



**STATE OF ARKANSAS**

**ARKANSAS DEPARTMENT OF HEALTH (ADH)**

**REQUEST FOR PROPOSALS**

**RFP# DH-12-0005**

**For**

**Tobacco Prevention & Cessation  
Media and Health Communications**

**Date Issued:**

**November 21, 2011**

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## **SECTION 1**

### **INTRODUCTION**

#### **1.1 Purpose**

The purpose of this Request for Proposal (RFP) is as follows:

Based on the availability of funds, to solicit proposals which will result in one (1) contractor who will coordinate media, health communications and public education activities for the Tobacco Prevention and Cessation Program (TPCP) with a working budget of approximately \$1.3 million. The purpose of this contract will be to educate adults and youth about tobacco prevention and cessation, encouraging them to quit or to never start using tobacco. Health education campaigns will target Arkansans using multiple media opportunities. Any media campaigns will promote tobacco prevention and cessation.

Specifically, we seek a contractor who will work closely with the TPCP and other media/health communication partners to implement a comprehensive state-level media plan with measurable objectives and performance indicators, which will be utilized by program staff to monitor the impact of these programs. The successful media and health communications contractor will be charged with administering TPCP's existing Stamp Out Smoking media and public education program with the following responsibilities:

- Determining and recommending the best strategies for reaching the target audience in order to achieve the greatest overall impact for educating on tobacco prevention and cessation
- Developing appropriate earned and paid media campaigns in order to reach the audience
- Reviewing and incorporating existing media campaigns where appropriate
- Producing reports, publications, promotional and other materials for TPCP
- Meeting the media, marketing and public education needs of TPCP in an efficient, coordinated and integrated manner

The contract for media, health communications and public education will be awarded via a professional services contract (PSC) between the Arkansas Department of Health and the successful respondent. The contract is contingent upon review by the Arkansas Department of Finance and Administration, Office of State Procurement, the Arkansas Legislative Council and/or the Joint Budget Committee and other funding sources, as necessary. Applicants may obtain more information and/or technical assistance by contacting the ADH Issuing Officer (see Section 3.1).

#### **1.2 Background**

##### **Tobacco Prevention & Cessation Program**

In 1993, the Arkansas Tobacco Prevention and Cessation Program was established through a federal grant from the Department of Health & Human Services, Centers of Disease Control and Prevention (CDC). In July 2001 the program was drastically enhanced with the receipt of funding from the Master Settlement Agreement (MSA). The Arkansas Department of Health receives 31.6% of the annual payment into the Tobacco Settlement Program fund. Fifteen (15) percent of the 31.6% is allocated by law to serve tobacco prevention and cessation activities in minority communities.

The mission of the TPCP is to reduce death, disability and disease related to tobacco use among Arkansas citizens, through the implementation of the Centers for Disease Control and Prevention's Best Practices for Comprehensive Tobacco Control Programs. These include: Administration and Management; Cessation

Interventions; Health Communication Interventions; State and Community Interventions, and Surveillance and Evaluation.

By following these Best Practices, the TPCP utilizes evidence-based strategies to address the four (4) primary goals of a comprehensive tobacco control program as follows:

- Preventing initiation among youth and young adults
- Eliminating exposure to secondhand smoke
- Promoting quitting among adults and youth
- Identifying and eliminating tobacco-related disparities among population groups

In the fight against tobacco, TPCP targets a broad audience which includes: those who smoke cigarettes; users of smokeless tobacco; women who smoke while pregnant, tobacco users struggling with mental illnesses and/or substance abuse addiction, and youth.

TPCP's successful outcomes include passage of legislation to make workplaces, including hospitals and public funded college campuses, smoke-free; legislation to protect children restrained in child passenger safety seats from secondhand smoke; reduced smoking rates among adults and youth; strengthened enforcement regulations, and a 2006 increase in the tobacco tax.

For more information on TPCP, visit:

<http://www.healthy.arkansas.gov/programsServices/tobaccoprevent/Pages/default.aspx>

### **About the Stamp Out Smoking Program**

TPCP conducts its media and public education efforts through the Stamp Out Smoking (SOS) program. Since its inception in 2002, SOS has developed creative advertising programs and utilizes a diverse mix of paid media, sponsorships, public relations and grassroots outreach to inform the public about the detrimental effects of tobacco use. More information about SOS can be obtained by visiting [www.stampoutsmoking.com](http://www.stampoutsmoking.com).

## **1.3 Overview of ADH Organization and Operations**

The Arkansas Department of Health (ADH) has a mission to promote public health policies and practices that assure a healthy quality of life for Arkansans. The TPCP is critical to the ADH mission and is administered through the Center for Health Advancement.

## **1.4 Scope of Work**

The ADH announces the availability of approximately \$1.3 million for a competing agreement for an advertising and public relations agency to serve the TPCP.

**The final amount of the winning contract will depend upon the availability of funds.**

Respondents should clearly define the best way to achieve the various section or program goals and tailor proposals and presentations to fit the agency's proposed budget of approximately \$1.3 million.

The successful contractor will be expected to include information with the RFP as to how the contractor will:

- 1.4.1. Cooperate fully with designated personnel from ADH/TPCP, other media/health communication partners and/or advisory board members as appropriate, during the course of the media contract. The contractor will submit campaign strategy and plan components to the staff and/or advisory board or designees, as appropriate, for approval.

- 1.4.2. Partner with ADH program designees in the selection of pre-produced media, the development of new media, testing, production, placement and evaluation of media components.
- 1.4.3. Work collaboratively with all other TPCP media contractors in order to maximize the campaign's impact and to ensure there is no duplication.
- 1.4.4. Maximize the exposure to target audiences and the value of media purchased under the allocated budget.
- 1.4.5. Assign a specific account manager, or team of executives, to supervise day-to-day management of the account with other qualified executives available as needed.
- 1.4.6. Meet with ADH or TPCP staff, or other program designee on a regular basis to ensure a well-coordinated flow of work.
- 1.4.7. Work with assigned program staff to identify and implement efficiencies and integration in as many places as possible between the programs' messages.
- 1.4.8. Participate in TPCP strategy meetings, as determined by staff. These meetings will be coordinated by the TPCP and will include program staff and contractors and, on occasion, outside partner organizations.
- 1.4.9. Provide detailed programmatic and financial reports including a summary of hourly rates as well as typical mark up rates for third party costs at inception of contract and on a yearly basis. The hourly rates should be provided as part of this proposal.
- 1.4.10. Provide program designee, a written summary and timeline of all contract activities within two (2) weeks after the contract starts
- 1.4.11. All printing must be awarded under contract to the lowest responsible bidder in order to comply with Amendment 54 requirements. Contractor must provide evidence that they have solicited competitive bids on any printing work.

The following Section describes the specific scope of work for this RFP.

**Pending the availability of funds, share with ADH how the selected contractor intends to provide the following specific deliverables:**

- 1.4.12. Administer the Stamp Out Smoking media and public education program.
- 1.4.13. Create, test, produce, place and manage all media and educational campaigns using a combination of social media, electronic, print, grassroots and public service campaigns. The campaigns will include media placement, purchase, production, pre-testing, placement and evaluation of the placed media.
- 1.4.14. Place any advertising campaign ads through a combination of both paid placement ads and public service announcements of equal value, maximizing the exposure to target audiences and the value of media purchased under the allocated budget.
- 1.4.15. Provide optimal media coverage to ensure the budget is maximized. All media should be placed according to a schedule approved by the program designee using approved media.
- 1.4.16. Provide program designee a quarterly television, radio and print media buy plan summary for approval a minimum of two (2) weeks prior to scheduled release of the ads. Subsequently, the program designee must approve any changes to the provided schedule. (A media buy plan summary is defined as a plan that includes a breakout of placements for the target audience and each campaign theme to include: budget, markets, a specific week's ads for which each theme will run and an estimate of reach/frequency/effective reach/gross ratings points, and daily time frame for TV/radio spots.)
- 1.4.17. Develop, coordinate and execute all earned media activities including public service announcements, feature stories, special news releases, special events, news conferences, media interviews, talking points and media kits.
- 1.4.18. Maintain the program's website and social media sites, making updates, at a minimum, on a monthly basis and adding crucial information weekly as needed.

- 1.4.19. Research and identify effective ways to reach the target audience and make recommendations for the most economical use of the funds.
- 1.4.20. Conduct creative testing of any new advertising materials with focus groups, based on staff and/or advisory board recommendations. Vendor must provide examples of methods, with adequate rationales as to how or why to test proposed or new advertising materials.
- 1.4.21. Provide a quarterly and annual written assessment of the full campaign, reporting on the impact including a detailed post-buy analysis.
- 1.4.22. Provide measurable evaluation methods for campaign outcomes.
- 1.4.23. Demonstrate with a sample quarterly buy plan, how they will maximize use of the most effective media outlets, which are determined to reach the target populations. The respondent must include at least three (3) current, preferably health-related case studies which exemplify work similar to that described in this RFP. Each study should identify the client and years of service, contain a statement about the scope of work, and provide insight into how the campaign was developed and implemented. Case studies should also detail how surveys (or other performance indicators) were used to measure health behavior change issues or the success of each program.

## 1.5. Contract Duration

Work will be done within the constraints of a professional services contract with a proposed effective period of July 1, 2012 through June 30, 2013. The contract may be extended for up to six (6) additional years, in increments no more than one (1) year or portions thereof, not to exceed a total contract period of seven (7) years from date of award, contingent upon approval by the ADH, its programs, review by the legislature, DFA/OSP approvals, appropriation of necessary funding and all necessary federal reviews and approvals.

