



County of Mono

Department of Social Services
452 Old Mammoth Rd. – Suite 305
PO Box 2969, Mammoth Lakes, CA 93546
(760) 924-1790 Fax (760) 924-5431

REQUEST FOR PROPOSALS:

Child Abuse Prevention, Intervention, Treatment (CAPIT)

and

Promoting Safe and Stable Families (PSSF)

Services

MONO COUNTY, CALIFORNIA



PROPOSAL SUBMITTAL DEADLINE:

5:00 pm, Monday, August 6, 2012

SUBMIT TO:

Julie Tiede, Director
Mono County Department of Social Services
452 Old Mammoth Rd. – Suite 305
PO Box 2969, Mammoth Lakes, CA 93546

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COUNTY OF MONO, DEPARTMENT OF SOCIAL SERVICES

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I. INTRODUCTION

Mono County Department of Social Services (MCDSS) is requesting proposals for Child Abuse Prevention, Intervention, and Treatment (CAPIT) and Promoting Safe & Stable Families (PSSF) services from qualified public and private organizations that serve the needs of at-risk children and families, and have demonstrated effectiveness in providing child abuse prevention, intervention and treatment and that are willing to work closely with MCDSS in the development and provision of responsive and responsible services. Proposers may address either or both of the project services requested.

Proposers will be eligible for funding provided evidence is submitted as part of their proposal, demonstrating broad-based community support. In addition, the application must demonstrate that the proposed services are not duplicative of other services in the community, are based on the needs of children at-risk, and do not supplant existing services. These services are supported by a local public governmental agency. These services may include, but are not limited to, one of the following:

- A public Law Enforcement agency
- County Probation Department
- County Board of Supervisors
- Tribal Entity
- County Mental Health Department
- A school district

In addition, proposers must demonstrate that they will efficiently and effectively meet the needs of children and families at-risk of child and/or neglect. Contracts will be executed for services in Fiscal Year (FY) 2012-2013. The Fiscal Year begins July 1 and ends June 30. Services are expected to begin on September 1, 2012. Please see the critical dates for the selection process provided as Attachment 1.

II. PROJECT DESCRIPTIONS

A. CAPIT Project Description - Funding: \$32,118.00

This funding will be used to provide services that target children who are at high risk, including those being served by the county welfare department especially age 14 years and younger. Priority is given to home visiting programs that are research based on best practices, as well as services provided to child victims of crime. Projects funded by CAPIT should be selected through a competitive process, and priority given to private, nonprofit agencies with programs that serve the needs of children at risk of abuse or neglect and that have demonstrated the effectiveness in prevention or intervention.

The funds under this project must provide the following service and shall be culturally and linguistically appropriate:

- Increase the strength and stability of families
- Increase parent competence and confidence in their parenting abilities
- Support children in a stable and safe environment
- Increase the safety, permanency and well-being of children and families
- Coordination and Support of the Child Abuse Prevention Council

For each of these components the contractor will be required to submit monitoring data on a quarterly basis which substantiates that the above services are being provided to the target population. Such monitoring includes the following data:

- Target population served
- Number of clients served, in person contacts, phone calls, mailing, and website contact
- services provided
- Ethnic groups served
- Culturally competent services provided
- Number of bi-lingual services provided
- Data supporting the effectiveness of services being provided
- Customer satisfaction

The contractor shall identify all other funds being used to support this program. The contractor shall further insure that no more than 10% of the above funding is used for administration. Monthly invoice to the Department of Social Services shall include the allocation of expenditures billed.

For further information regarding the terms and conditions this project please see:

http://www.childsworld.ca.gov/res/OCAP/CAPIT_FactSheet.pdf

B. PSSF Project Description - Funding: \$10,000

This funding will be used to provide services that strengthen parental relationship, improve parental skills, and promote healthy marriages as well as increasing relationship skills within a family to prevent child abuse and neglect. Programs under this funding should promote reunification of children when they are separated from their families for their protection.

The funds under this project must be expended with a 20% minimum in each of the following service components:

- Family Preservation
- Family Support
- Adoption Promotion and Support Services
- Time Limited Family Reunification

For each of these components the contractor will be required to submit monitoring data on a quarterly basis which substantiates that the above services are being provided to the target population. Such monitoring includes the following data:

- Target population served
- Number of clients served
- Services provided
- Ethnic groups served
- Number of bi-lingual services provided
- Data supporting the effectiveness of services being provided
- Customer satisfaction

The contractor shall identify all other funds being used to support this program. The contractor shall further insure that no more than 10% of the above funding is used for administration. Monthly invoice to the Department of Social Services shall include the allocation of expenditures billed.

For further information regarding the terms and conditions this project please see:
http://www.childsworld.ca.gov/res/OCAP/PSSF_FactSheet.pdf

III. SUBMITTAL INFORMATION & REQUIREMENTS

- A. Small and Minority Firms:** Consistent with 49 CFR parts 18 and 26, the County seeks to include small and minority firms whenever possible. Respondents are encouraged to use any and all UDBEs/DBEs that they may find available.
- B. Proposal Submission Requirements:** The proposer shall submit one (1) original and five (5) copies of the Proposal and one (1) electronic copy on CD. The CD must be readable by Mono County Department of Social Services (MCDSS), using software that is Windows-based, preferably Microsoft Word. Please submit Proposals to:

Julie Tiede, Director
Mono County Department of Social Services
452 Old Mammoth Rd. – Suite 305
PO Box 2969, Mammoth Lakes, CA 93546

Proposals may be delivered in person, by courier service, or by mail to the address indicated above. ALL PROPOSALS MUST BE SEALED AND RECEIVED BY **no later** than 5:00 P.M. on August 6, 2012, at the above office and address. Due to its remote location, overnight delivery to Mammoth Lakes by USPS, UPS, FedEx, and other carriers is actually scheduled as a two-day delivery.

- C. Late Submittals:** Submittals received after the specified time shall not be considered.
- D. Modification or Withdrawal of Submittals:** Any proposal received prior to the date and time specified above for receipt may be withdrawn or modified by written request of the consultant prior to the submittal deadline.
- E. Non-Commitment:** This RFP does not commit the County to award the contract, to pay any costs incurred in preparation for this request, or to procure or contract for services. The County reserves the right to accept or reject any or all submittals received as a result of this request, to negotiate with any qualified firm or to modify or cancel in part or in its entirety the RFP if it is in the best interests of the County to do so.
- F. Property Rights:** Proposals received become the property of the County and all rights to the contents therein become those of the County.
- G. Amendments to Request for Proposals:** The County reserves the right to amend this RFP by addendum before the final submittal date.
- H. Proposal Content Requirements:** Each proposal received by the deadline will be previewed to determine technical compliance and completion. An incomplete proposal will

not be submitted for the final review process. Requests for Proposals will be double-spaced in single page format with 12 point font size. Proposals should include the following:

- **Cover sheet, including appropriate signatures (Attachment A)**
- **Statement of Need**
- **Program Narrative (10 Page limit)**
- **Agency/Organization Description and Experience**
- **Evaluation Plan Matrix and Description (Attachment B)**
- **Data Collection Forms Used to Collect Outcome Measures (Attachment C)**
- **Logical Model and Timeline of Activities (Attachment D)**
- **Budget and Narrative (Attachment E).**
- **Letters of Support (Attachment F)**
- **Additional Background Material (Attachment G)**

For a more in depth explanation of the content requirements please refer to Attachment 2, entitled "Description of Content Requirements".

- I. **Conflict of Interest:** Any person or agency that engages in practices, which might result in unlawful activity relating to the selection process including, but not limited to kickback or other unlawful consideration paid to MCDSS employees, will be disqualified from the selection process.

MCDSS employees will not participate in the selection process when those employees have a relationship with a person or agency submitting a Proposal that would subject those employees to the prohibition of Section 87100 of the Government Code. Any person or agency submitting a Proposal who has such a relationship with MCDSS employee, and who may be involved in the selection process, shall advise MCDSS of the name of the MCDSS employee in the Proposal.

- J. **Inquires:** Inquires concerning this RFP should be in writing and directed to:

Julie Tiede, Director
Mono County Department of Social Services
PO Box 2969, Mammoth Lakes, CA 93546
jtiede@mono.ca.gov

Written inquiries for clarification of the RFP may be submitted until noon on July 27, 2012. The questions and answers of all submitted written inquiries will be posted the County's website at <http://www.monocounty.ca.gov/RFP.php> by 5:00 P.M. on July 27, 2012.

IV. PROPOSAL EVALUATION.

- A. **Process:** A two-phase process shall be used for selecting the highest ranked proposal(s) for Projects 1 and/or 2, which are described above. The first phase of the process is "Submittal Review" during which the County determines whether a submitted proposal will

be rejected. All proposals that are not rejected shall move to phase two of the selection process, which is "Submittal Evaluation". Phase 2 involves ranking proposals based on the appropriate criteria, attached hereto as Attachment 3. Please review the details of each phase below.

- B. Submittal Review:** A Mono County designated Evaluation Committee will review all timely submittals, in order to determine whether they meet all Proposal Submission and Content Requirements and whether the included Budget and Narrative reflects competitive program costs within the County's budgetary constraints. Those individuals participating in the Evaluation Committee will not be eligible to received funding under this RFP.

