



# Request for Proposal 07-X-38874

## For: Arbitration and Mediation Services: Claims Arbitration - DOBI

Event	Date	Time
<b>Bidder's Electronic Question Due Date</b> (Refer to <a href="#">RFP Section 1.3.1</a> for more information.)	10/18/06	5:00 PM
<b>Mandatory Pre-bid Conference</b>	N/A	N/A
<b>Mandatory Site Visit</b>	N/A	N/A
<b>Bid Submission Due Date</b> (Refer to <a href="#">RFP Section 1.3.2</a> for more information.)	11/14/06	2:00 PM

Dates are subject to change. All changes will be reflected in Addenda to the RFP posted on the Division of Purchase and Property website.

<b>Small Business Set-Aside</b> (Refer to <a href="#">RFP Section 4.4.2.2</a> for more information.)	<b>Status</b> <input type="checkbox"/> Not Applicable	<b>Category</b> <input type="checkbox"/> I
	<input type="checkbox"/> Entire Contract	<input checked="" type="checkbox"/> II
	<input type="checkbox"/> Partial Contract	<input checked="" type="checkbox"/> III
	<input checked="" type="checkbox"/> Subcontracting Only	

RFP Issued By

State of New Jersey  
Department of the Treasury  
Division of Purchase and Property  
Trenton, New Jersey 08625-0230

Using Agency

State of New Jersey  
Department of Banking and Insurance  
Division of Enforcement and Licensing  
Trenton, New Jersey 08625

Date: October 3, 2006

# Table of Contents

<b>1.0 INFORMATION FOR BIDDERS</b> .....	<b>5</b>
1.1 PURPOSE AND INTENT .....	5
1.2 BACKGROUND.....	5
1.3 KEY EVENTS .....	6
1.3.1 ELECTRONIC QUESTION AND ANSWER PERIOD .....	6
1.3.2 SUBMISSION OF BID PROPOSAL .....	6
1.4 ADDITIONAL INFORMATION .....	6
1.4.1 ADDENDA: REVISIONS TO THIS RFP .....	6
1.4.2 BIDDER RESPONSIBILITY .....	7
1.4.3 COST LIABILITY .....	7
1.4.4 CONTENTS OF BID PROPOSAL .....	7
1.4.5 BID OPENING .....	7
1.4.6 PRICE ALTERATION.....	7
1.4.7 JOINT VENTURE .....	7
<b>2.0 DEFINITIONS</b> .....	<b>9</b>
2.1 GENERAL DEFINITIONS.....	9
2.2 CONTRACT SPECIFIC DEFINITIONS .....	11
<b>3.0 SCOPE OF WORK</b> .....	<b>13</b>
3.1 DEPARTMENT OF BANKING AND INSURANCE COMMITMENT .....	13
3.1.1 LEGISLATIVE/REGULATORY CHANGES.....	13
3.1.2 DOBI SUPPORT FOR PAYMENT .....	13
3.1.3 DOBI NOTIFICATION OF PAYER NON-COMPLIANCE .....	13
3.1.4 REVIEW OF ARBITRATION REQUESTS .....	13
3.2 CONTRACTOR REQUIREMENTS .....	13
3.2.1 TIMELINESS OF REQUEST FOR BINDING ARBITRATION .....	13
3.2.2 AGGREGATED DISPUTE AMOUNT .....	14
3.2.3 CARRIER ARBITRATION ELIGIBILITY .....	14
3.2.4 ARBITRATION DISPUTE ISSUE ELIGIBILITY.....	14
3.2.5 REVIEW OF A REQUEST FOR ARBITRATION.....	14
3.2.6 REVIEW AND ARBITRATION FEES .....	15
3.2.7 PARTIES COOPERATION WITH CONTRACTOR.....	15
3.2.8 NOTIFICATION OF CONTRACTOR REVIEW .....	16
3.2.9 ARBITRATION .....	16
3.2.10 TIMELINESS OF ARBITRATION.....	16
3.2.11 PARTIES COMPLIANCE WITH CONTRACTOR DOCUMENTATION REQUESTS .....	16
3.2.12 PROCESSING THE ARBITRATION DECISION.....	17
3.2.13 ARBITRATION DECISION.....	17
3.2.14 CREDENTIALS OF CONTRACTOR MEDICAL DIRECTOR AND ARBITRATORS .....	17
3.2.14.1 DUTIES OF THE MEDICAL DIRECTOR OF THE CONTRACTOR .....	17
3.2.14.2 CONTRACTOR ARBITRATORS .....	17
3.2.14.3 ARBITRATOR OBJECTIVITY .....	18
3.3 DELIVERABLES .....	18
3.3.1 CONTRACTOR RELATED BUSINESS ARRANGEMENTS.....	18
3.3.2 PRO FORMA.....	18
3.3.3 STATISTICAL INFORMATION .....	18
3.3.4 MONTHLY REPORTS .....	18
3.3.5 ANNUAL REPORTS .....	19
3.3.6 CONTRACT OR PAYER COMPETITION.....	19
3.3.7 SUBMISSION OF CONTRACTOR BILL TO PAYER.....	19
3.3.7.1 CONTENTS OF BILL .....	20
3.3.7.2 PAYER NON-COMPLIANCE .....	20
3.3.8 HIPAA AND BBA COMPLIANCE .....	20

<b>4.0 BID PROPOSAL PREPARATION AND SUBMISSION</b> .....	<b>21</b>
4.1 GENERAL .....	21
4.2 BID PROPOSAL DELIVERY AND IDENTIFICATION.....	21
4.3 NUMBER OF BID PROPOSAL COPIES.....	21
4.4 BID PROPOSAL CONTENT .....	21
4.4.1 FORMS THAT MUST BE SUBMITTED WITH BID PROPOSAL .....	22
4.4.1.1 SIGNATORY PAGE.....	22
4.4.1.2 OWNERSHIP DISCLOSURE FORM.....	22
4.4.1.3 DISCLOSURE OF INVESTIGATIONS/ACTIONS INVOLVING BIDDER .....	22
4.4.1.4 NOTICE OF INTENT TO SUBCONTRACT FORM.....	22
4.4.1.5 SUBCONTRACTOR UTILIZATION FORM.....	22
4.4.2 PROOF OF REGISTRATIONS THAT MUST BE SUBMITTED WITH THE BID PROPOSAL .....	22
4.4.2.1 BUSINESS REGISTRATION CERTIFICATE FROM THE DIVISION OF REVENUE .....	23
4.4.2.2 SMALL BUSINESS SET-ASIDE CONTRACTS.....	23
4.4.3 FORMS THAT MUST BE SUBMITTED BEFORE CONTRACT AWARD AND SHOULD BE SUBMITTED WITH THE BID PROPOSAL.....	23
4.4.3.1 MACBRIDE PRINCIPLES CERTIFICATION .....	23
4.4.3.2 AFFIRMATIVE ACTION.....	23
4.4.3.3 SERVICES SOURCE DISCLOSURE FORM.....	24
4.4.4 TECHNICAL PROPOSAL .....	24
4.4.4.1 MANAGEMENT OVERVIEW .....	24
4.4.4.2 CONTRACT MANAGEMENT .....	25
4.4.4.3 CONTRACT SCHEDULE.....	26
4.4.4.4 MOBILIZATION AND IMPLEMENTATION PLAN.....	27
4.4.4.5 POTENTIAL PROBLEMS .....	27
4.4.5 ORGANIZATIONAL SUPPORT AND EXPERIENCE .....	27
4.4.5.1 LOCATION.....	27
4.4.5.2 ORGANIZATION CHART (CONTRACT SPECIFIC) .....	27
4.4.5.3 RESUMES .....	27
4.4.5.4 BACKUP STAFF .....	28
4.4.5.5 ORGANIZATION CHART (ENTIRE FIRM).....	28
4.4.5.6 EXPERIENCE OF BIDDER ON CONTRACTS OF SIMILAR SIZE AND SCOPE .....	28
4.4.5.7 FINANCIAL CAPABILITY OF THE BIDDER.....	28
4.4.5.8 SUBCONTRACTOR(S).....	29
4.4.6 PRICE SCHEDULE.....	29
<b>5.0 SPECIAL CONTRACTUAL TERMS AND CONDITIONS</b> .....	<b>31</b>
5.1 PRECEDENCE OF SPECIAL CONTRACTUAL TERMS AND CONDITIONS.....	31
5.2 CONTRACT TERM AND EXTENSION OPTION .....	31
5.3 CONTRACT TRANSITION.....	31
5.4 CONTRACT AMENDMENT .....	31
5.5 CONTRACTOR RESPONSIBILITIES .....	32
5.6 SUBSTITUTION OF STAFF .....	32
5.7 SUBSTITUTION OR ADDITION OF SUBCONTRACTOR(S) .....	32
5.8 OWNERSHIP OF MATERIAL .....	33
5.9 DATA CONFIDENTIALITY .....	33
5.10 NEWS RELEASES.....	33
5.11 ADVERTISING .....	33
5.12 LICENSES AND PERMITS .....	34
5.13 CLAIMS AND REMEDIES.....	34
5.13.1 CLAIMS .....	34
5.13.2 REMEDIES.....	34
5.13.3 REMEDIES FOR FAILURE TO COMPLY WITH MATERIAL CONTRACT REQUIREMENTS.....	34
5.14 LATE DELIVERY .....	34
5.15 RETAINAGE.....	34
5.16 STATE'S OPTION TO REDUCE SCOPE OF WORK .....	35
5.17 SUSPENSION OF WORK.....	35
5.18 CHANGE IN LAW.....	35
5.19 CONTRACT PRICE INCREASE (PREVAILING WAGE) .....	35

5.20 ADDITIONAL WORK AND/OR SPECIAL PROJECTS .....	35
5.21 FORM OF COMPENSATION AND PAYMENT .....	36
5.21.1 PAYMENT TO CONTRACTOR - OPTIONAL METHOD.....	36
5.22 MODIFICATIONS AND CHANGES TO THE NJ STANDARD TERMS AND CONDITIONS VERSION 05 09 06 .....	36
5.22.1 PATENT AND COPYRIGHT INDEMNITY .....	37
5.22.2 INDEMNIFICATION .....	37
5.22.3 INSURANCE - PROFESSIONAL LIABILITY INSURANCE .....	37
<b>6.0 PROPOSAL EVALUATION .....</b>	<b>39</b>
6.1 PROPOSAL EVALUATION COMMITTEE .....	39
6.2 ORAL PRESENTATION AND/OR CLARIFICATION OF BID PROPOSAL.....	39
6.3 EVALUATION CRITERIA .....	39
6.3.1 TECHNICAL EVALUATION CRITERIA .....	39
6.3.2 BIDDER'S PRICE SCHEDULE .....	40
6.3.3 BID DISCREPANCIES .....	40
6.4 NEGOTIATION AND BEST AND FINAL OFFER (BAFO) .....	40
<b>7.0 CONTRACT AWARD .....</b>	<b>42</b>
7.1 DOCUMENTS REQUIRED BEFORE CONTRACT AWARD .....	42
7.1.1 REQUIREMENTS OF N.J.S.A. 19:44A-20.13-25 (FORMERLY EXECUTIVE ORDER 134).....	42
7.1.1.1 DEFINITIONS .....	42
7.1.1.2 BREACH OF TERMS OF THE LEGISLATION.....	42
7.1.1.3 CERTIFICATION AND DISCLOSURE REQUIREMENTS.....	43
7.1.1.4 STATE TREASURER REVIEW .....	43
7.1.1.5 ADDITIONAL DISCLOSURE REQUIREMENT OF P.L. 2005, C. 271.....	43
7.1.2 SOURCE DISCLOSURE REQUIREMENTS.....	44
7.1.2.1 REQUIREMENTS OF N.J.S.A. 52:34-13.2.....	44
7.1.2.2 SOURCE DISCLOSURE REQUIREMENTS .....	44
7.1.2.3 BREACH OF CONTRACT OF EXECUTIVE ORDER 129.....	44
7.2 FINAL CONTRACT AWARD .....	44
7.3 INSURANCE CERTIFICATES .....	45
7.4 PERFORMANCE BOND .....	45
<b>8.0 CONTRACT ADMINISTRATION.....</b>	<b>46</b>
8.1 CONTRACT MANAGER .....	46
8.1.1 STATE CONTRACT MANAGER RESPONSIBILITIES.....	46
8.1.2 COORDINATION WITH THE STATE CONTRACT MANAGER .....	46

## **1.0 INFORMATION FOR BIDDERS**

### **1.1 PURPOSE AND INTENT**

This Request for Proposal (RFP) is issued by the Purchase Bureau, Division of Purchase and Property, Department of the Treasury (Division) on behalf of the Department of Banking and Insurance (DOBI). The purpose of this RFP is to solicit bid proposals for arbitration services as required by the Health Claims Authorization, Processing and Payment Act (the "Act") (P.L. 2005, c. 352).

The intent of this RFP is to award a contract to that responsible bidder whose bid proposal, conforming to this RFP, is most advantageous to the State, price and other factors considered. However, the State reserves the right to separately procure individual requirements that are the subject of the contract during the contract term, when deemed by the Director to be in the State's best interest.

The NJ Standard Terms & Conditions version 05 09 06 will apply to all contracts or purchase agreements made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in this RFP and should be read in conjunction with them unless the RFP specifically indicates otherwise.

