



# STATE OF MONTANA REQUEST FOR PROPOSAL (RFP)

<b>RFP Number:</b> 15-3090R	<b>RFP Title:</b> Comprehensive Media Campaign for Prescription Drug Abuse Prevention		
<b>RFP Response Due Date and Time:</b> MONDAY, APRIL 27, 2015 2:00 p.m., Mountain Time		<b>Number of Pages:</b> 29	<b>Issue Date:</b> 3/18/2015
<b>ISSUING AGENCY INFORMATION</b>			
<b>Procurement Officer:</b> RHONDA R. GRANDY		<b>State Procurement Bureau General Services Division Department of Administration Phone: (406) 444-2575 Fax: (406) 444-2529 TTY Users, Dial 711</b>	
<b>Website:</b> <a href="http://vendor.mt.gov/">http://vendor.mt.gov/</a>			
<b>INSTRUCTIONS TO OFFERORS</b>			
<b>Return Sealed Proposal to:</b>		<b>Mark Face of Envelope/Package with:</b>	
<b>PHYSICAL ADDRESS:</b> State Procurement Bureau General Services Division Department of Administration Room 165, Mitchell Building 125 North Roberts Street Helena, MT 59601-4558	<b>MAILING ADDRESS:</b> State Procurement Bureau General Services Division Department of Administration P.O. Box 200135 Helena, MT 59620-0135	<b>RFP Number: 15-3090R RFP Response Due Date: 4/27/2015</b>	
<b>Special Instructions:</b>			
<b>OFFERORS MUST COMPLETE THE FOLLOWING</b>			
<b>Offeror Name/Address:</b>	<hr/> <p style="text-align: center;">(Name/Title)</p> <hr/> <p style="text-align: center;">(Signature)</p> <p>Print name and title and sign in ink. By submitting a response to this RFP, offeror acknowledges it understands and will comply with the RFP specifications and requirements.</p>		
<b>Type of Entity (e.g., corporation, LLC, etc.)</b>	<b>Offeror Phone Number:</b>		
<b>Offeror E-mail Address:</b>	<b>Offeror FAX Number:</b>		
<b>OFFERORS MUST RETURN THIS COVER SHEET WITH RFP RESPONSE</b>			

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## INSTRUCTIONS TO OFFERORS

### It is the responsibility of each offeror to:

**Follow the format required in the RFP** when preparing your response. Provide responses in a clear and concise manner.

**Provide complete answers/descriptions.** Read and answer **all** questions and requirements. Proposals are evaluated based **solely** on the information and materials provided in your written response.

**Use any forms provided**, e.g., cover page, budget form, certification forms, etc.

**Submit your response on time.** Note all the dates and times listed in the Schedule of Events and within the document. Late proposals are **never** accepted.

**The following items MUST be included in the response.**  
**Failure to include ANY of these items may result in a nonresponsive determination.**

- Signed Cover Sheet**
- Signed Addenda (if appropriate) in accordance with Section 1.4.3**
- Address all mandatory requirements in accordance with Section 1.5.3**
- Correctly executed State of Montana "Affidavit for Trade Secret Confidentiality" form, if claiming information to be confidential or proprietary in accordance with Section 2.3.1.**
- In addition to a detailed response to all requirements within Sections 3, 4, and 5, offeror must acknowledge that it has read, understands, and will comply with each section/subsection listed below by initialing the line to the left of each. If offeror cannot meet a particular requirement, provide a detailed explanation next to that requirement.**

\_\_\_\_\_ Section 1, Introduction and Instructions

\_\_\_\_\_ Section 2, RFP Standard Information

\_\_\_\_\_ Section 3.1, Provision of Services

\_\_\_\_\_ Section 4.1, State's Right to Investigate and Reject

\_\_\_\_\_ Section 5.0, Available Funding

\_\_\_\_\_ Section 5.2, Commission Rate

\_\_\_\_\_ Section 5.3, Management of Media Campaign Budget

\_\_\_\_\_ Section 5.4, Restricted Use of Funds

\_\_\_\_\_ Section 6, Evaluation Process

\_\_\_\_\_ Appendix A, Standard Terms and Conditions

\_\_\_\_\_ Appendix B, Contract

\_\_\_\_\_ Appendix C, Client Reference Form

## SCHEDULE OF EVENTS

<u>EVENT</u>	<u>DATE</u>
RFP Issue Date .....	3/18/2015
Deadline for Receipt of Written Questions .....	3/27/2015
Deadline for Posting Written Responses to the State's Website .....	4/8/2015
RFP Response Due Date .....	4/27/2015
Intended Date for Contract Award.....	5/1/2015*

\*The date above identified by an asterisk is included for planning purposes. This date is subject to change.

## SECTION 1: INTRODUCTION AND INSTRUCTIONS

### 1.1 INTRODUCTION

The STATE OF MONTANA, Attorney General's Office ("State") is seeking a contractor to provide comprehensive media and communication services for a Prescription Drug Abuse Prevention marketing campaign which targets multiple demographics through multiple campaign flights. The State desires an innovative full-service agency/firm that can demonstrate the best plan to manage creative and cost-effective media development, production, and placement of traditional and non-traditional advertising.

The selected offeror will receive funding through a contract agreement to provide the media services that support the State's efforts to address the public health crisis caused by prescription drug abuse in Montana. A more complete description of the services to be provided is found in Section 3.

### 1.2 CONTRACT PERIOD

The contract period is one year, beginning approximately May 1, 2015 or upon execution of the contract and ending approximately April 30, 2016, or after one calendar year, inclusive. The parties may mutually agree to a renewal of this contract in one-year intervals, or any interval that is advantageous to the State. This contract, including any renewals, may not exceed a total of three years, at the State's option.

### 1.3 SINGLE POINT OF CONTACT

From the date this Request for Proposal (RFP) is issued until an offeror is selected and announced by the procurement officer, **offerors shall not communicate with any state staff regarding this procurement, except at the direction of Rhonda R. Grandy**, the procurement officer in charge of the solicitation. Any unauthorized contact may disqualify the offeror from further consideration. Contact information for the single point of contact is:

Procurement Officer: Rhonda R. Grandy  
State Procurement Bureau  
Phone: (406) 444-3320  
Fax: (406) 444-2529  
E-mail: [rhgrandy@mt.gov](mailto:rhgrandy@mt.gov)

### 1.4 REQUIRED REVIEW

**1.4.1 Review RFP.** Offerors shall carefully review the entire RFP. Offerors shall promptly notify the procurement officer identified above via e-mail or in writing of any ambiguity, inconsistency, unduly restrictive specifications, or error that they discover. In this notice, the offeror shall include any terms or requirements within the RFP that preclude the offeror from responding or add unnecessary cost. Offerors shall provide an explanation with suggested modifications. The notice must be received by the deadline for receipt of inquiries set forth in Section 1.4.2. The State will determine any changes to the RFP.