Failure to meet these requirements may be cause for rejection of the submittal. Similarly, the County may reject any submittal if it is conditional, incomplete, contains irregularities, or is beyond the reasonable scope of financial consideration.

The County may waive any immaterial deviation in a proposal, however the absence of information pertinent to the evaluation criteria will be evaluated accordingly. Waiver of an immaterial deviation shall in no way modify the RFP documents or excuse the selected consultant from full compliance with the contract terms and requirements.

- C. Submittal Evaluation:** The evaluation committee will score each criterion on a points basis and rank each project proposal based on the total points awarded according to the applicable evaluation attachment. Attachments include the statement of need, program narrative and plan for service delivery, agency qualifications, evaluation plan and outcome measures, logic model and timeline of activities, and cost effectiveness.

MCDSS may, during the evaluation process, request from any proposer any additional information that MCDSS deems necessary to determine the proposer's ability to perform the required services. If such information is requested, the proposer shall be permitted five (5) business days to submit the information requested.

- D. Proposal Selection:** Any contracts awarded shall be made to the responsible firm(s) whose proposal is most advantageous to the County based on the selection process, as outlined above. The lowest proposed cost is not the sole criterion for recommending contract awards. The County will notify the author(s) of the proposal(s) selected by distributing a Notice of Intent to Award the contract.

V. PROTEST PROCEDURE

A protest period shall commence immediately upon distribution of the Notice of Intent to Award the contract, during which time any interested person or entity may file a protest in accordance with the directions below with respect to the selected proposal(s), and/or with respect to the qualifications or responsibility of the selected firm(s), or of any other firm.

Firms who wish to lodge a protest as to the award of the contract must do so before 5:00 p.m. of the 5th business day following the Notice of Intent to Award the contract. Protests must be received by:

Julie Tiede, Director
Mono County Department of Social Services
452 Old Mammoth Rd. – Suite 305
PO Box 2969, Mammoth Lakes, CA 93546

Failure to timely file a written protest shall constitute a waiver of the right to protest. Untimely protests will not be accepted or considered.

Protests must be submitted in writing to the Director of Health and Human Services (hereinafter "Director") and include the following: 1) the name of the person or entity making the protest, 2) the name of the project, 3) a complete statement of all legal and factual grounds for the protest, 4) any documentation supporting the protestor's grounds for the protest, and 5) the form of relief requested and the legal basis for such relief.

If a valid protest is timely filed, the Director shall investigate the protest. The protested Firm shall have three (3) business days to respond to the Director and to provide any information requested by the Director. The Department shall respond to the protesting party, stating its findings. The Director shall make a recommendation to the Board of Supervisors regarding the bid protest.

VI. CONTRACT AWARD(S).

- A. Non-Commitment:** This RFP does not commit the County to award a contract, to pay any costs incurred in preparation for this request, or to procure or contract for services. The County reserves the right to accept or reject any or all submittals received as a result of this request or to modify or cancel in part or in its entirety the RFP if it is in the best interests of the County to do so.
- B. Recommendation, Approval and Execution:** Contract award(s) with the consultant(s) selected will be recommended for award by the Mono County Board of Supervisors. The prospective consultant is advised that the award of any contract is subject to the approval of the Mono County Board of Supervisors. Should this RFP result in for the award of any contract, the contract will not be in force until it is fully-executed by the County.
- C. Non-Discrimination:** Any contract awarded as a result of this RFP will be awarded without discrimination based on race, color, religion, sex, sexual orientation, or national origin, except as provided by law.
- D. Proof of Insurance:** The County requires a minimum of General Liability Insurance, but may also require other forms of insurance as yet to be determined. Be advised that if a consultant is selected, the consultant shall be required to demonstrate proof of insurance prior to performance of the contract. See Attachment 4, "Sample Contract."
- E. Payment:** Payment under any contract resulting from this RFP will be consistent with the contract agreement, a sample copy of which is attached as Attachment 4.
- F. Performance of Work:** It is the intent of Mono County to have the selected consulting firm begin project work on or about September 1, 2012. Federally funded consulting services shall be procured and performed in accordance with Attachment 5, entitled "Federal Provisions".

Attachment 1: Schedule of Critical Dates*

July 27, 2012 at Noon - Deadline for written inquiries about RFP

July 27, 2012 at 5:00 p.m. - RFP Q&A available on County website

Monday, August 6, 2012 at 5:00 p.m. - Deadline for RFP submittals

Proposals must be received by the above deadline to:

ATTN: Julie Tiede, Director

Mono County Department of Social Services

452 Old Mammoth Rd. – Suite 305

PO Box 2969, Mammoth Lakes, CA 93546

August 7, 2012 - Submittal review and evaluation

August 9, 2012 - Selection of proposal(s) for recommendation

The County will notify the selected candidate based on the written proposal, agency qualifications and other relevant information, as outlined below in the selection process. The Notice of Intent to Award will specify all required pre-performance documentation.

August 21, 2012 - Award of contract (tentative date)

September 1, 2012 - Start date of performance

**This timetable is for the consultant's information. Project constraints or other variables may cause these dates to change.*

Attachment 2: Description of Content Requirements

For each separate project proposed by the organization, please provide the information outlined below. The proposal shall use a 12-point font and 1-inch margins.

A. Cover Sheet

Use "Attachment A" as a Cover Sheet for the proposal.

B. Statement of Need

- 1) Provide a brief description of the program and identified needs in the county. Include a description of data used to outline the nature of the problem being targeted by the project, the extent of the need for the services, and activities for the identified population to be served.
- 2) Provide a description of the scope of the problem, its impact on the child welfare system, and how the project will address the problem in the defined target community.
- 3) Describe your program's relationship to similar projects in the area and how your program addresses a different need in the community.

C. Program Narrative (10 page limit)

- 1) Describe the mission, goals, and objectives of your proposal (the desired effect on an individual, group or community as a result of the proposed program or project —should correspond to the stated grant outcomes).
- 2) Describe the program activities, how they will meet program goals, and produce meaningful and relevant results to enhance child and family well-being.
- 3) Describe how the prevention activities will improve safety for children and families.
- 4) Describe the target population that the project will be serving and how it meets the funding priorities.
- 5) Describe the scope of work and how it can be successfully implemented, based on the budget and funding parameters. Include a description of how the program will strengthen families and promote family self-sufficiency. Describe how the program will enhance and maintain a system for delivering services to families and children that addresses critical children's issues and is comprehensive, collaborative, and efficient.
- 6) Describe the types of services including a description of best practice models utilized.
- 7) Describe how the project meets state and local funding priorities.
- 8) Describe how your project will ensure access for isolated families in Mono County, particularly those with young children.
- 9) Describe the outreach strategy(ies) that will be used to identify, reach, and effectively engage children and families who are at-risk of experiencing child abuse and/or neglect, especially ethnically diverse, minority, and special needs populations. Include the number of children and/or families that will receive the proposed services annually
- 10) Describe how services will be prioritized to children and families at high risk of abuse and neglect.

D. Agency/Organization Description and Experience

- 1) Provide the name and location of site(s) where the services are to be performed, including the legal name, type of entity (school, non-profit corporation, public agency), and governance structure. Attach a current roster of the agency's Board of Directors (if applicable)

- that includes each Director's professional affiliation and/or stakeholder group (i.e. parent/consumer representative). If two or more agencies are involved in a joint venture or association, the Proposal must clearly delineate the respective areas of authority and responsibility of each party. All parties signing the Agreement with the MDSS must be individually liable for the completion of the entire project even when the areas of responsibility under the terms of the joint venture or association are limited.
- 2) Provide information on the following personnel, their qualifications, and the amount of time devoted to the project:
 - a) Individual-in-Charge
 - b) Project Coordinator
 - c) Project Supervisor (if different than Project Coordinator)
 - d) Project Staff— state titles
 - 3) Provide specific information on the agency's experience administering public funds and providing services specified in this RFP, preferably within Mono County.
 - 4) List any consultant firms that you plan to use for this project and their experience in the provision and/or evaluation of child abuse and neglect prevention services.
 - 5) Descriptions of accreditation awards, completed/existing projects, and relevant outcome data that demonstrate the agency's effective delivery of services similar to those proposed should be submitted. This includes providing the following type(s) of data from services previously/currently implemented (i.e. # of children and families served, % of clients who meet the target population).
 - 6) Describe your organization's overall capacity to complete the proposed project.
 - 7) Describe your organization's/program's relationship with other organizations working to meet the same needs or providing similar services and how you plan to coordinate services to ensure services are not duplicated. Include a description of any coordination between HHS and other public and private providers.
 - 8) Provide information from your organization's most recent audit, including date of last audit; copy of any formal recommendation(s) resulting from audit, and agency response to the audit.
 - 9) Provide information on the percentage of funding provided to the program by this grant. If funding will be used to leverage additional funding, name the source of leveraged funds and required match requirements.

E. Evaluation Plan Matrix and Description (Attachment B), and Data Collection Forms Used to Collect Outcome Measures (Attachment C)

- 1) Complete the Evaluation Plan Matrix (Attachment B)
- 2) Provide a description of the Evaluation Plan addressing how the program and results of the program will be evaluated. Include a description of how the organization has involved clients and staff in the development of the program and evaluation activities.
- 3) Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met, and if the results and benefits are being achieved.