### **1.2 BACKGROUND**

The Act, enacted January 12, 2006 and effective on or about July 11, 2006, established a new statutory framework for binding arbitration of payment disputes between payers and providers. The Act requires DOBI to contract with a nationally recognized, independent arbitrator and establish an arbitration system subject to the following procedures:

- The party initiating an arbitration may submit a payment dispute to the arbitrator within ninety (90) days following receipt of a payer's internal claims appeal determination or within ninety (90) days of the date on which a payer's decision on an internal appeal was due, using a form prescribed by DOBI, for all disputed payment amount of \$1,000 or more (see [Section 3.2.2](#))
- An initiating provider may aggregate claims by carrier and covered person or by carrier and Current Procedural Terminology ("CPT") code to meet the \$1,000 aggregate threshold
- The arbitration will be conducted on the documentation submitted and there will be no in person or telephonic hearings conducted
- The Arbitrator shall issue a determination; in writing, in a manner prescribed by DOBI, with complete statements of the issues, findings and conclusions on which the determination is based, and the medical or other support; therefore, within thirty (30) days after receipt of the required documentation necessary to make a determination
- The determination is binding and nonappealable.
- If the determination favors the initiating party, payment of the award must be made by the payer within ten (10) business days of the date of the determination.
- If the arbitrator determines that a payer has withheld or denied payment of the claim in violation of the provisions of the Act, the arbitrator shall order the payer to make payment of the claim, together with accrued interest of 12% from the date the appeal was received by the payer.
- If the arbitrator determines that a payer has withheld or denied payment of the claim on the basis of information submitted by the health care provider, but it did not receive all the required information when the claim was initially reviewed or pursuant to the internal claims appeals process, the payer shall not be required to pay accrued interest

- If the arbitrator determines that the provider engaged in a pattern and practice of improper billing and a refund is due to the payer, the arbitrator may award the payer a refund including interest at 12% per annum accrued from the date the appeal was received by the payer.
- The arbitrator shall not award legal fees or costs.

### **1.3 KEY EVENTS**

#### **1.3.1 ELECTRONIC QUESTION AND ANSWER PERIOD**

The Purchase Bureau will accept questions and inquiries from all potential bidders electronically via web form. To submit a question, please go to Current Bid Opportunities webpage or to <http://ebid.nj.gov/QA.aspx>

Questions should be directly tied to the RFP and asked in consecutive order, from beginning to end, following the organization of the RFP. Each question should begin by referencing the RFP page number and section number to which it relates.

Bidders are not to contact the Using Agency directly, in person, by telephone or by email, concerning this RFP.

The cut-off date for electronic questions and inquiries relating to this RFP is indicated on the cover sheet. Addenda to this RFP, if any, will be posted on the Purchase Bureau website after the cut-off date (see Section 1.4.1. of this RFP for further information.)

#### **1.3.2 SUBMISSION OF BID PROPOSAL**

In order to be considered for award, the bid proposal must be received by the Purchase Bureau of the Division of Purchase and Property at the appropriate location by the required time. **ANY BID PROPOSAL NOT RECEIVED ON TIME AT THE LOCATION INDICATED BELOW WILL BE REJECTED. THE DATE AND TIME IS INDICATED ON THE COVER SHEET. THE LOCATION IS AS FOLLOWS:**

**BID RECEIVING ROOM - 9TH FLOOR  
PURCHASE BUREAU  
DIVISION OF PURCHASE AND PROPERTY  
DEPARTMENT OF THE TREASURY  
33 WEST STATE STREET, P.O. BOX 230  
TRENTON, NJ 08625-0230**

**Directions to the Purchase Bureau can be found at the following web address:**  
<http://www.state.nj.us/treasury/purchase/directions.shtml>

**Note: Bidders using USPS Regular or Express mail services should allow additional time since USPS mail deliveries are not delivered directly to the Purchase Bureau.**

### **1.4 ADDITIONAL INFORMATION**

#### **1.4.1 ADDENDA: REVISIONS TO THIS RFP**

In the event that it becomes necessary to clarify or revise this RFP, such clarification or revision will be by addendum. Any addendum to this RFP will become part of this RFP and part of any contract awarded as a result of this RFP.

**ALL RFP ADDENDA WILL BE ISSUED ON THE DIVISION OF PURCHASE AND PROPERTY WEB SITE. TO ACCESS ADDENDA, SELECT THE BID NUMBER ON THE BIDDING OPPORTUNITIES WEB PAGE AT THE FOLLOWING ADDRESS:**

**[HTTP://WWW.STATE.NJ.US/TREASURY/PURCHASE/BID/SUMMARY/BID.SHTML.](http://www.state.nj.us/treasury/purchase/bid/summary/bid.shtml)**

**There are no designated dates for release of addenda. Therefore interested bidders should check the Purchase Bureau "Bidding Opportunities" website on a daily basis from time of RFP issuance through bid opening.**

**It is the sole responsibility of the bidder to be knowledgeable of all addenda related to this procurement.**

#### **1.4.2 BIDDER RESPONSIBILITY**

The bidder assumes sole responsibility for the complete effort required in submitting a bid proposal in response to this RFP. No special consideration will be given after bid proposals are opened because of a bidder's failure to be knowledgeable as to all of the requirements of this RFP.

#### **1.4.3 COST LIABILITY**

The State assumes no responsibility and bears no liability for costs incurred by a bidder in the preparation and submittal of a bid proposal in response to this RFP.

#### **1.4.4 CONTENTS OF BID PROPOSAL**

Subsequent to bid opening, all information submitted by bidders in response to the bid solicitation is considered public information, except as may be exempted from public disclosure by the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and the common law. Because the State proposes to negotiate and/or pursue a Best and Final Offer, bid proposals will not be made public until the Letter of Intent to Award is issued.

A bidder may designate specific information as not subject to disclosure when the bidder has a good faith legal/factual basis for such assertion. The State reserves the right to make the determination and will advise the bidder accordingly. The location in the bid proposal of any such designation should be clearly stated in a cover letter. **The State will not honor any attempt by a bidder either to designate its entire bid proposal as proprietary and/or to claim copyright protection for its entire proposal.**

#### **1.4.5 BID OPENING**

On the date and time bid proposals are due under the RFP, only the names of the bidders submitting bid proposals will be publicly announced. The contents of the bid proposals shall remain confidential until the Notice of Intent to Award is issued by the Director.

#### **1.4.6 PRICE ALTERATION**

Bid prices must be typed or written in ink. Any price change (including "white-outs") must be initialed. Failure to initial price changes shall preclude a contract award from being made to the bidder.

#### **1.4.7 JOINT VENTURE**

If a joint venture is submitting a bid proposal, the agreement between the parties relating to such joint venture should be submitted with the joint venture's bid proposal. Authorized signatories from each party comprising the joint venture must sign the bid proposal. A separate Ownership Disclosure Form, Disclosure of Investigations and Actions Involving Bidder, Affirmative Action Employee Information Report, MacBride Principles Certification, and Business Registration or Interim Registration must be supplied for each party to a joint venture.

## 2.0 DEFINITIONS

### 2.1 GENERAL DEFINITIONS

The following definitions will be part of any contract awarded or order placed as result of this RFP.

**Addendum** – Written clarification or revision to this RFP issued by the Purchase Bureau.

**All-Inclusive Hourly Rate** – An hourly rate comprised of all direct and indirect costs including, but not limited to: overhead, fee or profit, clerical support, travel expenses, per diem, safety equipment, materials, supplies, managerial support and all documents, forms, and reproductions thereof. This rate also includes portal-to-portal expenses as well as per diem expenses such as food.

**Amendment** – A change in the scope of work to be performed by the contractor. An amendment is not effective until it is signed by the Director, Division of Purchase and Property.

**Bidder** – An individual or business entity submitting a bid proposal in response to this RFP.

**Contract** – This RFP, any addendum to this RFP, and the bidder's proposal submitted in response to this RFP, as accepted by the State.

**Contractor** – The bidder awarded a contract resulting from this RFP. Also referred to as the Implementation Contractor.

**Director** – Director, Division of Purchase and Property, Department of the Treasury. By statutory authority, the Director is the chief contracting officer for the State of New Jersey.

**Division** – The Division of Purchase and Property

**Evaluation Committee** – A committee established by the Director to review and evaluate bid proposals submitted in response to this RFP and to recommend a contract award to the Director.

**Firm Fixed Price** – A price that is all-inclusive of direct cost and indirect costs, including, but not limited to, direct labor costs, overhead, fee or profit, clerical support, equipment, materials, supplies, managerial (administrative) support, all documents, reports, forms, travel, reproduction and any other costs. No additional fees or costs shall be paid by the State unless there is a change in the scope of work.

**Joint Venture** – A business undertaking by two or more entities to share risk and responsibility for a specific project.

**May** – Denotes that which is permissible, not mandatory.

**Project** – The undertaking or services that are the subject of this RFP.

**Request for Proposal (RFP)** – This document which establishes the bidding and contract requirements and solicits bid proposals to meet the purchase needs of the using Agencies as identified herein.

**Shall or Must** – Denotes that which is a mandatory requirement. Failure to meet a mandatory requirement will result in the rejection of a bid proposal as materially non-responsive.

**Should** – Denotes that which is recommended, not mandatory.

**State Contract Manager** – The individual responsible for the approval of all deliverables, i.e., tasks, sub-tasks or other work elements in the Scope of Work as set forth in Sections 8.1, 8.1.1 and 8.1.2.

**Subtasks** – Detailed activities that comprise the actual performance of a task.

**State** – State of New Jersey.

**Subcontractor** – An entity having an arrangement with a State contractor, where the State contractor uses the products and/or services of that entity to fulfill some of its obligations under its State contract, while retaining full responsibility for the performance of all of its [the contractor's] obligations under the contract, including payment to the subcontractor. The subcontractor has no legal relationship with the State, only with the contractor.

**Task** – A discrete unit of work to be performed.

**Using Agency[ies]** – The entity[ies] for which the Division has issued this RFP and will enter into a contract.

## **2.2 CONTRACT SPECIFIC DEFINITIONS**

**Aggregated Dispute Amount** - The disputed payment amount may be aggregated by carrier and covered person or aggregated by carrier and CPT code in order to achieve the \$1,000 threshold.

**Arbitration** - Process of determining a payment dispute between a payer and a provider by one or more impartial persons for a final and binding determination, in accordance with the Act.

**Arbitration Organization** - Nationally recognized, independent organization that specializes in arbitration with which DOBI has contracted for the purpose of conducting an arbitration proceeding and making a determination.

**Arbitration Threshold** – Payment amount in dispute of at least \$1,000 by carrier and covered person or by carrier and Current Procedural Terminology ("CPT") code for all plans issued by that carrier. This excludes any payments previously made or received that are not in dispute.

**Arbitrator** - Individual employed by the arbitration organization who is responsible for conducting an arbitration proceeding and making a determination. Such person shall be a health care claims professional with a college or higher degree, with at least five (5) years health claims processing experience with a carrier, provider, governmental entity or medical review organization or with at least ten (10) years medical claim auditing experience, with a thorough understanding of health claims payment practices, health insurance contracts and judicial or alternative dispute resolution practices and procedures. Such person shall be proficient in CPT terminology, Medicare Correct Coding Initiatives, and the application of medical protocols in claims processing, including but not limited to multiple surgeries and bundling rules.

**Carrier** - Hospital service corporation, medical service corporation, health service corporation, health insurance company, or health maintenance organization.

**Claim or insured claim** - Claim by a covered person and/or provider for payment of benefits under a policy or contract issued by a payer for which the financial obligation for the payment of a claim under the policy or contract rests with the carrier.

**Commissioner** - Commissioner of Banking and Insurance.

**Covered Person** - Person on whose behalf a carrier offering the plan is obligated to pay benefits or provide services pursuant to the health benefits plan.

**DOBI** - Department of Banking and Insurance.

**Dispute** - Payment issue that remains unresolved following an internal appeal between the carrier and the provider.

**Health Benefits Plan** - Benefits plan that pays or provides hospital and medical expense benefits for covered services, and is delivered or issued for delivery in New Jersey by or through a carrier. A health benefits plan includes, but is not limited to, Medicare supplement coverage and Medicare+Choice contracts to the extent not otherwise prohibited by federal law. A health benefits plan shall not otherwise include the following plans, policies or contracts: accident only, credit disability, long-term care, Civilian Health and Medical Program for the Uniformed Services (CHAMPUS), CHAMPUS supplement coverage, coverage arising out of a workers' compensation or similar law, automobile medical payment insurance, personal injury protection insurance issued pursuant to N.J.S.A. 39:6A-1 et seq., or hospital confinement indemnity coverage.

**Health Care Provider or Provider** - Individual or entity which, while acting within the scope of its license or certification, provides a covered service or supply as defined by the health benefits plan. Health care provider includes, but is not limited to, a physician and other health care professional licensed pursuant to Title 45 of the Revised Statutes, and a hospital and other health care facilities licensed pursuant to Title 26 of the Revised Statutes.

**Hospital** - General acute care facility licensed by the Commissioner of Health and Senior Services pursuant to N.J.S.A. 26:2H-1 et seq., including rehabilitation, psychiatric and long-term acute care facilities.

**Independent Health Care Appeals Program or IHCAP** - External appeals process established in accordance with N.J.S.A. 26:2S-11 and 12. A covered person or provider acting on behalf of the covered person with the covered person's consent may appeal an adverse utilization management determination of a carrier. The appeal may be to deny, reduce, or terminate services or payment of benefits for services that are otherwise covered under the terms of the health benefits plan in which the covered person is enrolled, on the basis that the services are not medically necessary, including decisions to deny covered services, or payment thereof, on the basis that the request is for cosmetic purposes only, that the request is dental in nature rather than medical, or that the service is experimental or investigational.