**1.4.2 Form of Questions.** Offerors having questions or requiring clarification or interpretation of any section within this RFP must address these issues via e-mail or in writing to the procurement officer listed above on or before **Friday, March 27, 2015**. Offerors are to submit questions using the Vendor RFP Question and Answer Form available on the OneStop Vendor Information website at: <http://svc.mt.gov/gsd/OneStop/GSDDocuments.aspx> or by calling (406) 444-2575. Clear reference to the section, page, and item in question must be included in the form. Questions received after the deadline may not be considered.

**1.4.3 State's Response.** The State will provide a written response by **Wednesday, April 8, 2015** to all questions received by **Friday, March 27, 2015**. The State's response will be by written addendum and will be posted on the State's website with the RFP at <http://svc.mt.gov/gsd/OneStop/SolicitationDefault.aspx> by the close of business on the date listed. Any other form of interpretation, correction, or change to this RFP will not be binding upon the State. **Offerors shall sign and return with their RFP response an Acknowledgment of Addendum for any addendum issued.**

## **1.5 GENERAL REQUIREMENTS**

**1.5.1 Acceptance of Standard Terms and Conditions/Contract.** *By submitting a response to this RFP, offeror accepts the standard terms and conditions and contract set out in Appendices A and B, respectively.* Much of the language included in the standard terms and conditions and contract reflects the requirements of Montana law.

Offerors requesting additions or exceptions to the standard terms and conditions, or to the contract terms, shall submit them to the procurement officer listed above by the date specified in Section 1.4.2. A request must be accompanied by an explanation why the exception is being sought and what specific effect it will have on the offeror's ability to respond to the RFP or perform the contract. The State reserves the right to address nonmaterial requests for exceptions to the standard terms and conditions and contract language with the highest scoring offeror during contract negotiation.

The State shall identify any revisions to the standard terms and conditions and contract language in a written addendum issued for this RFP. The addendum will apply to all offerors submitting a response to this RFP. The State will determine any changes to the standard terms and conditions and/or contract.

**1.5.2 Resulting Contract.** This RFP and any addenda, the offeror's RFP response, including any amendments, a best and final offer (if any), and any clarification question responses shall be incorporated by reference in any resulting contract.

**1.5.3 Mandatory Requirements.** To be eligible for consideration, an offeror **must** meet all mandatory requirements as listed in Section 5. The State will determine whether an offeror's proposal complies with the requirements. Proposals that fail to meet any mandatory requirements listed in this RFP will be deemed nonresponsive.

**1.5.4 Understanding of Specifications and Requirements.** By submitting a response to this RFP, offeror acknowledges it understands and shall comply with the RFP specifications and requirements.

**1.5.5 Offeror's Signature.** Offeror's proposal must be signed in ink by an individual authorized to legally bind the offeror. The offeror's signature guarantees that the offer has been established without collusion. Offeror shall provide proof of authority of the person signing the RFP upon State's request.

**1.5.6 Offer in Effect for 120 Calendar Days.** Offeror agrees that it may not modify, withdraw, or cancel its proposal for a 120-day period following the RFP due date or receipt of best and final offer, if required.

## **1.6. SUBMITTING A PROPOSAL**

**1.6.1 Organization of Proposal.** Offerors must organize their proposal into sections that follow the format of this RFP. Proposals should be bound, and must include tabbed, titled dividers separating each section. Proposal pages must be consecutively numbered.

**All subsections not listed in the "Instructions to Offerors" on page 3 require a response. Restate the section/subsection number and the text immediately prior to your written response.**

Unless specifically requested in the RFP, an offeror making the statement "Refer to our literature..." or "Please see www.....com" may be deemed nonresponsive or receive point deductions. If making reference to materials located in another section of the proposal, specific page numbers and sections must be noted. The Evaluator/Evaluation Committee is not required to search through the proposal or literature to find a response.

The State encourages offerors to use materials (e.g., paper, dividers, binders, brochures, etc.) that contain post-consumer recycled content. Offerors are encouraged to print/copy on both sides of each page.

**1.6.2 Failure to Comply with Instructions.** Offerors failing to comply with these instructions may be subject to point deductions. Further, the State may deem a proposal nonresponsive or disqualify it from further consideration if it does not follow the response format, is difficult to read or understand, or is missing requested information.

**1.6.3 Multiple Proposals.** Offerors may, at their option, submit multiple proposals. Each proposal shall be evaluated separately.

**1.6.4 Copies Required and Deadline for Receipt of Proposals.** Offerors must submit **one original proposal and five copies** to the State Procurement Bureau. In addition, offerors must submit two electronic copies on compact disc (CD) or universal serial bus (USB) flash drive in Microsoft Word or portable document format (PDF). If any confidential materials are included in accordance with the requirements of Section 2.3.2, they must be submitted on a separate CD or USB flash drive.

**EACH PROPOSAL MUST BE SEALED AND LABELED ON THE OUTSIDE OF THE PACKAGE** clearly indicating it is in response to RFP15-3090R. ***Proposals must be received at the reception desk of the State Procurement Bureau prior to 2:00 p.m., Mountain Time, Monday, April 27, 2015. Offeror is solely responsible for assuring delivery to the reception desk by the designated time.***

**1.6.5 Facsimile Responses.** A facsimile response to an RFP will ONLY be accepted on an exception basis with prior approval of the procurement officer and only if it is received in its entirety by the specified deadline. Responses to RFPs received after the deadline will not be considered.

**1.6.6 Late Proposals.** ***Regardless of cause, the State shall not accept late proposals. Such proposals will automatically be disqualified from consideration.*** Offeror may request the State return the proposal at offeror's expense or the State will dispose of the proposal if requested by the offeror. (See Administrative Rules of Montana (ARM) 2.5.509.)

## **1.7 COSTS/OWNERSHIP OF MATERIALS**

**1.7.1 State Not Responsible for Preparation Costs.** Offeror is solely responsible for all costs it incurs prior to contract execution.

**1.7.2 Ownership of Timely Submitted Materials.** The State shall own all materials submitted in response to this RFP.

## SECTION 2: RFP STANDARD INFORMATION

### 2.1 AUTHORITY

The RFP is issued under 18-4-304, Montana Code Annotated (MCA) and ARM 2.5.602. The RFP process is a procurement option allowing the award to be based on stated evaluation criteria. The RFP states the relative importance of all evaluation criteria. The State shall use only the evaluation criteria outlined in this RFP.

### 2.2 OFFEROR COMPETITION

The State encourages free and open competition to obtain quality, cost-effective services and supplies. The State designs specifications, proposal requests, and conditions to accomplish this objective.

### 2.3 RECEIPT OF PROPOSALS AND PUBLIC INSPECTION

**2.3.1 Public Information.** Subject to exceptions provided by Montana law, all information received in response to this RFP, including copyrighted material, is public information. Proposals will be made available for public viewing and copying shortly after the proposal due date and time. The exceptions to this requirement are: (1) bona fide trade secrets meeting the requirements of the Uniform Trade Secrets Act, Title 30, chapter 14, part 4, MCA, that have been properly marked, separated, and documented; (2) matters involving individual safety as determined by the State; and (3) other constitutional protections. See 18-4-304, MCA. The State provides a copier for interested parties' use at \$0.10 per page. The interested party is responsible for the cost of copies and to provide personnel to do the copying.