- 4) Clearly describe the outcomes to be achieved, how staff will collect the data, the frequency of data collection, instruments used to collect the information, plans to evaluate the data, and submission of a final report at the end of the funding period.
- 5) Describe how the project will achieve the outcomes. Be sure to integrate required outcomes and additional RFP criteria into this action plan description. Describe the sequence of strategies/steps needed to implement your program and the time frames in which this will occur. Provide data collection forms that will be used to collect outcome measures.
- 6) Outline evaluation strategies that will be used in addressing the indicators and outcomes included in the grant criteria and describe how these results will be used to improve future effort.
- 7) Describe your organization's experience and ability to transmit data electronically.
- 8) Provide examples of the data collection forms used to collect the project's outcome measures (Attachment C).

NOTE: MDSS will be responsible for evaluating the effectiveness of the CAPIT/ PSSF programs Countywide. All projects will be required to participate in required data collection and other evaluation activities.

F. Logic Model and Timeline of Activities

Provide a list of key program activities, a description of all activities, and a timeline for implementation (Attachment D).

G. Budget and Narrative

- 1) Provide a program budget with appropriate line-item costs (Attachment E). Include all expenses that will be charged to MDSS, including but not limited to personnel costs, training, supplies, travel, etc. Failure to not clearly identify all costs associated with the proposal may be cause for rejection of the Agency's proposal.
- 2) Provide a brief budget narrative for each category. Clearly explain and justify the budget. Include a budget narrative that justifies all costs that will be charged to MDSS (e.g. if supplies are budgeted, what types of supplies will be purchased? How many project hours will each CAPIT funded staff person provide services?) 1 Full Time Equivalent = 2,080 project hours (40 hours per week x 52 weeks = 2,080 hours). Additionally, describe the matching funds, including the source for each that will be contributed to the project.
- 3) Describe how the budget expenditures are consistent with the goal's outcomes, and activities proposed.
- 4) Describe in-kind match. Agencies must include a minimum of a ten (10) percent match (in-kind or cash) for all funds that will be charged to MDSS. Please identify the source of the matching funds.
- 5) A maximum of ten (10) percent of the total budgeted for Personnel and Services and Supplies may be budgeted for agency indirect costs.
- 6) CAPIT/ PSSF funds may not in any way supplant existing funds. Since the amount of CAPIT/ PSSF funds available are limited, proposers should take care to ensure that proposed services will be cost effective in consideration to the numbers of children and families to be served. Identify other funding used to support this program. If funding will be used to leverage additional funding, describe the plan for leveraging this funding.

Attachment 3: Evaluation Criteria

Category	Max. Points
<p>Statement of Need:</p> <ul style="list-style-type: none"> • Clear description of data used to outline the nature of the problem being targeted by the proposed project, the extent of the need for proposed services, and activities for the identified population to be served • Description of the scope of the problem, its impact on the child welfare system, and how the proposed project will address the problem in the defined target community 	5
<p>Program Narrative (10 page limit):</p> <ul style="list-style-type: none"> • Description of the mission, goals, and objectives of the project • Description of the program activities, how they will meet program goals, and produce meaningful and relevant results to enhance child and family well-being • Description of how the prevention activities will improve safety for children and families • Description of the target population and how it meets the funding priorities • Description of the scope of work and how it can be successfully implemented, based on the budget and funding parameters • Description of how the proposed project meets state and local funding priorities 	40
<p>Agency/Organization Description and Experience:</p> <ul style="list-style-type: none"> • Project staff meet necessary qualifications/experience to carry out project activities and meet state requirements • Agency demonstrates stability and credibility regarding past performance • Agency demonstrates program and fiscal management experience • Agency demonstrates experience in delivering quality and timely services • Agency has a history of linkages with relevant organizations, such as coordination between HHS and other public and private providers • Agency demonstrates a strong history of collaboration with local organizations 	15
<p>Evaluation Plan Matrix and Description (Attachment B) and Data Collection Forms Used to Collect Outcome Measures (Attachment C):</p> <ul style="list-style-type: none"> • Clients and staff are involved in program development and evaluation activities • Evaluation plan clearly describes outcome measures and a clear plan for collecting and reporting data at regular intervals throughout the project. • Evaluation plan describes methods for reliably collecting performance measures • Include data collection forms used to collect outcome measures (Attachment C) • Evaluation plan clearly demonstrates the agency's ability to transmit data electronically • Organization submits documented experience in submitting data in a timely manner 	15
<p>Logic Model and Timeline of Activities (Attachment D):</p> <ul style="list-style-type: none"> • Applicant provides a clear description of key program activities and a timeline 	10
<p>Budget and Narrative (Attachment E):</p> <ul style="list-style-type: none"> • Organization/Agency fiscal management • Accurate program/project budget with appropriate line-item costs • Cost-effectiveness (e.g. cost/unit of services) • Relationship of program to organization/agency budget • Last Year's Audit • Budget and Budget Narrative for each proposed funding source 	15
Total	100

Mono County will consider the following guidelines when determining the ranking score for each criterion:

Superior Response (90-100%): A superior response will be a highly comprehensive, excellent reply that meets all of the requirements of the areas within the specific criteria. In addition, the response covers areas not originally addressed within the evaluation criteria and includes additional information and recommendations that would prove both valuable and beneficial to Mono County. This response is considered to be an excellent standard, demonstrating the Consultant's authoritative knowledge and understanding of the project.

Good Response (80-89%): A good response will provide useful information, while showing experience and knowledge within the evaluation criteria. The response is well thought out and addresses all requirements set forth in the RFP. The Consultant provides insight into its expertise, knowledge and understanding of the subject matter outlined in the criteria.

Fair Response (70-79%): A fair response meets all the requirements of the RFP and has demonstrated in a clear and concise manner a thorough knowledge and understanding of the subject matter outlined in the criteria. This response demonstrates an above-average performance with minimal apparent deficiencies noted.

Poor Response (60-69%): A poor response minimally meets most requirements of the RFP. The Consultant has demonstrated limited knowledge of the subject matter only as outlined in the criteria.

Inadequate Response (0-59%): An inadequate response does not meet the requirements of the RFP. The Consultant has not demonstrated knowledge of the subject matter outlined in the RFP and its response is considered inadequate.

Attachment 4: Sample Contract

AGREEMENT BETWEEN COUNTY OF MONO AND [CONTRACTOR] FOR THE PROVISION OF [CAPIT and/or PSSF] SERVICES

INTRODUCTION

WHEREAS, the County of Mono (hereinafter referred to as "County") in coordination with the Mono County Child Abuse Prevention Council, may need various consulting services from [Corporation]/[[Name(s)], [an] individual[s]], doing business as [Consultant] of [City], [State] (hereinafter referred to as "Contractor"), and in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

TERMS AND CONDITIONS

1. SCOPE OF WORK.

This Agreement includes and is subject to the provisions of the Contract Documents, including but not limited to, the Request for Proposal, the Proposal, and any Request for Proposal Addenda, which documents are incorporated herein by this reference.

Contractor shall furnish the services, perform the work, and provide the associated materials and equipment for the County described in the Scope of Work (Attachment A), attached hereto and by reference incorporated herein. Requests by the County to Contractor to perform under this Agreement shall be made by the Director of the Mono County Department of Social Services, or an authorized representative thereof. Requests to Contractor for services and work to be performed under this Agreement shall be based upon the County's need for such services or work.

Services and work provided by the Contractor at the County's request under this Agreement will be performed in a manner consistent with the requirements and standards established by applicable federal, state, and county laws, ordinances, and resolutions. Such laws, ordinances, regulations, and resolutions include, but are not limited to, those that are referred to in this Agreement.

2. TERM.

The term of this Agreement shall be from September 1, 2012 through June 30, 2013, unless sooner terminated as provided below.

3. CONSIDERATION.

A. Compensation. County shall pay Contractor in accordance with the Payment Provisions (set forth in Attachment A) and Paragraph 3E for the services and work described in the Scope of Work which are performed by Contractor at County's request.

B. Travel and Per Diem. Unless otherwise stated in the Scope of Work, Contractor will not be paid or reimbursed for travel expenses or per diem which Contractor incurs in providing services and work requested by the County under this Agreement.

C. No Additional Consideration. Except as expressly provided in this Agreement, Contractor shall not be entitled to, nor receive, from County, any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement. Specifically, Contractor shall not be entitled, by virtue of this Agreement, to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever.

D. Limit upon amount payable under Agreement. The total sum of all payments made by the County to Contractor for services and work performed under this Agreement shall not exceed [contract limit] (\$[contract limit]) (hereinafter referred to as "contract limit"). County expressly reserves the right to deny any payment or reimbursement requested by Contractor for services or work performed that is in excess of the contract limit.

E. Billing and Payment. Contractor shall submit an invoice with a monitoring report, as defined in the Scope of Work, to the County on a quarterly basis. Quarterly invoices and required reporting shall be due from Contractor on [insert due dates for invoices and reporting]. The obligation to provide invoices and receipts shall survive the contract expiration date.