**Medical Necessity or Medically Necessary** - A health care service that a health care provider, exercising his/her prudent clinical judgment, would provide to a covered person for the purpose of evaluating, diagnosing or treating an illness, injury or disease or its symptoms, in accordance with generally accepted standards of medical practice, clinically appropriate, in terms of type, frequency, extent, site and duration, and considered effective for the covered person's illness, injury or disease. Further, the service is not primarily for the convenience of the covered person or the health care provider and not more costly than an alternative service or sequence of services and at least as likely to produce equivalent therapeutic or diagnostic results as is the diagnosis or treatment of that covered person's illness, injury or disease.

**Payer** - Carrier which requires or authorizes the approval of a health care service and includes an organized delivery system that is certified or licensed pursuant to N.J.S.A. 17:48H-1 et seq.

**Payer's Agent or Agent** - An intermediary contracted or affiliated with the payer to provide authorization for service or perform administrative functions including, but not limited to, the payment of claims or the receipt, processing or transfer of claims or claim information.

**Utilization Management** - System for reviewing the appropriate and efficient allocation of health care services under a health benefits plan according to specified guidelines, in order to recommend or determine whether, or to what extent, a health care service given or proposed to be given to a covered person should or will be reimbursed, covered, paid for, or otherwise provided under the health benefits plan. The system may include, but shall not be limited to, preadmission certification, the application of practice guidelines, continued stay review, discharge planning, preauthorization of ambulatory care procedures, and retrospective review.

### **3.0 SCOPE OF WORK**

#### **3.1 DEPARTMENT OF BANKING AND INSURANCE COMMITMENT**

##### **3.1.1 LEGISLATIVE/REGULATORY CHANGES**

DOBI shall apprise the contractor of legislative and regulatory changes affecting the operation of the binding arbitration system for provider health care benefit claims in the State of New Jersey.

##### **3.1.2 DOBI SUPPORT FOR PAYMENT**

DOBI shall exercise its regulatory authority to ensure payment of arbitration fees from the payers to the contractor as required by the Act.

##### **3.1.3 DOBI NOTIFICATION OF PAYER NON-COMPLIANCE**

DOBI shall, upon notification by the contractor that a payer is non-compliant regarding a request for documentation or payment for the arbitration, use its regulatory authority to compel submission of all documentation/information and/or payment from the payer, pursuant to the Act.

##### **3.1.4 REVIEW OF ARBITRATION REQUESTS**

DOBI shall have the option to review any of the requests for arbitration to confirm that the subject matter of the request is not within the purview of the Independent Health Care Appeals Program. The review will also verify that the request was submitted in a timely manner, that the disputed payment amount meets or exceeds the \$1,000 threshold ([see section 3.2.2](#)) and that the health benefits plan is an insured plan issued in New Jersey.

#### **3.2 CONTRACTOR REQUIREMENTS**

The contractor shall complete a review of the request for arbitration submitted by the initiating party pursuant to [Section 3.1.4](#). The request for arbitration shall be accompanied by the initiating party's full share of the review and arbitration fees. If the initiating party's request and payment for the arbitration is accepted, the contractor shall collect the responding party's share of the review and arbitration fees. The initiating and responding parties are each responsible for one-half of the review fee and one-half of the arbitration fee.

The contractor shall, subsequent to fee collection, conduct an arbitration review, issue a decision and communicate its findings in an electronic format to DOBI. When DOBI authorizes the contractor to do so, the contractor shall release its decision to the provider and payer in an electronic format. At DOBI's option, review of the arbitrator's findings may be waived.

##### **3.2.1 TIMELINESS OF REQUEST FOR BINDING ARBITRATION**

The contractor shall reject a request for arbitration when such a request is made in excess of ninety (90) days after the provider's receipt of the payer's written determination on the internal claims appeal, or in excess of ninety (90) days after the date that a payer's determination of the provider's internal claims appeal was due where a payer has not provided a written notification on the provider's internal claims appeal. Proof of the payer's receipt of a claims appeal is required, either by certified mail receipt or other delivery method

showing date of actual receipt. If a timely request for arbitration has been rejected for insufficient information, a resubmitted request is deemed timely if received within fifteen (15) calendar days of the issuance of the rejection; no additional fee is required from the initiating party. If a timely request for arbitration is resubmitted with all the required information greater than fifteen (15) calendar days after the issuance of a rejection for insufficient information, the contractor may impose an additional review fee on the initiating party not to exceed an additional one-half of the review fee. If the contractor rejects the resubmitted request for arbitration, an initiating party must submit a new filing for consideration. A new filing made in excess of ninety (90) days after the provider's receipt of the payer's claims appeal determination shall be rejected as untimely.

### **3.2.2 AGGREGATED DISPUTE AMOUNT**

The contractor shall consider the following two (2) threshold dollar amounts when determining the aggregation of claims:

- a) The contractor shall reject a request for arbitration as described in [Section 3.1.4](#) when such a request is made for a disputed payment amount less than \$1,000. However, the disputed payment may be aggregated by carrier and covered person or aggregated by carrier and CPT code in order to achieve the \$1,000 threshold. Other aggregation methods are not acceptable, and the contractor shall reject non-complying claims for purposes of satisfying the \$1,000 threshold.
- b) A filing by an initiating provider with aggregated disputed payment amounts greater than \$2,000 by carrier and covered person or by carrier and CPT code shall be considered additional filings for purposes of fee calculations and may be adjudicated as separate arbitrations.
- c) A non-aggregated disputed payment amount equal to or greater than \$1,000 shall be considered as a single filing for purposes of fee calculations.

### **3.2.3 CARRIER ARBITRATION ELIGIBILITY**

The contractor shall reject an application for binding arbitration where such a request is made with respect to a health benefits plan that was not delivered or issued for delivery in New Jersey or which involves a health benefit provided by a self-funded or federal plan except for Managed Medicaid.

### **3.2.4 ARBITRATION DISPUTE ISSUE ELIGIBILITY**

The contractor shall reject a request for arbitration where such a request is made regarding any payment dispute in which the dispute involves medical necessity or utilization management. Medical necessity and utilization management disputes should go through the Independent Health Care Appeals Process (IHCAP), see definition of IHCAP in [Section 2.2](#).

### **3.2.5 REVIEW OF A REQUEST FOR ARBITRATION**

The contractor shall conduct a review of the initiating party's arbitration request and accept it for processing if the contractor determines that:

- a. the provider rendered a covered service to a covered person under the health benefits plan at the time of the action on which the arbitration is based;

- b. the service which is the subject of the arbitration reasonably appears to be a covered service under the health benefits plan which covers the covered person and the covered person was enrolled with the carrier at the time the service was rendered;
- c. the initiating party has made reasonable efforts to comply with the internal claims appeal mechanism available;
- d. the initiating party has provided all information required to conduct the review, including the completed arbitration request form, its attachments and a fully executed release signed by the covered person in the event that the covered person's confidential information will accompany the arbitration request.
  - 1. The release will be in a form prescribed by DOBI, in accordance with applicable regulations, providing for the release of medical records to obtain any necessary medical records from the carrier and payer and any other relevant health care provider;
- e. the aggregated payment amount in dispute of the claim(s), by carrier and covered person or by carrier and CPT code, is \$1,000 or more as per [Section 3.2.2](#);
- f. the covered person's health benefits plan is or was delivered or issued for delivery in New Jersey and is not a self-funded or federal plan except for Managed Medicaid; and,
- g. an initiating party has included one-half of the review fee and one-half of the arbitration fee with his request for arbitration.

If one-half of the review fee and one-half of the arbitration fee is not included, the contractor shall consider the arbitration request to be incomplete.

### **3.2.6 REVIEW AND ARBITRATION FEES**

The contractor shall bill the responding party for one-half of the review and one-half of the arbitration fee when the contractor accepts the payment dispute for arbitration unless the responding party has an alternate payment method as set forth in [Section 3.3.7](#). The contractor shall retain the initiating party's review fee if arbitration requests are rejected, in whole or in part, based on information submitted by the initiating party; the arbitration fee submitted by the initiating party shall be refunded.

The contractor shall retain both the initiating and responding parties' review fee if the request for arbitration is initially accepted but later rejected as ineligible for arbitration based on the information, in whole or in part, submitted by the responding party; however, no arbitration fees will be retained. The contractor shall withhold the initiating and responding parties' review and arbitration fees once the contractor has issued notification to the initiating and responding parties that the matter has been reviewed and accepted for arbitration, even if the arbitration is discontinued by either party. The responding party is responsible for its full share of the review and arbitration fees.

### **3.2.7 PARTIES COOPERATION WITH CONTRACTOR**

The contractor shall report to DOBI on a party's non-cooperation and non-compliance with the arbitration process. If a party does not respond to the contractor's requests for documentation within the period requested by the contractor, the contractor may draw an adverse inference with respect to the party's failure to provide the requested information and may deem the dispute resolved in favor of the compliant party.

The contractor may bill a non-cooperative or non-compliant party its share of the review and arbitration fees. Multiple instances of unfair and abusive practices by initiating parties may serve as a basis for restricting or denying access to the arbitration process. Such matters shall be brought to DOBI's attention.

### **3.2.8 NOTIFICATION OF CONTRACTOR REVIEW**

The contractor shall complete the review and notify the provider, the payer and the State Contract Manager in writing as to whether the arbitration has been accepted and if not so accepted, the reasons therefore, within five (5) business days of receipt of the request for arbitration.

### **3.2.9 ARBITRATION**

The contractor shall conduct an arbitration review upon acceptance of the arbitration request. The review shall determine whether the provider was properly or improperly reimbursed and whether the payer's payment determination should be upheld, reversed or modified, unless upon receipt of additional documentation, the arbitrator reconsiders the matter and determines it to be ineligible for arbitration.

The contractor shall conduct arbitration proceedings pursuant to the rules of its organization, including rules of discovery subject to confidentiality and non-disclosure requirements established by State or federal rules and regulations and law, the timeframes established by State law for completion of the review and issuance of a determination, and use of certain forms established by DOBI. In reaching this determination, the contractor shall take into consideration all information submitted by the parties and information deemed appropriate in the opinion of the contractor including but not limited to: pertinent medical records; consulting physician reports and other documents submitted by the parties; any applicable, generally accepted practice guidelines developed by the federal government, national or professional medical societies, boards and associations; and any applicable policies, clinical protocols and/or practice guidelines utilized by the payer. All determinations made by the contractors shall be consistent with the evidence presented as well as applicable recognized standards of arbitration best practices. The contractor's decision shall identify with specificity the policies, practice guidelines and clinical protocols relied upon in making its decision. The contractor shall decide those issues, if any, that do not involve medical necessity or utilization management issues. If there are no issues eligible for arbitration then the contractor shall reject the arbitration and notify the parties pursuant to [Section 3.2.8](#). The contractor shall not be required to return the initiating party's share of the arbitration fee.

### **3.2.10 TIMELINESS OF ARBITRATION**

The contractor shall complete its review and issue its decision in accordance with [Section 3.2.9](#) within thirty (30) days from receipt of all documentation necessary to complete the review.

### **3.2.11 PARTIES COMPLIANCE WITH CONTRACTOR DOCUMENTATION REQUESTS**

The contractor shall request that the parties submit arbitration documentation, electronically (including fax transmissions), within ten (10) calendar days of receipt of a documentation request.

### **3.2.12 PROCESSING THE ARBITRATION DECISION**

The contractor shall, at the option of the State Contract Manager, (1) provide the written arbitration decision of the contractor to the State Contract Manager to determine if the review has met DOBI's processing requirements. The State Contract Manager shall authorize distribution of the contractor's written decision prior to the contractor's distribution of the decision, within timeframes determined by DOBI.

### **3.2.13 ARBITRATION DECISION**

The contractor's arbitration decision shall be sent, electronically and in writing, to the initiating party, the responding party and the State Contract Manager, with a cover letter of transmittal signed by a responsible representative of the contractor. The written decision of the contractor shall be signed by the arbitrator and reviewed and counter signed by the medical director and shall list the documentation and evidence/criteria reviewed and reference sources relied upon. The written decision shall explain each and every basis of the contractor's determination, including a statement of the issue(s) in dispute; findings of fact; a statement of the amount, including interest, to be awarded to the prevailing party; and any criteria and reference sources relied upon. The arbitration award may be vacated or modified only in accordance with N.J.S.A. 2A:24-1 et seq. If it is determined that no arbitratable payment issues exist, the arbitration filing shall be sent back to the State Contract Manager.

### **3.2.14 CREDENTIALS OF CONTRACTOR MEDICAL DIRECTOR AND ARBITRATORS**

#### **3.2.14.1 DUTIES OF THE MEDICAL DIRECTOR OF THE CONTRACTOR**

The medical director shall be licensed to practice medicine in New Jersey and shall serve as the overall medical director of the contractor. The medical director shall be responsible for the direction and provision of quality reviews provided by the arbitrators, including but not limited to:

- a. coordinating, supervising and overseeing the functioning of the arbitrators' services;
- b. evaluating the medical aspects of the review and arbitration;
- c. overseeing the continuing in-service education of the arbitrators;
- d. providing clinical direction and leadership to ensure continuous quality improvement of the review and arbitration process;
- e. establishing policies and procedures regarding the standard operations of the review and arbitration process;
- f. establishing a system for monitoring the quality of the review and the arbitration process; and
- g. establishing mechanisms for ensuring the verification and review of the arbitrators' credentials.

#### **3.2.14.2 CONTRACTOR ARBITRATORS**

The arbitrators shall have a college or higher degree and be health care claims professionals with a minimum of five (5) years health claims processing experience with a carrier, provider, governmental entity or medical review organization or with at least ten (10) years medical claim auditing experience, and a thorough understanding of health claims payment practices, health insurance contracts and judicial or alternative dispute resolution practices and procedures. The contractor shall include arbitrators proficient in CPT, ICD9 or 10, HCPCS and DSMIV coding, Medicare Correct Coding Initiatives, and

the application of medical protocols in claims processing, including, but not limited to, multiple surgeries and bundling rules.

