

**STATE OF NORTH CAROLINA
REQUEST FOR PROPOSAL**

RFP #30- DPH-632-07-OE

TITLE: Management and Technical Support for Public Health Social Marketing and Health Communication Programs

USING AGENCY: NC Department of Health and Human Services

ISSUING AGENCY: NC Department Health and Human Services
Office of Procurement and Contract Services
Raleigh, NC

ISSUE DATE: January 17, 2007

Sealed Proposals subject to the conditions made a part hereof shall be received until **5:00 p.m. on February 13, 2007**, for furnishing services described herein.

Direct all inquiries concerning this RFP to:

Susan W. Lewis, Assistant Director
NC Department of Health and Human Services
Office of Procurement and Contract Services
Raleigh, NC 27603 (919) 855-4086
e-mail susan.lewis@ncmail.net

MAILING INSTRUCTIONS: Indicate firm name and RFP number on the front of each sealed proposal envelope or package, along with the date for receipt of proposals specified above. Include two (2) originals, fully executed bid documents and four (4) copies. Proposals shall not be accepted by electronic means.

Send proposal to the applicable address below: The address must appear on the envelope or package as shown below:

DELIVERED BY US POSTAL SERVICE	DELIVERED BY ANY OTHER MEANS
RFP NO. <u>30-DPH-632-07-OE</u> NC Department of Health & Human Services Office of Procurement & Contract Services 2008 Mail Service Center Raleigh, NC 27699-2008	RFP NO. <u>#30-DPH-632-07-OE</u> NC Department of Health & Human Services Office of Procurement & Contract Services 801 Ruggles Drive, Hoey Building Raleigh, NC 27603-2001

WRITTEN QUESTIONS are to be submitted via e-mail to susan.lewis@ncmail.net no later than **2:00 pm, January 24, 2007**. Only written answers to submitted questions will constitute an official answer. A summary of all questions and answers shall be posted as an addendum on the State's IPS web site within 2-3 business days. See <http://www.ips.state.nc.us/ips/pubmain.asp#bid#>

NOTICE TO OFFERORS:

- Offerors are cautioned that requirements of this RFP can only be altered by written addenda and verbal communications from whatever sources are of no effect.
- Definition: The phrases "Request for Proposal," "RFP," "IFB" and "Invitation for Bid" may be used interchangeably in this solicitation. The words "proposal" and "bid", and the words "offeror" and "Vendor" may also be used interchangeably herein.
- All proposals are subject to the provisions of the Request for Proposals for Bid, Terms and Conditions, Specifications and General Instructions. The State objects to and will not evaluate or consider any additional terms and conditions submitted with an offeror's response. Do not attach any additional terms and conditions. By execution and delivery of this document, the bidder agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.
- This is not an e-procurement solicitation. General information on NC E-Procurement service can be found at <http://eprocurement.ncgov.com>. However, within two (2) days after notification of award of a contract, the Vendor must register in NC E-Procurement @ Your Service (<http://Vendor.ncgov.com>).

NOTE TO VENDORS THAT ARE PRESENTLY ON THE
ELIGIBILITY LIST

If you are currently on the eligibility list for Social Marketing #30-DPH-632-06,
“Management and Technical Support for Public Health Social Marketing and Health
Communication Programs”, and want to remain on the list, please complete
only the Execution Page contained in this RFP and submit it according to the
instructions on page 1. This is also an opportunity for you to update any
information that has changed since last year, such as contact person, email, address, etc.

Vendors that are currently on the eligibility list will be removed in the event a
new Execution Page is not submitted by February 13, 2007.

Reference Section I. Purpose and Objectives, paragraph B. Objectives

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SECTION I. PURPOSE AND OBJECTIVES

A. Purpose

The North Carolina Department of Health and Human Services (DHHS), Division of Public Health (DPH), (hereinafter referred to as "The Agency"), hereby requests all interested parties (hereinafter referred to as "Respondent" or "Offeror") to submit to the agency by the date indicated on page 1 of this RFP, a proposal describing the Offeror's capacity for the provision of creative services, mass media purchase and placement, formative research, program planning, management and logistical support for the design, development, implementation and evaluation of public health social marketing and health communication programs.