Upon finding that Contractor has satisfactorily completed the work and performed the services called for in the Scope of Work, the County shall make payment equal to one quarter of the contract limit to Contractor within 30 days of its receipt of the invoice and monitoring report. Should the County determine that services or work have not been completed or performed as called for in the Scope of Work and/or should Contractor produce an incorrect invoice or monitoring report, the County shall withhold payment until the services and work are satisfactorily completed and performed and accepted by the County and/or the invoice or monitoring report is corrected and resubmitted.

F. Federal and State Taxes.

(1) Except as provided in subparagraph (2) below, County will not withhold any federal or state income taxes or social security from any payments made by County to Contractor under the terms and conditions of this Agreement.

(2) County shall withhold California state income taxes from payments made under this Agreement to non-California resident independent contractors when it is anticipated that total annual payments to Contractor under this Agreement will exceed one thousand five hundred dollars (\$1,500.00).

(3) Except as set forth above, County has no obligation to withhold any taxes or payments from sums paid by County to Contractor under this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.

(4) The total amounts paid by County to Contractor, and taxes withheld from payments to non-California residents, if any, will be reported annually to the Internal Revenue Service and the California State Franchise Tax Board.

4. WORK SCHEDULE.

Contractor's obligation is to perform, in a timely manner, those services and work identified in Attachment A that are requested by the County. It is understood by Contractor that the performance of these services and work will require a varied schedule. Contractor, in arranging its schedule, will coordinate with

County to ensure that all services and work requested by County under this Agreement will be performed within the time frame set forth by County.

5. REQUIRED LICENSES, CERTIFICATES, AND PERMITS.

Any licenses, certificates, or permits required by the federal, state, county, or municipal governments, for Contractor to provide the services and work described in Attachment A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include, but are not limited to, driver's licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits will be procured and maintained in force by Contractor at no expense to the County. Contractor will provide County, upon execution of this Agreement, with evidence of current and valid licenses, certificates and permits that are required to perform the services identified in Attachment A. Where there is a dispute between Contractor and County as to what licenses, certificates, and permits are required to perform the services identified in Attachment A, County reserves the right to make such determinations for purposes of this Agreement.

6. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC.

The Contractor shall provide such office space, supplies, equipment, vehicles, reference materials, support services and telephone service as is necessary for Contractor to provide the services identified in Attachment A to this Agreement. County is not obligated to reimburse or pay Contractor for any expense or cost incurred by Contractor in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Contractor in providing and maintaining such items is the sole responsibility and obligation of Contractor.

7. COUNTY PROPERTY.

A. Personal Property of County. Any personal property such as, but not limited to, protective or safety devices, badges, identification cards, keys, uniforms, vehicles, reference materials, furniture, appliances, etc. provided to Contractor by County pursuant to this Agreement is, and at the termination of this Agreement remains, the sole and exclusive property of the County. Contractor will use reasonable care to protect, safeguard and maintain such items while they are in Contractor's possession. Contractor will be financially responsible for any loss or damage to such items, partial or total, that is the result of Contractor's negligence.

B. Products of Contractor's Work and Services. Any and all compositions, publications, plans, designs, specifications, blueprints, maps, formulas, processes, photographs, slides, videotapes, computer programs, computer disks, computer tapes, memory chips, soundtracks, audio recordings, films, audio-visual presentations, exhibits, reports, studies, works of art, inventions, patents, trademarks, copyrights, or intellectual properties of any kind that are created, produced, assembled, compiled by, or are the result, product, or manifestation of, Contractor's services or work under this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of the County. At the termination of the Agreement, Contractor will convey possession and title to all such properties to County.

8. WORKER'S COMPENSATION

Contractor shall provide workers' compensation insurance coverage, in the legally required amount, for all Contractor's employees utilized in providing services and work pursuant to this Agreement. By executing a copy of this Agreement, Contractor acknowledges its obligations and responsibilities to its

employees under the California Labor Code, and warrants that Contractor has complied and will comply during the term of this Agreement with all provisions of the California Labor Code with regard to its employees. Contractor, at the time of execution of this Agreement, will provide the County with evidence of the required workers' compensation insurance coverage.

9. INSURANCE.

A certificate of insurance, for all stated insurances, shall be provided to the Mono County Risk Management at least ten (10) days prior to the start of services to be performed by the Contractor. The policy/policies shall maintain a provision prohibiting the cancellation or modification of said policy except upon thirty (30) days prior written notice to the County Risk Manager.

A. General Liability.

Contractor shall procure, and maintain during the entire term of this Agreement, a policy of general liability insurance which covers all the work and services to be performed by Contractor under this Agreement. Such insurance policy will have a per occurrence combined single limit coverage of not less than \$1,000,000.00. Such policy will not exclude or except from coverage any of the services and work required to be performed by Contractor under this Agreement. The required policy of insurance will be issued by an insurer authorized to sell such insurance by the State of California, and having at least a "Best's" policyholder's rating of "A" or "A+." County will be named as "an additional named insured" on this policy. Contractor will provide the County a copy of the policy and a certificate of insurance showing the County as "an additional named insured" and indicating that the policy will not be terminated, canceled, or modified without thirty (30) days written notice to the County Risk Manager.

B. Business Vehicle.

If Contractor utilizes a motor vehicle in performing any of the work or services identified in Attachment A (Scope of Work), Contractor shall procure and maintain in force throughout the duration of this Agreement, a business auto liability insurance policy with minimum coverage levels of \$300,000.00 per occurrence, combined single limit for bodily injury liability and property damage liability. The coverage shall include all Contractor owned vehicles and all hired and non-owned vehicles used in performing under this Agreement.

C. Deductible and Self Insured Retentions

Any deductibles or self insured retentions must be declared and approved by Mono County Risk Manager. If possible the Insurer shall reduce or eliminate such deductibles or self insured retentions as respects to Mono County, its officials, officers, employees and volunteers; or the Contractor shall provide evidence satisfactory to Mono County Risk Manager guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

D. Subcontractors

Contractor shall include all subcontractors as insureds under its policies and shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements herein for Contractor.

E. Unemployment, Disability, and Liability Insurance

Contractor shall maintain, if so required by law, unemployment, disability and liability insurance in an amount to be determined by the State which is reasonable to compensate any person, firm, or corporation who maybe injured or damaged by the Contractor in performing work associated with this Agreement.

10. STATUS OF CONTRACTOR.

All acts of Contractor, its agents, officers, and employees, relating to the performance of this Agreement, shall be performed by independent contractors, and not as agents, officers, or employees of the County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of, or exercise any right or power vested in, the County, except as expressly provided by law or set forth in Attachment A. No agent, officer, or employee of the County is to be considered an employee of Contractor. It is understood by both Contractor and County that this Agreement shall not, under any circumstances, be construed to create an employer-employee relationship or a joint venture. As an independent contractor:

A. Contractor shall determine the method, details, and means of performing the work and services to be provided by Contractor under this Agreement.

B. Contractor shall be responsible to County only for the requirements and results specified in this Agreement, and except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement.

C. Contractor, its agents, officers and employees are, and at all times during the term of this Agreement shall represent and conduct themselves as, independent contractors, and not employees of County.

11. DEFENSE AND INDEMNIFICATION.

Contractor shall defend, indemnify, and hold harmless County, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, resulting from or in connection with, the performance of this Agreement by Contractor, or Contractor's agents, officers, or employees. Contractor's obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless applies to any actual or alleged personal injury, death, damage or destruction to tangible or intangible property, including the loss of use. Contractor's obligation under this paragraph extends to any claim, damage, loss, liability, expense, or other costs that are caused in whole or in part by any act or omission of the Contractor, its agents, employees, supplier, or anyone directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable.

Contractor's obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to, or restricted by, any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

These provisions shall survive any termination or expiration of this Agreement and remain in effect to meet the intent of this paragraph.

12. RECORDS AND AUDIT.

A. Records. Contractor shall prepare and maintain all records required by the various provisions of this Agreement, federal, state, county, municipal, ordinances, regulations, and directions. Contractor shall maintain these records for a minimum of four (4) years from the termination or expiration of this Agreement, except in the event litigation or settlement of claims arising from the performance of the Agreement, in which case the Federal Provisions of the RFP, incorporated herein by reference, shall apply. Contractor may fulfill its obligation to maintain records as required by this paragraph by substitute photographs, micrographs, or other authentic reproduction of such records.

B. Inspections and Audits. Any authorized representative of County shall have access to any books, documents, papers, records, including, but not limited to, financial records of Contractor, that County determines to be pertinent to this Agreement, for the purposes of making audit, evaluation, examination, excerpts, and transcripts during the period such records are to be maintained by Contractor. Further, County has the right, at all reasonable times, to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement.

13. NONDISCRIMINATION.

During the performance of this Agreement, Contractor, its agents, officers, and employees shall not unlawfully discriminate in violation of any federal, state, or local law, against any employee, or applicant for employment, or person receiving services under this Agreement, because of race, religion, color, ancestry, national origin, physical handicap, medical condition, marital status, age, or sex. Contractor and its agents, officers, and employees shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), and the applicable regulations promulgated thereunder in the California Code of Regulations. Contractor shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said Act.