The contractor shall submit a list of its arbitrators to the State Contract Manager. The list of arbitrators shall include the name and a resume or summary of qualifications, including sample decisions, and if applicable, the professional license number, the state in which the license has been issued, and board certification of each arbitrator. Qualifications of new arbitrators shall be submitted to the State Contract Manager in advance of performance of arbitration responsibilities. Notification of any reductions of the contractor's arbitration staff shall be provided by the contractor to the State Contract Manager in writing prior to the date of reduction when at all possible, but no later than five day after the date of the reduction.

### **3.2.14.3 ARBITRATOR OBJECTIVITY**

The contractor shall ensure the objectivity of arbitrators and that the quality of the reviews meets acceptable standards for application of the standards as described in this RFP and [Section 3.2.9](#) to the specific facts of each case under review.

## **3.3 DELIVERABLES**

### **3.3.1 CONTRACTOR RELATED BUSINESS ARRANGEMENTS**

The contractor shall submit and maintain a current list, with the State Contract Manager, identifying all carriers, health care facilities and other health care providers with whom the contractor maintains any health related business arrangement. This list shall include a brief description of the nature of any such arrangement and shall be updated by the contractor and provided to the State Contract Manager when changes occur. A list of the names and affiliations of the contractor's Board members of the contractor shall also be submitted to the State Contract Manager and shall be updated by the contractor when changes occur.

### **3.3.2 PRO FORMA**

The contractor shall submit all Pro forma of all correspondence used in the Arbitration process to the State Contract Manager. This shall include letters of notice for whether the arbitration was accepted for processing and for the arbitration decision. This shall be approved by the State Contract Manager prior to use.

### **3.3.3 STATISTICAL INFORMATION**

Contractor shall maintain information and statistics in an electronic format that can be fully accessed and utilized by DOBI for review and publication purposes. DOBI shall establish and may amend from time to time the type of information and statistics to be maintained by the contractor.

### **3.3.4 MONTHLY REPORTS**

The contractor shall submit reports to the State Contract Manager within thirty (30) calendar days following the end of each month in an electronic database format determined by DOBI to generate additional reports. The monthly report information shall include, but not limited to:

- a. name of provider and payer, listed by provider category;

- b. date arbitration request was received by the contractor from the initiating party or DOBI and the date the review was completed;
- c. number of rejected arbitrations, listed by provider category, provider name, payer, and reasons for rejection;
- d. number of withdrawn or settled disputes, listed by provider category, provider name payer, and basis of the arbitration;
- e. number of arbitrations conducted, listed by provider category, provider name, payer and arbitrator;
- f. date of contractor determination and number of calendar days to complete the arbitration from date of receipt of all required documentation;
- g. summary of the issue of each case;
- h. summary of the contractor's determination for each case;
- i. party's compliance or non-compliance with the arbitration timeframes, requests for information and the contractor's arbitration determination;
- j. date and amount billed to the provider and payer (cost of arbitration);
- k. date and amount paid by the payer and provider;
- l. number of pending arbitrations at the end of the month;
- m. number of arbitrations assigned, closed and pending per arbitrator at the end of the month; and
- n. time required to complete each arbitration, and
- o. additional information as required by DOBI from time to time.

### **3.3.5 ANNUAL REPORTS**

The contractor shall submit annual cumulative reports to the State Contract Manager within thirty (30) calendar days of the end of each calendar year, in a database determined by DOBI for generating additional reports. The annual report shall contain cumulative information as set forth in [Section 3.3.4](#) and include, but not limited to:

- a. the number of arbitrations conducted, listed by provider category payer:
- b. the outcome of each arbitration;
- c. number of arbitrations pending at the close of the year;
- d. number of arbitrations assigned, concluded and pending at the close of the year by arbitrator;
- e. the time required to complete each arbitration from date of receipt of all required documentation; and
- f. an independent financial report on the revenues and the expenses associated with conducting the arbitration process.

### **3.3.6 CONTRACT OR PAYER COMPETITION**

The contractor shall have a procedure for reporting to the State Contract Manager the contractor's intention to compete for contracts or other arrangements, or any other action by the contractor which may result in the contractor becoming a competitor of a payer.

### **3.3.7 SUBMISSION OF CONTRACTOR BILL TO PAYER**

The contractor shall submit a bill to the respective payer at the time the contractor accepts the provider's arbitration request for review. The bill shall be for one-half of the review fee and one-half of the arbitration fee. At the discretion of the contractor and with the consent of the payer, alternate billing arrangements are permissible, such as monthly or bulk billings.

### **3.3.7.1 CONTENTS OF BILL**

The bill to the payer shall be itemized and shall conform to the fee structure set forth in the contractor's bid proposal.

### **3.3.7.2 PAYER NON-COMPLIANCE**

Upon receipt of the bill referred to above, the payer shall pay the contractor one-half of the review and one-half of the arbitration fees as billed by the contractor, subject to alternate billing arrangements pursuant to [Section 3.3.6](#). Following notification to the State Contract Manager of a failure by the payer to remit the billed fee, the contractor may make a determination favorable to the provider.

### **3.3.8 HIPAA AND BBA COMPLIANCE**

The contractor shall, at all times, in performance of this contract, ensure that it maintains compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Balanced Budget Act (BBA) of 1997 governing the protection of patient information. ([refer to Attachment 1](#))

- 3.3.8.1 Such regulatory compliance shall include the erasure and deletion of all personal, confidential information that may be contained on all personal computers and their drives prior to the disposal, or any other disposition that may be required, of such informational technology equipment as per requirements as set forth by the US Department of Defense (DoD) 5220.22-M Standard.  
See [http://www.hipaadvisory.com/tech/data\\_removal.htm](http://www.hipaadvisory.com/tech/data_removal.htm) for additional information

## **4.0 BID PROPOSAL PREPARATION AND SUBMISSION**

### **4.1 GENERAL**

The bidder is advised to thoroughly read and follow all instructions contained in this RFP, including the instructions on the RFP's signatory page, in preparing and submitting its bid proposal.

### **4.2 BID PROPOSAL DELIVERY AND IDENTIFICATION**

In order to be considered, a bid proposal must arrive at the Purchase Bureau in accordance with the instructions on the RFP signatory page <http://www.state.nj.us/treasury/purchase/bid/summary/07-x-38874.shtml>. Bidders are cautioned to allow adequate delivery time to ensure timely delivery of bid proposals. **State regulation mandates that late bid proposals are ineligible for consideration. THE EXTERIOR OF ALL BID PROPOSAL PACKAGES ARE TO BE LABELED WITH THE BID IDENTIFICATION NUMBER AND THE FINAL BID OPENING DATE OR RISK NOT BEING RECEIVED IN TIME.**

### **4.3 NUMBER OF BID PROPOSAL COPIES**

The bidder must submit **one (1) complete ORIGINAL bid proposal**, clearly marked as the "ORIGINAL" bid proposal. The bidder should submit **seven (7) full, complete and exact copies** of the original. The copies requested are necessary in the evaluation of the bid proposal. A bidder failing to provide the requested number of copies will be charged the cost incurred by the State in producing the requested number of copies. It is suggested that the bidder make and retain a copy of its bid proposal.

### **4.4 BID PROPOSAL CONTENT**

The bid proposal should be submitted in one volume and that volume divided into four (4) sections with tabs (separators), and the content of the material located behind each tab, as follows:

- Section 1 - Forms (Section 4.4.1 - 4.4.3.)
- Section 2 - Technical Proposal (Section 4.4.4)
- Section 3 - Organizational Support and Experience (Section 4.4.5)
- Section 4 - Cost Proposal (Section 4.4.6)

#### **4.4.1 FORMS THAT MUST BE SUBMITTED WITH BID PROPOSAL**

##### **4.4.1.1 SIGNATORY PAGE**

The bidder shall complete and submit the Signatory page provided on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/07-x-38874.shtml>. The Signatory page shall be signed by an authorized representative of the bidder. If the bidder is a limited partnership, the Signatory page must be signed by a general partner. If the bidder is a joint venture, the Signatory page must be signed by a principal of each party to the joint venture. Failure to comply will result in rejection of the bid proposal.

##### **4.4.1.2 OWNERSHIP DISCLOSURE FORM**

In the event the bidder is a corporation, partnership or sole proprietorship, the bidder must complete the attached Ownership Disclosure Form. A current completed Ownership Disclosure Form must be received prior to or accompany the bid proposal. Failure to do so will preclude the award of a contract.

The Ownership Disclosure Form is located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/07-x-38874.shtml>.

##### **4.4.1.3 DISCLOSURE OF INVESTIGATIONS/ACTIONS INVOLVING BIDDER**

The bidder shall provide a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five years including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, disposition. The bidder shall use the Disclosure of Investigations and Actions Involving Bidder form located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/07-x-38874.shtml>.

##### **4.4.1.4 NOTICE OF INTENT TO SUBCONTRACT FORM**

All bidders shall complete the attached Notice of Intent to Subcontract Form <http://www.state.nj.us/treasury/purchase/bid/summary/07-x-38874.shtml> to advise the State as to whether or not a subcontractor will be utilized to provide any goods or services under the contract. If this is a Small Business Subcontracting set-aside contract, the bidder must comply with the Procedures for Small Business Participation as Subcontractors set forth in <http://www.state.nj.us/treasury/purchase/bid/summary/07-x-38874.shtml>.

##### **4.4.1.5 SUBCONTRACTOR UTILIZATION FORM**

If the bidder intends to utilize a subcontractor, the Subcontractor Utilization Form <http://www.state.nj.us/treasury/purchase/bid/summary/07-x-38874.shtml> must be completed and submitted with the bid proposal.

#### **4.4.2 PROOF OF REGISTRATIONS THAT MUST BE SUBMITTED WITH THE BID PROPOSAL**

#### **4.4.2.1 BUSINESS REGISTRATION CERTIFICATE FROM THE DIVISION OF REVENUE**

**FAILURE TO SUBMIT A COPY OF THE BIDDER'S BUSINESS REGISTRATION CERTIFICATE (OR INTERIM REGISTRATION) FROM THE DIVISION OF REVENUE WITH THE BID PROPOSAL MAY BE CAUSE FOR REJECTION OF THE BID PROPOSAL.**

The bidder may go to [www.nj.gov/njbgs](http://www.nj.gov/njbgs) to register with the New Jersey Division of Revenue or to obtain a copy of an existing Business Registration Certificate.

Refer to Section 1.1. of the NJ Standard Terms and Conditions version 05 09 06 located on the Advertised Solicitation, Current Bid Opportunities webpage  
<http://www.state.nj.us/treasury/purchase/bid/summary/07-x-38874.shtml>

#### **4.4.2.2 SMALL BUSINESS SET-ASIDE CONTRACTS**

This is a contract with set aside subcontracting goals for Small Businesses. All bidders must include in their bid proposal a completed and signed **Notice of Intent to Subcontract** form located on the Advertised Solicitation, Current Bid Opportunities webpage  
<http://www.state.nj.us/treasury/purchase/bid/summary/07-x-38874.shtml>. Bidders intending to utilize subcontractors must also include a completed and signed Subcontractor Utilization Plan form located on the Advertised Solicitation, Current Bid Opportunities webpage  
<http://www.state.nj.us/treasury/purchase/bid/summary/07-x-38874.shtml>. Failure to submit the required forms shall result in a determination that the bid is materially non-responsive. Bidders seeking eligible small businesses should contact the New Jersey Commerce, Economic Growth and Tourism Commission at (609) 292-2146.

#### **4.4.3 FORMS THAT MUST BE SUBMITTED BEFORE CONTRACT AWARD AND SHOULD BE SUBMITTED WITH THE BID PROPOSAL.**

##### **4.4.3.1 MACBRIDE PRINCIPLES CERTIFICATION**

The bidder is required to complete the attached MacBride Principles Certification evidencing compliance with the MacBride Principles. The requirement is a precondition to entering into a State contract. The MacBride Principles Certification Form is located on the Advertised Solicitation, Current Bid Opportunities webpage:  
<http://www.state.nj.us/treasury/purchase/bid/summary/07-x-38874.shtml>.

##### **4.4.3.2 AFFIRMATIVE ACTION**

The bidder is required to complete the attached Affirmative Action Employee Information Report, or, in the alternative, supply either a New Jersey Affirmative Action Certificate or evidence that the bidder is operating under a federally approved or sanctioned affirmative action program. The requirement is a precondition to entering into a State contract. The Affirmative Action Forms are located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/07-x-38874.shtml>.

#### **4.4.3.3 SERVICES SOURCE DISCLOSURE FORM**

Pursuant to N.J.S.A. 52:34-13.2, the bidder is required to submit with its bid proposal a completed source disclosure form. <http://www.state.nj.us/treasury/purchase/bid/summary/07-x-38874.shtml>. Refer to section 7.1.2 of this RFP.

#### **4.4.4 TECHNICAL PROPOSAL**

In this Section, the bidder shall describe its approach and plans for accomplishing the work outlined in the Scope of Work Section, i.e., Section 3.0. The bidder must set forth its understanding of the requirements of this RFP and its ability to successfully complete the contract. This Section of the bid proposal should contain at least the following information:

##### **4.4.4.1 MANAGEMENT OVERVIEW**

The bidder shall set forth its overall technical approach and plans to meet the requirements of the RFP in a narrative format. This narrative should convince the State that the bidder understands the objectives that the contract is intended to meet, the nature of the required work and the level of effort necessary to successfully complete the contract. This narrative should convince the State that the bidder's general approach and plans to undertake and complete the contract are appropriate to the tasks and subtasks involved.