**2.3.2 Procurement Officer Review of Proposals.** Upon opening the proposals in response to this RFP, the procurement officer will review the proposals for information that meets the exceptions in Section 2.3.1, providing the following conditions have been met:

- Confidential information (including any provided in electronic media) is clearly marked and separated from the rest of the proposal.
- The proposal does not contain confidential material in the cost or price section.
- An affidavit from the offeror's legal counsel attesting to and explaining the validity of the trade secret claim as set out in Title 30, chapter 14, part 4, MCA, is attached to each proposal containing trade secrets. Counsel must use the State of Montana "Affidavit for Trade Secret Confidentiality" form in requesting the trade secret claim. This affidavit form is available on the OneStop Vendor Information website at: <http://svc.mt.gov/gsd/OneStop/GSDDocuments.aspx> or by calling (406) 444-2575.

Information separated out under this process will be available for review only by the procurement officer, the evaluator/evaluation committee members, and limited other designees. Offerors shall pay all of its legal costs and related fees and expenses associated with defending a claim for confidentiality should another party submit a "right to know" (open records) request.

### 2.4 CLASSIFICATION AND EVALUATION OF PROPOSALS

**2.4.1 Initial Classification of Proposals as Responsive or Nonresponsive.** The State shall initially classify all proposals as either "responsive" or "nonresponsive" (ARM 2.5.602). The State may deem a proposal nonresponsive if: (1) any of the required information is not provided; (2) the submitted price is found to be excessive or inadequate as measured by the RFP criteria; or (3) the proposal does not meet RFP requirements and specifications. The State may find any proposal to be nonresponsive at any time during the procurement process. If the State deems a proposal nonresponsive, it will not be considered further.



**2.4.2 Determination of Responsibility.** The procurement officer will determine whether an offeror has met the standards of responsibility consistent with ARM 2.5.407. An offeror may be determined nonresponsible at any time during the procurement process if information surfaces that supports a nonresponsible determination. If an offeror is found nonresponsible, the procurement officer will notify the offeror by mail. The determination will be included within the procurement file.

**2.4.3 Evaluation of Proposals.** An evaluator/evaluation committee will evaluate all responsive proposals based on stated criteria and recommend an award to the highest scoring offeror. The evaluator/evaluation committee may initiate discussion, negotiation, or a best and final offer. In scoring against stated criteria, the evaluator/evaluation committee may consider such factors as accepted industry standards and a comparative evaluation of other proposals in terms of differing price and quality. These scores will be used to determine the most advantageous offering to the State. If an evaluation committee meets to deliberate and evaluate the proposals, the public may attend and observe the evaluation committee deliberations.

**2.4.4 Completeness of Proposals.** Selection and award will be based on the offeror's proposal and other items outlined in this RFP. Proposals may not include references to information such as Internet websites, unless specifically requested. Information or materials presented by offerors outside the formal response or subsequent discussion, negotiation, or best and final offer, if requested, will not be considered, will have no bearing on any award, and may result in the offeror being disqualified from further consideration.

**2.4.5 Achieve Minimum Score.** Any proposal that fails to achieve **75% of the total available points for Sections 3.2.1.1, 4.2.1, 4.2.2.1, 4.2.2.5 – 4.2.2.9, 4.2.3, and 4.2.4.1 – 4.2.4.5 (or a total of 2,175 points for those sections out of a possible 2900 points available)** may be eliminated from further consideration. A "fail" for any individual evaluation criteria may result in proposal disqualification at the discretion of the procurement officer.

**2.4.6 Opportunity for Discussion/Negotiation and/or Oral Presentation/Product Demonstration.** After receipt of proposals and prior to the recommendation of award, the procurement officer may initiate discussions with one or more offerors should clarification or negotiation be necessary. Offerors may also be required to make an oral presentation and/or product demonstration to clarify their RFP response or to further define their offer. In either case, offerors should be prepared to send qualified personnel to Helena, Montana, to discuss technical and contractual aspects of their proposal. Oral presentations and product demonstrations, if requested, shall be at the offeror's expense.

**2.4.7 Best and Final Offer.** Under Montana law, the procurement officer may request a best and final offer if additional information is required to make a final decision. The State reserves the right to request a best and final offer based on price/cost alone. Please note that the State rarely requests a best and final offer on cost alone.

**2.4.8 Evaluator/Evaluation Committee Recommendation for Contract Award.** The evaluator/evaluation committee will provide a written recommendation for contract award to the procurement officer that contains the scores, justification, and rationale for the decision. The procurement officer will review the recommendation to ensure its compliance with the RFP process and criteria before concurring with the evaluator's/evaluation committee's recommendation.

**2.4.9 Request for Documents Notice.** Upon concurrence with the evaluator's/evaluation committee's recommendation, the procurement officer will request from the highest scoring offeror the required documents and information, such as insurance documents, contract performance security, an electronic copy of any requested material (e.g., proposal, response to clarification questions, and/or best and final offer), and any other necessary documents. Receipt of this request does not constitute a contract and **no work may begin until a contract signed by all parties is in place**. The procurement officer will notify all other offerors of the State's selection.

**2.4.10 Contract Execution.** Upon receipt of all required materials, a contract (Appendix B) incorporating the Standard Terms and Conditions (Appendix A), as well as the highest scoring offeror's proposal, will be provided to the highest scoring offeror for signature. The highest scoring offeror will be expected to accept and agree to all material requirements contained in Appendices A and B of this RFP. If the highest scoring offeror does not accept all material requirements, the State may move to the next highest scoring offeror, or cancel the RFP. Work under the contract may begin when the contract is signed by all parties.

## **2.5 STATE'S RIGHTS RESERVED**

While the State has every intention to award a contract resulting from this RFP, issuance of the RFP in no way constitutes a commitment by the State to award and execute a contract. Upon a determination such actions would be in its best interest, the State, in its sole discretion, reserves the right to:

- Cancel or terminate this RFP (18-4-307, MCA);
- Reject any or all proposals received in response to this RFP (ARM 2.5.602);
- Waive any undesirable, inconsequential, or inconsistent provisions of this RFP that would not have significant impact on any proposal (ARM 2.5.505);
- Not award a contract, if it is in the State's best interest not to proceed with contract execution (ARM 2.5.602); or
- If awarded, terminate any contract if the State determines adequate state funds are not available (18-4-313, MCA).

## SECTION 3: SCOPE OF SERVICES

To enable the State to determine the capabilities of an offeror to perform the services specified in the RFP, the offeror shall respond to the following regarding its ability to meet the State's requirements.