14. TERMINATION.

The County reserves the right to terminate this contract in whole or in part at any time, either of the County's convenience or because of the Contractor's failure to fulfill the contract obligations, upon a determination by the Director of the Mono County Department of Social Services, after seeking advice from County Counsel, that termination of the contract is in the best interest of the County and by giving notice to the Contractor.

If either party elects to terminate the contract, the termination of the contract and the total compensation payable to the Contractor shall be governed by the Federal Provisions of the Request for Proposals, incorporated herein, if applicable.

15. ASSIGNMENT.

This is an agreement for the personal services of Contractor. County has relied upon the skills, knowledge, experience, and training of Contractor as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement, or any part of it, without the express written consent of the County. Further, Contractor shall not assign any moneys due or to become due under this Agreement without the prior written consent of the County.

16. DEFAULT.

If the Contractor abandons the work, or fails to proceed with the work and services requested by the County in a timely manner, or fails in any way as required to conduct the work and services as required by the County, the County may declare the Contractor in default and terminate this Agreement upon five (5) days written notice to Contractor. Upon such termination by default, County will pay to Contractor all amounts owing to Contractor for services and work satisfactorily performed to the date of termination.

17. WAIVER OF DEFAULT.

Waiver of any default by either party to this Agreement shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided in paragraph 24 below.

18. CONFIDENTIALITY.

Contractor agrees to comply with various provisions of the federal, state, and county laws, regulations, and ordinances providing that information and records kept, maintained, or accessible by Contractor in the course of providing services and work under this Agreement, shall be privileged, restricted, or confidential. Contractor agrees to keep confidential, all such privileged, restricted or confidential information and records obtained in the course of providing the work and services under this Agreement. Disclosure of such information or records shall be made by Contractor only with the express written consent of the County.

19. CONFLICTS.

Contractor agrees that he/she has no interest, and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the work and services under this Agreement. Contractor agrees to complete and file a conflict-of-interest statement.

20. POST-AGREEMENT COVENANT.

Contractor agrees not to use any confidential, protected, or privileged information that is gained from the County in the course of providing services and work under this Agreement, for any personal benefit, gain, or enhancement. Further, Contractor agrees for a period of two (2) years after the termination of this Agreement, not to seek or accept any employment with any entity, association, corporation, or person who, during the term of this Agreement, has had an adverse or conflicting interest with the County, or who has been an adverse party in litigation with the County, and concerning such, Contractor by virtue of this Agreement has gained access to the County's confidential, privileged, protected, or proprietary information.

21. SEVERABILITY.

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction, or if it is found in contravention of any federal, state, or county statute, ordinance, or regulation, the remaining provisions of this Agreement, or the application thereof, shall not be invalidated thereby, and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

22. FUNDING LIMITATION.

The ability of the County to enter into this Agreement is based upon available funding from various sources. In the event that such funding fails, is reduced, or is modified, from one or more sources, County has the option to terminate, reduce, or modify this Agreement, or any of its terms within ten (10) days of notifying Contractor of the termination, reduction, or modification of available funding. Any reduction or modification of this Agreement effective pursuant to this provision must comply with the requirements of paragraph 24.

23. VENUE.

This Agreement shall be governed under the laws of the State of California and venue for any litigation under this Agreement shall be the County of Mono, State of California.

24. AMENDMENT.

This Agreement may be modified, amended, changed, added to, or subtracted from, by the mutual consent of the parties hereto, if such amendment or change is in written form, and executed with the same formalities as this Agreement, and attached to the original Agreement to maintain continuity.

25. NOTICE.

Any notice, communication, amendments, additions or deletions to this Agreement, including change of address of any party during the term of this Agreement, which Contractor or County shall be required, or may desire to make, shall be in writing and may be personally served, or sent by prepaid first-class mail to the respective parties as follows:

County of Mono:	Contractor:
Julie Tiede, Director	[Contractor Contact]
Department of Social Services	[Contractor Name]
Post Office Box 2969	[Contractor Address]
Mammoth Lakes, California 93546	[Contractor Address]

26. ENTIRE AGREEMENT.

This Agreement contains the entire agreement of the parties, and no representations, inducements, promises, or agreements otherwise between the parties not embodied herein or incorporated herein by reference, shall be of any force or effect. Further, no term or provision hereof may be changed, waived, discharged, or terminated, unless executed in writing by the parties hereto.

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS AS SET FORTH BELOW.

COUNTY OF MONO:

By: DRAFT
Name: Jim Arkens
Title: County Administrative Officer

CONSULTANT:

By: DRAFT
Name: _____
Title: _____

Request for Proposal

Department of Social Services

Date: _____

Firm: [Name(s) dba] [Consultant]

Date: _____

Approved as to Form:

Tax ID: _____

DRAFT _____

Tara McKenzie Date
Deputy County Counsel

DRAFT _____

Rita Sherman Date
County Risk Manager

ATTACHMENT A
AGREEMENT BETWEEN COUNTY OF MONO
AND [CONTRACTOR]
FOR THE PROVISION OF [CAPIT and/or PSSF] SERVICES

TERM:

FROM: September 1, 2012
TO: June 30, 2013

SCOPE OF WORK:

WORK SCHEDULE:

PAYMENT PROVISIONS:

Attachment 5: Federal Provisions

The following Federal Provisions govern this solicitation and award of any contract resulting therefrom as well as the performance of the contract itself:

Energy Conservation.

The consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Program Fraud and False or Fraudulent Statements or Related Acts.

- (1) The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 ~~et seq.~~ apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the DHHS assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Consultant to the extent the Federal Government deems appropriate.
- (2) The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by DHHS under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Consultant, to the extent the Federal Government deems appropriate.
- (3) The Consultant agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by DHHS. It is further agreed that the clauses shall not be modified, except to identify the subconsultant who will be subject to the provisions.

Waiver of Remedies.

In the event that County elects to waive its remedies for any breach by Consultant of any covenant, term or condition of this Contract, such waiver by County shall not limit County's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Termination for Convenience or Default.

The County may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Consultant to fulfill the contract obligations. The County shall terminate by delivering to the Consultant a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Consultant shall:

- (1) immediately discontinue all services affected (unless the notice directs otherwise), and
- (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the contract is terminated, Mono County shall be liable only for payment under the payment provisions of this contract for deliverables submitted to the County and accepted before the effective date of termination.

If, after termination for failure to fulfill contract obligations, it is determined that the Consultant was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

Suspension and Debarment.

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the consultant is required to verify that none of the consultant, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The consultant is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by **Mono County**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **Mono County** the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Civil Rights .

The following requirements apply to the underlying contract:

- (1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements DHHS may issue.
- (2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
 - (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance

Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq. , (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with any implementing requirements DHHS may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements DHHS may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Consultant agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Consultant agrees to comply with any implementing requirements DHHS may issue.

(3) The Consultant also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by DHHS, modified only if necessary to identify the affected parties.

Rights in Data.

The following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Consultant may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Consultant authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any

subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased by the Purchaser or Consultant using Federal assistance in whole or in part provided by DHHS.

(c) When DHHS awards Federal assistance for experimental, developmental, or research work, it is DHHS's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless DHHS determines otherwise, the Purchaser and the Consultant performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit DHHS to make available to the public, either DHHS's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Consultant's use whose costs are financed in whole or in part with Federal assistance provided by DHHS for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Consultant agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Consultant of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Consultant shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Consultant and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Purchaser or Consultant identifies that data in writing at the time of delivery of the contract work.

(g) Unless DHHS determines otherwise, the Consultant agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by DHHS.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Consultant's status (i.e. , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Consultant agree to take the necessary actions to provide, through DHHS, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Consultant also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by DHHS.

No Obligation by the Federal Government.

(1) The Purchaser and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

Access to Records.

The following access to records requirements apply to this Contract:

- (1) Where the Purchaser is not a State but a local government and is the DHHS Recipient or a subgrantee of the DHHS Recipient in accordance with 49 C. F. R. 18.36(i), the Consultant agrees to provide the Purchaser, the DHHS Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Consultant also agrees, pursuant to 49 C. F. R. 633.17 to provide the DHHS Administrator or his authorized representatives including any PMO Consultant access to Consultant's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- (2) Where the Purchaser is a State and is the DHHS Recipient or a subgrantee of the DHHS Recipient in accordance with 49 C.F.R. 633.17, Consultant agrees to provide the Purchaser, the DHHS Administrator or his authorized representatives, including any PMO Consultant, access to the Consultant's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
- (3) Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the DHHS Recipient or a subgrantee of the DHHS Recipient in accordance with 49 C.F.R. 19.48, Consultant agrees to provide the Purchaser, DHHS Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- (4) Where any Purchaser which is the DHHS Recipient or a subgrantee of the DHHS Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Consultant shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- (5) The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (6) The Consultant agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the

performance of this contract, in which case Consultant agrees to maintain same until the Purchaser, the DHHS Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

Paperwork Reduction Act.