Mere reiterations of RFP tasks and subtasks are strongly discouraged, as they do not provide insight into the bidder's ability to complete the contract. The bidder's response to this section should be designed to convince the State that the bidder's detailed plans and approach proposed to complete the Scope of Work are realistic, attainable and appropriate and that the bidder's bid proposal will lead to successful contract completion.

The bidder's response to this section of the proposal shall contain at least the following information:

- a. explain the process to be employed in reviewing a payment dispute, from initiation of the internal appeal to the final determination. This explanation should include a description of the scope of services, the criteria to be used in the decision making process and the systems and methods used to process payment dispute reviews including:
  - the method of providing a determination in the mandated amount of time;
  - the method for selecting and assigning arbitrators to cases including the recruitment, credentialing and assignment of the appropriate arbitrator to disputes;
  - the method for communications with parties involved in the process, including communication of the determination; and
  - a system and method of rendering written determinations and the basis for the determination.
- b. the method of reviewing the determinations and assuring quality outcomes, and.
- c. describe the systems and methods for compliance with the reporting requirements to DOBI, monthly and annually.

The bidder shall describe the means by which it will:

- a. have adequate arbitrator capability to accomplish the requirements of this contract,
- b. provide personnel who possess the appropriate training and qualifications for the area in which they will be conducting arbitrations. The proposal should include the criteria to be used for the selection or rejections of arbitration personnel,
- c. ensure the availability of appropriate arbitration staff as needed for timely and efficient review.
- d. ensure the neutrality and objectivity of all arbitrators conducting reviews and avoid conflict of interest. Provide affirmative evidence that no conflict of interest exists, and
- e. the bidder should provide samples of provider payment dispute arbitrations, if available.

The bidder shall have and provide a copy of its policy for ensuring that no conflict of interest exists among the bidder, its arbitrators or its agents or providers.

The bidder shall submit to the State Contract Manager, as part of its bid proposal, a list identifying all carriers, health care facilities and health care providers with whom it maintains any health related business arrangements.

The bidder shall submit a list of its Board members and their affiliations and provide updates as changes occur.

#### **4.4.4.2 CONTRACT MANAGEMENT**

The bidder should describe its specific plans to manage, control and supervise the contract to ensure satisfactory contract completion according to the required schedule. The plan should include the bidder's approach to communicate with the State Contract Manager including, but not limited to, status meetings, status reports, etc.

Bidders shall submit the documents and information specified below with their proposal to serve as arbitrator. Bidders shall submit a dispute resolution plan that describes how the contractor shall meet the requirements of the Act and this RFP. The plan shall include procedures and rules governing the arbitration process to ensure adherence to the requirements of the Act and this RFP.

The arbitration plan should be comprised of two parts.

Part I should detail the internal procedures of the contractor's operation including but not limited to:

- a. intake, screening and assignment of arbitrations;
- b. information systems for tracking cases and issuance of arbitration decisions, including, but not limited to, the receipt of requests made to the payer or provider and delivery to the arbitrator of the requested case information;
- c. hiring, regular training and evaluation of arbitrators including the frequency and type of training, the process for evaluation and procedures to avoid conflicts of interest; and
- d. standards for content of arbitration decisions including references to practice guidelines and clinical protocols.

Part II should consist of:

- a. the rules for conduct of provider payment dispute proceedings for users of the system

The plan should include, but not limited to:

- a. a process by which provider requests for arbitration may be submitted electronically, with the electronic filing setting forth concisely:
  1. the disputed claims;
  2. the issues in dispute and the relief sought; and
  3. such other information as may be required for administrative purposes
- b. a process by which the contractor may consolidate claims into a single proceeding where appropriate in order to promote prompt, efficient resolution of the dispute consistent with fairness and due process, detailing the circumstances under which disputes may be consolidated. DOBI believes "where appropriate" may include but is not limited to disputes involving same providers/payers and common payment processing issues;
- c. a process and standards for verifying the assigned arbitrator has sufficient proficiency to issue a determination resolving the dispute;
- d. prompt, fair and efficient resolution of disputes, detailing the procedure, standard of review, including reference to practice guidelines, coding and clinical protocols, and disposition timetable;
- e. an electronic tracking system of dispute management for standard and complex disputes that details the characteristics of each type of dispute including disposition timetables. The timetables should indicate the expected number of days from arbitration filing through issuance of the decision, not to exceed thirty (30) days after receipt of the required documentation as required by the Act and this RFP;
- f. a tracking system for requests of additional information from initiating and responding parties and receipt of same;
- g. a detailed plan of how the contractor will solicit candidates, interview and hire full-time arbitrators, to meet the requirements of the Act and this RFP;
- h. sufficient oversight and training of its arbitrators to promote fair, efficient and consistent determinations. In addition the Plan should describe in detail the frequency and content of a training program for its arbitrators that will encourage an efficient and cost-effective use of arbitration and will contain updates on new and revised coding protocols and payment practices, which should include DOBI personnel;
- i. detailed procedures for the evaluation of performance of the arbitrators including the establishment and communication of standards and the scheduling of performance reviews; and,
- j. the contractor's process for communicating with parties and providing access to users of the arbitration system for information about the status of pending arbitrations.

#### **4.4.4.3 CONTRACT SCHEDULE**

The bidder should include a contract schedule. If key dates are a part of this RFP, the bidder's schedule should incorporate such key dates and should identify the completion date for each task and sub-task required by the Scope of Work. Such schedule should also identify the associated deliverable item(s) to be submitted as evidence of completion of each task and/or subtask.

The bidder should identify the contract scheduling and control methodology to be used and should provide the rationale for choosing such methodology. The use of Gantt, PERT or other charts is at the option of the bidder.

#### **4.4.4.4 MOBILIZATION AND IMPLEMENTATION PLAN**

Not Applicable to this Procurement

#### **4.4.4.5 POTENTIAL PROBLEMS**

The bidder should set forth a summary of any and all problems that the bidder anticipates during the term of the contract. For each problem identified, the bidder should provide its proposed solution.

#### **4.4.5 ORGANIZATIONAL SUPPORT AND EXPERIENCE**

The bidder should include information relating to its organization, personnel, and experience, including, but not limited to, references, together with contact names and telephone numbers, evidencing the bidder's qualifications, and capabilities to perform the services required by this RFP.

##### **4.4.5.1 LOCATION**

The bidder should include the location of the bidder's office that will be responsible for managing the contract. The bidder should include the telephone number and name of the individual to contact.

##### **4.4.5.2 ORGANIZATION CHART (CONTRACT SPECIFIC)**

The bidder should include a contract organization chart, with names showing management, supervisory and other key personnel (including sub-vendor's management, supervisory or other key personnel) to be assigned to the contract. The chart should include the labor category and title of each such individual.

##### **4.4.5.3 RESUMES**

Detailed resumes should be submitted for all management, supervisory and key personnel to be assigned to the contract. Resumes should be structured to emphasize relevant qualifications and experience of these individuals in successfully completing contracts of a similar size and scope to those required by this RFP. Resumes should include the following:

- clearly identify the individual's previous experience in completing similar contracts.
- beginning and ending dates should be given for each similar contract.
- a description of the contract should be given and should demonstrate how the individual's work on the completed contract relates to the individual's ability to contribute to successfully providing the services required by this RFP.
- with respect to each similar contract, the bidder should include the name and address of each reference together with a person to contact for a reference check and a telephone number.

The bidder should provide a list of personnel to be assigned to conduct the reviews and arbitrations, their function on the project, an indication of the labor category as described above, professional licenses or board certifications, if any, and a detailed resume for each arbitrator showing quantified experience in payment dispute resolutions.

#### **4.4.5.4 BACKUP STAFF**

The bidder should include a list of backup staff that may be called upon to assist or replace primary individuals assigned. Backup staff must be clearly identified as backup staff.

In the event the bidder must hire management, supervisory and/or key personnel if awarded the contract, the bidder should include, as part of its recruitment plan, a plan to secure backup staff in the event personnel initially recruited need assistance or need to be replaced during the contract term.

#### **4.4.5.5 ORGANIZATION CHART (ENTIRE FIRM)**

The bidder should include an organization chart showing the bidder's entire organizational structure. This chart should show the relationship of the individuals assigned to the contract to the bidder's overall organizational structure.

#### **4.4.5.6 EXPERIENCE OF BIDDER ON CONTRACTS OF SIMILAR SIZE AND SCOPE**

The bidder should provide a comprehensive listing of contracts of similar size and scope that it has successfully completed, as evidence of the bidder's ability to successfully complete the services required by this RFP. Emphasis should be placed on contracts that are similar in size and scope to the work required by this RFP. A description of all such contracts should be included and should show how such contracts relate to the ability of the firm to complete the services required by this RFP. For each such contract, the bidder should provide two names and telephone numbers of individuals for the other contract party. Beginning and ending dates should also be given for each contract.

#### **4.4.5.7 FINANCIAL CAPABILITY OF THE BIDDER**

In order to provide the State with the ability to judge the bidder's financial capacity and capabilities to undertake and successfully complete the contract, the bidder should submit certified financial statements to include a balance sheet, income statement and statement of cash flow, and all applicable notes for the most recent calendar year or the bidder's most recent fiscal year. If certified financial statements are not available, the bidder should provide either a reviewed or compiled statement from an independent accountant setting forth the same information required for the certified financial statements, together with a certification from the Chief Executive Officer and the Chief Financial Officer, that the financial statements and other information included in the statements fairly present in all material respects the financial condition, results of operations and cash flows of the bidder as of, and for, the periods presented in the statements. In addition, the bidder should submit a bank reference.

If the information is not supplied with the bid proposal, the State may still require the bidder to submit it. If the bidder fails to comply with the request within seven (7) business days, the State may deem the proposal non-responsive.

A bidder may designate specific financial information as not subject to disclosure when the bidder has a good faith legal/factual basis for such assertion. Bidder may submit specific financial documents in a separate, sealed package clearly marked "Confidential-Financial Information" along with the Bid Proposal.

The State reserves the right to make the determination to accept the assertion and shall so advise the bidder.

#### **4.4.5.8 SUBCONTRACTOR(S)**

- A. **All bidders** must complete the **Notice of Intent to Subcontract Form** whether or not they intend to utilize subcontractors in connection with the work set forth in this RFP. If the bidder intends to utilize subcontractor(s), then the **Subcontractor Utilization Plan** must also be submitted with the bid.

N.J.A.C. 17:13-4 and Executive Order 71 mandate that if the bidder proposes to utilize a subcontractor, the bidder must make a good faith effort to meet the set-aside subcontracting targets of awarding a total of twenty-five percent (25%) of the value of the contract to New Jersey-based, New Jersey Commerce and Economic Growth Commission registered small businesses, with a minimum of five (5) percent awarded to each of the three categories set forth below, and the balance of ten (10) percent spread across the three annual gross revenue categories: Category I – \$1 to \$500,000; Category II - \$500,001 to \$5,000,000; Category III - \$5,000,001 to \$12,000,000.

- B. **Should the bidder choose to use subcontractors and fail to meet the Small Business Subcontracting targets set forth above, the bidder must submit documentation demonstrating its good faith effort to meet the targets with its bid proposal or within seven (7) business days upon request.**
- C. Should the bidder propose to utilize a subcontractor(s) to fulfill any of its obligations, the bidder shall be responsible for the subcontractor's(s): (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws.
- D. The bidder must provide a detailed description of services to be provided by each subcontractor, referencing the applicable Section or Subsection of this RFP.
- E. The bidder should provide detailed resumes for each subcontractor's management, supervisory and other key personnel that demonstrate knowledge, ability and experience relevant to that part of the work which the subcontractor is designated to perform.
- F. The bidder should provide documented experience to demonstrate that each subcontractor has successfully performed work on contracts of a similar size and scope to the work that the subcontractor is designated to perform in the bidder's proposal.

#### **4.4.6 PRICE SCHEDULE**

The bidder shall provide a fee for completed arbitrations for two categories of providers, institutional providers such as hospitals or facilities and for individual providers, such as physicians or groups of physicians. The bidder shall also provide a review fee for the same two categories of providers. Fees to be received are further described in [Section 3.2.6](#).

The bidder must submit its pricing using the format set forth in the State supplied price sheet(s) attached to this RFP. Failure to submit all information required may result in the bid being

considered non-responsive. Each bidder is required to hold its prices firm through issuance of contract.

The bidder should also provide a budget with labor titles and hourly rates for each labor title that ties into the total budget proposed.

## **5.0 SPECIAL CONTRACTUAL TERMS AND CONDITIONS**

### **5.1 PRECEDENCE OF SPECIAL CONTRACTUAL TERMS AND CONDITIONS**

The contract awarded as a result of this RFP shall consist of this RFP, addendum to this RFP, the contractor's bid proposal and the Division's Notice of Award.

Unless specifically stated within this RFP, the Special Contractual Terms and Conditions of the RFP take precedence over the NJ Standard Terms and Conditions version 05 09 06 located on the Advertised Solicitation, Current Bid Opportunities webpage:

<http://www.state.nj.us/treasury/purchase/bid/summary/07-x-38874.shtml>.

In the event of a conflict between the provisions of this RFP, including the Special Contractual Terms and Conditions and the NJ Standard Terms and Conditions version 05 09 06, and any Addendum to this RFP, the Addendum shall govern.

In the event of a conflict between the provisions of this RFP, including any Addendum to this RFP, and the bidder's bid proposal, the RFP and/or the Addendum shall govern.