**All subsections of Section 3 not listed in the "Instructions to Offerors" on page 3 require a response. Restate the subsection number and the text immediately prior to your written response.**

**NOTE: Each item must be thoroughly addressed. Offerors taking exception to any requirements listed in this section may be found nonresponsive or be subject to point deductions.**

### **3.1 PROVISION OF SERVICES**

**3.1.1 Prescription Drug Abuse Prevention, Background.** Prescription drug abuse is an endemic problem in Montana. According to statistics from the Office of Epidemiology and Scientific Support, between 2010 and 2013, 484 Montanans died from prescription drug overdoses. In that same time period, more than 7200 hospital admissions and emergency department encounters were attributed to poisoning by prescription drugs. Additionally, more than 16 percent of high school students in Montana admit to having taken a prescription drug without a doctor's prescription at least once in their lifetime, according to the 2013 Youth Risk Behavior Survey.

Current data shows there are subsets of the population that suffer negative impacts from prescription drug abuse more widely than others. Those groups currently include but are not limited to adults ages 35-60, Native Americans, current active or formerly active military personnel, and students ages 12-22. However, these groups may not be the only demographic subsets disproportionately affected by prescription drug abuse, or may not represent the groups to best target with marketing messages. That is one reason why demographic research will be so important to these media campaigns.

**3.1.2 Statewide Media Campaign Component in Prescription Drug Abuse Prevention.** A statewide media campaign is known to be an effective tool for reaching multiple demographic groups with messages tailored to address various aspects of the prescription drug abuse problem in Montana.

A professionally developed and managed advertising campaign has the potential to significantly bolster prescription drug abuse prevention, build public support for prescription drug abuse prevention-related policies and undertakings, and set a supportive climate for school and community efforts. Each selected demographic group should have its own targeted messaging, and messages should debut in separate but connected media 'flights' throughout the duration of the contract. Success is supported when the media campaigns include the following elements, among others:

- Are evergreen, well planned and executed, while allowing for flexibility to be responsive to current events and unanticipated situations;
- Are integrated, comprehensive, and market research-based;
- Keep all strategies consistent with a common look, feel, and recognizable brand;
- Consider demographic differences and ways to develop culturally and age-appropriate advertising efforts to target key populations;
- Build in opportunities for evaluation, and include a strong impact, process, and intermediate outcome evaluation component;
- Supplement traditional media advertising with innovative guerilla and ambient marketing opportunities and community activities to create a recognizable presence across the state and to complement the efforts of both paid and earned media; and
- Address solutions to reach the many isolated rural and frontier communities within the state's large geographical area.

**3.1.3 Montana-Specific Media Services Sought.** The State seeks an experienced and qualified professional firm or agency to provide comprehensive media campaign services to reach the Montana public and specifically targeted demographics through effective messaging that will achieve the desired outcome of increased prescription drug abuse prevention. The successful offeror will be the agency/firm that can demonstrate the best plan to research, strategize, produce, place, monitor and manage effective, impactful, dynamic and cost effective media campaigns for prescription drug abuse prevention.

The State will work closely with the contractor to deliver statewide campaigns. The State will rely on the agency/firm's experience and expertise to develop and implement campaigns that provide messages that support the following goal areas:

- Deaths from prescription drug overdoses are reduced
- Hospital admissions due to prescription drug overdoses are reduced
- Percentage of high school students who report having taken a prescription drug without a doctor's prescription is reduced
- Rate of prescription drug-involved DUI is reduced

The campaigns will utilize paid media outlets (including but certainly not limited to television, radio, newspaper, billboards, and the Internet). It may include the development, promotion, or management of earned media placements (for example editorials, letters, media releases, community events, news conferences, etc.) but will require coordination with these efforts at the state, county, and community level.

**3.1.4 Responsibilities of the State.** The State will assign a staff person to be the primary liaison with the contractor. The liaison at the State will work closely with the contractor to monitor the completion of the services required under this RFP. The State's liaison will be available to provide technical assistance, review, and approve proposed media strategies and materials, and to provide assistance with monitoring implementation. The State shall have the final approval of any subcontractors whose services may be retained. The State shall have the final approval for all materials created by the contractor. All creative materials will become the property of the State.

## **3.2 PROPOSAL REQUIREMENTS**

### **3.2.1 Demonstrate Full Capacity to Provide Comprehensive Media Services.**

**3.2.1.1** The offeror must demonstrate that they have the full capacity to provide, at a minimum, the following media services to support the work described in this RFP.

- Demographic Research and Analysis
- Advertising Strategy Development and Implementation
- Creative Concept Development
- Print, Web and Broadcast Advertising Production
- Media Buying and Placement
- Media Monitoring and Response
- Ongoing Evaluation

**3.2.1.2** All campaign materials must be reviewed and approved by the State prior to production and placement. Budget estimates are required for all proposed campaign projects. The offeror must describe a streamlined approach that ensures the State has ample time to review, provide input, and approve the proposed campaign strategies, materials, and budgets prior to production.

## SECTION 4: OFFEROR QUALIFICATIONS

All subsections of Section 4 not listed in the "Instructions to Offerors" on page 3 require a response. Restate the subsection number and the text immediately prior to your written response.

### 4.1 STATE'S RIGHT TO INVESTIGATE AND REJECT

The State may make such investigations as deemed necessary to determine the offeror's ability to provide the supplies and/or perform the services specified. The State reserves the right to reject a proposal if the information submitted by, or investigation of, the offeror fails to satisfy the State's determination that the offeror is properly qualified to perform the obligations of the contract. *This includes the State's ability to reject the proposal based on negative references.*

### 4.2 OFFEROR QUALIFICATIONS

To enable the State to determine the capabilities of an offeror to provide the supplies and/or perform the services specified in the RFP, the offeror shall respond to the following regarding its ability to meet the State's requirements. **THE RESPONSE, "(OFFEROR'S NAME) UNDERSTANDS AND WILL COMPLY," IS NOT APPROPRIATE FOR THIS SECTION.**

**NOTE: Each item must be thoroughly addressed. Offerors taking exception to any requirements listed in this section may be found nonresponsive or be subject to point deductions.**

**4.2.1 Client Reference Form.** Offeror shall provide complete and separate **Appendix C**, Client Reference Form, for three references (and no more than three) that are currently using or have previously used supplies and/or services of the type proposed in this RFP. The references may include state governments or universities for whom the offeror, preferably within the last two years, has successfully completed comprehensive media production, placement and management services. A responsible party of the organization for which the supplies and/or services were provided to the client (the offeror's customer) must provide the reference information and must sign and date the form. It is the offeror's responsibility to ensure that the completed forms are submitted with the proposal by the submission date, for inclusion in the evaluation process. Any Client Reference Forms that are not received with the offeror's proposal or are not completed may adversely affect the offeror's score in the evaluation process. Client Reference Forms exceeding the specified number will not be considered. The State may contact the client references for validation of the information provided in the Client Reference Forms. If the State finds erroneous information, evaluation points may be deducted or the proposal may be rejected.