## 1.6. Acronyms Used in RFP DH-12-0005

<b>Acronym</b>	<b>Descriptor</b>
A.C.A.	Arkansas Code Annotated
ADH	Arkansas Department of Health
CD	Computer Disc
CDC	Centers of Disease Control and Prevention
CST	Central Standard Time
DFA	Arkansas Department of Finance and Administration
EEO	Equal Employment Opportunity Policy
EO	Employment Opportunity Policy
FTE	Full Time Equivalent
MSA	Master Settlement Agreement
OSP	Arkansas Office of State Procurement
PSC	Professional/Consultant Services Contract
RFP	Request for Proposals
SOS	Stamp Out Smoking program
TPCP	Tobacco Prevention and Cessation Program

## SECTION 2

### RFP SCHEDULE OF EVENTS

#### 2.1. RFP Schedule of Events

The following timetable is anticipated for the procurement process. All times refer to local time (CST) in Little Rock, Arkansas.

Event	Date
RFP issued	November 21, 2011
Due date for written questions	2:00 P.M., December 8, 2011.
Anticipated due date for answers to questions	December 16, 2012
Closing date and time for receipt of proposals & Official Opening	2:00 P.M., January 20, 2012
Oral presentations	February 10, 2012
Anticipated completion of proposal evaluation and contract selection	February 17, 2012
Anticipation of Award announcement placed on OSP website	February 24, 2012
Contract start (Subject to State approval)	July 1, 2012



## **SECTION 3**

### **GENERAL REQUIREMENTS AND INFORMATION**

#### **3.1 ADH Issuing Officer**

This RFP is issued by the Arkansas Department of Health (ADH).

Although communications regarding protests are permitted in accordance with Arkansas Code Annotated (A.C.A.) §19-11-244, from the issue date of this RFP until a successful respondent is selected and announced, respondents shall limit all other communications with any state staff about this or a related procurement to the ADH Issuing Officer. All questions and requests for clarification should be addressed to the ADH Issuing Officer listed below:

Timothy Smith, CPPB  
Procurement Branch Chief  
Arkansas Department of Health  
4815 West Markham, Slot 58  
Little Rock, AR 72205  
501-280-4573  
[timothy.w.smith@arkansas.gov](mailto:timothy.w.smith@arkansas.gov)

#### **3.2 Questions**

Respondents with questions about the RFP shall submit their questions in writing by close of business on the date specified in Section 2.1. Respondents shall submit their written questions to the ADH Issuing Officer identified in Section 3.1. Respondents may submit their questions by e-mail, but it remains the respondent's responsibility to guarantee receipt of the questions by the specified time and date. The State accepts no responsibility for accurate or timely receipt of e-mail submissions from respondents. Questions received after the due date and time will not be answered.

**The ADH Issuing Officer will post written responses to questions received, on the DFA/OSP website <http://www.arkansas.gov/dfa/procurement/bids/index.php> in the form of an addendum. Respondents will be responsible for obtaining, signing and the returning of any addendums.**

Respondents shall rely only on these written responses as the official answers to questions related to this RFP.

#### **3.3 Proposal Submittal**

To be considered, each respondent shall submit a complete response to this RFP, using the format provided. An official who is authorized to bind the respondent to its provisions must sign the proposal in ink. The proposal must include a statement that the proposal remains valid through the evaluation, selection, and contract period.

Each proposal should be prepared simply and economically, providing a straightforward, clearly organized, and concise response by the respondent to the requirements of the RFP. Emphasis should be on completeness, clarity of content and ease of use for the reviewers/evaluators. The respondent shall not include materials in the proposal or with the proposal package that do not directly apply to this RFP.

### **3.4 Proposal Preparation Costs**

All costs for developing the response to this RFP are solely the responsibility of the respondents. The ADH will provide no reimbursement for such costs. All costs associated with any oral presentations to ADH will be the responsibility of the respondent and shall not be paid for or reimbursed by ADH. The ADH is not liable for any cost incurred by any respondent prior to the issuance of any agreement or contract.

All proposals, responses, materials, inquiries or correspondence relating to or in reference to this RFP will become the property of the ADH and will not be returned.

### **3.5 Opening of Proposals**

The ADH Issuing Officer will publicly open proposals on the date identified in **Section 2.1**. Individuals wishing to attend the public opening may contact the ADH Issuing Officer for location and time information.

### **3.6 Acceptance of Proposals**

All proposals properly submitted in accordance with the above rules shall be accepted by the ADH. However, ADH reserves the right to request necessary amendments or supplementation to proposals or to reject any or all proposals received, amend the RFP or cancel this RFP at any time, according to the best interest of ADH.

The ADH reserves the right to waive minor irregularities in proposals providing they meet the rules of procurement and mandatory requirements. Such a waiver shall be done in the best interest of the ADH and shall in no way modify the RFP requirements or excuse the respondent from full compliance with the RFP specifications, including contract requirements if the respondent is awarded the contract.

### **3.7 Rejection of Proposals**

The ADH reserves the right to reject any and all proposals received as a result of this RFP. Failure to furnish all information may disqualify a respondent. If the respondent takes exceptions to the RFP that are not acceptable to the ADH, the proposal may be rejected.

Proposals will not be considered if submitted by any person or entity subject to debarment or exclusion under applicable laws, regulations, or rules in effect at the time the proposal is made, reviewed or both.

### **3.8 Disposition of Proposals**

All proposals become the public property of the ADH and will be a matter of public record subject to the provisions of the Arkansas Freedom of Information Act, A.C.A. §25-19-101 *et seq.* In accordance with A.C.A. §25-19-105 (b) (9) (A), to prevent any parties from obtaining information that would result in an unfair competitive advantage, no proposals will be released prior to the announcement of the results of the procurement process.

If the proposal contains material that is considered by the respondent to be confidential under Arkansas law, the respondent must so designate the material and state the basis for the claim of confidentiality in the Statement of Acknowledgement. In responding to any requests under the Freedom of Information Act for materials so designated, the ADH shall review the basis for the claim of confidentiality to determine if the claim of confidentiality appears justified. If there appears to be a valid basis for the claim of confidentiality, the materials will not be released.

If, in the judgment of the ADH, there is no valid justification for the claim of confidentiality, the respondent will be notified prior to the release of the information in order to allow the respondent the opportunity to pursue any desired legal remedies.

### **3.9 Incorporation into the Contract**

Appropriate portions of the successful proposal may be incorporated into the resulting contract and shall be a public record subject to disclosure under the provisions of the Arkansas Freedom of Information Act, A.C.A. §25-19-101 through §25-19-107.

The ADH shall have the right to use all ideas, or adaptations of those ideas, contained in any proposal received in response to the RFP. Selection or rejection of the proposal shall not affect this right.

### **3.10 Subcontracting**

Each respondent in its proposal shall designate only one (1) organization as the primary contractor. All other participating organizations shall be designated as subcontractors and all subcontractors are subject to prior approval by ADH.

Respondents shall certify that they have all the necessary resources to complete the work described in the RFP Scope of Work section. Only the subcontractors approved by the ADH shall work on the contract. Respondents must attach to their Statement of Acknowledgement statements from each subcontractor confirming their willingness and ability to perform the work designated in the proposal. Respondents shall not make multiple proposals as the primary contractor under this proposal and as subcontractor in other proposals.

### **3.11 Minority Business Policy**

Minority participation is encouraged in this and all other procurements by state agencies. "Minority" is defined by A.C.A. §1-2-503 as "black or African American, Hispanic American, American Indian or Native American, Asian and Pacific Islander." The Division of Minority Business Enterprise of the Department of Economic Development conducts a certification process for minority businesses. Respondents unable to include minority-owned businesses as subcontractors may explain the circumstances preventing minority inclusion.

### **3.12 Independent Price Determination**

Respondent's Cost Proposal (price) shall be arrived at independently without collusion, consultation, communication, or agreement with any other respondent or with any competitor. The respondent shall include a statement in the proposal that the price was arrived at independently without collusion, consultation, communication, or agreement. Should a conflict of interest be detected at any time during the contract, the contract shall be deemed null and void and the contractor shall assume all costs of the contract until such time that a new contractor is selected.

### **3.13 Prohibited Solicitation**

It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business (A.C.A. §19-11-229). If this provision is violated, the ADH shall have the right to reject the proposal, annul the contract without liability, or deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

### **3.14 RFP Amendments**

The ADH reserves the right to amend the RFP prior to opening of the proposal. Prior to the due date for proposals, amendments, addenda and clarifications will be posted on the internet at <http://www.arkansas.gov/dfa/procurement/bids/index.php>.

### **3.15 Proposal Amendments and Rules of Withdrawal**

Prior to the proposal selection date, a submitted proposal may be withdrawn by submitting a written request for its withdrawal to the ADH Issuing Officer, signed by the respondent.

The ADH will not accept any amendments, revisions, or alterations to the request for proposals after the proposal due date unless such changes were requested by the ADH Issuing Officer.

### **3.16 Respondent's Contact Person**

Respondent will provide the name, telephone number, including area code, and email address of an authorized person in its company who may be contacted regarding this RFP response.

### **3.17 Anticipation of Award**

After complete evaluation of the proposal, the anticipated award announcement will be posted on the Department of Finance and Administration, Office of State Procurement website [http://www.arkansas.gov/dfa/procurement/pro\\_intent.php](http://www.arkansas.gov/dfa/procurement/pro_intent.php). The purpose of the posting is to establish a specific time in which vendors and agencies are aware of the anticipated award. The RFP results will be posted for fourteen (14) calendar days prior to the issuance of any award. Vendors and agencies are cautioned that these are preliminary results only and no official award will be issued prior to the end of the fourteen-day (14) posting period. Accordingly, any reliance on these preliminary results is at the agency/vendor's own risk.

The Office of State Procurement (OSP) reserves the right to waive this policy, the Anticipation to Award, when it is in the best interests of the State.

### **3.18 Awarding of Contract**

The ADH may decline to enter into a contract as a result of this RFP. If a contract is awarded, it shall be awarded to the respondent whose proposal is determined to be most advantageous to the ADH based on the selection criteria. The ADH is not liable for any cost incurred by any respondent prior to the issuance of any contract. The contract is subject to state approval processes including but not limited to approval by DFA and legislative review as well as federal agency oversight and is not valid until those processes are complete.