### **5.2 CONTRACT TERM AND EXTENSION OPTION**

The term of the contract shall be for a period of **three (3) years**. The anticipated "Contract Effective Date" is provided on the signatory page of this RFP:

<http://www.state.nj.us/treasury/purchase/bid/summary/07-x-38874.shtml>. If delays in the procurement process result in a change to the anticipated Contract Effective Date, the bidder agrees to accept a contract for the full term of the contract. The contract may be extended for all or part of **two (2)** one-year periods, by the mutual written consent of the contractor and the Director.

**Purchase orders may be placed against the contract up to and including the end of business on the last day of the contract, for delivery no more than 45 days after contract expiration.]**

### **5.3 CONTRACT TRANSITION**

In the event that a new contract has not been awarded prior to the contract expiration date, as may be extended herein, it shall be incumbent upon the contractor to continue the contract under the same terms and conditions until a new contract can be completely operational. At no time shall this transition period extend more than ninety (90) days beyond the expiration date of the contract.

### **5.4 CONTRACT AMENDMENT**

Any changes or modifications to the terms of the contract shall be valid only when they have been reduced to writing and signed by the contractor and the Director.

## **5.5 CONTRACTOR RESPONSIBILITIES**

The contractor shall have sole responsibility for the complete effort specified in the contract. Payment will be made only to the contractor. The contractor shall have sole responsibility for all payments due any subcontractor.

The contractor is responsible for the professional quality, technical accuracy and timely completion and submission of all deliverables, services or commodities required to be provided under the contract. The contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its deliverables and other services. The approval of deliverables furnished under this contract shall not in any way relieve the contractor of responsibility for the technical adequacy of its work. The review, approval, acceptance or payment for any of the services shall not be construed as a waiver of any rights that the State may have arising out of the contractor's performance of this contract.

## **5.6 SUBSTITUTION OF STAFF**

If it becomes necessary for the contractor to substitute any management, supervisory or key personnel, the contractor will identify the substitute personnel and the work to be performed.

The contractor must provide detailed justification documenting the necessity for the substitution. Resumes must be submitted evidencing that the individual(s) proposed as substitution(s) have qualifications and experience equal to or better than the individual(s) originally proposed or currently assigned.

The contractor shall forward a request to substitute staff to the State Contract Manager for consideration and approval. No substitute personnel are authorized to begin work until the contractor has received written approval to proceed from the State Contract Manager.

## **5.7 SUBSTITUTION OR ADDITION OF SUBCONTRACTOR(S)**

This Subsection serves to supplement but not to supersede Section 3.11 of the NJ Standard Terms and Conditions version 05 09 06 located on the Advertised Solicitation, Current Bid Opportunities webpage.

If it becomes necessary for the contractor to substitute a subcontractor, add a subcontractor or substitute its own staff for a subcontractor, the contractor will identify the proposed new subcontractor or staff member(s) and the work to be performed. The contractor must provide detailed justification documenting the necessity for the substitution or addition.

The contractor must provide detailed resumes of its proposed replacement staff or of the proposed subcontractor's management, supervisory and other key personnel that demonstrate knowledge, ability and experience relevant to that part of the work which the subcontractor is to undertake.

The qualifications and experience of the replacement(s) must equal or exceed those of similar personnel proposed by the contractor in its bid proposal.

The contractor shall forward a written request to substitute or add a subcontractor or to substitute its own staff for a subcontractor to the State Contract Manager for consideration. If

the State Contract Manager approves the request, the State Contract Manager will forward the request to the Director for final approval.

No substituted or additional subcontractors are authorized to begin work until the contractor has received written approval from the Director.

### **5.8 OWNERSHIP OF MATERIAL**

All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the contract, including, but not limited to, all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the services required under this contract shall be and remain the property of the State of New Jersey and shall be delivered to the State of New Jersey upon 30 days notice by the State. With respect to software computer programs and/or source codes developed for the State, the work shall be considered "work for hire", i.e., the State, not the contractor or subcontractor, shall have full and complete ownership of all software computer programs and/or source codes developed. To the extent that any of such materials may not, by operation of the law, be a work made for hire in accordance with the terms of this Agreement, contractor or subcontractor hereby assigns to the State all right, title and interest in and to any such material, and the State shall have the right to obtain and hold in its own name and copyrights, registrations and any other proprietary rights that may be available.

Should the bidder anticipate bringing pre-existing intellectual property into the project, the intellectual property must be identified in the bid proposal. Otherwise, the language in the first paragraph of this section prevails. If the bidder identifies such intellectual property ("Background IP") in its bid proposal, then the Background IP owned by the bidder on the date of the contract, as well as any modifications or adaptations thereto, remain the property of the bidder. Upon contract award, the bidder or contractor shall grant the State a non-exclusive, perpetual royalty free license to use any of the bidder/contractor's Background IP delivered to the State for the purposes contemplated by the Contract.

### **5.9 DATA CONFIDENTIALITY**

All financial, statistical, personnel and/or technical data supplied by the State to the contractor are confidential. The contractor is required to use reasonable care to protect the confidentiality of such data. Any use, sale or offering of this data in any form by the contractor, or any individual or entity in the contractor's charge or employ, will be considered a violation of this contract and may result in contract termination and the contractor's suspension or debarment from State contracting. In addition, such conduct may be reported to the State Attorney General for possible criminal prosecution.

### **5.10 NEWS RELEASES**

The contractor is not permitted to issue news releases pertaining to any aspect of the services being provided under this contract without the prior written consent of the Director.

### **5.11 ADVERTISING**

The contractor shall not use the State's name, logos, images, or any data or results arising from this contract as a part of any commercial advertising without first obtaining the prior written consent of the Director.

## **5.12 LICENSES AND PERMITS**

The contractor shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform this contract. The contractor shall supply the State Contract Manager with evidence of all such licenses, permits and authorizations. This evidence shall be submitted subsequent to the contract award. All costs associated with any such licenses, permits and authorizations must be considered by the bidder in its bid proposal.

## **5.13 CLAIMS AND REMEDIES**

### **5.13.1 CLAIMS**

All claims asserted against the State by the contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

### **5.13.2 REMEDIES**

Nothing in the contract shall be construed to be a waiver by the State of any warranty, expressed or implied, of any remedy at law or equity, except as specifically and expressly stated in a writing executed by the Director.

### **5.13.3 REMEDIES FOR FAILURE TO COMPLY WITH MATERIAL CONTRACT REQUIREMENTS**

In the event that the contractor fails to comply with any material contract requirements, the Director may take steps to terminate the contract in accordance with the State administrative code and/or authorize the delivery of contract items by any available means, with the difference between the price paid and the defaulting contractor's price either being deducted from any monies due the defaulting contractor or being an obligation owed the State by the defaulting contractor.

## **5.14 LATE DELIVERY**

The contractor must immediately advise the State Contract Manager of any circumstance or event that could result in late completion of any task or subtask called for to be completed on a date certain.

## **5.15 RETAINAGE**

Not applicable to this procurement

#### **5.16 STATE'S OPTION TO REDUCE SCOPE OF WORK**

The State has the option, in its sole discretion, to reduce the scope of work for any task or subtask called for under this contract. In such an event, the Director shall provide advance written notice to the contractor.

Upon receipt of such written notice, the contractor will submit, within five (5) working days to the Director and the State Contract Manager, an itemization of the work effort already completed by task or subtask. The contractor shall be compensated for such work effort according to the applicable portions of its price schedule.

#### **5.17 SUSPENSION OF WORK**

The State Contract Manager may, for valid reason, issue a stop order directing the contractor to suspend work under the contract for a specific time. The contractor shall be paid until the effective date of the stop order. The contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the contractor's approved schedule of performance. The Director and the contractor shall negotiate an equitable adjustment, if any, to the contract price.

#### **5.18 CHANGE IN LAW**

Whenever an unforeseen change in applicable law or regulation affects the services that are the subject of this contract, the contractor shall advise the State Contract Manager and the Director in writing and include in such written transmittal any estimated increase or decrease in the cost of its performance of the services as a result of such change in law or regulation. The Director and the contractor shall negotiate an equitable adjustment, if any, to the contract price.

#### **5.19 CONTRACT PRICE INCREASE (PREVAILING WAGE)**

If the Prevailing Wage Act (N.J.S.A. 34:11-56 et seq.) is applicable to the contract, the contractor may apply to the Director, on the anniversary of the effective date of the contract, for a contract price increase. The contract price increase will be available only for an increase in the prevailing wages of trades and occupations covered under this contract during the prior year. The contractor must substantiate with documentation the need for the increase and submit it to the Director for review and determination of the amount, if any, of the requested increase, which shall be available for the upcoming contract year. No retroactive increases will be approved by the Director.

#### **5.20 ADDITIONAL WORK AND/OR SPECIAL PROJECTS**

The contractor shall not begin performing any additional work or special projects without first obtaining written approval from both the State Contract Manager and the Director.

In the event of additional work and/or special projects, the contractor must present a written proposal to perform the additional work to the State Contract Manager. The proposal should provide justification for the necessity of the additional work. The relationship between the additional work and the base contract work must be clearly established by the contractor in its proposal.

The contractor's written proposal must provide a detailed description of the work to be performed broken down by task and subtask. The proposal should also contain details on the level of effort, including hours, labor categories, etc., necessary to complete the additional work.

The written proposal must detail the cost necessary to complete the additional work in a manner consistent with the contract. The written price schedule must be based upon the hourly rates, unit costs or other cost elements submitted by the contractor in the contractor's original bid proposal submitted in response to this RFP. Whenever possible, the price schedule should be a firm, fixed cost to perform the required work. The firm fixed price should specifically reference and be tied directly to costs submitted by the contractor in its original bid proposal. A payment schedule, tied to successful completion of tasks and subtasks, must be included.

Upon receipt and approval of the contractor's written proposal, the State Contract Manager shall forward same to the Director for the Director's written approval. Complete documentation from the Using Agency, confirming the need for the additional work, must be submitted. Documentation forwarded by the State Contract Manager to the Director must include all other required State approvals, such as those that may be required from the State of New Jersey's Office of Management and Budget (OMB) and Office of Information and Technology (OIT).

No additional work and/or special project may commence without the Director's written approval. In the event the contractor proceeds with additional work and/or special projects without the Director's written approval, it shall be at the contractor's sole risk. The State shall be under no obligation to pay for work performed without the Director's written approval.

## **5.21 FORM OF COMPENSATION AND PAYMENT**

This Section supplements Section 4.5 of the NJ Standard Terms and Conditions version 05 09 06, located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/07-x-38874.shtml>.

The Contractor shall be paid by parties seeking arbitration in accordance with [section 3.2.7](#). That is, the contractor shall collect one-half of the review fee and one-half of the arbitration fee from the initiating party upon receipt of the application for arbitration, and shall bill the respondent for the remaining one-half of the review fee and one-half of the arbitration fee. The actual amount to which the contractor is entitled will depend upon whether the contractor accepts the application and the matter goes to arbitration as set forth in [section 3.2.6](#).

### **5.21.1 PAYMENT TO CONTRACTOR - OPTIONAL METHOD**

Not applicable to this procurement

## **5.22 MODIFICATIONS AND CHANGES TO THE NJ STANDARD TERMS AND CONDITIONS VERSION 05 09 06**

NJ Standard Terms and Conditions version 05 09 06 are located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/07-x-38874.shtml>

### **5.22.1 PATENT AND COPYRIGHT INDEMNITY**

Section 2.1 of the NJ Standard Terms and Conditions version 05 09 06 is deleted and replaced with the following:

#### **2.1 Patent and Copyright Indemnity**

- a. The Contractor shall hold and save the State of New Jersey, its officers, agents, servants and employees, harmless from liability of any nature or kind for or on account of the use of any copyrighted or uncopied composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of the contract.
- b. The State of New Jersey agrees: (1) to promptly notify the Contractor in writing of such claim or suit; (2) that the Contractor shall have control of the defense of settlement of such claim or suit; and (3) to cooperate with the Contractor in the defense of such claim or suit, to the extent that the interests of the Contractor and the State are consistent.
- c. In the event of such claim or suit, the Contractor, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

### **5.22.2 INDEMNIFICATION**

Section 2.2 of the NJ Standard Terms and Conditions version 05 09 06, is deleted and replaced with the following:

#### **2.2 Indemnification**

The contractor's liability to the State for actual, direct damages resulting from the contractor's performance or non-performance, or in any manner related to the contract, for any and all claims, shall be limited in the aggregate to 100 % of the value of the contract, except that such limitation of liability shall not apply to the following:

1. The contractor's obligation to indemnify the State of New Jersey and its employees from and against any claim, demand, loss, damage or expense relating to bodily injury or the death of any person or damage to real property or tangible personal property, incurred from the work or materials supplied by the contractor under the contract caused by negligence or willful misconduct of the contractor;
2. The contractor's breach of its obligations of confidentiality; and,
3. Contractor's liability with respect to copyright indemnification.

The contractor's indemnification obligation is not limited by but is in addition to the insurance obligations contained in Section 2.3 of the NJ Standard Terms and Conditions version 05 09 06.

The contractor shall not be liable for special, consequential, or incidental damages.

### **5.22.3 INSURANCE - PROFESSIONAL LIABILITY INSURANCE**

Section 2.3 of the NJ Standard Terms and Conditions version 05 09 06 regarding insurance is modified with the addition of the following section regarding Professional Liability Insurance.

d) Professional Liability Insurance: The Contractor shall carry Errors and Omissions, Professional Liability Insurance and/or Professional Liability Malpractice Insurance sufficient to protect the Contractor from any liability arising out the professional obligations performed pursuant to the requirements of the Contract. The insurance shall be in the amount of not less than \$1,000,000 and in such policy forms as shall be approved by the State. If the Contractor has claims-made coverage and subsequently changes carriers during the term of the Contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

## **6.0 PROPOSAL EVALUATION**

### **6.1 PROPOSAL EVALUATION COMMITTEE**

Bid proposals may be evaluated by an Evaluation Committee composed of members of affected departments and agencies together with representative(s) from the Purchase Bureau. Representatives from other governmental agencies may also serve on the Evaluation Committee. On occasion, the Evaluation Committee may choose to make use of the expertise of outside consultant in an advisory role.