**4.2.2 Company Profile and Experience.** Offeror shall provide documentation establishing the individual or company submitting the proposal has the qualifications and experience to provide the supplies and/or services specified in this RFP, including, at a minimum:

**4.2.2.1** A short history of your company, its mission and marketing philosophy, and how securing the Prescription Drug Abuse Prevention Media Campaign would align with what your company does.

**4.2.2.2** An organizational chart, highlighting/denoting any employees who would be working directly with the State should your firm/agency be awarded this RFP.

**4.2.2.3** Your company's experience providing media services for non-profit organizations and/or state or local government agencies, including garnering added-value promotions and free bonus spots from radio and TV stations.

**4.2.2.4** Your company's experience with developing and placing media campaigns focused on any of the following demographic groups: Native Americans, youth, active military personnel, and/or veterans.

**4.2.2.5** Your firm's experience, credentials, and capability in the areas of market research, media buying, and media placement in Montana.

**4.2.2.6** Your firm's in-house production capabilities.

**4.2.2.7** The procedures your firm uses to confirm, track, analyze, evaluate, and adjust media placement.

**4.2.2.8** Your firm's capacity to negotiate and monitor subcontracts and ensure high performance.

**4.2.2.9** How your firm selects subcontractors and media vendors (i.e., specific TV and radio stations, newspapers, other outlets) and how they are monitored for accuracy and compliance.

**4.2.2.10** Industry or media awards or honors your firm received in the last three years. Include the full name and contact information of the organization bestowing them.

**4.2.3 Work Examples.** Offeror shall provide examples of past production work, including three print advertisements and two 30 second television advertisements or public service announcements. At least one print example and one broadcast example must come from the same campaign. The works samples must be submitted on a compact disc (CD) or universal serial bus (USB) flash drive. The print examples must be saved in JPEG format and the broadcast examples must be saved in .mp4 or Windows Media Video (.wmv) format. Work examples exceeding the specified number will not be considered.

**4.2.4 Provide Qualified Personnel and Oversee Performance of Staff and Subcontractors.** The offeror must demonstrate that their company has knowledgeable and qualified staff with the skills and experience to complete all projects associated with this RFP. The offeror must clearly describe their firm's plan for staffing and subcontracting, and must assure quality performance of their work under this RFP, including the following:

**4.2.4.1** The name, title and contact information of the person who will have final authority (signatory approval) over the State's account.

**4.2.4.2** The name, title and contact information for the person who will have primary responsibility for the State's account. Include brief descriptions of any experience this staff person may have had in handling an account for a state government entity.

**4.2.4.3** The name and credentials of the staff person/people assigned to oversee ad production, and the name and credentials of the staff person/people responsible for making the media buys.

**4.2.4.4** The names, titles and expertise of all the employees who will be members of the team working on anything related to the State's account. Include where they are located, their general tasks allocated for this project, and the specific skills and experiences that qualify them for the assignments. Also include job assignments and descriptions for principle subcontractors, if any.

**4.2.4.5** The person/people responsible for supervising assigned staff and/or subcontractors, and how they will accomplish it.

## SECTION 5: COST PROPOSAL

All subsections of Section 5 not listed in the "Instructions to Offerors" on page 3 require a response. Restate the subsection number and the text immediately prior to your written response.

### 5.1 AVAILABLE FUNDING

The State has a maximum funding amount of \$800,000 available for this project over the course of three years, to be spent approximately as follows: year one - \$350,000, year two - \$300,000, year three - \$150,000. At least 60% of the funds must be allocated for media placement. Proposals exceeding the maximum funding amount of \$800,000 will disqualify the response from further consideration.

State monies must be spent in the most advantageous way to ensure the messages addressing prescription drug abuse and its prevention reach the targeted audiences in the most efficient and cost-effective manner possible.

### 5.2 BILLABLE SERVICES AND ESTIMATED COSTS

**5.2.1 Services and Hourly Rates** Provide an itemized budget with narrative justification, including all services for which you charge and the amount you would charge for the initial contract term (May 1, 2015 – April 30, 2016). List any hourly rates charged for each item and list the estimated hours needed for each task during the contract term. Include total estimated spend for the initial contract term. Include:

- General Account Management
- Demographic Research and Analysis
- Strategic Marketing Plan Development
- Creative Concept Planning
- Brand Development/Naming of Campaign
- Logo Creation/Design
- Print Ad Design/Layout
- Print Ad Copywriting
- Print Ad Web Conversion
- Proofreading
- Print Supervision/Quality Control
- Broadcast Ad Scriptwriting
- Broadcast Ad Talent Recruitment
- Broadcast Ad Direction/Production/Editing
- Community Events (registration fees/materials/etc.)
- Op Ed/Press Release Writing
- PowerPoint Template Design
- Ambient Media Opportunities (design)
- Social Media Ads/Promoted Posts (design)
- Non-commissionable Media Buying
- Evaluation/Effectiveness Measurement
- Ongoing Client Counsel
- Travel Time
  - Meeting Time (for Firm and State Benefit)
  - Meeting Time (for State Benefit)
- Include all other items that the State would be expected to pay

### **5.3 COMMISSION RATE**

The State will pay a commission rate of 12% of the total spend for all eligible media placements. Commission covers time for media strategy and media planning as it pertains to overall marketing and individual campaign goals, and an hourly rate will not be charged in addition.

### **5.4 MANAGEMENT OF MEDIA CAMPAIGN BUDGET**

The contractor shall implement a system to ensure that all media was run or published according to any contracts or placement instructions and to reconcile the media costs billed to the State with media runs and publications actually received. The contractor must obtain and maintain affidavits, tear sheets, or other documentation of media placements, runs, and publications, and shall provide copies of such documentation to State staff along with monthly invoices for all services rendered.

Final reconciliation of the media campaign budget must be complete within 30 days of the end of the contract term. At the State's sole discretion, any credit balance of media campaign funds due to media placements that did not run correctly or as scheduled either may be replaced by the contractor as "make-good" placements, or must be refunded to the State.

### **5.5 RESTRICTED USE OF FUNDS**

**5.4.1 Specific Prohibitions.** Funds received under this contract may not be used for:

- Activities outside of the approved media campaign work plan or that have not been specifically required through this RFP;
- Travel, except with prior written approval from the State;
- Construction or remodeling; and
- Equipment purchase, without prior written approval from the State.

**5.4.2 Other Funding Restrictions/Requirement.**

- Certain tasks require less expertise and normally are assigned to a mid-level staff member. Should a manager or high-level staff person have to perform such a task(s), the contractor must agree to charge only the mid-level hourly amount.
- The contractor shall pass on to the State any discounts, rebates, or credits related to projects undertaken on behalf of the State. The contractor shall advise the State of any allowable or available discounts or rebates related to volume, special packages, promotions, or early payment by media or other sources.
- The contractor shall provide, at no charge, secretarial and accounting services normally associated with, or required in maintenance of, an advertising account. If a special project or extensive research outside the scope of the agreed-upon contract is called for, the parties shall agree in writing, to the charges for this service prior to the commencement of the project.