### 3.19 Rules of Procurement

Any actual or prospective respondent, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may file a written protest with the ADH Director and State Procurement Director within fourteen (14) calendar days after the respondent knows or should have known of the facts giving rise thereto in accordance with A.C.A. §19-11-244. The State Procurement Director, ADH Director or a designee, prior to commencement of an action in court or any other action provided by law, will attempt to negotiate a settlement of the protest with the parties in accordance with A.C.A. §19-11-244. This decision will be final and conclusive.

### 3.20 Restriction on Communications with State Staff

Although communications regarding protests are permitted in accordance with A.C.A. §19-11-246, from the issue date of this RFP until a successful respondent is selected and the selection is announced, respondents shall limit all other communications with any state staff about this or a related procurement to the ADH Issuing Officer. If this provision is violated, the state shall have the right to reject the proposal and annul the contract without liability.

### 3.21 Equal Employment Opportunity Policy

In compliance with **Act 2157 of 2005**, the Office of State Procurement is required to have a copy of the vendor's Equal Employment Opportunity (EEO) Policy prior to issuing a contract award to the vendor. The vendor may submit its EEO policy as a hard copy accompanying vendor's response to this solicitation or in electronic format to the Office of State Procurement at the following e-mail address: [eeopolicy.osp@dfa.state.ar.us](mailto:eeopolicy.osp@dfa.state.ar.us). The Office of State Procurement will maintain a file of all vendor EO policies submitted in response to solicitations issued by this office. The submission is a one-time requirement but vendors are responsible for providing updates or changes to their respective policies and of supplying EO policies upon request to other state agencies that must also comply with this statute. Vendors that do not have an established EO policy will not be prohibited from receiving a contract award, but are required to submit a written statement to that effect.

### 3.22 Oral Presentations

After the evaluation committee has initially scored the proposals, the respondents will be required to give a thirty (30) minute oral presentation for the committee on the date(s) listed in **Section 2.1** at 4815 West Markham Street, Room L137 in Little Rock, Arkansas. For questions regarding the oral presentation and availability of equipment, please contact Tim Smith at 501-280-4573 or email at [timothy.w.smith@arkansas.gov](mailto:timothy.w.smith@arkansas.gov)

### 3.23 Certification of Non-Acceptance of Tobacco Funds

The offeror must certify in written format (Attachment F) that it has not received in the past five (5) years funding from nor have an affiliation (membership, ownership, contractual or other) with any organization that has any interest in the production, manufacture, marketing, distribution, sale or continued use of tobacco, including subsidiaries, foundations or other related parties of such organizations. This restriction shall apply throughout the entire term of the contract.

## SECTION 4

### PROPOSAL REQUIREMENTS

#### 4.1 General Proposal Requirements

Proposal shall include **one (1) original, seven (7) copies and one (1) Public Information copy** responsive to the terms of the RFP. If the ADH requests additional copies of the proposal, they must be delivered by the vendor within twenty-four (24) hours. Envelopes must be marked with vendors name, RFP number, RFP opening time and date. In addition, the respondent shall include an electronic copy on a CD in Microsoft readable format with the original and each copy of the proposal. The proposal shall be received by ADH by the date and time identified in Section 2.1. **PROPOSALS RECEIVED AFTER THE DEADLINE WILL NOT BE CONSIDERED.** The envelope or package must be clearly labeled with the name and number of the RFP as indicated on the cover page of this RFP.

To be considered, each respondent shall submit a complete response to this RFP, using the format provided. An official authorized to bind the respondent to its provisions must sign the proposal in ink. The proposal must include a statement that the proposal remains valid through the evaluation, selection and contract period.

Each proposal should be prepared simply and economically, providing a straightforward, clearly organized, and concise response by the respondent to the requirements of the RFP. Emphasis should be on completeness, clarity of content, and ease of use for the reviewers/evaluators. Fancy bindings, colored displays, etc., will receive no additional evaluation points or credit.

**ANY CONFIDENTIAL, PROPRIETARY, COPYRIGHTED OR FINANCIAL MATERIAL SUBMITTED BY RESPONDENTS MUST BE MARKED AS SUCH AND SUBMITTED UNDER SEPARATE COVER.**

Proposals may be hand delivered or mailed to:

Timothy Smith, CPPB  
Procurement Branch Chief  
Arkansas Department of Health  
4815 West Markham, Slot 58, Room L163  
Little Rock, AR 72205

The proposals shall be received by the ADH Issuing Officer by the date and time identified in Section 2.1. Proposals received after the deadline will not be considered and shall be rejected. The envelopes or packages must be clearly labeled with the name and number of the RFP as indicated on the cover page of this RFP.

## 4.2 Technical Proposal Requirements

The Technical Proposal must present a complete detailed description of the respondent's qualifications to perform and its approach to carry out the requirements as set forth in **Section 1.4** (Scope of work), **Attachment A** (Terms and Conditions) and **Attachment D** (Performance Based Contracting).

The Technical Proposal shall be arranged in the following order. Deviation from the prescribed order may disqualify a proposal.

1. Cover Sheet
2. Table of Contents
3. Statement of Acknowledgement (see **Attachment B**)
4. Disclosure of Litigation
5. Executive Summary
6. Technical Approach and Solutions to Scope of Work
7. Respondent's Background, Experience and Qualifications
8. Project Organization and Staffing
9. Project Management
10. Financial Disclosure

**The original proposal and all copies shall be indexed and tabbed with the above sections clearly marked. The respondents should make the proposal easy for the evaluators to read and reference.**

**Respondents shall not include ancillary information including promotional/marketing information or anything not directly responsive to the RFP in the Technical Proposal or as attachments to the proposal.**

### 4.2.1 Cover Sheet

The Cover Sheet shall identify the name and number of the RFP and the name and address of the respondent.

### 4.2.2 Table of Contents

The Table of Contents should itemize the contents by section, subsection, and page numbers for facilitation of the evaluators reading the proposal.

### 4.2.3 Statement of Acknowledgement

The Statement of Acknowledgement (**Attachment B**) must be signed by an individual authorized to legally bind the respondent. The Statement of Acknowledgement contains the following components:

1. Name, address, phone number, FAX number and tax identification number of the respondent;
2. Indication if the respondent is a state government, local government, for profit agency or not for profit agency;
3. Indication if the respondent is a minority vendor (Arkansas law defines "minority" as black or African American, Hispanic American, American Indian or Native American, Asian and Pacific Islander);
4. Indication if the respondent is a corporation, partnership, sole proprietor or individual;
5. Names and titles of the individual authorized to contractually obligate the organization, the individual authorized to negotiate the contract and the corporate president, if applicable;
6. Indication if the organization has previously contracted with ADH;



7. Statement by the respondent indicating that neither the respondent's principal officers (President, Vice President, Treasurer, Chairperson of the Board of Directors and other executive officers) nor any individuals with ownership interest in the entity have been terminated previously from a ADH program or been convicted of Medicare or Medicaid fraud;
8. Statement indicating whether or not the organization intends to offer services through a subcontractor (if "Yes", additional information is required);
9. Statement certifying that the completed proposal includes an original, an electronic copy on a CD in Microsoft readable format and the required number of hard copies of the proposal in the required format and containing all required information;
10. Statement certifying that the respondent has read, understands and agrees to comply with all the terms and conditions as set forth in the RFP without qualification;
11. Statement certifying that the respondent is a **Corporation, Limited Liability Corporation (LLC) or Professional Association (PA)** (If respondent is NOT one of the above, respondent must provide documentation evidencing proof of filing as either a **Corporation, LLC or PA** with the Arkansas Secretary of State's office.)  
(Out-of-state respondents must submit a copy of their Certificate of Authority from the Arkansas Secretary of State authorizing the respondent to transact business in the State of Arkansas before a contract can be executed, in accordance with A.C.A. §4-27-1501 and §4-27-1502.)
12. Statement certifying the respondent does not discriminate in its employment practices with regard to race, color, religion, age, sex, national origin or handicap;
13. Statement certifying that the individual signing the Statement of Acknowledgement is authorized to make decisions as to, and responsible for, the prices quoted, that the offer is firm and binding and that he/she has not participated, and will not participate, in any action contrary to the above conditions;
14. Statement authorizing ADH or its agents to verify the financial information requested in the RFP;
15. Statement certifying that no attempt has been made or will be made by the respondent to persuade any other person or firm to submit or not to submit a response;
16. Statement committing the respondent to adhere to an established system of accounting and financial controls adequate to permit the effective administration of the contract;
17. Statement identifying all amendments to this RFP issued by the Issuing Officer and received by the respondent or, if no amendments have been received, a statement to that effect;
18. If services are to be provided by subcontractors, a statement of the exact amount of work to be done by the primary contractor (not less than 50%) and each subcontractor as measured by price.
19. If services are to be provided by subcontractors, statements from each subcontractor, signed by an individual authorized to legally bind the subcontractor, stating:
  - o The scope of work to be performed by the subcontractor;
  - o The subcontractor's willingness to perform the work indicated;
  - o The subcontractor's certification that he/she does not discriminate in its employment practices with regard to race, color, religion, age, sex, national origin or handicap;
20. Statement certifying acceptance of and agreement with the terms and conditions contained within this RFP.

If the respondent believes their proposal contains confidential information or information that would provide an unfair advantage to competitors, the information, justification and page number and section number must be listed as an attachment to the Statement of Acknowledgement.

If the proposal deviates from the detailed requirements of this RFP in any manner, the respondent must attach an explanation to the Statement of Acknowledgement. ADH reserves the right to reject any proposal containing such deviations.



#### 4.2.4 Disclosure of Litigation

The respondent (and any subcontractors offering services) shall disclose in the proposal their involvement in any litigation that could affect the project or contract.

The respondent must identify, for all projects undertaken for the past three (3) years, any claims, disputes, or disallowances imposed by any funding agency. In addition, a statement of any assignments, contractual obligations, and the respondent's involvement in litigation that could affect this work shall be included. Respondent must identify any contract termination(s) that have occurred or that were initiated by either party.