The use of this contract is provided as a matter of convenience. Therefore, it is intended to be a convenience contract (accessible and not mandatory) for use by the Division.

B. Objectives

The objective of this RFP is to obtain one or more qualified vendors that can be contracted, based on the Division's need and the Offeror's availability and expertise, to manage and/or provide selected technical services in support of public health social marketing and health communication programs.

Offerors may be placed on an eligibility list under this contract through submission of an accepted proposal to this RFP. The Division may identify the need for a specialty service through the issuance of a solicitation document hereafter referred to as a "Scope Statement". The "Scope Statement" is a solicitation document that describes a specific management function or technical support work needed by the Division's Social Marketing and Health Communications Programs, as described in this RFP. Eligible Offerors will receive notice via e-mail of a Scope Statement solicitation document. It will include technical or functional specifications that describe the specific service requirements needed. It will also define the format and structure of the response document. Only the eligible Offerors will be given an opportunity to provide a response to the Scope Statement hereafter referred to as a "Statement of Work". The evaluation and selection of a specific Offeror for each "Scope Statement" will be the responsibility of an evaluation committee.

This RFP will be re-issued annually. *(For example: The effective date of the original contract is March 1, 2006. The RFP will be re-issued in January 2007 and 2008, to allow for "open enrollment".)* Open enrollment will allow DHHS to refresh and maintain a current list of eligible vendors. At the time of open enrollment, current eligible vendors will be required to submit a signed copy of the Execution Page in order to maintain their eligibility status and update any changes in company information, such as address, contact person, etc. Failure to submit a signed Execution Page will result in removal from the eligibility list and could result in the termination of an existing project that was awarded under this contract. Offerors seeking eligibility will have the opportunity to submit a proposal in accordance with the re-issued RFP.

The State reserves the right to advertise on the open market a project(s) or service(s) that does not fall within the scope of this contract.

Consultant services will be handled in accordance with the North Carolina Administrative Code 01 NCAC 05D .0203.

C. Contract Term

The effective date of this contract shall begin on approximately March 1, 2007, and continue for one (1) year with the option to renew for an additional one (1) year.

SECTION II. BACKGROUND

The North Carolina Department of Health and Human Services (DHHS) is an umbrella state agency encompassing multiple health and human service administrative units and programs. Along with their local counterparts, divisions within DHHS are responsible for administering public services that meet the health and social welfare needs of adults, children, families and individuals residing in public institutions.

Within DHHS, the Division of Public Health (DPH) is charged with the following broad public health mandate: To protect the health of the public and ensure that communities are healthy places in which to live. To achieve this mission, DPH and its local counterparts (county health departments, public health districts and public health authorities) 1) assess the health status and health needs of North Carolina's residents, 2) develop and promote public policy and programs to improve health, well-being and safety, and 3) work to ensure reasonable access, cost and quality of preventive health care. These public health "core functions" are sustained through a network of essential public health services such as environmental protection (ensuring public water quality, safe disposal of waste, etc.), health promotion (automobile safety restraints, smoking cessation, nutrition, etc.), and disease prevention and control (measles, cholera, etc.).

The control and prevention of infectious diseases, improvements in environmental sanitation, and support for health-directed changes in lifestyles are examples of why public health has been the primary contributor to a 50% increase in lifespan (since 1900) for most Americans.

The Chronic Disease and Injury Prevention (CDIP) Section of the DPH acts to reduce morbidity and mortality associated with chronic diseases such as cardiovascular disease, diabetes, osteoporosis and cancer. Given that 50% of an individual's health status is determined by lifestyle choices, one of the primary strategies of CDIP is to address the principle risk factors associated with these diseases: inadequate diet and poor nutritional practices, insufficient levels of moderate physical activity, overweight/obesity and tobacco use. To this end, CDIP works to develop 1) policies, both public and private, that support chronic disease risk factor reduction; and 2) interventional programs that seek to modify or change unhealthy behaviors and support health-affirming lifestyle choices. Success in achieving disease prevention and health promotion goals and objectives is dependent (in part) upon the capacity of the public health system to:

- Analyze the behavioral determinants of unhealthy behavior within selected target populations;
- Develop programmatic interventions that are uniquely tailored to the meet the needs of these populations;
- Gain community support to create interventions that are sustainable and viable with local resources;
- Employ effective channels of communication and influence (including, but not limited to, mass mediated forms of communication) to reach target populations; and
- Effectively monitor and assess the impact of these interventions.

