal practices, books, and records relating to the Use and Disclosure of PHI;
 - b. Business Associate's policies and procedures relating to the Use and Disclosure of PHI; and
 - c. All PHI received from ADHS Covered Component or created or received by Business Associate on behalf of ADHS Covered Component.

This provision does not constitute a waiver by ADHS Covered Component of any attorney-client privilege or other legal privilege.

10. **Transaction Standards Regulation.** If Business Associate conducts in whole or part Standard Transactions for or on behalf of ADHS Covered Component, Business Associate shall comply with the Electronic Data Transaction Standards and Code Sets, 45 CFR Part 162, Subparts I through R ("Transaction Standards and Code Sets"). Business Associate shall require any subcontractor or agent involved in conducting Standard Transactions for or on behalf of ADHS Covered Component, to comply with the Transaction Standards and Code Sets. Business Associate and its subcontractors or agents shall not enter into any agreement related to conducting in whole or in part Standard Transactions for or on behalf of ADHS Covered Component that:
- a. Changes the definition, Data Condition, or use of a Data Element or Segment in a Standard Transaction;
 - b. Adds any Data Elements or Segments to the maximum defined Data Set;
 - c. Uses any code or Data Element that is marked "not used" in the Standard Transaction's implementation specification or that is not in the Standard Transaction's implementation specification; or
 - d. Changes the meaning or intent of the Standard Transaction's implementation specification.

D. **OBLIGATIONS OF BUSINESS ASSOCIATE REGARDING ePHI.**

- 1. **Safeguards.** Business Associate shall implement Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of the ePHI that Business Associate creates, receives, maintains, or transmits on behalf of ADHS Covered Component.
- 2. **Agents and Subcontractors.** Business Associate shall ensure that any agent or subcontractor to whom Business Associate provides ePHI agrees to implement reasonable and appropriate safeguards to protect the Confidentiality, Integrity, and Availability of the ePHI.
- 3. **Report of Security Incident.** Business Associate shall promptly report to ADHS Covered Component any Security Incident of which Business Associate becomes aware that involves ePHI created, received, maintained, or transmitted by Business Associate.
- 4. **Governmental Access to Records.** Business Associate shall make its policies, procedures, and the documentation required by the Security Standards available to ADHS Covered Component and to the Secretary for purposes of

determining ADHS Covered Component's compliance.

5. **Termination Authorized.** Business Associate agrees that ADHS Covered Component may terminate this Agreement if ADHS Covered Component determines that Business Associate has violated a material term of this Agreement related to the Security of ePHI.

E. **OBLIGATIONS OF ADHS COVERED COMPONENT.**

1. **Notice of Privacy Practices.** ADHS Covered Component shall notify Business Associate of any changes or limitation(s) in ADHS Covered Component's Notice of Privacy Practices according to 45 CFR Section 164.520, to the extent that such changes or limitation(s) may affect Business Associate's Use or Disclosure of PHI.
2. **Changes in Permission by Individual.** ADHS Covered Component shall notify Business Associate of any changes in, or revocation of, an Individual's permission to use or disclose PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.
3. **Restrictions on PHI.** ADHS Covered Component shall notify Business Associate of any restriction of PHI Uses and Disclosures that ADHS Covered Component has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect Business Associate's PHI Use or Disclosure.
4. **Permissible Requests by ADHS Covered Component.** ADHS Covered Component shall not request Business Associate to use or disclose PHI in any manner not permitted under the Privacy Standards if done by ADHS Covered Component.

F. **TERM AND TERMINATION**

1. **Term.** The term of this Agreement shall begin on the Effective Date and shall terminate when all PHI provided by ADHS Covered Component to Business Associate, or created or received by Business Associate on behalf of ADHS Covered Component, is destroyed or returned to ADHS Covered Component. If it is not feasible for Business Associate to return or destroy all PHI, the term of this Agreement shall terminate, except to the extent protections are extended to any PHI not returned or destroyed, according to the provisions in Section F(2)(c).
2. **Effect of Termination.**
 - a. Except as provided in paragraph (c) of this Subsection, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from ADHS Covered Component, or created or received by Business Associate on behalf of ADHS Covered Component.
 - b. This provision shall apply to PHI in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the returned or destroyed PHI.
 - c. If Business Associate determines that returning or destroying PHI is not feasible, Business Associate shall provide to ADHS Covered Component notification of the conditions making return or destruction not feasible. Business Associate shall extend the protections of this Agreement to the PHI and shall limit further Uses and Disclosures of the PHI to the purposes that make the return or destruction not feasible, for so long as Business Associate maintains the PHI. If it is not feasible for Business Associate to recover from a subcontractor or agent any PHI, Business Associate shall provide a written explanation to ADHS Covered Component. Business Associate shall require the subcontractor or agent to agree:
 - (1) To extend the protections of this Agreement to the PHI in the possession of the subcontractor or agent, and
 - (2) To limit any further Uses or Disclosures of the PHI to the purposes that make the return or destruction not feasible, for so long as the subcontractor or agent maintains the PHI.
3. **Termination for Cause.** Upon ADHS Covered Component's knowledge of a material breach by Business Associate of the terms of this Agreement, ADHS Covered Component shall:
 - a. Terminate this Agreement and the underlying Service Agreement(s) if Business Associate does not cure the breach or end the violation within the time specified by ADHS Covered Component;

- b. Immediately terminate this Agreement and the underlying Service Agreement(s); or
- c. Report the violation to the Secretary if:
 - (1) Termination is not feasible, and
 - (2) Business Associate does not cure the breach or end the violation within the time specified by ADHS Covered Component.

G. **NOTICES**

All notices or other communications by either party to the other hereunder shall be in writing and shall be deemed properly delivered (i) when received by the party; or (ii) three (3) days after deposit in the United States mail of such notice or communications to the parties entitled hereto, registered or certified mail, postage prepaid, to the parties at the following address (or to such other addresses as are designated in writing to all parties):

To:

Address:

Phone Number:

To:

Address:

Phone Number:

E-mail Address:

Copy to:

Address:

Phone Number:

E-mail Address:

H. **MISCELLANEOUS**

1. **References.** A reference in this Agreement to HIPAA, the Privacy Standards, or the Security Standards means the law or regulation as in effect on the Effective Date or as subsequently amended, and for which compliance is required.
2. **Amendment.** The parties agree to take the action necessary to amend this Agreement from time to time so that ADHS Covered Component may comply with the requirements of HIPAA.
3. **Survival.** The obligations of Business Associate under this Agreement shall survive the termination of this Agreement and of the underlying Service Agreement(s) to the extent required by Section F(2)(c).
4. **Effect on Service Agreement(s).** Except as specifically required to implement the purposes of this Agreement, or to the extent not consistent with this Agreement, all provisions of the underlying Service Agreement(s) shall remain in force and effect.

Contractor hereby acknowledges receipt and acceptance of this HIPAA Agreement and that a signed copy must be filed with the Procurement Office. _____ Signature Date _____ Authorized Signatory's Name and Title: _____ Contractor's Name	The above referenced HIPAA Agreement is hereby executed this _____ day of _____ 20__ by the Arizona Department of Health Services. _____ Procurement Officer
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