#### 4.2.5 Executive Summary

The executive summary should condense and summarize the contents of the Technical Proposal to provide the proposal evaluators with a broad but clear understanding of the entire proposal. It should summarize the respondent's technical approach and the enhancements proposed for ADH.

The executive summary should include a cross-reference to the pages in the proposal that address the RFP requirements. The proposal may be rejected as incomplete and failing mandatory requirements if the respondent fails to include the cross-reference.

The executive summary should not exceed three (3) pages. The RFP cross-reference pages are not included in this number.

#### 4.2.6 Technical Approach and Solutions to Scope of Work

The proposal must specify the respondent's plan for meeting the objectives of the contract. The response shall clearly indicate how the requirements will be met, what assurances of success the proposed approach will provide, and what individuals will support the respondent's efforts, both on-site and at other locations.

The respondent must provide a summary of hourly rates, as well as markup rates for third party costs. In addition, respondent must provide a summary of typical costs to which the markup rates will be applied.

Service delivery must be provided in accordance with the **Section 1.4** (Scope of work) and **Attachment D** (Performance Based Contracting). See **Section 4.2** for the specific criteria to be considered for this RFP.

#### 4.2.7 Respondent's Background, Experience and Qualifications

##### 4.2.7.1 Background

Proposals shall include details of the background of the respondent regarding:

- Date established;
- Ownership (whether public, partnership, subsidiary, or specified other);
- Total number of employees;
- Number of full time equivalent (FTE) employees engaged in similar contracts

#### 4.2.7.2 Experience

Respondents shall submit a minimum of three (3) letters of recommendation from three (3) different sources or give an explanation as to why three (3) are not submitted. If subcontractors are proposed, three (3) letters of recommendation should also be submitted for each subcontractor. The ADH reserves the right to contact the references submitted as well as any other references, which may attest to the respondent's work experience. Letters of recommendation should meet the following criteria:

- They should be on official letterhead of the party submitting recommendation;
- They should be from entities with recent [within the last three (3) years] contract experience with the respondent;
- If the respondent or subcontractor has no recent contract experience, they should be from organizations regarding work closely related;
- They should be from individuals who can directly attest to the respondent's qualification relevant to this RFP;
- They should be limited to organizational recommendations, not personal recommendations;
- They should be dated not more than six (6) months prior to the proposal submission date;
- They shall not be from current ADH employees;

Recommendations may be verified, so it is very important that the proposal contain current phone numbers, mail addresses, and e-mail addresses for all references. Respondent will be responsible for accuracy of information being provided.

Respondents should also demonstrate with samples, their experience with electronic, print, media and social media such as below:

- Brochure design and production
- Color magazine ad production and placement
- Newspaper ad production and placement
- Radio & television ad production and placement
- Annual report design and production
- Poster design and production
- Feature article
- Web-site development and implementation
- Social media

#### 4.2.7.3 Qualifications

The respondent should include the following information for itself and each subcontractor:

- An organizational chart displaying the overall business structure;
- Evidence of the qualifications and credentials of the respondent in terms of proven successful experience through similar projects of like size and scope;
- The number and a description of recent similar projects successfully completed;
- A statement specifying the extent of respondent's responsibility and experience on each described project.

For each referenced project or contract, the respondent shall provide a description of work performed, the time period of the project or contract, the staff-months required, the contract amount, and a customer reference (including current phone numbers).

### 4.2.8 Project Organization and Staffing

The respondent shall include a section in its proposal that details the proposed project organization and staffing. This shall include project organization charts showing all proposed personnel by job title and lines of supervision. The respondent's proposal shall identify key personnel as required in the RFP as well as resumes for all staff proposed to meet the requirements of the RFP, and include names, positions and experience for each.

### 4.2.9 Project Management

The respondent shall provide details of their intended project management and project control methods. These shall clearly explain how the respondent proposes to manage the project, control project activities, report progress, ensure required staffing, relate and report to ADH, respond to requests by ADH, and interact and coordinate with other involved parties.

## 4.3 Financial Disclosure

The respondent shall provide evidence of financial status and the financial ability to carry out the project. Sufficient information shall be provided relevant to the last year (12 months) for the respondent and any subcontractors evidencing good standing.

The financial statements shall include:

- Summary of financial standing;
- Balance sheets;
- Statement of income;
- Statements of change in financial position;
- Notes to financial statements;
- Auditor's report(s)

### 4.3.1 Independent Price Determination

The Proposal shall contain a statement of independent price determination as described in **Section 3.12**.

### 4.3.2 Price Warranty

By submitting a proposal under this RFP, the respondent warrants their agreement to the pricing methods. Any qualifications, counter proposal, deviations or challenges related to this may render the proposal void.

### 4.3.3 Price

Services provided under this contract will be reimbursed based on the following method:

Payment requests may be submitted monthly for services rendered. Invoices will be original and on company letterhead. Invoices will be processed through the ADH Tobacco Prevention & Cessation Program, 4815 West Markham, Slot #3, Little Rock, Arkansas 72205 for program approval. The last invoice of the contract year must be submitted within thirty (30) calendar days of the contract's expiration date.
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Contractor will not receive any other payment.

#### 4.3.4 IRS Form W-9

The respondent shall submit a completed and signed IRS Form W-9.

#### 4.3.5 Vendor Number

If the respondent does not already have an Arkansas vendor number issued by DFA/OSP, they shall obtain the vendor number before the contract is signed. The respondent shall submit proof of application for the vendor number. Information and necessary forms to obtain a vendor number can be found on the following website: [http://www.arkansas.gov/dfa/procurement/pro\\_vendor.html](http://www.arkansas.gov/dfa/procurement/pro_vendor.html)

### 4.4 Mandatory Requirements

The following are the mandatory requirements for this RFP. Failure to provide the identified information will result in a proposal being rejected.

- 4.4.1 Proposal must be received by time and date specified in **Section 2.1**.
- 4.4.2 Proposal must be submitted in the manner specified in **Section 4.1**.
- 4.4.3 Statement of Acknowledgement must be completed and signed by individual authorized to legally bind the respondent, as specified in **Section 4.2.3**.
- 4.4.4 Technical proposal must address the criteria specified in **Sections 4.2**.
- 4.4.5 Prospective offeror shall be prepared for oral presentations for dates indicated in **Section 2.1**.
- 4.4.6 Applicant Certification statement has been signed (**Attachment F**)

## **SECTION 5**

### **EVALUATION AND CONTRACTOR SELECTION**

#### **5.1 Proposal Evaluation Process**

The proposals will be evaluated in phases.

##### **5.1.1 Evaluation of Mandatory Requirements**

Following the public opening of proposals, the ADH Issuing Officer shall begin the evaluation process by examining the proposal to determine if mandatory requirements of the RFP have been agreed to, or met as set forth in **Section 4.4**. The purpose of this phase is to determine whether each proposal has met the response submission requirements, conforms to the rules of the procurement and is sufficiently responsive to permit a further evaluation. In this phase, each proposal shall be evaluated as either “pass” or “fail”. Only those proposals which pass the first phase shall be forwarded for the second phase of evaluation.

Any response that fails to meet the mandatory requirements shall be deemed non-responsive and shall be rejected without further review or evaluation. The ADH reserves the right to reject any and all proposals.

##### **5.1.2 Evaluation of the Technical Proposals**

The second phase is an evaluation of the Technical Proposals. The ADH shall appoint an evaluation team of qualified members to evaluate the merit of the proposals. Each team member shall use the approved evaluation tools and forms to review each technical proposal and arrive at a technical score. Points will be awarded on a comparative evaluation as indicated below. The ADH reserves the right to request clarifications during the second phase.

During the course of the second phase, the ADH Issuing Officer or designee may conduct corporate and personnel reference checks to verify project experience and qualifications.

##### **5.1.3 Evaluation of Oral Presentations**

Each response that meets the mandatory minimum requirements for acceptance will be reviewed by the agency evaluation committee and awarded points based upon the merits of the proposal. The respondents will be prepared for quick notice to conduct the presentation. Respondents shall be prepared to appear in Little Rock, AR as described in Section 3.22 to make a thirty (30) minute oral presentation to the evaluation team. A detailed outline of the material to be covered in the presentation must be submitted by the respondents to the ADH Issuing Officer and approved by the committee in advance of the presentation. Presentations must adhere closely to the pre-approved outline as established by the evaluation committee and will be required to stay within the time limit specified. Each presentation will be evaluated based upon the following criteria:

###### Creativity

Does the concept presented by the respondent indicate a clear understanding of the agencies needs?  
Are the ideas original and does the overall campaign meet the agency’s expectations?

###### Adherence to Outline

Did the presentation stay on target and deal effectively with all of the agenda items? Did the presentation include items that were not originally provided for in the outline?

Time

Did the presentation stay within the time allotted?

Target Specific

Did the presentation adequately address issues associated with the respondent's projected plans for reaching target audience?

The ADH shall forward to respondents before their presentation any specific questions the evaluation team members have about their proposal. The respondent's presenter shall fully answer these questions during the oral presentation

The person designated in the proposal to become the Project/Account manager or supervisor shall make the oral presentation. Other proposed project staff or corporate representatives may attend and provide limited input, but the ADH requires the bulk of the presentation from the proposed Project/Account Manager. During the presentation, the evaluation team members will direct any additional questions to the proposed project Manager.

Respondents may make product demonstrations during their oral presentations only if the product is integral to their proposal.

The ADH will not provide any type of equipment for the presentations. Respondents shall provide any equipment needed for their presentations.

As oral presentations are time-limited, the respondent shall use the time wisely to answer questions and present only information pertinent to the proposal. The ADH is not interested in, and will not permit, corporate marketing presentations.

#### **5.1.4 Ranking Proposals**

In the third phase, the proposals are ranked from highest to lowest according to total points.