Other programs, including the Women's Health Section and the Epidemiology Section, deal with public health issues that involve lifestyle choices. These programs utilize the above capacities, also.

Historically, the primary public health approach to promoting health-directed behavior change has been health education – providing education, materials and information to "at risk" populations in the belief that education will be sufficient to bring about the desired changes. Extensive research and experience have shown that health-related behavior is far more complex and frequently very difficult to influence. As a result, practitioners of public health have moved to embrace a variety of other tools in their efforts to reduce, through voluntary behavior change and environmental support, the burden of chronic disease. Two of these tools are ***social marketing and consumer-based health communication***.

A. Social marketing is the application of commercial marketing strategies and tactics to bring about beneficial changes in behavior among members of a select, and narrowly defined, target audience. Social marketing seeks to bring about positive behavior change by implementing interventions that 1) lower the barriers that target audience's associate with the desired behavior, and 2) increase the benefits the audience identifies for the behavior. Social marketing uses audience research and behavioral science to understand the determinants of specific behaviors. A social marketing approach emphasizes: setting behavioral goals; working with specific audience segments within a broad population; using exchange theory and behavioral science; identifying competition to the desired behavior. While it is frequently confused with social advertising or media campaigns, social marketing uses all of the commercial marketing strategies of product, price, place and promotion. Social marketing programs are characterized by their: 1) focus on beneficial behavior change; 2) audience orientation; and 3) use of a variety of interventions, rather than reliance on communication alone.

B. Consumer-based health communication is the application of marketing/social marketing principles to the design, development and dissemination of messages or other forms of communication in order to influence target audience health-related behavior. Consumer-based health communication relies on many of the basic elements of the marketing approach: consumer focus, formative research, exchange theory, and data analysis. Consumer-based health communication differs from more traditional health communication tactics (e.g., risk communication) in its direct emphasis on behavior change (as opposed to changes in knowledge or attitude).

Between 1996 and 1999, the Division of Public Health undertook a series of initiatives to determine how best to structure public health for the 21st Century. The North Carolina Turning Point Initiative included several statewide assessments of the existing public health system. Among the principle findings was the realization that the capacity of North Carolina's public health system to carry out social marketing and consumer-based health communication programs was inadequate. One of the primary goals of this RFP is to significantly enhance this capacity.

SECTION III. SCOPE OF WORK

A. The Agency wishes to contract specifically for the following types of work and service:

1. Collection, analysis and interpretation of research data for selected target audiences, including (but not necessarily limited to: demographic, socioeconomic, psychographic and lifestyle information, and health behavior risk factors. The purpose of this data collection and analysis will be to profile target audience members in a manner that will support the development of effective behavior change strategies. At the very least, analysis of target audience data should facilitate audience segmentation and contribute to an understanding of relevant behavioral determinants. The Agency may require an Offeror to have access to, and familiarity with, health-related marketing databases such as *PRIZM* and *INFORM*. The Offeror must have a demonstrated capacity for the execution of research methods such as (but not necessarily limited to) surveys, focus groups, intercept interviews, etc.

2. Planning, management, and coordination social marketing interventions. Develop and recommend product, price, place and promotion interventions for a marketing campaign. Work collaboratively with the requesting program to develop and or carry out all elements of the marketing mix, depending on the experience and resources of the program.

3. Professional creative planning and execution of appropriate elements of a marketing campaign including, but not necessarily limited to, the design and production of logos, slogans, identity elements,

artwork, layout, and graphic design. In addition, the Agency may require the execution of body copy for print or outdoor material. Related services that might be needed include production and dissemination of marketing materials and the development of a brand identity for a particular program.

Original and professional quality artwork, responsive to the specific components of creative briefs developed by the Agency, also will be needed on an ongoing basis. All creative materials will be pre-tested with representative target audience members through techniques such as mall intercepts, to assess response and impact of messages.