## SECTION 6: EVALUATION PROCESS

### 6.1 BASIS OF EVALUATION

The evaluator/evaluation committee will review and evaluate the offers according to the following criteria based on a total number of 4000 points.

The **Provision of Services, Client Reference Forms, Company Profile and Experience, Work Samples, and Personnel and Staffing** portions of the proposal will be evaluated based on the following Scoring Guide. The **Cost Proposal** will be evaluated based on the formula set forth below.

**A "fail" for any individual evaluation criterion may result in proposal disqualification at the discretion of the procurement officer.**

### SCORING GUIDE

In awarding points to the evaluation criteria, the evaluator/evaluation committee will consider the following guidelines:

**Superior Response (95-100%):** A superior response is an exceptional reply that completely and comprehensively meets all of the requirements of the RFP. In addition, the response may cover areas not originally addressed within the RFP and/or include additional information and recommendations that would prove both valuable and beneficial to the agency.

**Good Response (75-94%):** A good response clearly meets all the requirements of the RFP and demonstrates in an unambiguous and concise manner a thorough knowledge and understanding of the project, with no deficiencies noted.

**Fair Response (60-74%):** A fair response minimally meets most requirements set forth in the RFP. The offeror demonstrates some ability to comply with guidelines and requirements of the project, but knowledge of the subject matter is limited.

**Failed Response (59% or less):** A failed response does not meet the requirements set forth in the RFP. The offeror has not demonstrated sufficient knowledge of the subject matter.

### 6.2 EVALUATION CRITERIA

#### Provision of Services

20% of points for a possible 800 points

CATEGORY	RFP SECTION	VALUE
1. Demographic Research	3.2.1.1	100
2. Marketing Strategy Development	3.2.1.1	200
3. Creative Concept Development	3.2.1.1	100
4. Ad Production Capabilities	3.2.1.1	100
5. Media Buying and Placement	3.2.1.1	100
6. Media Monitoring and Response	3.2.1.1	100
7. Ongoing Campaign Monitoring	3.2.1.1	100

#### Client Reference Forms

7.5% of points for a possible 300 points

CATEGORY	RFP SECTION	POINT VALUE
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8. Client Reference Form #1	4.2.1	100
9. Client Reference Form #2	4.2.1	100
10. Client Reference Form #3	4.2.1	100

<b>Company Profile and Experience</b>	<b>25% of points for a possible 1000 points</b>
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CATEGORY	RFP SECTION	POINT VALUE
11. Mission, Philosophy and RFP Fit	4.2.2.1	100
12. Organizational Chart	4.2.2.2	PASS/FAIL
13. Non-Profit/Government Entity Experience	4.2.2.3	100
14. Target Demographic Experience	4.2.2.4	100
15. Market Research	4.2.2.5	100
16. Media Buying and Placement	4.2.2.5	100
17. Production Capabilities	4.2.2.6	100
18. Campaign Analysis	4.2.2.7	100
19. Subcontractor Monitoring	4.2.2.8	100
20. Vendor Monitoring	4.2.2.9	100
21. Awards and Honors	4.2.2.10	100

<b>Work Samples</b>	<b>17.5% of points for a possible 700 points</b>
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CATEGORY	RFP SECTION	POINT VALUE
22. Print Ad #1	4.2.3	100
23. Print Ad #2	4.2.3	100
24. Print Ad #3	4.2.3	100
25. Broadcast Ad #1	4.2.3	100
26. Broadcast Ad #2	4.2.3	100
27. Campaign Cohesion	4.2.3	200

<b>Personnel and Staffing</b>	<b>10% of points for a possible 400 points</b>
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CATEGORY	RFP SECTION	POINT VALUE
28. Signatory Approval	4.2.4.1	PASS/FAIL
29. Account Manager	4.2.4.2	100
30. Creative Team/Media Buyers	4.2.4.3	100
31. Complete Team	4.2.4.4	100
32. Team Supervisors	4.2.4.5	100

<b>Cost Proposal</b>	<b>20% of points for a possible 800 points</b>
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CATEGORY	RFP SECTION	POINT VALUE
33. Cost Proposal	5.2	800

Lowest overall cost receives the maximum allotted points. All other proposals receive a percentage of the points available based on their cost relationship to the lowest.

Example: Total possible points for cost are 200. Offeror A's cost is \$20,000. Offeror B's cost is \$30,000. Offeror A would receive 200 points. Offeror B would receive 134 points ( $(\$20,000/\$30,000) = 67\% \times 200 \text{ points} = 134$ ).

$$\frac{\text{Lowest Responsive Offer Total Cost}}{\text{This Offeror's Total Cost}} \times \text{Number of available points} = \text{Award Points}$$

## APPENDIX A: STANDARD TERMS AND CONDITIONS

By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.

**ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES:** The State reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

**ALTERATION OF SOLICITATION DOCUMENT:** In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

**DEBARMENT:** Contractor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If Contractor cannot certify this statement, attach a written explanation for review by the State.

**FACSIMILE RESPONSES:** Facsimile responses will be accepted for invitations for bids, small purchases, or limited solicitations ONLY if they are completely received by the State Procurement Bureau prior to the time set for receipt. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to requests for proposals are ONLY accepted on an exception basis with prior approval of the procurement officer.

**FAILURE TO HONOR BID/PROPOSAL:** If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the State of Montana.

**LATE BIDS AND PROPOSALS:** Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to ensure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

**RECIPROCAL PREFERENCE:** The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, see <http://gsd.mt.gov/ProcurementServices/preferences.mcp.x>.

**SOLICITATION DOCUMENT EXAMINATION:** Vendors shall promptly notify the State of any ambiguity, inconsistency, or error which they may discover upon examination of a solicitation document.

## APPENDIX B: CONTRACT

### JUS15-3090R

#### COMPREHNSIVE MEDIA CAMPAIGN FOR PRESCRIPTION DRUG ABUSE PROGRAM

**THIS CONTRACT** is entered into by and between the State of Montana, Department of Justice, (State), whose address and phone number are 303 N Roberts, PO Box 200151, Helena, MT 59620-0151 and 406-444-2649 and **(insert name of contractor)**, (Contractor), whose address and phone number are **(insert address)** and **(insert phone number)**.

#### 1. EFFECTIVE DATE, DURATION, AND RENEWAL

**1.1 Contract Term.** The contract's initial term is May 1, 2015, or upon contract execution, through April 30, 2016, unless terminated earlier as provided in this contract. In no event is this contract binding on the State unless the State's authorized representative has signed it. The legal counsel signature approving legal content of the contract and the procurement officer signature approving the form of the contract do not constitute an authorized signature.

**1.2 Contract Renewal.** The State may renew this contract under its then-existing terms and conditions (subject to potential cost adjustments described below in section 2) in one-year intervals, or any interval that is advantageous to the State. This contract, including any renewals, may not exceed a total of seven years.

#### 2. COST ADJUSTMENTS

**2.1 Cost Increase by Mutual Agreement.** After the contract's initial term and if the State agrees to a renewal, the parties may agree upon a cost increase. The State is not obligated to agree upon a renewal or a cost increase. Any cost increases must be based on demonstrated industry-wide or regional increases in Contractor's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the increased value.