Once the proposals are ranked, the evaluation team will recommend the top ranked proposer to the ADH Issuing Officer, who shall present to the Center for final review and approval. Pending available funds, review by the state legislative committee and a successful negotiation, a contract will be awarded.

## 5.2 Point Assignment

All criteria to be considered in the evaluation of proposals are itemized below under "Criteria". The maximum points possible for each criterion are indicated in the column entitled "POSSIBLE POINTS".

CRITERIA	POSSIBLE POINTS
A. Creativity	15
B. Demonstrated ability to resonate with targeted audiences	15
C. Project Organization, Staffing and Plan for Project Management	10
D. Respondent's Background, Experience and Qualifications	10
E. Approach to Scope of Work	15
F. Approach to the Budget	15
<b>SUBTOTAL POINTS FOR TECHNICAL</b>	<b>80</b>
G. Respondent's points awarded for Oral Presentation	20
<b>Total Possible Points</b>	<b>100</b>

## 5.3 Contract Award Process

After complete evaluation of the proposal, the anticipated award will be posted on the Office of State Procurement website ([http://www.arkansas.gov/dfa/procurement/pro\\_intent.php](http://www.arkansas.gov/dfa/procurement/pro_intent.php)). The purpose of the posting is to establish a specific time in which vendors and agencies are aware of the anticipated award. The RFP results will be posted for a period of fourteen (14) days prior to the issuance of any award.

**Vendors and agencies are cautioned that these are preliminary results only, and no official award will be issued prior to the end of the fourteen (14<sup>TH</sup>) day posting period. Accordingly, any reliance on these preliminary results is at the agency/vendor's own risk**

The contract will be awarded to the respondent that provides the most effective solution(s).

The format for the professional services contract, as prescribed by Arkansas law, can be found in **Attachment C**.

## 5.4 Contract Negotiations

After recommendation of a selected Offeror(s) by appropriate officials of the State, contract negotiations may commence. The contract will be based on the required clauses in the RFP, clauses by the Offeror that are acceptable to the State and additionally, on any clauses agreed upon by all parties to be incorporated into the contract. Offeror(s) selected to participate in negotiation will be given an opportunity to submit a best and final offer to the committee. Prior to a specified cut-off time for best and final offers, vendor may submit revisions to their technical and business, and cost proposals. Meeting before the committee is not subject to the Arkansas Freedom of Information Act. All information received prior to the cut-off time will be considered part of the Offeror's best and final offer.

If at any time contract negotiations are judged ineffective by the State Procurement Director or designee, negotiators will cease all activities with the Offeror and begin contract negotiations with the next highest ranked Offeror or Offeror the Director determines to be in the State's best interest. This process may continue until both the Offeror and the State of Arkansas (Office of State Procurement) execute a completed contract or OSP determines that no acceptable alternative proposal exists.

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## ATTACHMENT A

Except upon the approval of the ADH, the terms and conditions set out in this section are non-negotiable items and will be transferred to the contract as written. The ADH has determined that any attempt by any vendor to reserve the right to alter or amend the terms and conditions via negotiation, without the approval of ADH, is an exception to the terms and conditions that will result in rejection of the proposal. A statement accepting and agreeing to the terms and conditions set out in this section, or to alternate terms and conditions upon approval by ADH is required to be submitted with the respondent's proposal. **Failure to provide this statement will result in rejection of the proposal.**

### PROFESSIONAL SERVICES CONTRACT

#### GENERAL TERMS AND CONDITIONS FOR NON-STATE AGENCY

In consideration of the premises and the mutual agreements hereinafter set forth, the Contractor and the Arkansas Department of Health ("the Department") agree as follows:

#### Legal Considerations

The contract shall be construed according to the laws of the State of Arkansas. Any legal proceedings against the Department shall be brought in the State of Arkansas' administrative or judicial forums and the rights and remedies of the parties hereunder shall be determined in accordance with such laws. Venue for all legal proceedings shall be in Pulaski County, Arkansas. Nothing in this contract may be construed as a waiver of the Department's sovereign immunity.

In no event shall the initial term of this contract extend beyond the end of the current biennial period unless the General Assembly, prior to the expiration of the biennial period, makes an appropriation for such purpose.

#### Financial Terms of the Contract

All services rendered under this contract must be billed as set out herein. No services may be billed to a Medicaid Provider or to any other contract. Payments will be made after services are provided based on the following financial terms:

Funding Source	Reimbursement Method *	Payment Limitations **	Match Requirements***	
			Maximum Amount of Match Required OR Percentage of Allowable Billing Required	Type(s) of Match (Select from listing below)
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

\***Reimbursement Method:** (Select from the following) Actual Cost Reimbursement; Final Negotiated Rate; Fixed Rate; Scheduled Reimbursement

\*\***Payment Limitations:** (Select from the following) Quarterly Cumulative; Monthly Cumulative; None

\*\*\***Matching Requirements:** The Contractor certifies the funds, property, goods, or services listed in this section will be used to meet the match requirements of this agreement. If there are no matching requirements for a funding source, enter "None" in the corresponding box above.

**Type(s) of Match:** The matching requirement may be satisfied by any one or a combination of the following methods unless specific funding source restrictions apply:

**Cash Match:** Cash will be obtained by the Contractor and will be applied against allowable costs covered by this agreement.

**Donation of Property:** Title to or the use of property or equipment has been donated by a public agency for the program(s) covered by this agreement. If title to property is donated, match value is the fair market value of the property. If the use of the property or equipment is donated, match value is the fair rental value as determined by applicable Department policy will be used as matching of the payments.

**Third Party In-Kind Contributions.** Property, goods, or services have been donated by a non-federal agency for the programs(s) covered by this agreement without charge to the contractor. The Code of Federal Regulations, Title 45, Part 74, Subpart G shall be used to establish the basis of valuation.

**Funds Transfer:** Match funds will be submitted by a third party to the Arkansas Department of Health by check or money order under the terms of this agreement. Matching funds are to be received by the Department in an amount sufficient to match billing before the contractor will be reimbursed for services.

The Contractor certifies that any funds to be donated under this agreement which are derived or come directly or indirectly from Federal or State funds, or any other contractor under contract to the Department, have been specifically listed as a source above.

The Contractor certifies that the matching arrangements comply with requirements established in the Code of Federal Regulations, Title 45, Part 74, Subpart G (Cost Sharing or Matching) and all applicable Department policy.

#### Term of the Contract

The Department shall notify the contractor at least thirty (30) days prior to the end of the contract period or extension thereof if the State intends to amend to extend the contract. If notification is not made, the contract will terminate at the end of the contract period or current extension thereof.

#### Terms of Payment/Billing

The Contractor agrees to submit all billing invoices within sixty (60) days of the expiration of the contract. Any billings for services rendered during a particular state fiscal year which are not submitted within ninety (90) days of the end of the fiscal year will not be paid.

#### Termination of Contract

The Department may cancel this contract unilaterally at any time, for any reason including unavailability of federal funds, state funds or both by giving the other party thirty (30) calendar days' written notice, and delivering notice of cancellation either in person or by certified mail, return receipt requested, restricted delivery. Availability of funds will be determined at the sole discretion of the Department.

Payments for completed services or deliverables satisfactorily delivered to and approved by the Department shall be at the contract price. Payment for partially completed services or deliverables satisfactorily delivered to and not yet approved by the Department shall be at a price mutually agreed upon by the Contractor and the Department. In addition to any other law, rule or provision which may authorize complete or partial contract termination, the Department may terminate this contract in whole or in part when the Department determines that the Contractor or subcontractor has failed to satisfactorily perform its contractual duties and responsibilities.

### Procedure on Expiration or Termination

Upon delivery by certified mail to the Contractor of a Notice of Termination specifying the nature of the termination and the date upon which such termination becomes effective, the Contractor shall:

- Stop work under the contract on the date and to the extent specified in the Notice of Termination,
- Place no further orders or enter in any additional subcontracts for services,
- Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination,
- Assign to the Department in the manner and to the extent directed by the Department representative all of the right, title and interest of the Contractor in the orders or subcontracts so terminated. The Department shall have the right, in its discretion, to settle or pay any and all claims arising out of the termination of such orders and subcontracts,
- With the approval or ratification of the Department representative, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable, in whole or part, in accordance with the provisions of this Contract.
- Transfer title to the Department and deliver in the manner, at the time, and extent directed by the Department representative, all files, data, information, manuals, or other documentation, or property, in any form whatsoever, that relate to the work terminated by the Notice of Termination.
- Complete the performance of such part of the work as shall not have been terminated by the Notice of Termination.
- Take such action as may be necessary, or as the Department representative may direct, for the protection and preservation of the property related to the contract which is in the possession of the Contractor and in which the Department has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item or reimbursable price under this clause.

### Termination Claims

After receipt of a Notice of Termination, the Contractor shall submit to the Department all outstanding claims within ten (10) working days. The Contractor and the Department may agree upon the amounts to be paid to the Contractor by reason of the total or partial termination of work as described in this section.

In the event of the failure of the Contractor and the Department to agree in whole or in part as to the amount with respect to costs to be paid to the Contractor in connection with the total or partial termination of work as described in this section, the Department shall determine, on the basis of information available, the amount, if any, due to the Contractor by reason of termination and shall pay to the Contractor the amount so determined.

### Contractor

It is expressly agreed that the Contractor, officers, and employees of the Contractor or Sub-Contractor in the performance of this contract shall act in an independent capacity and not as officers or employees of the Department. It is further expressly agreed that the Department shall exercise no managerial responsibility over the Contractor nor shall this contract be construed as a partnership or joint venture between the Contractor or any subcontractor and the Department or the State of Arkansas.