4. Selection, purchase and placement of targeted communication including, but not necessarily limited to, public service announcements (PSA's), paid (commercial) advertising and/or underwriting mentions on public radio and television. The Agency may require an Offeror to negotiate favorable rates and opportunities for placement with multiple media vendors. Similarly, Offerors may be asked to schedule and purchase media placements for a number of ongoing public health programs, coordinating flights and insertions across print, broadcast, and other forms of media. The Agency will insist on public service and not-for-profit discounts whenever possible.

5. Impact evaluation of selected elements of a social marketing or health communication campaign, including but not necessarily limited to, the tracking and monitoring of strategy implementation, product distribution and use, outreach, and information dissemination activities, assessment of media strategies and creative executions, and cost-benefit analysis when possible and appropriate. Offerors will be required to provide creative, and media-related, evaluation data in a timely manner and in a fashion that is usable and understandable by the Agency. In certain instances, the Agency may require multiple contractors to cooperate on the evaluation component of a campaign. Because public funds will be used to support this work, potential contractors must demonstrate the highest level of professional standards and ethics when carrying out evaluation activities.

6. Management, planning and coordination of media and communication services. For programs that require a variety of technical services (e.g., media placement, creative execution, market research, etc.), the Agency may contract specifically for the management, planning and coordination of the technical work required. In such cases, individual Offerors selected as vendors for technical or creative work must demonstrate organizational willingness and capacity to work cooperatively within a collaborative management structure.

7. A division may require multiple contractors to cooperate on the evaluation component of a campaign. Because public funds will be used to support this work, potential contractors must demonstrate the highest level of professional standards and ethics when carrying out evaluation activities.

8. Both the individual public health project manager and the Public Affairs Office of DHHS must approve all creative work done by the Contractor or subcontractors. Further, resources that are currently available through DHHS (such as printing) should be given first priority over the Contractor's in-house or subcontractor resources.

SECTION IV. QUALIFICATIONS

A. Qualified Offerors must demonstrate organizational proficiency in population and consumer research methodology and social marketing theory and practice. In addition, a qualified Offeror must demonstrate (preferably through recent experience) a comprehensive understanding of public health programs, processes and organizations in North Carolina or other states with similar program operations.

B. Offerors must have the experience and resources to effectively manage and execute various phases of a social marketing or health communications program in consultation with the Agency. Because proposals will be for future as well as ongoing projects, individual offerors' services may be requested at various phases of different campaign(s). It is not required that a qualified Offeror have expertise and capacity in every strategic area listed above under "Scope of Work." However, to be considered qualified, an individual Offeror must demonstrate capacity and expertise in at least one of the strategic areas listed under "Scope of Work."

Examples of currently funded projects include the following:

- Start with your Heart/Strike Out Stroke – A statewide program using environmental and policy change and public awareness to move at risk populations through the "Stages of Change" in order to adopt behaviors that will prevent and control heart disease and stroke.
- Family Planning Medicaid Waiver – A statewide program extending family planning services to citizens up to 185% of the poverty level and increasing the number of medical providers who can be reimbursed for delivering these services. Used formative research (including focus groups and PRIZM data) to position the product and develop appropriate promotional materials for the target audience.
- Childhood Obesity Prevention – A grant funded program to prevent and reduce childhood overweight in African-American, American Indian and Hispanic youth, ages 5-11 and their families in four counties. Using social marketing to understand determinants of behavior for increased physical activity and reduced television and computer time, and to develop product, place, price and promotion interventions to support these behaviors.

SECTION V. PROPOSAL REQUIREMENTS

All proposals must be received by the issuing agency no later than the date and time specified on the cover sheet of this RFP. Each Offeror must provide two (2) originals and four (4) copies.

Offerors' Proposal must consist of and be organized as follows:

1. Signed Execution Page. Unsigned proposals will not be accepted.
2. Corporate Background
 - Date established
 - Ownership (public company, partnership, subsidiary, parent company)
 - Primary business
 - Total number of full-time employees
3. Corporate Experience
 - Offerors shall describe their experience relevant to the type projects described herein.
 - Offerors shall describe the types of services offered.