(a) This contract involves a requirement to collect or record information calling either for answers to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is outside the scope of their employment, for use by the Federal government or disclosure to third parties; therefore, the *Paperwork Reduction Act of 1995* (44 U.S.C. 3501 *et seq.*) shall apply to this contract. No plan, questionnaire, interview guide or other similar device for collecting information (whether repetitive or single time) may be used without the Office of Management and Budget (OMB) first providing clearance. Consultants and the Contracting Officer's Technical Representative shall be guided by the provisions of 5 CFR Part 1320, Controlling Paperwork Burdens on the Public, and seek the advice of the HHS operating division or Office of the Secretary Reports Clearance Officer to determine the procedures for acquiring OMB clearance.

(b) The Consultant shall not expend any funds or begin any data collection until OMB Clearance is received. Once OMB Clearance is received from the Contracting Officer's Technical Representative, the Contracting Officer shall provide the Consultant with written notification authorizing the expenditure of funds and the collection of data. The Consultant shall allow at least 120 days for OMB clearance. The Contracting Officer will consider excessive delays caused by the Government which arise out of causes beyond the control and without the fault or negligence of the Consultant in accordance with the Excusable Delays or Default clause of this contract.

(End of clause)

352.202-1 Definitions.

“(a) The term “Secretary” or “Head of the Agency” (also called “Agency Head”) means the Secretary, Deputy Secretary, or any Assistant Secretary, Administrator or Commissioner of the Department of Health and Human Services; and the term “his/her duly authorized representative” means any person, persons, or board authorized to act for the Secretary.”

“(h) The term “Contracting Officer's Technical Representative” means the person who monitors the technical aspects of contract performance. The Contracting Officer's Technical Representative is not authorized to issue any instructions or directions which cause any increase or decrease in the Statement of Work/Performance Work Statement/Specifications which would result in the increase or decrease in the price of this contract, or changes in the delivery schedule or period of performance of this contract. If applicable, the Contracting Officer's Technical Representative is not authorized to receive or act upon any notification or revised cost estimate provided by the Consultant in accordance with the Limitation of Cost or Limitation of Funds clauses of this contract.”

352.203-70 Anti-lobbying.

Pursuant to the current HHS annual appropriations act, except for normal and recognized executive-legislative relationships, the Consultant shall not use any HHS contract funds for (i) publicity or propaganda purposes; (ii) the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself; or (iii) payment of salary or expenses of the Consultant, or any agent acting for the Consultant, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

(End of clause)

352.215-1 Instructions to offerors—competitive acquisition.

(e) Restriction on disclosure and use of data.

(1) The proposal submitted in response to this request may contain data (trade secrets; business data (e.g., commercial information, financial information, cost and pricing data); and technical data) which the offeror, including its prospective subconsultant(s), does not want used or disclosed for any purpose other than for evaluation of the proposal. The use and disclosure of any data may be so restricted; provided, that the Government determines that the data is not required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, as amended, and the offeror marks the cover sheet of the proposal with the following statements, specifying the particular portions of the proposal which are to be restricted:

“Unless disclosure is required by the Freedom of Information Act, 5 U.S.C. 552, as amended, (the Act) as determined by Freedom of Information (FOI) officials of the Department of Health and Human Services (HHS), data contained in the portions of this proposal which the offeror has specifically identified by page number, paragraph, *etc.* as containing restricted information shall not be used or disclosed except for evaluation purposes.

The offeror acknowledges that HHS may not be able to withhold a record (e.g., data, document, *etc.*) nor deny access to a record requested pursuant to the Act and that the HHS' FOI officials must make that determination. The offeror hereby agrees that the Government is not liable for disclosure if HHS has determined that disclosure is required by the Act.

If a contract is awarded to the offeror as a result of, or in connection with, the submission of this proposal, the Government shall have the right to use or disclose the data to the extent provided in the contract. Proposals not resulting in a contract remain subject to the Act.

The offeror also agrees that the Government is not liable for disclosure or use of unmarked data and may use or disclose the data for any purpose, including the release of the information pursuant to requests under the Act. The data subject to this restriction are contained in pages (insert page numbers, paragraph designations, *etc.* or other identification).”

(2) In addition, the offeror must mark each page of data it wishes to restrict with the following statement

“Use or disclosure of data contained on this page is subject to the restriction on the cover sheet of this proposal or quotation.”

(3) Offerors are cautioned that proposals submitted with restrictive statements or statements differing in substance from those cited above may not be considered for award. The Government reserves the right to reject any proposal submitted with nonconforming statement(s).

352.215-70 Late proposals and revisions.

Notwithstanding the procedures contained in *FAR 52.215–1(c)(3)* of the provision of this solicitation entitled Instructions to Offerors—Competitive Acquisition, the Government may consider a proposal received after the date specified for receipt if it appears to offer the best value to the Government and it was received before proposals were distributed for evaluation, or within 5 calendar days after the exact time specified for receipt, whichever is earlier.

(End of provision)

352.216-70 Additional cost principles.*(a) Bid and proposal (B & P) costs.*

(1) B & P costs are the immediate costs of preparing bids, proposals, and applications for potential Federal and non-Federal contracts, grants, and agreements, including the development of scientific, cost, and other data needed to support the bids, proposals, and applications.

(2) B & P costs of the current accounting period are allowable as indirect costs.

(3) B & P costs of past accounting periods are unallowable in the current period. However, if the organization's established practice is to treat these costs by some other method, they may be accepted if they are found to be reasonable and equitable.

(4) B & P costs do not include independent research and development (IR & D) costs covered by the following paragraph, or pre-award costs covered by paragraph 36 of Attachment B to *OMB Circular A-122*.

(b) IR & D costs.

(1) IR & D is research and development conducted by an organization which is not sponsored by Federal or non-Federal contracts, grants, or other agreements.

(2) IR & D shall be allocated its proportionate share of indirect costs on the same basis as the allocation of indirect costs to sponsored research and development.

(3) The cost of IR & D, including its proportionate share of indirect costs, is unallowable.

(End of clause)

352.219-70 Mentor-protégé program.

(a) Large business prime Consultants serving as mentors in the HHS Mentor-Protégé program are eligible for HHS subcontracting plan credit, and shall submit a copy of their HHS Office of Small and Disadvantaged Business Utilization (OSDBU)-approved mentor protégé agreements as part of their offers. The amount of credit provided by the Contracting Officer to a mentor firm for protégé firm developmental assistance costs shall be calculated on a dollar for dollar basis and reported by the mentor firm in the Summary Subcontract Report via the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The mentor firm and protégé firm shall submit to the Contracting Officer a signed joint statement agreeing on the dollar value of the developmental assistance the mentor firm provided. (For example, a mentor firm would report a \$10,000 subcontract awarded to a protégé firm and provision of \$5,000 of developmental assistance as \$15,000 of developmental assistance.) The mentor firm may use this additional credit towards attaining its subcontracting plan participation goal under this contract.

(b) The program consists of—

(1) *Mentor firms* —large businesses that: (i) demonstrate the interest, commitment, and capability to provide developmental assistance to small business protégé firms; and (ii) have a Mentor-Protégé agreement approved by HHS' OSDBU;

(2) *Protégé firms* —firms that: (i) seek developmental assistance; (ii) qualify as small businesses, veteran-owned small businesses, service-disabled veteran-owned small businesses, HUBZone small businesses, small disadvantaged businesses, or woman-owned businesses; and (iii) have a Mentor-Protégé agreement

approved by HHS' OSDDBU; and

(3) *Mentor-Protégé agreements* —joint agreements, approved by HHS' OSDDBU, which detail the specific terms, conditions, and responsibilities of the mentor-protégé relationship.

(End of provision)

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21511, Apr. 26, 2010]

352.219-71 Mentor-protégé program reporting requirements.

The Consultant shall comply with all reporting requirements specified in its Mentor-Protégé agreement approved by HHS' OSDDBU.

(End of clause)

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21511, Apr. 26, 2010]

352.222-70 Consultant cooperation in equal employment opportunity investigations.

(a) In addition to complying with the clause in FAR 52.222–26, Equal Opportunity, the Consultant shall, in good faith, cooperate with the Department of Health and Human Services (Agency) in investigations of Equal Employment Opportunity (EEO) complaints processed pursuant to 29 CFR Part 1614. For purposes of this clause, the following definitions apply:

(1) “Complaint” means a formal or informal complaint that has been lodged with Agency management, Agency EEO officials, the Equal Employment Opportunity Commission (EEOC), or a court of competent jurisdiction.

(2) “Consultant employee” means all current Consultant employees who work or worked under this contract. The term also includes current employees of subconsultants who work or worked under this contract. In the case of Consultant and subconsultant employees, who worked under this contract, but who are no longer employed by the Consultant or subconsultant, or who have been assigned to another entity within the Consultant's or subconsultant's organization, the Consultant shall provide the Agency with that employee's last known mailing address, e-mail address, and telephone number, if that employee has been identified as a witness in an EEO complaint or investigation.

(3) “Good faith cooperation” cited in paragraph (a) includes, but is not limited to, making Consultant employees available for: (i) Formal and informal interviews by EEO counselors or other Agency officials processing EEO complaints; (ii) formal or informal interviews by EEO investigators charged with investigating complaints of unlawful discrimination filed by Federal employees; (iii) reviewing and signing appropriate affidavits or declarations summarizing statements provided by such Consultant employees during the course of EEO investigations; (iv) producing documents requested by EEO counselors, EEO investigators, Agency employees, or the EEOC in connection with a pending EEO complaint; and (v) preparing for and providing testimony in hearings before the EEOC and U.S. District Court.