The Contractor hereby represents and warrants to the Department that as of the execution date of this Contract:

- The Contractor has been duly organized and is validly existing and in good standing under the laws of the State of Arkansas, with power, authority, and legal right to enter into this Contract.
- There are no proceedings or investigations pending or threatened, before any court, regulatory body, administrative agency or other governmental instrumentality having jurisdiction over the Contractor or its properties (i) seeking to prevent the consummation of any of the transactions contemplated by this Contract; or (ii) seeking any determination or ruling that might materially and adversely affect the performance by the Contractor of its obligations hereunder, or the validity or enforceability of this Contract.
- All approvals, authorizations, consents, orders or other actions of any person or of any governmental body or official required to be obtained on or prior to the date hereof in connection with the execution and delivery of this Contract and the performance of the services contemplated by this Contract and the fulfillment of the terms hereof have been obtained.
- The Contractor and the executive officers of the Contractor have not been the subject of any proceeding under the United States Bankruptcy Code.

### Force Majeure

The Contractor will not be liable for any cost to the Department if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, Acts of God, fires, quarantine restriction, strikes and freight embargoes.

### Disputes

In the event of any dispute concerning any performance by the Department under the contract, the Contractor shall notify the Department Director in writing. The State Procurement Director or a designee, prior to commencement of an action in court or any other action provided by law, will attempt to negotiate a settlement of the dispute with the parties in accordance with A.C.A. § 19-11-246. If the claim or controversy is not resolved by mutual agreement, and after reasonable notice to the parties in accordance with A.C.A. § 19-11-246 (c) (1), the State Procurement Director or his designee shall promptly issue a decision in writing stating the reason for the actions taken and a copy of the decision shall be mailed or otherwise furnished to the Contractor. This decision will be final and conclusive.

Pending final determination of any dispute hereunder, the contractor shall proceed diligently with the performance of the contract and in accordance with the Division Director's instructions.

### Confidentiality of Information

In connection with this Contract, each party hereto will receive certain confidential information relating to the other party. For purposes of this Contract, any information furnished or made available to one party relating to the financial condition, results of operation, business, customers, properties, assets, liabilities or information relating to recipients and providers, including but not limited to protected health information as defined by the Privacy Rule promulgated pursuant to the Health Insurance Portability and Accountability Act (HIPAA) of 1996, is collectively referred to as "Confidential Information". The Contractor shall implement and maintain reasonable security procedures and practices appropriate to the nature of the Confidential Information as required by A.C.A. §4-11-04, the Personal Information Protection Act ("the Act"), and shall disclose any breaches of the security of Contractor's system as defined by the Act to DHS by contacting the contract Administrator within one (1) business day of the breach.

The contractor shall safeguard the use and disclosure of information concerning applicants for or recipients of Title XIX services in accordance with 42 CFR Part 431, Subpart F, and shall comply with 45 CFR Parts 160 and 164 and shall restrict access to and disclosure of such information in compliance with federal and state laws and regulations.

The Contractor shall treat all Confidential Information which is obtained by it through its performance under the contract as Confidential Information to the extent that confidential treatment is provided under State and Federal law, and shall not use any information so obtained in any manner except as necessary for the proper discharge of its obligations and securing of its rights hereunder. The parties acknowledge that the disclosure of Confidential Information in contravention of the provisions hereof would damage the party to whom the information disclosed relates and such party has the right to seek all remedies at law or equity to minimize such damage and to obtain compensation therefor.

### Public Disclosure

Upon signing of the contract by all parties, terms of the contract shall become available to the public, pursuant to the provisions of Ark. Code Ann., § 25-19-101 et seq.

### Inspection of Work Performed

The State of Arkansas and its authorized representatives shall, at all reasonable times, have the right to enter the Contractor's work areas to inspect, monitor, or otherwise evaluate the quality, appropriateness, and timeliness of work, services, or both, that have been or are being performed.

### **Subcontracts**

The Contractor is fully responsible for all work performed under the contract. The Contractor may, with the prior written consent of the Department, enter into written subcontract(s) for performance of certain of its functions under the contract. No subcontract under this contract shall in any way relieve the Contractor of any responsibility for performance of its duties. The Contractor agrees that all subcontracts shall adhere to Department policies.

The Contractor shall give the Department immediate notice in writing by certified mail of any action or suit filed and prompt notice of any claim made against the Contractor or any subcontractor which may result in litigation related in any way to the contract or the Department.

### **Audit Requirement:**

Contractor shall comply with the Department audit requirements as outlined in "Arkansas Department of Health Audit Guidelines". Copies may be obtained from:

Arkansas Department of Health  
Legal and Audit Section  
4815 West Markham, Slot H-31  
Little Rock, Arkansas 72205

### **Indemnification**

The Contractor agrees to indemnify, defend, and save harmless the State, the Department, its officers, agents and employees from any and all damages, losses, claims, liabilities and related costs, expenses, including reasonable attorney's fees and disbursements awarded against or incurred by the Department arising out of or as a result of:

- Any claims or losses resulting from services rendered by any person, or firm, performing or supplying services, materials, or supplies in connection with the performance of the contract;
- Any claims or losses to any person or firm injured or damaged by the erroneous or negligent acts (including without limitation disregard of Federal or State regulations or statutes) of the Contractor, its officers or employees in the performance of the contract;
- Any claims or losses resulting to any person or firm injured or damaged by the Contractor, its officers or employees by the publication, translation, reproduction, delivery, performance, use, or disposition of any data processed under the contract in a manner not authorized by the contract, or by Federal or State regulations or statutes;
- Any failure of the Contractor, its officers or employees to observe local, federal or State of Arkansas laws or policies, including but not limited to labor laws and minimum wage laws.
- The Contractor shall agree to hold the Department harmless and to indemnify the Department for any additional costs of alternatively accomplishing the goals of the contract, as well as any liability, including liability for costs or fees, which the Department may sustain as a result of the Contractor's or its subcontractor's performance or lack of performance.

### **Assignments**

The Contractor shall not assign the contract in whole or in part or any payment arising therefrom without the prior written consent of the Department representative.

### **Waiver**

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

### **Department Property**

Property, including intellectual property, acquired or created by the Contractor as a Contract deliverable, is the property of the Department. The Contractor shall be responsible for the proper custody and care of all Department owned property, including Department owned property used in connection with the performance of this contract and the Contractor agrees to reimburse the Department for its loss or damage due to negligence, theft, vandalism, or Acts of God.

### **Use and Ownership of Software**

The Contractor will have access to all applications software that the Department requires the Contractor to use in the performance of the services covered in the contract, subject to customary confidentiality and other license terms and conditions. No changes in the applications software may be made without the written consent of the Contract Administrator if the change would have the effect of causing the Department to incur additional costs for either hardware or software upgrades or both.

Any applications software developed by the Contractor in the performance of the services under this contract must become the property of the State of Arkansas at no additional cost. Any existing software applications owned by the Contractor and used in the performance of the services under this contract must be granted to the State of Arkansas at no additional cost, subject to customary confidentiality and other license terms and conditions.

### **Contract Variations**

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

### **Attorney's Fees**

In the event that either party to this Contract deems it necessary to take legal action to enforce any provision of the contract, and the Department prevails, the Contractor agrees to pay all expenses of such action, including attorney's fees and costs at all stages of litigation as set by the court or hearing officer. Legal action shall include administrative proceedings.

### **Liability**

In the event of non-performance of a contractual obligation by the Contractor or his agents which results in the determination by Federal authorities of noncompliance with Federal regulations and standards, the Contractor will be liable to the Department in full for all penalties, sanctions and disallowances assessed against the Department.

### **Records Retention**

The Contractor agrees to retain all records for five (5) years after final payment is made under this Contract or any related subcontract. In the event any audit, litigation or other action involving these records is initiated before the end of the five (5) year period, the Contractor agrees to retain these records until all issues arising out of the action are resolved or until the end of the five (5) year period, whichever is later. The Contractor agrees to retain all protected health information as defined by the Privacy Rule promulgated pursuant to HIPAA for six (6) years or as otherwise required by HIPAA.

### **Access to Contractor's Records**

The Contractor will grant access to its records upon request by state or federal government entities or any of their duly authorized representatives. Access will be given to any books, documents, papers or records of the Contractor which are related to any services performed under the contract. The Contractor additionally consents that all subcontracts will contain adequate language to allow the same guaranteed access to the records of subcontractors.

### **Ownership of Documentation**

All documents and deliverables prepared by the Contractor and accepted by the Department shall become the property of the Department and shall not be used for any other purpose by the Contractor without the Department's specific written consent.

### **Disclosure**

The failure of any person or entity to disclose as required under any term of Executive Order 98-04, or the violation of any rule, regulation or policy promulgated by the State Department of Finance and Administration pursuant to this Order, shall be considered a material breach of the terms of the contract, lease, purchase agreement, or grant and shall subject the party failing to disclose or in violation to all legal remedies available to the Department under the provisions of existing law.

### **Set-Off**

The parties agree that the Department, in its sole discretion, shall have the right to set-off any money Contractor owes the Department from the Department's payment to Contractor under this contract.



### State and Federal Laws

Performance of this contract by both parties must comply with State and federal laws and regulations. If any statute or regulation is enacted which requires a change in this contract or any attachment, then both parties will deem this contract and any attachment to be automatically amended to comply with the newly enacted statute or regulation as of its effective date.

### Accessibility Act 1227 of 1999

The Contractor expressly acknowledges that state funds may not be expended in connection with the purchase of information technology unless that system meets certain statutory requirements, in accordance with State of Arkansas technology policy standards, relating to accessibility by persons with visual impairments.

Accordingly, the Contractor represents and warrants to the Arkansas Department of Health (ADH) that the technology provided to ADH for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: (1) providing equivalent access for effective use by both visual and nonvisual means; (2) presenting information, including prompts used for interactive communications, in formats intended for nonvisual use; and (3) after being made accessible, it can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this paragraph, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance. If requested, the Contractor must provide a detailed plan for making the purchase accessible and/or a validation of concept demonstration.