#### 3. SERVICES AND/OR SUPPLIES

Contractor shall provide the State the following **(insert a detailed description of the supplies, services, etc., to be provided to correspond to the requirements specified in the Scope of Project as listed in the solicitation)**.

#### 4. WARRANTIES

**4.1 Warranty of Services.** Contractor warrants that the services provided conform to the contract requirements, including all descriptions, specifications and attachments made a part of this contract. The State's acceptance of services provided by Contractor shall not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this contract, at law, or in equity, the State may, at Contractor's expense, require prompt correction of any services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this contract in the manner and to the same extent as services originally furnished.

#### 5. CONSIDERATION/PAYMENT

**5.1 Payment Schedule.** In consideration of the **(insert supplies or services)** to be provided, the State shall pay Contractor according to the following schedule: **(insert pay schedule)**.

**5.2 Payment Terms.** Unless otherwise noted in the solicitation document, the State has thirty (30) days to pay invoices, as allowed by 17-8-242, MCA. Contractor shall provide banking information at the time of contract execution in order to facilitate the State's electronic funds transfer payments.

**5.3 Reference to Contract.** The contract number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the contract. If the number is not provided, the State is not obligated to pay the invoice.

## **6. ACCESS AND RETENTION OF RECORDS**

**6.1 Access to Records.** Contractor shall provide the State, Legislative Auditor, or their authorized agents access to any records necessary to determine contract compliance. The State may terminate this contract under section 23, without incurring liability, for the Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

**6.2 Retention Period.** Contractor shall create and retain all records supporting Comprehensive Media Campaign for Prescription Drug Abuse Prevention for a period of eight years after either the completion date of this contract or termination of the contract.

## **7. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

Contractor may not assign, transfer, or subcontract any portion of this contract without the State's prior written consent. (18-4-141, MCA.) Contractor is responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and the State under this contract.

## **8. HOLD HARMLESS/INDEMNIFICATION**

Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this contract.

## **9. REQUIRED INSURANCE**

**9.1 General Requirements.** Contractor shall maintain for the duration of this contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

**9.2 Primary Insurance.** Contractor's insurance coverage shall be primary insurance with respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

**9.3 Specific Requirements for Commercial General Liability.** Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage OF \$1,000,000 occurrence AND \$2,000,000 aggregate per year to cover such claims as may be

caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

**9.4 Specific Requirements for Automobile Liability.** Contractor shall purchase and maintain coverage with split limits of \$500,000 per person (personal injury), \$1,000,000 per accident occurrence (personal injury), and \$100,000 per accident occurrence (property damage), OR combined single limits of \$1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, owned, or borrowed by Contractor.

**9.5 Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and approved by the State. At the request of the State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**9.6 Certificate of Insurance/Endorsements.** A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been received by the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. Contractor must notify the State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

## **10. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire contract term and any renewal. Upon expiration, a renewal document must be sent to the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.

## **11. COMPLIANCE WITH LAWS**

Contractor shall, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including but not limited to, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. The Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, Contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

## **12. DISABILITY ACCOMMODATIONS**

The State does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

## **13. REGISTRATION WITH THE SECRETARY OF STATE**

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

## **14. INTELLECTUAL PROPERTY/OWNERSHIP**

**14.1 Mutual Use.** Contractor shall make available to the State, on a royalty-free, non-exclusive basis, all patent and other legal rights in or to inventions first conceived and reduced to practice, or created in whole or in part under this contract, if such availability is necessary for the State to receive the benefits of this contract. Unless otherwise specified in a statement of work, both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use copyrightable property created under this contract. This mutual right includes (i) all deliverables and other materials, products, modifications that Contractor has developed or prepared for the State under this contract; (ii) any program code, or site-related program code that Contractor has created, developed, or prepared under or primarily in support of the performance of its specific obligations under this contract; and (iii) manuals, training materials, and documentation. All information described in (i), (ii), and (iii) is collectively called the "Work Product".

**14.2 Title and Ownership Rights.** The State retains title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio, and video), text, and the like provided by the State (the "Content"), but grants Contractor the right to access and use Content for the purpose of complying with its obligations under this contract and any applicable statement of work.

**14.3 Ownership of Work Product.** Contractor shall execute any documents or take any other actions as may reasonably be necessary, or as the State may reasonably request, to perfect the State's ownership of any Work Product.

**14.4 Copy of Work Product.** Contractor shall, at no cost to the State, deliver to the State, upon the State's request during the term of this contract or at its expiration or termination, a current copy of all Work Product in the form and on the media in use as of the date of the State's request, or such expiration or termination.

**14.5 Ownership of Contractor Pre-Existing Materials.** Contractor retains ownership of all literary or other works of authorship (such as software programs and code, documentation, reports, and similar works), information, data, intellectual property, techniques, subroutines, algorithms, methods or related rights and derivatives that Contractor owns at the time this contract is executed or otherwise developed or acquired independent of this contract and employed by Contractor in connection with the services provided to the State (the "Contractor Pre-existing Materials"). Contractor Pre-existing Materials are not Work Product. Contractor

shall provide full disclosure of any Contractor Pre-Existing Materials to the State before its use and to prove its ownership. If, however, Contractor fails to disclose to the State such Contractor Pre-Existing Materials, Contractor shall grant the State a nonexclusive, worldwide, paid-up license to use any Contractor Pre-Existing Materials embedded in the Work Product to the extent such Contractor Pre-Existing Materials are necessary for the State to receive the intended benefit under this contract. Such license shall remain in effect for so long as such Pre-Existing Materials remain embedded in the Work Product. Except as otherwise provided for in **Section 19.3** or as may be expressly agreed in any statement of work, Contractor shall retain title to and ownership of any hardware it provides under this contract.

## **15. CONTRACT TERMINATION**

**15.1 Termination for Cause with Notice to Cure Requirement.** The State may terminate this contract in whole or in part for Contractor's failure to materially perform any of the services, duties, terms, or conditions contained in this contract after giving Contractor written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

**15.2 Termination for Cause with Notice to Cure Requirement.** Contractor may terminate this contract for the State's failure to perform any of its duties under this contract after giving the State written notice of the failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

**15.3 Reduction of Funding.** The State must by law terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this contract in a subsequent fiscal period. (18-4-313(4), MCA.) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the State shall terminate this contract as required by law. The State shall provide Contractor the date the State's termination shall take effect. The State shall not be liable to Contractor for any payment that would have been payable had the contract not been terminated under this provision. As stated above, the State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the State's termination takes effect. This is Contractor's sole remedy. The State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

## **16. EVENT OF BREACH – REMEDIES**

**16.1 Event of Breach by Contractor.** Any one or more of the following Contractor acts or omissions constitute an event of material breach under this contract:

- products or services furnished fail to conform to any requirement;
- failure to submit any report required by this contract;
- failure to perform any of the other terms and conditions of this contract, including but not limited to beginning work under this contract without prior State approval or breaching section 29.1 obligations; or
- voluntary or involuntary bankruptcy or receivership.