### **6.2 ORAL PRESENTATION AND/OR CLARIFICATION OF BID PROPOSAL**

After the submission of bid proposals, unless requested by the State, contact with the State is limited to status inquiries only and such inquiries are only to be directed to the buyer. Any further contact or information about the proposal to the buyer or any other State official connected with the solicitation will be considered an impermissible supplementation of the bidder's bid proposal.

A bidder may be required to give an oral presentation to the Evaluation Committee concerning its bid proposal. The Evaluation Committee may also require a bidder to submit written responses to questions regarding its bid proposal.

The purpose of such communication with a bidder, either through an oral presentation or a letter of clarification, is to provide an opportunity for the bidder to clarify or elaborate on its bid proposal. Original bid proposals submitted, however, cannot be supplemented, changed, or corrected in any way. No comments regarding other bid proposals are permitted. Bidders may not attend presentations made by their competitors.

It is within the Evaluation Committee's discretion whether to require a bidder to give an oral presentation or require a bidder to submit written responses to questions regarding its bid proposal. Action by the Evaluation Committee in this regard should not be construed to imply acceptance or rejection of a bid proposal. The Purchase Bureau buyer will be the sole point of contact regarding any request for an oral presentation or clarification.

### **6.3 EVALUATION CRITERIA**

The following evaluation criteria categories, not necessarily listed in order of significance, will be used to evaluate bid proposals received in response to this RFP. The evaluation criteria categories may be used to develop more detailed evaluation criteria to be used in the evaluation process:

#### **6.3.1 TECHNICAL EVALUATION CRITERIA**

- A) The bidder's general approach and plans in meeting the requirements of this RFP.
- B) The bidder's detailed approach and plans to perform the services required by the Scope of Work of this RFP.
- C) The bidder's documented experience in successfully completing contracts of a similar size and scope to the work required by this RFP.

- D) The qualifications and experience of the bidder's management, supervisory or other key personnel assigned to the contract, with emphasis on documented experience in successfully completing work on contracts of similar size and scope to the work required by this RFP.
- E) The overall ability of the bidder to mobilize, undertake and successfully complete the contract. This judgment will include, but not be limited to, the following factors: the number and qualifications of management, supervisory and other staff proposed by the bidder to complete the contract, the availability and commitment to the contract of the bidder's management, supervisory and other staff proposed and the bidder's contract management plan, including the bidder's contract organizational chart.

### **6.3.2 BIDDER'S PRICE SCHEDULE**

For evaluation purposes, bidders will be ranked according to the total bid price located on the Price Sheet located on the Advertised Solicitation, Current Bid Opportunities webpage, <http://www.state.nj.us/treasury/purchase/bid/summary/07-x-38874.shtml>

The bidder should submit a budget that supports and explains each total price submitted on its price schedule. The budget should include, but not be limited to, staff, estimated hours for each staff person and an all inclusive hourly rate for each staff person. The budget for price lines 1 and 4 should be designed to match the deliverables specified in section 3.9.

Failure to submit all requested pricing information may result in the bidder's proposal being considered materially non-responsive. Each bidder must hold its price(s) firm through issuance of contract to permit the completion of the evaluation of bid proposals received and the contract award process.

### **6.3.3 BID DISCREPANCIES**

In evaluating bids, discrepancies between words and figures will be resolved in favor of words. Discrepancies between unit prices and totals of unit prices will be resolved in favor of unit prices. Discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated total of multiplied unit prices and units of work and the actual total will be resolved in favor of the actual total. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the corrected sum of the column of figures.

### **6.4 NEGOTIATION AND BEST AND FINAL OFFER (BAFO)**

Following the opening of bid proposals, the State shall, pursuant to N.J.S.A. 52:34-12(f), negotiate one or more of the following contractual issues: the technical services offered, the terms and conditions and/or the price of a proposed contract award with any bidder, and/or solicit a Best and Final Offer (BAFO) from one or more bidders.

Initially, the Evaluation Committee will conduct a review of all the bids and select bidders to contact to negotiate and/or conduct a BAFO based on its evaluation and determination of the bid proposals that best satisfy the evaluation criteria and RFP requirements, and that are most

advantageous to the State, price and other factors considered. The Committee may not contact all bidders to negotiate and/or to submit a BAFO.

In response to the State's request to negotiate, bidders must continue to satisfy all mandatory RFP requirements but may improve upon their original technical proposal in any revised technical proposal. However, any revised technical proposal that does not continue to satisfy all mandatory requirements will be rejected as non-responsive and the original technical proposal will be used for any further evaluation purposes in accordance with the following procedure.

In response to the State's request for a BAFO, bidders may submit a revised price proposal that is equal to or lower in price than their original submission, but must continue to satisfy all mandatory requirements. Any revised price proposal that is higher in price than the original will be rejected as non-responsive and the original bid will be used for any further evaluation purposes.

After receipt of the results of the negotiation and/or the BAFO(s), the Evaluation Committee will complete its evaluation and recommend to the Director for award that responsible bidder(s) whose bid proposal, conforming to this RFP, is most advantageous to the State, price and other factors considered.

All contacts, records of initial evaluations, any correspondence with bidders related to any request for negotiation or BAFO, any revised technical and/or price proposals, the Evaluation Committee Report and the Award Recommendation, will remain confidential until a Notice of Intent to Award a contract is issued.

## **7.0 CONTRACT AWARD**

### **7.1 DOCUMENTS REQUIRED BEFORE CONTRACT AWARD**

#### **7.1.1 REQUIREMENTS OF N.J.S.A. 19:44A-20.13-25 (FORMERLY EXECUTIVE ORDER 134)**

In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the negotiation and award of State contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, the Legislature enacted N.J.S.A. 19:44A-20.13 – 25 on March 22, 2005 the “Legislation”), retroactive to October 15, 2004, superseding the terms of Executive Order 134. Pursuant to the requirements of the Legislation, the terms and conditions set forth in this section are material terms of any contract resulting from this RFP:

##### **7.1.1.1 DEFINITIONS**

For the purpose of this section, the following shall be defined as follows:

a) Contribution – means a contribution reportable as a recipient under “The New Jersey Campaign Contributions and Expenditures Reporting Act.” P.L. 1973, c. 83 (C.19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq. Through December 31, 2004, contributions in excess of \$400 during a reporting period were deemed "reportable" under these laws. As of January 1, 2005, that threshold was reduced to contributions in excess of \$300.

b) Business Entity – means any natural or legal person, business corporation, professional services corporation, Limited Liability Company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction. The definition of a business entity includes (i) all principals who own or control more than 10 percent of the profits or assets of a business entity or 10 percent of the stock in the case of a business entity that is a corporation for profit, as appropriate; (ii) any subsidiaries directly or indirectly controlled by the business entity; (iii) any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and (iv) if a business entity is a natural person, that person's spouse or child, residing in the same household.

##### **7.1.1.2 BREACH OF TERMS OF THE LEGISLATION**

It shall be a breach of the terms of the contract for the Business Entity to (i) make or solicit a contribution in violation of the Legislation, (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation; (vi) fund contributions made by third parties, including consultants, attorneys, family

members, and employees; (vii) engage in any exchange of contributions to circumvent the intent of the Legislation; or (viii) directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

### **7.1.1.3 CERTIFICATION AND DISCLOSURE REQUIREMENTS**

a) The State shall not enter into a contract to procure from any Business Entity services or any material, supplies or equipment, or to acquire, sell or lease any land or building, where the value of the transaction exceeds \$17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor, or to any State or county political party committee during certain specified time periods

b) Prior to awarding any contract or agreement to any Business Entity, the Business Entity proposed as the intended awardee of the contract shall submit the Certification and Disclosure form, certifying that no contributions prohibited by the Legislation have been made by the Business Entity and reporting all contributions the Business Entity made during the preceding four years to any political organization organized under 26 U.S.C.527 of the Internal Revenue Code that also meets the definition of a “continuing political committee” within the mean of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The required form and instructions, available for review on the Purchase Bureau website at <http://www.state.nj.us/treasury/purchase/forms.htm#eo134>, shall be provided to the intended awardee for completion and submission to the Purchase Bureau with the Notice of Intent to Award. Upon receipt of a Notice of Intent to Award a Contract, the intended awardee shall submit to the Division, in care of the Purchase Bureau Buyer, the Certification and Disclosure(s) within five (5) business days of the State’s request. Failure to submit the required forms will preclude award of a contract under this RFP, as well as future contract opportunities.

c) Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the contract, and any extension(s) thereof, at the time any such contribution is made. The required form and instructions, available for review on the Purchase Bureau website at <http://www.state.nj.us/treasury/purchase/forms.htm#eo134>, shall be provided to the intended awardee with the Notice of Intent to Award.

### **7.1.1.4 STATE TREASURER REVIEW**

The State Treasurer or his designee shall review the Disclosures submitted pursuant to this section, as well as any other pertinent information concerning the contributions or reports thereof by the intended awardee, prior to award, or during the term of the contract, by the contractor. If the State Treasurer determines that any contribution or action by the contractor constitutes a breach of contract that poses a conflict of interest in the awarding of the contract under this solicitation, the State Treasurer shall disqualify the Business Entity from award of such contract.

### **7.1.1.5 ADDITIONAL DISCLOSURE REQUIREMENT OF P.L. 2005, C. 271**

Contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to P.L. 2005, c. 271, section 3 if the contractor receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the contractor’s responsibility to determine if filing is

necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at [www.elec.state.nj.us](http://www.elec.state.nj.us).

## **7.1.2 SOURCE DISCLOSURE REQUIREMENTS**

### **7.1.2.1 REQUIREMENTS OF N.J.S.A. 52:34-13.2**

Under the referenced statute, effective August 3, 2005, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

### **7.1.2.2 SOURCE DISCLOSURE REQUIREMENTS**

Pursuant to the statutory requirements, the intended awardee of a contract primarily for services with the State of New Jersey must disclose the location by country where services under the contract, including subcontracted services, will be performed. The Source Disclosure Certification form is located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/07-x-38874.shtml>.

### **FAILURE TO SUBMIT SOURCING INFORMATION WHEN REQUESTED BY THE STATE SHALL PRECLUDE AWARD OF A CONTRACT TO THE BIDDER.**

If any of the services cannot be performed within the United States, the bidder shall state with specificity the reasons why the services cannot be so performed. The Director shall determine whether sufficient justification has been provided by the bidder to form the basis of his certification that the services cannot be performed in the United States and whether to seek the approval of the Treasurer.

### **7.1.2.3 BREACH OF CONTRACT OF EXECUTIVE ORDER 129**

### **A SHIFT TO PROVISION OF SERVICES OUTSIDE THE UNITED STATES DURING THE TERM OF THE CONTRACT SHALL BE DEEMED A BREACH OF CONTRACT.**

If, during the term of the contract, the contractor or subcontractor, who had on contract award declared that services would be performed in the United States, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 3.5b.1 of the Standard Terms and Conditions version 05 09 06 of the RFP, unless previously approved by the Director and the Treasurer.

## **7.2 FINAL CONTRACT AWARD**

Contract award[s] shall be made with reasonable promptness by written notice to that responsible bidder(s), whose bid proposal(s), conforming to this RFP, is (are) most advantageous to the State, price, and other factors considered. Any or all bid proposals may be rejected when the State Treasurer or the Director determines that it is in the public interest to do so.

### **7.3 INSURANCE CERTIFICATES**

The contractor shall provide the State with current certificates of insurance for all coverages required by the terms of this contract, naming the State as an Additional Insured.

### **7.4 PERFORMANCE BOND**

Not Applicable to this Procurement

## **8.0 CONTRACT ADMINISTRATION**

### **8.1 CONTRACT MANAGER**

The State Contract Manager is the State employee responsible for the overall management and administration of the contract.

The State Contract Manager for this project will be identified at the time of execution of contract. At that time, the contractor will be provided with the State Contract Manager's name, department, division, agency, address, telephone number, fax phone number, and email address.

#### **8.1.1 STATE CONTRACT MANAGER RESPONSIBILITIES**

For an agency contract where only one State office uses the contract, the State Contract Manager will be responsible for engaging the contractor, assuring that Purchase Orders are issued to the contractor, directing the contractor to perform the work of the contract, approving the deliverables and approving payment vouchers. The State Contract Manager is the person that the contractor will contact **after the contract is executed** for answers to any questions and concerns about any aspect of the contract. The State Contract Manager is responsible for coordinating the use and resolving minor disputes between the contractor and any component part of the State Contract Manager's Department.

If the contract has multiple users, then the State Contract Manager shall be the central coordinator of the use of the contract for all Using Agencies, while other State employees engage and pay the contractor. All persons and agencies that use the contract must notify and coordinate the use of the contract with the State Contract Manager.

#### **8.1.2 COORDINATION WITH THE STATE CONTRACT MANAGER**

Any contract user that is unable to resolve disputes with a contractor shall refer those disputes to the State Contract Manager for resolution. Any questions related to performance of the work of the contract by contract users shall be directed to the State Contract Manager. The contractor may contact the State Contract Manager if the contractor can not resolve a dispute with contract users.