(b) The Consultant shall include the provisions of this clause in all subcontract solicitations and subcontracts awarded at any tier under this contract.

(c) Failure on the part of the Consultant or its subconsultants to comply with the terms of this clause may be grounds for the Contracting Officer to terminate this contract for default.

(End of clause)

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21511, Apr. 26, 2010]

352.223-70 Safety and health.

(a) To help ensure the protection of the life and health of all persons, and to help prevent damage to property, the Consultant shall comply with all Federal, State, and local laws and regulations applicable to the work being performed under this contract. These laws are implemented or enforced by the Environmental Protection Agency, Occupational Safety and Health Administration (OSHA) and other regulatory/enforcement agencies at the Federal, State, and local levels.

(1) In addition, the Consultant shall comply with the following regulations when developing and implementing health and safety operating procedures and practices for both personnel and facilities involving the use or handling of hazardous materials and the conduct of research, development, or test projects:

(i) 29 CFR 1910.1030, Bloodborne pathogens; 29 CFR 1910.1450, Occupational exposure to hazardous chemicals in laboratories; and other applicable occupational health and safety standards issued by OSHA and included in 29 CFR Part 1910. These regulations are available at <http://www.osha.gov>.

(ii) Nuclear Regulatory Commission Standards and Regulations, pursuant to the Energy Reorganization Act of 1974 (42 U.S.C. 5801 *et seq.*). The Consultant may obtain copies from the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

(2) The following Government guidelines are recommended for developing and implementing health and safety operating procedures and practices for both personnel and facilities:

(i) Biosafety in Microbiological and Biomedical Laboratories, CDC. This publication is available at <http://www.cdc.gov/OD/ohs/biosfty/bmbl4/bmbl4toc.htm>.

(ii) Prudent Practices for Safety in Laboratories (1995), National Research Council, National Academy Press, 500 Fifth Street, NW., Lockbox 285, Washington, DC 20055 (ISBN 0-309-05229-7). This publication is available at <http://www.nap.edu/catalog/4911.html>.

(b) Further, the Consultant shall take or cause to be taken additional safety measures as the Contracting Officer, in conjunction with the Contracting Officer's Technical Representative or other appropriate officials, determines to be reasonably necessary. If compliance with these additional safety measures results in an increase or decrease in the cost or time required for performance of any part of work under this contract, the Contracting Officer will make an equitable adjustment in accordance with the applicable "Changes" clause set forth in this contract.

(c) The Consultant shall maintain an accurate record of, and promptly report to the Contracting Officer, all accidents or incidents resulting in the exposure of persons to toxic substances, hazardous materials or hazardous operations; the injury or death of any person; or damage to property incidental to work performed under the contract and all violations for which the Consultant has been cited by any Federal, State or local regulatory/enforcement agency. The report shall include a copy of the notice of violation and the findings of any inquiry or inspection, and an analysis addressing the impact these violations may have on the work remaining to be performed. The report shall also state the required action(s), if any, to be taken to correct any violation(s) noted by the Federal, State or local regulatory/enforcement agency and the time frame allowed by the agency to accomplish the necessary corrective action.

(d) If the Consultant fails or refuses to comply with the Federal, State or local regulatory/enforcement agency's

directive(s) regarding any violation(s) and prescribed corrective action(s), the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action (as approved by the Federal, State or local regulatory/enforcement agencies) has been taken and documented to the Contracting Officer. No part of the time lost due to any stop work order shall be subject to a claim for extension of time or costs or damages by the Consultant.

(e) The Consultant shall insert the substance of this clause in each subcontract involving toxic substances, hazardous materials, or hazardous operations. The Consultant is responsible for the compliance of its subConsultants with the provisions of this clause.

(End of clause)

352.224-70 Privacy Act.

This contract requires the Consultant to perform one or more of the following: (a) Design; (b) develop; or (c) operate a Federal agency system of records to accomplish an agency function in accordance with the Privacy Act of 1974 (Act) (5 U.S.C. 552a(m)(1)) and applicable agency regulations. The term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Violations of the Act by the Consultant and/or its employees may result in the imposition of criminal penalties (5 U.S.C. 552a(i)). The Consultant shall ensure that each of its employees knows the prescribed rules of conduct and that each employee is aware that he/she is subject to criminal penalties for violation of the Act to the same extent as Department of Health and Human Services employees. These provisions also apply to all subcontracts the Consultant awards under this contract which require the design, development or operation of the designated system(s) of records [5 U.S.C. 552a(m)(1)]. The contract work statement: (a) identifies the system(s) of records and the design, development, or operation work the Consultant is to perform; and (b) specifies the disposition to be made of such records upon completion of contract performance.

(End of clause)

352.227-70 Publications and publicity.

(a) Unless otherwise specified in this contract, the Government encourages the Consultant to publish the results of its work under this contract. A copy of each article the Consultant submits for publication shall be promptly sent to the Contracting Officer's Technical Representative. The Consultant shall also inform the Contracting Officer's Technical Representative when the article or other publication is published, and furnish a copy of it as finally published.

(b) Unless authorized by the Contracting Officer's Technical Representative, the Consultant shall not display the HHS logo on any publications.

(End of clause)

352.228-7 Insurance—liability to third persons.

(a)(1) Except as provided in paragraph (a)(2) immediately following, or in paragraph (h) of this clause [if the clause has a paragraph (h)], the Consultant shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.

(2) The Consultant may, with the approval of the Contracting Officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the Consultant is qualified pursuant to statutory

authority.

(3) All insurance required by this paragraph shall be in form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.

(b) The Consultant agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other insurance that is maintained by the Consultant in connection with performance of this contract and for which the Consultant seeks reimbursement.

(c) Except as provided in paragraph (h) of this clause [if the clause has a paragraph (h)], the Consultant shall be reimbursed—

(1) For that portion of the reasonable cost of insurance allocable to this contract, and required or approved under this clause; and

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise within the funds available under the Limitation of Cost or the Limitation of Funds clause of this contract. These liabilities must arise out of the performance of this contract, whether or not caused by the negligence of the Consultant or the Consultant's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Government. These liabilities are for—

(i) Loss of or damage to property (other than property owned, occupied, or used by the Consultant, rented to the Consultant, or in the care, custody, or control of the Consultant); or

(ii) Death or bodily injury.

(d) The Government's liability under paragraph (c) of this clause is limited to the amounts reflected in final judgments, or settlements approved in writing by the Government, but in no event to exceed the funds available under the Limitation of Cost or Limitation of Funds clause of this contract. Nothing in this contract shall be construed as implying that, at a later date, the Government will request, or the Congress will appropriate, funds sufficient to meet any deficiencies.

(e) The Government shall not reimburse the Consultant for liabilities (and expenses incidental to such liabilities)—

(1) For which the Consultant is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the contract;

(2) For which the Consultant has failed to insure or to maintain insurance as required by the Contracting Officer; or

(3) That result from willful misconduct or lack of good faith on the part of the Consultant's directors, officers, managers, superintendents, or other representatives who have supervision or direction of —

(i) All or substantially all of the Consultant's business;

(ii) All or substantially all of the Consultant's operations at any one plant or separate location in which this contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

(f) The provisions of paragraph (e) of this clause shall not restrict the right of the Consultant to be reimbursed for the cost of insurance maintained by the Consultant in connection with the performance of this contract, other than insurance required in accordance with this clause; provided, that such cost is allowable under the Allowable Cost and Payment clause of this contract.

(g) If any suit or action is filed or any claim is made against the Consultant, the cost and expense of which may be reimbursable to the Consultant under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Consultant shall—

(1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

(3) Authorize Government representatives to settle or defend the claim and to represent the Consultant in or to take charge of any litigation, if required by the Government, when the liability is not insured or covered by the bond. The Consultant may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

Alternate I (APR 1984). If the successful offeror represents in its offer that it is partially immune from tort liability as a State agency, the Contracting Officer shall add the following paragraph (h) to the basic clause:

(h) Notwithstanding paragraphs (a) and (c) of this clause—

(1) The Government does not assume any liability to third persons, nor will the Government reimburse the Consultant for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract; and

(2) The Consultant need not provide or maintain insurance coverage as required by paragraph (a) of this clause; provided, that the Consultant may obtain any insurance coverage deemed necessary, subject to approval by the Contracting Officer as to form, amount, and duration. The Consultant shall be reimbursed for the cost of such insurance and, to the extent provided in paragraph (c) of this clause, for liabilities to third persons for which the Consultant has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount.

(End of clause)

Alternate II (APR 1984). If the successful offeror represents in its offer that it is totally immune from tort liability as a State agency, the Contracting Officer shall substitute the following paragraphs (a) and (b) for paragraphs (a) and (b) of the basic clause:

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Consultant for its liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract under this contract.

(b) If any suit or action is filed, or if any claim is made against the Consultant, the cost and expense of which may be reimbursable to the Consultant under this contract, the Consultant shall immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received by the Consultant. The Consultant shall, if Government requires, authorize Government representatives to settle or defend the claim and to represent the Consultant in or take charge of any litigation. The Consultant may, at its own expense, be associated with the Government

representatives in any such claims or litigation.