**16.2 Event of Breach by State.** The State's failure to perform any material terms or conditions of this contract constitutes an event of breach.

**16.3 Actions in Event of Breach.** Upon Contractor's material breach, the State may:



- terminate this contract under Section 23.1 and pursue any of its remedies under this contract, at law, or in equity; or
- treat this contract as materially breached and pursue any of its remedies under this contract, at law, or in equity.

Upon the State's material breach, Contractor may:

- terminate this contract under section 23.2 and pursue any of its remedies under this contract, at law, or in equity; or
- treat this contract as materially breached and, except as the remedy is limited in this contract, pursue any of its remedies under this contract, at law, or in equity.

**17. FORCE MAJEURE**

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five-day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this contract, unless the parties mutually agree that the obligation is excused because of the condition.

**18. WAIVER OF BREACH**

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

**19. CONFORMANCE WITH CONTRACT**

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without the State Procurement Bureau's prior written consent. Product or services provided that do not conform to the contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

**20. LIAISONS AND SERVICE OF NOTICES**

**20.1 Contract Liaisons.** All project management and coordination on the State's behalf must be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed under this contract must be coordinated between the State's liaison and Contractor's liaison.

\_\_\_\_\_ is the State's liaison.

(Address):

(City, State, ZIP):

Telephone:

Cell Phone:

Fax:

E-mail:

\_\_\_\_\_ is Contractor's liaison.

(Address):  
(City, State, ZIP):  
Telephone:  
Cell Phone:  
Fax:  
E-mail:

**20.2 Notifications.** The State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, mail, or facsimile. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three business days of mailing. A signed and dated acknowledgement of the notice is required of both parties.

**20.3 Identification/Substitution of Personnel.** The personnel identified or described in Contractor's proposal shall perform the services provided for the State under this contract. Contractor agrees that any personnel substituted during the term of this contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. The State reserves the right to approve Contractor personnel assigned to work under this contract and any changes or substitutions to such personnel. The State's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve Contractor to perform and be responsible for its obligations under this contract. The State reserves the right to require Contractor personnel replacement. If Contractor personnel become unavailable, Contractor shall provide an equally qualified replacement in time to avoid delays to the work plan.

## **21. MEETINGS**

**20.1 Technical or Contractual Problems.** Contractor shall meet with the State's personnel, or designated representatives, to resolve technical or contractual problems occurring during the contract term or to discuss the progress made by Contractor and the State in the performance of their respective obligations, at no additional cost to the State. The State may request the meetings as problems arise and will be coordinated by the State. The State shall provide Contractor a minimum of three full working days notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the contract.

**20.2 Progress Meetings.** During the term of this contract, the State's Project Manager shall plan and schedule progress meetings with Contractor to discuss Contractor's and the State's progress in the performance of their respective obligations. These progress meetings will include the State Project Manager, the Contractor Project Manager, and any other additional personnel involved in the performance of this contract as required. At each meeting, Contractor shall provide the State with a written status report that identifies any problem or circumstance encountered by Contractor, or of which Contractor gained knowledge during the period since the last such status report, which may prevent Contractor from completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the failure or inadequacy of the State to perform its obligation under this contract. Contractor shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same.

**20.3 Failure to Notify.** If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of services or products, including a material breach by the State, about which Contractor knew or reasonably should have known with respect to the period during the term covered by Contractor's status report, Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope.

**20.4 State's Failure or Delay.** For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of the State's failure or delay in discharging any State obligation, the State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If the State agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby, and provide for any additional charges by Contractor. This is Contractor's sole remedy. If the State does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

## **21. TRANSITION ASSISTANCE**

If this contract is not renewed at the end of this term, if the contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this contract or particular work under this contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay Contractor for any resources utilized in performing such transition assistance at the most current contract rates. If the State terminates a project or this contract for cause, then the State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages the State may have sustained as a result of Contractor's breach.

## **22. CHOICE OF LAW AND VENUE**

Montana law governs this contract. The parties agree that any litigation concerning this bid, proposal, or this contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

## **23. TAX EXEMPTION**

The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

## **24. AUTHORITY**

This contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

## **25. SEVERABILITY CLAUSE**

A declaration by any court or any other binding legal source that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually and materially dependent.

## **26. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT**

**26.1 Contract.** This contract consists of **(insert number)** numbered pages, any Attachments as required, Solicitation #RFP15-3090R, as amended, and Contractor's response, as amended. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

**26.2 Entire Agreement.** These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

**27. WAIVER**

The State's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

**28. EXECUTION**

The parties through their authorized agents have executed this contract on the dates set out below.

**STATE OF MONTANA**  
**DEPARTMENT OF JUSTICE**  
**303 N ROBERTS, PO BOX 200151**  
**HELENA, MT 59620-0151**

**(INSERT CONTRACTOR'S NAME)**  
**(Insert Address)**  
**(Insert City, State, Zip)**  
**FEDERAL ID #**

BY: \_\_\_\_\_  
(Name/Title)

BY: \_\_\_\_\_  
(Name/Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Approved as to Legal Content:

\_\_\_\_\_  
Legal Counsel (Date)

Approved as to Form:

\_\_\_\_\_  
Procurement Officer (Date)  
State Procurement Bureau

## APPENDIX C: CLIENT REFERENCE FORM

The individual completing this Client Reference Form must be a responsible party of the organization for which the services were provided. This individual should have comprehensive knowledge about the services provided.

**Your response will be used as part of the Offeror's. The total points awarded will be multiplied by five, for a maximum of 100 points available based on your ratings.**

<b>Client Reference Form</b>	<b>0-4</b> Please rank each of these items on a scale of 0 to 4, where:	
Company Name (Offeror): _____  Client: _____  Description of services/products provided: _____	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;"> <b>4:</b> Agree Strongly  <b>3:</b> Agree  <b>2:</b> Neutral  <b>1:</b> Disagree  <b>0:</b> Failed                         </td> </tr> </table>	<b>4:</b> Agree Strongly <b>3:</b> Agree <b>2:</b> Neutral <b>1:</b> Disagree <b>0:</b> Failed
<b>4:</b> Agree Strongly <b>3:</b> Agree <b>2:</b> Neutral <b>1:</b> Disagree <b>0:</b> Failed		
1. Overall, were you satisfied with the Offeror's services?		
2. Did the Offeror stay within the agreed upon budget?		
3. Did the Offeror meet all agreed upon deadlines?		
4. Did the Offeror communicate issues and problems early, and manage them well?		
5. Did the Offeror include your company sufficiently in its creative concept development?		
<b>NAME:</b> _____ <b>DATE:</b> _____ <div style="text-align: center; margin-left: 150px;">(Signature)</div>		
<b>TITLE:</b> _____		
<b>EMAIL ADDRESS:</b> _____		
<b>PHONE NUMBER:</b> _____		