### Criminal History Check/Central Registry Check

Contractor shall comply with Arkansas Code Annotated (A.C.A.) §21-15-101 *et seq*, or any amendments thereto, which requires all employees of state agencies, in designated positions including those providing care, supervision, treatment or any other services to the elderly, mentally ill or developmentally disabled persons, to individuals with mental illnesses or to children who reside in any state-operated facility or a position in which the applicant or employee will have direct contact with a child, to have a criminal history check and a central registry check. Should an applicant or employee be found to have been convicted of a crime listed in A.C.A. §21-15-101 *et seq*, that employee shall be prohibited from providing services in a designated position as defined by Arkansas law or being present at the facility.

### Prohibition Against Contingent Fees

It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business.

### Compliance with Department Policy Issuances

The Contractor agrees to deliver the services authorized by this contract or any attachment in accordance with all policies, manuals and other official issuances of the State of Arkansas and Department promulgated through the Administrative Procedures Act.

### Relinquishment

The failure of the Department to insist upon the performance of any of the conditions in any one (1) or more instances shall not be construed as a waiver or relinquishment of the future benefit of said condition.

### Entire Contract

The parties acknowledge that each have read this Contract, understand it and agree to be bound by the terms. The parties further agree that this Contract is the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and that it supersedes all prior proposals, representations, arrangements, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof.

This Contract may not be modified, amended, or in any way altered except by a written agreement duly executed by the parties and approved in accordance with the laws and established procedures of the State of Arkansas.

### Survival of Rights and Obligations

The right and obligations of the Parties under this Contract shall survive and continue after the ending or expiration of the term of this Contract, and shall bind the parties, and their legal representatives, successors, heirs and assigns.

### Notices

All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if mailed by first class mail, postage prepaid, to:

\_\_\_\_\_  
(address)  
\_\_\_\_\_

Attention: \_\_\_\_\_  
(name of contractor contact person or such other name or address as  
may hereafter be furnished to Department in writing by the Contractor)

Notices to the Department should be mailed to:

\_\_\_\_\_  
Arkansas Department of Health  
4815 West Markham, Slot 58  
Little Rock, AR 72205  
\_\_\_\_\_  
Attention: \_\_\_\_\_ Timothy W Smith, Procurement Branch Chief  
(Name of Department contact person)

### Severability of Provisions

If any one or more of the covenants, agreements, provisions or terms of this Contract shall be for any reason whatsoever held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Contract and shall in no way affect the validity or enforceability of the other provisions of this Contract.

### Certification Regarding Lobbying:

The Contractor will comply with public law 101-121, section 319 (section 1352 of Title 31 U.S.C.) for an award in excess of \$100,000.00 by certifying that appropriated federal funds have not been or will not be used to pay any person to influence or attempt to influence a federal official/employee in connection with the awarding of any federal contract, grant, loan or cooperative agreement.

If the Contractor has paid or will pay for lobbying using funds other than federal appropriated funds, Standard Form-LLL (Disclosure of Lobbying Activities) shall be completed and included as an attachment to this contract.

### Certification Regarding Debarment

The Contractor, as a lower tier recipient of \$25,000.00 or more in federal funds, will comply with Executive Order 12549 (Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions). By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

- are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state agency
- where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled \*Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions\* without modification in all lower tier covered transactions.

Contractor certifies that the Contractor is in compliance with Public Law 101-121 (Certification Regarding Lobbying) and Executive Order 12549 (Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions):



### Certification Regarding Employment Practices

Neither the Contractor nor its subcontractors shall discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation, or disability. The Contractor must take affirmative action to ensure that employees, as well as applicants for employment, are treated without discrimination because of their race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation, or disability. Such action shall include, but not be limited to, the following:

- Employment
- Promotion
- Demotion or transfer
- Recruitment or recruitment advertising
- Layoff or termination
- Rates of pay or other forms of compensation, and
- Selection for training, including apprenticeship.

Contractor certifies that neither the contractor nor its subcontractors shall discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, age (except as provided by law) or disability. Contractor must insure that employees, as well as applicants for employment, are treated without discrimination because of their race, color, religion, gender, national origin, age (except as provided by law) or disability. Such action shall include, but not be limited to, employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection of training, including apprenticeships.

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**Attachment B**  
**STATEMENT OF ACKNOWLEDGEMENT**

NAME OF ORGANIZATION			
ADDRESS		Phone #	
		FAX #	
TAXPAYER IDENTIFICATION / SOCIAL SECURITY NUMBER:			
<input type="checkbox"/> MINORITY VENDOR	<input type="checkbox"/> STATE AGENCY	<input type="checkbox"/> LOCAL GOVT	<input type="checkbox"/> FOR PROFIT
		<input type="checkbox"/> NON-PROFIT	<input type="checkbox"/> CORPORATION, LLC, or PA
			<input type="checkbox"/> FILED FOR INCORPORATION, LLC, or PA

**PERSON AUTHORIZED BY ORGANIZATION TO CONTRACTUALLY OBLIGATE THE ORGANIZATION:**

NAME:		TITLE:	
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**PERSON AUTHORIZED BY ORGANIZATION TO NEGOTIATE THE CONTRACT ON BEHALF OF THE ORGANIZATION:**

NAME:		TITLE:	
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**CORPORATE PRESIDENT'S NAME AND ADDRESS (IF NOT APPLICABLE, SO NOTE):**

NAME:		ADDRESS:	
OFFICIAL TITLE:			

Does this proposal contain confidential information? If "Yes", explain on an attachment to this Statement. YES  NO

Have you previously been a provider for the Arkansas Department of Health? YES  NO

Have you been terminated from an ADH program or convicted of Medicare / Medicaid fraud? YES  NO

Do you intend to offer any services through a subcontractor? YES  NO

- If so, indicate in the space provided the percentages of work that will be done by the primary contractor and the subcontractors?

- If so, have you attached the required statements from the subcontractors? YES  NO

Have you included the original and copies of the proposal, in the required format and number? YES  NO

(Statement has been removed – this is a placeholder)

Have you read and understood, and do you agree to comply with, the requirements of the RFP? YES  NO

Do you certify that you do not and will not discriminate in employment practices? YES  NO

Does the person signing certify that he/she is responsible for making decisions for the organization relevant to this RFP? YES  NO

Do you authorize ADH to verify financial information requested by the RFP? YES  NO

Do you certify that no attempt has been made to persuade others to or not to submit proposals? YES  NO

Do you commit to adhering to an established accounting systems and financial controls? YES  NO

Have you received any amendments to this RFP? YES  NO  If "YES", how many?

**CERTIFICATION**

By signature of this form and submission of a proposal in response to this RFP, the respondent acknowledges that the above certifications are true and accurate AND acknowledges acceptance of and agreement with the terms and conditions contained within this RFP.

SIGNATURE BY OFFICER OF ORGANIZATION  
Authorized to Contractually Obligate

TITLE

DATE

**ATTACHMENT C**  
**STATE OF ARKANSAS**  
**PROFESSIONAL/CONSULTANT SERVICES CONTRACT**

<b>CONTRACT #</b>		<b>FEDERAL I.D. #</b>	
<b>VENDOR #</b>		<b>MINORITY VENDOR</b>	<b>YES</b> <input type="checkbox"/> <b>NO</b> <input type="checkbox"/>

**1. PROCUREMENT:**

Check appropriate box below for the method of procurement for this contract:

- ABA Criteria     Request for Proposal     Competitive Bid     Request for Qualifications   
 Intergovernmental     Emergency   
 Sole Source by Justification  (Must be attached).    Sole Source by Intent to Award   
 Sole Source by Law  Act # \_\_\_\_\_ or Statute # \_\_\_\_\_

**2. DATES, PARTIES:**

The term of this agreement shall begin on \_\_\_\_\_ and shall end on \_\_\_\_\_.

State of Arkansas is hereinafter referred to as the agency and vendor is herein after referred to as the Contractor.

<b>AGENCY NUMBER/NAME</b>	
<b>AGENCY NUMBER/NAME</b>	

<b>CONTRACTOR NAME</b>	
<b>ADDRESS</b>	

**3. CALCULATIONS OF COMPENSATION:**

For work to be accomplished under this agreement, the Contractor agrees to provide the personnel at the rates scheduled for each level of consulting personnel as listed herein. Calculations of compensation and reimbursable expenses shall only be listed in this section. If additional space is required, a continuation sheet may be used as an attachment.

LEVEL OF PERSONNEL	NUMBER	COMPENSATION RATE	TOTAL FOR LEVEL

Total compensation exclusive of expense reimbursement \$ \_\_\_\_\_

REIMBURSABLE EXPENSES ITEM (Specify)	ESTIMATED RATE OF REIMB.	TOTAL

Total reimbursable expense \$ \_\_\_\_\_

Total compensation inclusive of expense reimbursement \$ \_\_\_\_\_

<b>Projected total cost of contract if all available periods of extensions are completed</b>	<b>\$</b> _____
--	-----------------

4. **SOURCE OF FUNDS:**

Complete appropriate box(es) below to total 100% of the funding in this contract.

% Federal Funds	% State Funds	% Cash Funds	% Trust Funds	% Other Funds

Identify the source of funds for the following:

Federal Funds	
Cash Funds	
Trust Funds	
Other Funds	

**MUST BE SPECIFIC** (i.e. fees, tuition, agricultural sales, bond proceeds, donations, etc.)

5. **RENDERING OF COMPENSATION:**

The method(s) of rendering compensation and/or evaluation of satisfactory achievement toward attainment of the agreement listed herein is as follows, or in attachment no. \_\_\_\_\_ to this agreement.

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6. **OBJECTIVES AND SCOPE:**

State description of services, objectives, and scope to be provided. (DO NOT USE "SEE ATTACHED")

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7. **PERFORMANCE STANDARDS:**

List Performance standards for the term of the contract. (If necessary, use attachments)

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8. **ATTACHMENTS:**

List ALL attachments to this contract by attachment number:

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9. **CERTIFICATION OF CONTRACTOR**

A. "I, \_\_\_\_\_ (Contractor) \_\_\_\_\_ (Title)

certify under penalty of perjury that, to the best of my knowledge and belief, no regular full-time or part-time employee of any State agency of the State of Arkansas will receive any personal, direct or indirect monetary benefits which would be in violation of the law as a result of the execution of this contract." Where the contractor is a widely-held public corporation, the term 'direct or indirect monetary benefits' "shall not apply to any regular corporate dividends paid to a stockholder of said corporation who is also a State employee and who owns less than ten percent (10%) of the total outstanding stock of the contracting corporation."