CERTIFICATIONS

When awarded a contract resulting from future Scope Statements, the Contractor will be required to sign the following documents prior to execution of the contract if supported by Federal funds.

a. CERTIFICATION REGARDING LOBBYING: This certification requiring the Contractor's signature and signature date is required to be attached to each executed contract that is funded in whole or partially with federal dollars. Use only when required by federal authorities.

b. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION--LOWER TIER COVERED TRANSACTIONS: This certification requiring the Contractor's signature and signature date is required to be attached to each executed contract that is funded in whole or partially with federal dollars. Use only when required by federal authorities.

c. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS: This certification requiring the Contractor's signature and signature date is required to be attached to each executed contract when required by the funding source, usually federal grants. Use only when required by federal authorities.

d. CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE: This certification requiring the Contractor's signature and signature date is required to be attached to each executed contract that is funded in whole or partially with federal dollars and providing health, day care, education, or library services to children under the age of 18. Use only when required by federal authorities. (Does not apply to contracts with private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment).

SECTION VI. GENERAL INFORMATION ON SUBMITTING PROPOSALS

1. EXCEPTIONS: All proposals are subject to the terms and conditions outlined herein. All responses shall be controlled by such terms and conditions and the submission of other terms and conditions, price lists, catalogs, and/or other documents as part of an offeror's response will be waived and have no effect either on this Request for Proposals or on any contract that may be awarded resulting from this solicitation. Offeror specifically agrees to the conditions set forth in the above paragraph by signature to the proposal.

2. CERTIFICATION: By executing the proposal, the signer certifies that this proposal is submitted competitively and without collusion (G.S. 143-54), that none of our officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that we are not an ineligible Vendor as set forth in G.S. 143-59.1. False certification is a Class I felony.

3. ORAL EXPLANATIONS: The State shall not be bound by oral explanations or instructions given at any time during the competitive process or after award.

4. REFERENCE TO OTHER DATA: Only information which is received in response to this RFP will be evaluated; reference to information previously submitted shall not be evaluated.

5. ELABORATE PROPOSALS: Elaborate proposals in the form of brochures or other presentations beyond that necessary to present a complete and effective proposal are not desired.

In an effort to support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort.

6. It is desirable that all responses meet the following requirements:

- All copies are printed **double sided**.
- All submittals and copies are printed on **recycled paper with a minimum post-consumer content of 30%** and indicate this information accordingly on the response.
- Unless absolutely necessary, all proposals and copies should **minimize or eliminate use of non-recyclable or non re-usable materials** such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
- Materials should be submitted in a format which allows for **easy removal and recycling** of paper materials.

7. COST FOR PROPOSAL PREPARATION: Any costs incurred by offerors in preparing or submitting offers are the offerors' sole responsibility; the State of North Carolina will not reimburse any offeror for any costs incurred prior to award.

8. TIME FOR ACCEPTANCE: Each proposal shall state that it is a firm offer which may be accepted within a period of 90 days. Although the contract is expected to be awarded prior to that time, the 90 day period is requested to allow for unforeseen delays.

9. TITLES: Titles and headings in this RFP and any subsequent contract are for convenience only and shall have no binding force or effect.

10. CONFIDENTIALITY OF PROPOSALS: In submitting its proposal the offeror agrees not to discuss or otherwise reveal the contents of the proposal to any source outside of the using or issuing agency, government or private, until after the award of the contract. Offerors not in compliance with this provision may be disqualified, at the option of the State, from contract award. Only discussions authorized by the issuing agency are exempt from this provision.

11. RIGHT TO SUBMITTED MATERIAL: All responses, inquiries, or correspondence relating to or in reference to the RFP, and all other reports, charts, displays, schedules, exhibits, and other documentation submitted by the offerors shall become the property of the State when received.

12. OFFEROR'S REPRESENTATIVE: Each offeror shall submit with its proposal the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.

13. SUBCONTRACTING: Offerors may propose to subcontract portions of the work provided that their proposals clearly indicate what work they plan to subcontract and to whom and that all information required about the prime contractor is also included for each proposed subcontractor.