**PRICE SCHEDULE**

**ARBITRATION AND MEDIATION SERVICES: CLAIMS ARBITRATION - DOBI**

**Bid Number 07-X-38874**

Refer to [RFP Section 3.0](#) (Scope of Work) for task requirements and deliverables & [RFP Section 2.2](#) for definitions of "All Inclusive Hourly Rate" and "Firm Fixed Price"

Price Line	Work to be Performed	Estimated Qty	Unit	Unit Price	Total
1	Fully Loaded Firm Fixed Price for the Initial Review of the Arbitration related to Institutional Providers	1,000	Each		
2	Fully Loaded Firm Fixed Price for the Initial Review of the Arbitration related to Individual Providers	1,000	Each		
3	Fully Loaded Firm Fixed Price for Completed Arbitration for Institutional Providers	1,000	Each		
4	Fully Loaded Firm Fixed Price for Completed Arbitration for Individual Providers	1,000	Each		
<b>TOTAL BID PRICE</b>					<b>\$</b>

The bidder must provide a price for each bid item or the bid proposal may be considered non-responsive.

For all unit price items, the Contractor shall be paid based on the actual quantity of work performed multiplied by the unit price.

\*Estimated quantities are for bidding purposes only. For all unit price items, the Contractor shall be paid based on the actual quantities for each of the categories.

ATTACHMENT 1

STATE OF NEW JERSEY  
BUSINESS ASSOCIATE AGREEMENT

**Preamble** -- This Business Associate Agreement (“Agreement”) supplements and is made a part of the Contract, number T-\_\_\_\_\_ issued by the Department of Treasury, Division of Purchase and Property on behalf of the \_\_\_\_\_, (\_\_\_\_\_) and is effective as of \_\_\_\_\_[DATE].

**Whereas,**

**Whereas**

**Whereas,**

**Whereas,** the Covered Entity and Business Associate must protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to this Addendum in compliance with the HIPAA and the HIPAA Regulations and other applicable laws; and

**Whereas,** the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including but not limited to those contained in Title 45, ' 164.504(e) of the Code of Federal Regulations (ACFR@), as the same may be amended from time to time;

**NOW THEREFORE,** in consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the Covered Entity and Business Associate agree as follows:

Article I - Definitions

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR ' 160.103 and ' 164.501.

^Agreement@ shall mean the Services Agreement dated \_\_\_\_\_, mutually entered into between the Commission as the Business Associate, and \_\_\_\_\_ (\_\_\_\_), as the Covered Entity, under which agreed to perform services [fill in the services agreed to in the services agreement]

^Business Associate@ shall mean \_\_\_\_\_ [VENDOR].

“Covered Entity” shall mean the \_\_\_\_\_

“Data Aggregation” shall have the meaning given to such term under the Privacy Rule, including but not limited to 45 CFR ‘ 164.501.

“Designated Record Set” shall have the meaning given to such term under the Privacy Rule, including but not limited to 45 CFR ‘ 164.501.

“Electronic Protected Health Information” shall have the same meaning as given to such term in 45 CFR 160.103, and limited to the information the Business Associate creates, receives, maintains, or transmits from or on behalf of Covered Entity.

“Health Care Operations” shall have the meaning given to such term under the Privacy Rule, including but not limited to 45 CFR ‘ 164.501.

“Individual” shall have the meaning given to such term in 45 CFR ‘ 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR ‘ 164.502(g)

“Privacy Rule” shall mean the HIPAA Regulation that is codified at 45 CFR Parts 160 and part 164, sub parts A and E.

“Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 CFR §160.103, limited to the information created or received by the Business Associate from or on behalf of the Covered Entity.

“Required by Law” shall have the meaning given to such term in 45 CFR ‘ 164.103.

“Secretary” shall mean the Secretary of the federal Department of Health and Human Services or his designee.

## Article II - Obligations and Activities of Business Associate

A. *Permitted Uses and Disclosures.* Business Associate agrees to not use or disclose PHI other than as permitted or required by the Contract or as Required By Law.

B. *Nondisclosure.* Business Associate shall not use or further disclose the Covered Entity=s PHI other than as permitted or required by the Contract, the Regulations or as Required by Law. 45 CFR ' 164.504(e)(2)(ii)(A).

C. *Safeguards.* Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of PHI other than as permitted by the Contract or the Regulations or by 45 CFR ' 164.504(e)(2)(ii)(B).

D. *Duty to Mitigate.* Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by the Contract, the Act or the Regulations of which it becomes aware.

**[Alternate language: “Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.]**

E. *Reporting of Improper Use or Disclosure.* Business Associate shall report to the Covered Entity any use or disclosure of the PHI otherwise than as provided for by this Agreement within two business days of Business Associate becoming aware of such use or disclosure. 45 CFR ' 164.504(e)(2)(ii)(C).

F. *Business Associate=s Agents.* Business Associate shall ensure that any agents, including subcontractors, to whom it provides PHI agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI. 45 CFR ' 164.504(e)(2)(D).

G. *Availability of Information to Covered Entity.* To the extent that Business Associate possesses or maintains PHI in a Designated Record Set, Business Associate agrees to provide access, at the request of or as directed by the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR ' 164.524. provided Business Associate has not issued a denial pursuant to 45 CFR ' 164.524(a)(2) or (a)(3).

H. *Amendment of PHI.* To the extent that Business Associate possesses or maintains PHI in a Designated Record Set, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR '164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by the Covered Entity unless Business Associate has issued a denial pursuant to 45 CFR '164.526(2).

I. *Appeals Procedure for Denial of Access or Amendment of PHI.* Business Associate shall create and maintain an appeal process described in 45 CFR '164.524 and '164.526 that Individuals can utilize, if their request for access to or amendment of their PHI is denied. **[Comment: This provision should be reviewed by a DAG with specific knowledge of HIPAA regulations . 45 CFR 164.524 and 164.526 concern specific obligations of the Covered Entity and not the BA. There is no indication that these obligations can be delegated to the BA.]**

J. *Internal Practices.* Business Associate shall make its internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by, the Business Associate on behalf of the Covered Entity available to the Covered Entity, or the Secretary of the U.S. Department of Health and Human Services for purposes of determining the Business Associate=s compliance with the Privacy Rule.

K. *Availability of PHI to Covered Entity.* Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner designated by the Covered Entity, information collected in accordance with Section 2.(i.)(?) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

L. *Minimum Necessary.* Business Associate and its agents or subcontractors shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure. 45 CFR '164.514(d)(3).

M. *Retention of Protected Health Information.* Business Associate and its agents or subcontractors shall retain all PHI throughout term of the Agreement and shall continue to maintain the information required under Article II, Section J, Internal Practices, of this Agreement for a period of six (6) years after termination of the Agreement. 45 CFR '164.530(j)(2). **[Comment – see comment above at section I. This code section concerns obligations of the Covered Entity and not the BA.]**

N. *Notification of Breach.* During the term of this Agreement, the Business Associate shall notify the Covered Entity within two business days of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

### **Article III - Permitted Uses and Disclosures by Business Associate**

A. *Purposes of Disclosure.* Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform services for, or on behalf of, covered entity as specified in the Services Agreement, provided that such use and disclosure would not violate the Privacy rule if done by the Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

*B. Information.* Covered Entity shall disclose the following information to the Business Associate in accordance with the terms of the Contract and the Regulations:

**[insert what will be disclosed. can attach the file transfer format if electronic exchange]**

*C. Subcontractor(s).* The Parties acknowledge that the following subcontractors or agents of the Business Associate shall receive PHI in the course of assisting the Business Associate in the performance of its obligations under the Contract and the Regulations and this Agreement. Business Associate shall have a continuing obligation to amend this list from time to time should it change or add subcontractors to perform key services under this contract.

**[Business Associate to list subcontractors here]**

*D. Use for Management and Administration.* Except as otherwise limited herein, Business Associate may use PHI received by the Business Associate in its capacity as a Business Associate of the Covered Entity, if such disclosure is necessary (i) for the proper management and administration of the Business Associate, or (ii) to carry out the legal responsibilities of the Business Associate. 45 CFR ' 164.504(e)(2)(i).

*E. Disclosure for Management and Administration.* Except as otherwise limited herein, Business Associate may disclose PHI received by the Business Associate in its capacity as a Business Associate of the Covered Entity for the proper management and administration of the Business Associate if (i) the disclosure is Required by Law or (ii) Business Associate (a) obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person and (b) the person notifies the Business Associate of any instances of which it becomes aware in which the confidentiality of the PHI has been breached.

**[this may not apply]** *F. Data Aggregation Services.* Except as otherwise limited herein, Business Associate may use PHI to provide Data Aggregation services to the covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B)..

*G.* Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1).

- 1) *Receipt.* Business Associate=s receipt of the Covered Entity=s PHI pursuant to the transactions contemplated by the Contract shall be deemed to occur as follows, and the Business Associate=s obligations under this Agreement shall commence with respect to such PHI upon receipt:

#### Article IV- Obligations of Covered Entity

A. *Safeguards.* The Covered Entity shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to the Business Associate pursuant to the Contract and the Regulations, in accordance with the standards and requirements of the Privacy Rule, until such PHI is received by the Business Associate, and in accordance with any specifications set forth in this agreement.

B. *Limitations in Privacy Notice.* The Covered Entity agrees to notify the Business Associate of any limitations(s) in its notice of privacy practices of the Covered Entity in accordance with 45 CFR ' 164.520(2)(i) to the extent that such limitation may affect the Business Associate=s use or disclosure of PHI.

C. *Revocation of Permissions.* The Covered Entity agrees to notify the Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect the Business Associate=s use or disclosure of PHI.

D. *Request for Restrictions.* Covered Entity agrees to notify the Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR ' 164.522, to the extent that such restriction may affect the Business Associate=s use or disclosure of PHI.

#### Article V - Termination

A. *Term.* The effective date of this Agreement shall be \_\_\_\_\_ from the date of execution by all the Parties and it shall terminate when all the PHI provided by the Covered Entity to the Business Associate, or created or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity. If the Business Associate determines pursuant to subsection E below that it is not feasible to return or destroy PHI received from, or created or received by the Business Associate on behalf of the Covered Entity, the protections of this Agreement with respect to such PHI shall remain in effect.

B. *Material Breach.* A breach by the Business Associate of any material provision of this Agreement, as determined by the Covered Entity, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement by the Covered Entity.

C. *Reasonable Steps to Cure Breach.* If the Covered Entity knows of a pattern of activity or practice of the Business Associate that constitutes a material breach or violation of the Business Associate's obligations under the provisions of this Agreement and does not terminate the Agreement, then the Covered Entity shall provide the Business Associate time to take reasonable steps to cure such breach or end such violation, as applicable. If the Business Associate's efforts to cure such breach or end such violation within the time accorded by the Covered Entity, are unsuccessful, the Covered Entity shall either (i) terminate the Agreement, if feasible, or (ii) if termination of the Agreement is not feasible, then the Covered Entity shall report the Business Associate's breach or violation to the Secretary. 45 CFR ' 164.504(e)(1)(ii).

D. *Judicial or Administrative Proceedings.* Covered Entity may terminate the Agreement, effective immediately, if (i) the Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate has been joined.

E. *Effect of Termination.* Upon termination of the Agreement for any reason, the Business Associate shall return or destroy all PHI that the Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI.

(i) In the event that the Business Associate determines that return or destruction is not feasible, the Business Associate shall provide the Covered Entity notification of the conditions that make return or destruction infeasible. Business Associate shall continue to extend the protections of this Agreement to such PHI that was infeasible to return or destroy, and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. 45 CFR ' 164.504(e)(2)(I).

(ii) If the Business Associate elects to destroy the PHI, the Business Associate shall certify in writing to the Covered Entity that such PHI has been destroyed. [This originally read BA shall extend the protections of this Addendum to such PHI and limit further use and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as BA maintains such PHI.]

The rights and obligations of Covered Entity and Business Associate established under this Addendum, HIPAA and the Privacy Rule in regard to PHI shall survive the termination of the Agreement and continue for as long as Business Associate maintains such PHI.

#### Article VI - Disclaimer.

Covered Entity makes no warranty or representation that compliance by the Business Associate with this Agreement, HIPAA, or the Privacy Rule will be adequate or satisfactory for the Business Associate's own purposes. Business Associate is solely responsible for all decisions made by the Business Associate regarding the safeguarding of PHI.

#### Article VII - Amendment

A. *Amendment to Comply with Law.* The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Covered Entity to comply with the requirements of the Privacy Rule and HIPAA. The parties understand and agree that the Covered Entity must receive satisfactory written assurance from the Business Associate that the Business Associate will adequately safeguard all PHI that it receives or creates pursuant to the Agreement. Upon the Covered Entity's request, the Business Associate agrees to promptly enter into negotiations with the Covered Entity concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of the Privacy Rule. The Covered Entity may terminate the Agreement upon 30 days written notice in the event (i) the Business Associate does not promptly enter into negotiations to amend this Agreement when requested by the Covered Entity pursuant to this Section or (ii) the Business Associate does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of PHI that the Covered Entity deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA Regulations.

B. *Regulatory References.* Any reference in this Agreement to a section in the Privacy Rule means the section in effect or as amended.

#### Article VIII - No Third Party Beneficiaries.

Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Covered Entity, the Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

## Article IX - Interpretation

This Agreement and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the Privacy Rule and applicable state laws.

The Parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the Privacy Rule.

## Article X - Notices

Any notices required pursuant to this Agreement, to be given to the Covered Entity, shall be made in following manner:

As to the Covered Entity:

As to the Business Associate:

[       ]  
Address  
Phone Number  
Telecopier Number  
Contact Person

**Article XII - Authority to Execute Agreement and Signatures**

The Parties each understand and agree to the terms of this Agreement. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such Party to this document.

**[BUSINESS ASSOCIATE]**

**BY:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

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

**COVERED ENTITY [NAME]**

**BY:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