B. List any other contracts or subcontracts you have with any other state government entities. (Not applicable to contracts between Arkansas state agencies.)

---

C. Are you currently engaged in any legal controversies with any state agencies or represent any clients engaged in any controversy with any Arkansas state agency?

---

D. The contractor agrees to list below, or on an attachment hereto, names, addresses, and relationship of those persons who will be supplying services to the state agency at the time of the execution of the contract. If the names are not known at the time of the execution of the contract, the contractor shall submit the names along with the other information as they become known. Such persons shall, for all purposes, be employees or independent contractors operating under the control of the contractor (sub-contractors), and nothing herein shall be construed to create an employment relationship between the agencies and the persons listed below.

NAME	RELATIONSHIP

E. The agency shall exercise no managerial responsibilities over the contractor or his employees. In carrying out this contract, it is expressly agreed that there is no employment relationship between the contracting parties.

10. **DISCLOSURE REQUIRED BY EXECUTIVE ORDER 98-04:**  
Any contract or amendment to a contract executed by an agency which exceeds \$25,000 shall require the contractor to disclose information as required under the terms of Executive Order 98-04 and the Regulations pursuant thereto. The contractor shall also require the subcontractor to disclose the same information. The Contract and Grant Disclosure and Certification Form (Form PCS-D attachment II-10.3) shall be used for this purpose.

Contracts with another government entity such as a state agency, public education institution, federal government entity, or body of a local government are exempt from disclosure requirements.

The failure of any person or entity to disclose as required under any term of Executive Order 98-04, or the violation of any rule, regulation or policy promulgated by the Department of Finance and Administration pursuant to this Order, shall be considered a material breach of the terms of the contract, lease, purchase agreement, or grant and shall subject the party failing to disclose, or in violation, to all legal remedies available to the Agency under the provisions of existing law.

11. **NON-APPROPRIATION CLAUSE:**

“In the event the State of Arkansas fails to appropriate funds or make monies available for any biennial period covered by the term of this contract for the services to be provided by the contractor, this contract shall be terminated on the last day of the last biennial period for which funds were appropriated or monies made available for such purposes.

This provision shall not be construed to abridge any other right of termination the agency may have.”

12. **TERMS:**

The term of this agreement begins on the date in SECTION 2 and will end on the date in SECTION 2, and/or as agreed to separately in writing by both parties.

This contract may be extended until June 30, 2015, in accordance with the terms stated in the Procurement, by written mutual agreement of both parties and subject to: approval of the Arkansas Department of Finance and Administration/Director of Office of State Procurement, appropriation of necessary funding, and review by any necessary state or federal authority.

Amendments to contracts will require review by Legislative Council or Joint Budget Committee prior to approval by the Department of Finance and Administration/Director of Office of State Procurement if the original contract was reviewed by Legislative Council or Joint Budget Committee and the amendment increases the dollar amount or involves major changes in the objectives and scope of the contract.

Amendments (to contracts that originally did not require review by Legislative Council or Joint Budget Committee) which cause the total compensation to exceed the sum of \$25,000, shall require review by the Legislative Council or Joint Budget Committee, prior to the approval of the Department of Finance and Administration/Director of Office of State Procurement and before the execution date of the amendment.

This contract may be terminated by either party upon 30 day written notice, unless otherwise agreed by both parties.

13. **AUTHORITY:**

- A. This contract shall be governed by the Laws of the State of Arkansas as interpreted by the Attorney General of the State of Arkansas and shall be in accordance with the intent of Arkansas Code Annotated §19-11-1001 et seq.
- B. Any legislation that may be enacted subsequent to the date of this agreement, which may cause all or any part of the agreement to be in conflict with the laws of the State of Arkansas, will be given proper consideration if and when this contract is renewed or extended; the contract will be altered to comply with the then applicable laws.

14. **AGENCY COORDINATION:**  
The Agency Representative coordinating the work of this contractor will be:

\_\_\_\_\_ (NAME) \_\_\_\_\_ (TITLE) \_\_\_\_\_ (TELEPHONE #)

Agency agrees to make available advice, counsel, data, and personnel, etc. as described immediately below or in Attachment number \_\_\_\_\_ to this agreement.

15. **AGENCY SIGNATURE CERTIFIES NO OBLIGATIONS WILL BE INCURRED BY A STATE AGENCY UNLESS SUFFICIENT FUNDS ARE AVAILABLE TO PAY THE OBLIGATIONS WHEN THEY BECOME DUE.**

16. **TYPE OF CONTRACT:** PROFESSIONAL  CONSULTANT

17. **SIGNATURES**

CONTRACTOR \_\_\_\_\_ DATE \_\_\_\_\_ AGENCY DIRECTOR \_\_\_\_\_ DATE \_\_\_\_\_

TITLE \_\_\_\_\_ TITLE \_\_\_\_\_

ADDRESS \_\_\_\_\_ ADDRESS \_\_\_\_\_

APPROVED: \_\_\_\_\_ DEPARTMENT OF FINANCE AND ADMINISTRATION \_\_\_\_\_ DATE \_\_\_\_\_

Contractor Point of Contact:

\_\_\_\_\_ Name

\_\_\_\_\_ Telephone Number

## **ATTACHMENT D ARKANSAS DEPARTMENT OF HEALTH PERFORMANCE BASED CONTRACTING**

**NOTE:** These Performance Based Standards are EXAMPLES ONLY and represent the types of indicators which will be included in the contract.

Pursuant to A.C.A. §19-11-1010 et. seq., the selected contractor shall comply with performance based standards. Following are the performance based standards that will be a part of the contract and with which the contractor must comply for acceptable performance to occur under the contract.

- I. The contract must comply with all statutes, regulations, codes, ordinances, licensure or certification requirements applicable to the contractor or to the contractor's agents and employees and to the subject matter of the contract. Failure to comply shall be deemed unacceptable performance.
- II. The contractor agrees to hold the contracting Center/Program harmless and to indemnify the contracting Center/Program for any additional costs of alternatively accomplishing the goals of the contract, as well as any liability, including liability for costs or fees, which the contracting Center/Program may sustain as a result of the contractor's performance or lack of performance.
- III. During the term of the contract, the division/office will complete sufficient performance evaluation(s) to determine if the contractor's performance is acceptable.
- IV. The contractor will provide reports for each branch, section or program area as specified by the deliverables in 1.4.
- V. The contractor will have designated personnel or the account executive attend regular planning meetings, advisory board meetings and any other meetings as requested by ADH program staff.
- VI. The contractor will meet all deliverables identified by the separate branches and programs in Scope of work, 1.4.
- VII. The contract program deliverables and performance indicators to be performed will be similar to the examples given below. Specific details will be discussed and developed with the successful applicant.

### **ACCEPTABLE PERFORMANCE:**

- 1) The contractor will implement the plan/deliverables within the timeframes established 100% of the time
- 2) The contractor will complete all the above performance standards in a time and manner acceptable to the ADH, Center for Health Advancement, Chronic Disease and Tobacco Prevention & Cessation Branches in order to implement effective program strategies 100% of the time.

### **REMEDIES FOR UNACCEPTABLE PERFORMANCE**

Acceptable performance shall be determined solely at the discretion of the Center/Program. One or more of the following remedies may be imposed for unacceptable performance:

1. The Center/Program will notify the contractor of unacceptable performance. A meeting between the division and contractor will take place to discuss and develop an informal plan for change.
2. The Center/Program will notify the contractor in writing of non-compliance with the program deliverable and performance indicators for that program deliverable. Within ten working days of notification of non-compliance, contractor must submit and implement a corrective action plan that is acceptable to the contracting division or its designee. Pending submission and implementation of an acceptable corrective action plan, payment may be reduced or withheld as determined by the contracting branches.
3. Payment may be withheld or reduced as determined by the contracting branches.
4. The contract may be terminated.

These remedies are in addition to all others available by law or equity.



**ATTACHMENT E**  
**RESOURCE INFORMATION**

**Arkansas Tobacco Prevention and Cessation websites: -**

[www.healthy.arkansas.gov/programsServices/tobaccoprevent/Pages/default.aspx](http://www.healthy.arkansas.gov/programsServices/tobaccoprevent/Pages/default.aspx)  
[www.stampoutsmoking.com](http://www.stampoutsmoking.com)  
[www.cleartheairarkansas.com](http://www.cleartheairarkansas.com)  
[www.sosprojectprevent.com](http://www.sosprojectprevent.com)

**Arkansas Department of Health**

[www.healthyarkansas.gov](http://www.healthyarkansas.gov)

**University of Arkansas at Pine Bluff- Minority Initiative Sub-Recipient Grant Office website:**

[www.misrgo.org/](http://www.misrgo.org/)

## Attachment F

### Applicant Certifications

#### 3.23 Certification of Non-Acceptance of Tobacco Funds

I certify, by my signature below, that the company I represent has not received in the past five (5) years funding from or have an affiliation (membership, ownership, contractual or other) with any organization that has any interest in the production, manufacture, marketing, distribution, sale or continued use of tobacco, including subsidiaries, foundations or other related parties of such organizations. This restriction shall apply throughout the entire term of the contract.

#### 4.3.1 Independent Price Determination Certification Statement

I certify, by my signature below, that the price was arrived at without any conflict of interest. Should any conflict of interest be detected at any time during the contract, the contract shall be deemed null and void and the contractor shall assume all costs of the project until such time that a new contractor is selected.

---

Signature of Authorized Individual

---

Name of Company

---

Address