14. PROPRIETARY INFORMATION: Trade secrets or similar proprietary data which the offeror does not wish disclosed to other than personnel involved in the evaluation or contract administration will be kept confidential to the extent permitted by NCAC T01:05B.1501 and G.S. 132-1.3 if identified as follows: Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL". Any section of the proposal which is to remain confidential shall also be so marked in boldface on the title page of that section. Cost information may not be deemed confidential. In spite of what is labeled as confidential, the determination as to whether or not it is shall be determined by North Carolina law.

15. HISTORICALLY UNDERUTILIZED BUSINESSES: Pursuant to General Statute 143-48 and Executive Order #150, DHHS invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled.

16. PROTEST PROCEDURES: When an offeror wants to protest a contract awarded pursuant to this solicitation, that is over \$25,000.00, they must submit a written request to the State Purchasing Officer, Division of Purchase and Contract, 116 West Jones Street, Raleigh, NC 27603 or via US Mail to 1305 Mail Service Center, Raleigh, NC 27699-1305. This request must be received by the Division of Purchase and Contract within thirty (30) consecutive calendar days from the date of the contract award, and must contain specific sound reasons and any supporting documentation for the protest. NOTE: Contract award notices are sent only to those actually awarded contracts, and not to every person or firm responding to this solicitation. Contract status and award notices are posted on the internet at <http://www.state.nc.us/pandc/>. Offerors may call (919) 733-2105 to obtain a verbal status of contract award. All protests will be handled pursuant to the North Carolina Administrative Code, Title 1, Department of Administration, Chapter 5, Purchase and Contract, Section 5B.1519.

17. TABULATIONS: The Division has implemented an Interactive Purchasing System (IPS) that allows the public to retrieve bid tabulations electronically from our Internet web site: < <http://www.state.nc.us/pandc/> >. Click on the IPS BIDS icon, click on Search for Bid, enter the RFP number, and then search. Tabulations will normally be available at this web site not later than one working day after opening. Lengthy tabulations may not be available on the Internet, and requests for these verbally or in writing cannot be honored.

18. VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM: Vendor Link NC allows Vendors to electronically register free with the State to receive electronic notification of current procurement opportunities for goods and services available on the Interactive Purchasing System. Online registration and other purchasing information are available on our Internet web site: < <http://www.state.nc.us/pandc/> >.

19. RECIPROCAL PREFERENCE: G.S. 143-59 establishes a reciprocal preference law to discourage other states from applying in-state preferences against North Carolina's resident offerors. The Principal Place of Business" is defined as the principal place from which the trade or business of the offeror is directed or managed.

20. LIMIT OF LIABILITY:

Neither the State of North Carolina, nor its employees shall be responsible for any liability claims against the Contractor.

21. PARTIES TO THE CONTRACT:

The parties to this Contract are the North Carolina Department of Health and Human Services and the Contractor selected through this RFP process.

Contract Documents:

The Contract consists of the following documents, incorporated herein by reference:

- (a) The Addenda to this RFP, if any;
- (b) This RFP; and
- (c) The Contractor's Proposal.

SECTION VII. GENERAL TERMS AND CONDITIONS

Relationships of the Parties

Independent Contractor: The Contractor is and shall be deemed to be an independent contractor in the performance of this contract and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Contractor represents that it has, or shall secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with, the Division.

Subcontracting: The Contractor shall not subcontract any of the work contemplated under this contract without prior written approval from the Division. Any approved subcontract shall be subject to all conditions of this contract. Only the subcontractors specified in the contract documents are to be considered approved upon award of the contract. The Division shall not be obligated to pay for any work performed by any unapproved subcontractor. The Contractor shall be responsible for the performance of all of its subcontractors.

Assignment: No assignment of the Contractor's obligations or the Contractor's right to receive payment hereunder shall be permitted. However, upon written request approved by the issuing purchasing authority, the State may:

- (a) Forward the Contractor's payment check(s) directly to any person or entity designated by the Contractor, or
- (b) Include any person or entity designated by Contractor as a joint payee on the Contractor's payment check(s).

In no event shall such approval and action obligate the State to anyone other than the Contractor and the Contractor shall remain responsible for fulfillment of all contract obligations.

Beneficiaries: Except as herein specifically provided otherwise, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this contract, and all rights of action relating to such enforcement, shall be strictly reserved to the Division and the named Contractor. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Division and Contractor that any such person or entity, other than the Division or the

Contractor, receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

Indemnity and Insurance

Indemnification: The Contractor agrees to indemnify and hold harmless the Division, the State of North Carolina, and any of their officers, agents and employees, from any claims of third parties arising out of any act or omission of the Contractor in connection with the performance of this contract.

Insurance: During the term of the contract, the Contractor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the Contractor shall provide and maintain the following coverage and limits:

- (a) **Worker's Compensation** - The contractor shall provide and maintain Worker's Compensation Insurance as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$500,000.00, covering all of Contractor's employees who are engaged in any work under the contract. If any work is sublet, the Contractor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the contract.
- (b) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)
- (c) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles used in performance of the contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$25,000.00 medical payment.

Providing and maintaining adequate insurance coverage is a material obligation of the Contractor and is of the essence of this contract. The Contractor may meet its requirements of maintaining specified coverage and limits by demonstrating to the Division that there is in force insurance with equivalent coverage and limits that will offer at least the same protection to the Division. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such

coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the Contractor shall not be interpreted as limiting the contractor's liability and obligations under the contract.

Default and Termination

Termination Without Cause: The Division may terminate this contract without cause by giving **30 days written notice** to the Contractor. In that event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the Division, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials, minus any payment or compensation previously made.

Termination for Cause: If, through any cause, the Contractor shall fail to fulfill its obligations under this contract in a timely and proper manner, the Division shall have the right to terminate this contract by giving written notice to the Contractor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the Division, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials, minus any payment or compensation previously made. Notwithstanding the foregoing provision, the Contractor shall not be relieved of liability to the Division for damages sustained by the Division by virtue of the Contractor's breach of this agreement, and the Division may withhold any payment due the Contractor for the purpose of setoff until such time as the exact amount of damages due the Division from such breach can be determined. In case of default by the Contractor, without limiting any other remedies for breach available to it, the Division may procure the contract services from other sources and hold the Contractor responsible for any excess cost occasioned thereby. The filing of a petition for bankruptcy by the Contractor shall be an act of default under this contract.

Waiver of Default: Waiver by the Division of any default or breach in compliance with the terms of this contract by the Provider shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be modification of the terms of this contract unless stated to be such in writing, signed by an authorized

representative of the Department and the Contractor and attached to the contract.

Availability of Funds: The parties to this contract agree and understand that the payment of the sums specified in this contract is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the Division.

Force Majeure: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

Survival of Promises: All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

Intellectual Property Rights

Copyrights and Ownership of Deliverables: All deliverable items produced pursuant to this contract are the exclusive property of the Division. The Contractor shall not assert a claim of copyright or other property interest in such deliverables.

Federal Intellectual Property Bankruptcy Protection Act: The Parties agree that the Division shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365 (n), and any amendments thereto.

Compliance with Applicable Laws

Compliance with Laws: The Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

Equal Employment Opportunity: The Contractor shall comply with all federal and State laws relating to equal employment opportunity.

Health Insurance Portability and Accountability Act (HIPAA): The Contractor agrees that, if the Division determines that some or all of the activities within the scope of this contract are subject to the Health Insurance Portability and Accountability Act of 1996, P.L.

104-91, as amended ("HIPAA"), or its implementing regulations, it will comply with the HIPAA requirements and will execute such agreements and practices as the Division may require to ensure compliance.

Confidentiality

Confidentiality: Any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Contractor under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the Division. The Contractor acknowledges that in receiving, storing, processing or otherwise dealing with any confidential information it will safeguard and not further disclose the information except as otherwise provided in this contract.

Oversight

Access to Persons and Records: The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7. Additionally, as the State funding authority, the Department of Health and Human Services shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions.

Record Retention: The Department of Health and Human Services' basic records retention policy requires all records to be retained for a minimum of three years following completion or termination of the contract. If the contract is subject to Federal policy and regulations, record retention will normally be longer than three years since records must be retained for a period of three years following submission of the final Federal Financial Status Report, if applicable, or three years following the submission of a revised final Federal Financial Status Report. Also, if any litigation, claim, negotiation, audit, disallowance action, or other action involving this contract has been started before expiration of the three year retention period described above, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three year period described above, whichever is later. Therefore, records shall not be destroyed, purged or disposed of without the express written consent of the Division.

Warranties and Certifications

Date and Time Warranty: The Contractor warrants that the product(s) and service(s) furnished pursuant to this contract ("product" includes, without limitation, any piece of equipment, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interfaces therein) that perform any date and/or time data recognition function, calculation, or sequencing will support a four digit year format and will provide accurate date/time data and leap year

calculations. This warranty shall survive the termination or expiration of this contract.

Certification Regarding Collection of Taxes: G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with Vendors that meet one of the conditions of G.S. 105-164.8(b) and yet refuse to collect use taxes on sales of tangible personal property to purchasers in North Carolina. The conditions include: (a) maintenance of a retail establishment or office; (b) presence of representatives in the State that solicit sales or transact business on behalf of the Vendor; and (c) systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. The Contractor certifies that it and all of its affiliates (if any) collect all required taxes.

Miscellaneous

Choice of Law: The validity of this contract and any of its terms or provisions, as well as the rights and duties of the parties to this contract, are governed by the laws of North Carolina. The Contractor, by signing this contract, agrees and submits, solely for matters concerning this Contract, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purpose, that the exclusive venue for any legal proceedings shall be Wake County, North Carolina. The place of this contract and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

Amendment: This contract may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of the Division and the Contractor. The Purchase and Contract Divisions of the NC Department of Administration and the NC Department of Health and Human Services shall give prior approval to any amendment to a contract awarded through those offices.

Severability: In the event that a court of competent jurisdiction holds that a provision or requirement of this contract violates any applicable law, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this contract shall remain in full force and effect.

Headings: The Section and Paragraph headings in these General Terms and Conditions are not material parts of the agreement and should not be used to construe the meaning thereof.

Time of the Essence: Time is of the essence in the performance of this contract.

Key Personnel: The Contractor shall not replace any of the key personnel assigned to the performance of this contract without the prior written approval of the Division. The term "key personnel" includes any and all persons identified as such in the contract documents and any other persons subsequently identified as key personnel by the written agreement of the parties.

Care of Property: The Contractor agrees that it shall be responsible for the proper custody and care of any

property furnished to it for use in connection with the performance of this contract and will reimburse the Division for loss of, or damage to, such property. At the termination of this contract, the Contractor shall contact the Division for instructions as to the disposition of such property and shall comply with these instructions.

Travel Expenses: Reimbursement to the Contractor for travel mileage, meals, lodging and other travel expenses incurred in the performance of this contract shall not exceed the rates published in the applicable State rules. International travel shall not be reimbursed under this contract.

Sales/Use Tax Refunds: If eligible, the Contractor and all subcontractors shall: (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this contract, pursuant to G.S. 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their reimbursement reports.

Advertising: The Contractor shall not use the award of this contract as a part of any news release or commercial advertising

Attachment A

EXECUTION OF PROPOSAL

By submitting this proposal, the potential contractor certifies the following:

- This proposal is signed by an authorized representative of the firm.
- The Offeror will submit Statements of Work that are responsive to future Scope Statements issued under this RFP.
- The potential contractor has read and understands the conditions set forth in this RFP and agrees to them with no exceptions.

Therefore, in compliance with this Request for Proposals, and subject to all conditions herein, the undersigned offers and agrees, if this proposal is accepted within 90 days from the date of the opening, to furnish the subject services.

OFFEROR: _____

ADDRESS: _____

CITY, STATE, ZIP: _____

TELEPHONE NUMBER: _____ **E-MAIL ADDRESS:** _____

PRINCIPAL PLACE OF BUSINESS IF DIFFERENT FROM ABOVE: _____

FEDERAL EMPLOYER IDENTIFICATION NUMBER: _____

BY: _____ **TITLE:** _____ **DATE:** _____
(Signature)

(Typed or printed name)

ACCEPTANCE OF PROPOSAL

The Department of Health & Human Services

BY: _____ **TITLE:** _____ **DATE:** _____

THIS PAGE MUST BE SIGNED AND INCLUDED IN YOUR PROPOSAL.

Unsigned proposals will not be considered.