(End of clause)

352.231-70 Salary rate limitation.

(a) Pursuant to the current and applicable prior HHS appropriations acts, the Consultant shall not use contract funds to pay the direct salary of an individual at a rate in excess of the Federal Executive Schedule Level I in effect on the date an expense is incurred.

(b) For purposes of the salary rate limitation, the terms “direct salary,” “salary,” and “institutional base salary” have the same meaning and are collectively referred to as “direct salary” in this clause. An individual's direct salary is the annual compensation that the Consultant pays for an individual's direct effort (costs) under the contract. Direct salary excludes any income that an individual may be permitted to earn outside of duties to the Consultant. Direct salary also excludes fringe benefits, overhead, and general and administrative expenses (also referred to as indirect costs or facilities and administrative [F&A] costs).

Note: The salary rate limitation does not restrict the salary that an organization may pay an individual working under an HHS contract or order; it merely limits the portion of that salary that may be paid with Federal funds.

(c) The salary rate limitation also applies to individuals under subcontracts. If this is a multiple-year contract or order, it may be subject to unilateral modification by the Contracting Officer to ensure that an individual is not paid at a rate that exceeds the salary rate limitation provision established in the HHS appropriations act in effect when the expense is incurred regardless of the rate initially used to establish contract or order funding.

(d) See the salaries and wages pay tables on the U.S. Office of Personnel Management Web site for Federal Executive Schedule salary levels that apply to the current and prior periods.

(End of clause)

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21511, Apr. 26, 2010]

352.231-71 Pricing of adjustments.

When costs are a factor in determination of a contract price adjustment pursuant to the “Changes” clause or any provision of this contract, the applicable cost principles and procedures set forth below shall form the basis for determining such costs:

Principles	Types of organizations
(a) Subpart 31.2 of the Federal Acquisition Regulation	Commercial.
(b) Subpart 31.3 of the Federal Acquisition Regulation	Educational.
(c) Subpart 31.6 of the Federal Acquisition Regulation	State, local, and Federally recognized Indian Tribal governments.
(d) 45 CFR Part 74 Appendix E	Hospitals (performing research and development contracts only).

(e) Subpart 31.7 of the Federal Acquisition Regulation	Other nonprofit organizations.
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(End of clause)

352.233-71 Litigation and claims.

(a) The Consultant shall provide written notification immediately to the Contracting Officer of any action, including any proceeding before an administrative agency, filed against the Consultant arising out of the performance of this contract, including, but not limited to the performance of any subcontract hereunder; and any claim against the Consultant the cost and expense of which is allowable under the clause entitled "Allowable Cost and Payment."

(b) Except as otherwise directed by the Contracting Officer, the Consultant shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Consultant with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the Consultant may, with the Contracting Officer's approval, settle any such action or claim. If required by the Contracting Officer, the Consultant shall effect an assignment and subrogation in favor of the Government of all the Consultant's rights and claims (except those against the Government) arising out of any such action or claim against the Consultant; and authorize representatives of the Government to settle or defend any such action or claim and to represent the Consultant in, or to take charge of, any action.

(c) If the Government undertakes a settlement or defense of an action or claim, the Consultant shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Consultant is not covered by a policy of insurance, the Consultant shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith. The Government shall not be liable for the expense of defending any action or for any costs resulting from the loss thereof to the extent that the Consultant would have been compensated by insurance which was required by law or regulation or by written direction of the Contracting Officer, but which the Consultant failed to secure through its own fault or negligence. In any event, unless otherwise expressly provided in this contract, the Government shall not reimburse or indemnify the Consultant for any liability loss, cost, or expense, which the Consultant may incur or be subject to by reason of any loss, injury or damage, to the person or to real or personal property of any third parties as may accrue during, or arise from, the performance of this contract.

(End of clause)

352.234-1 Notice of earned value management system—pre-award Integrated Baseline Review.

The offeror shall provide documentation that its proposed Earned Value Management System (EVMS) complies with the EVMS guidelines in ANSI/EIA Standard-748 (current version at time of solicitation).

(a) If the offeror proposes to use a system that currently does not meet the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the guidelines.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contract;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the guidelines;

(iii) Describe the management system and its application in terms of the EVMS guidelines;

- (iv) Describe the proposed procedure for application of the EVMS requirements to subConsultants;
 - (v) Provide documentation describing the process and results, including Government participation if applicable, of any third-party evaluation or self-evaluation of the system's compliance with the EVMS guidelines; and
 - (vi) Provide a schedule of events leading up to formal validation and Government acceptance of the offeror's EVMS, if the value of the offeror's proposal, including options, is \$25 million or more.
- (2) The offeror shall provide information and assistance, as required by the Contracting Officer, to support review of the plan.
- (3) The Contracting Officer will review the offeror's EVMS implementation plan prior to contract award.
- (4) The offeror's EVMS plan must provide milestones indicating when the offeror anticipates that the EVMS will be compliant with the ANSI/EIS Standard-748 guidelines.
- (b) The offeror shall identify in its offer the subConsultants, or subcontracted effort if subConsultants have not been identified, to which the requirements of EVMS will be applied. Prior to contract award, the offeror and HHS shall agree on the subConsultants, or subcontracted effort, subject to the EVMS requirement.
- (c) HHS will conduct an Integrated Baseline Review (IBR) prior to contract award. The offeror shall be compensated as set forth elsewhere in this solicitation for its preparation for and participation in the IBR.

(End of provision)

352.234-2 Notice of earned value management system—post-award Integrated Baseline Review.

Notice of Earned Value Management System—Post-Award Integrated Baseline Review (October 2008)

- (a) The offeror shall provide documentation that its proposed Earned Value Management System (EVMS) complies with the EVMS guidelines in ANSI/EIA Standard-748 (current version in effect at time of solicitation).
- (b) If the offeror proposes to use a system that currently does not meet the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the guidelines.
- (1) The plan shall—
- (i) Describe the EVMS the offeror intends to use in performance of the contract;
 - (ii) Distinguish between the offeror's existing management system and modifications proposed to meet the guidelines;
 - (iii) Describe the management system and its application in terms of the EVMS guidelines;
 - (iv) Describe the proposed procedure for application of the EVMS requirements to subConsultants;
 - (v) Provide documentation describing the process and results, including Government participation if applicable, of any third-party evaluation or self-evaluation of the system's compliance with the EVMS guidelines; and
 - (vi) Provide a schedule of events leading up to formal validation and Government acceptance of the offeror's EVMS, if the value of the offeror's proposal, including options, is \$25 million or more.

(2) The offeror shall provide information and assistance, as required by the Contracting Officer, to support review of the plan.

(3) The Contracting Officer will review the offeror's EVMS implementation plan prior to contract award.

(4) The offeror's EVMS plan must provide milestones indicating when the offeror anticipates that the EVM system will be compliant with the ANSI/EIA Standard-748 guidelines.

(c) The offeror shall identify in its offer the subConsultants, or subcontracted effort if subConsultants have not been identified, to which the requirements of EVMS will be applied. Prior to contract award, the offeror and HHS shall agree on the subConsultants, or subcontracted effort, subject to the EVMS requirement.

(d) HHS will conduct an Integrated Baseline Review after contract award.

(End of provision)

352.234-3 Full earned value management system.

Full Earned Value Management System (October 2008)

(a) The Consultant shall use an Earned Value Management System (EVMS) that has been validated and accepted by the Cognizant Federal Agency (CFA) as being compliant with the guidelines in ANSI/EIA Standard-748 (current version at the time of award) to manage this contract. If the Consultant's current EVMS has not been validated and accepted by the CFA at the time of award, see paragraph (b) of this clause. The Consultant shall submit EVM reports in accordance with the requirements of this contract.

(b) If, at the time of award, the Consultant's EVM system has not been validated and accepted by the CFA as complying with EVMS guidelines in ANSI/EIA Standard-748 (current version at time of award), the Consultant shall—

(1) Apply the current system to the contract; and

(2) Take necessary and timely actions to meet the milestones in the Consultant's EVMS plan approved by the Contracting Officer.

(c) HHS requires the Consultant to obtain validation and acceptance of its EVM system by the CFA during the base period of performance of this contract. The Contracting Officer or designee will conduct a Compliance Review to assess the Consultant's compliance with its approved plan. If the Consultant does not follow the approved implementation schedule or correct all resulting system deficiencies noted during the Compliance Review within a reasonable time, the Contracting Officer may take remedial action, which may include, but is not limited to, suspension of or reduction in progress payments, or a reduction in fee.

(d) HHS will conduct an Integrated Baseline Review (IBR). If a pre-award IBR has not been conducted, a post-award IBR will be conducted by HHS as early as practicable, but no later than 90 days after contract award. The Contracting Officer may also require an IBR as part of the exercise of an option or the incorporation of a major modification.

(e) Unless a waiver is granted by the CFA, Consultant-proposed EVMS changes require approval of the CFA prior to implementation. The CFA will advise the Consultant of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Consultant. If the advance approval requirements are waived by the CFA, the Consultant shall disclose EVMS changes to the CFA at least 14 calendar days prior to the effective date of implementation.

(f) The Consultant shall provide access to all pertinent records and data requested by the Contracting Officer or a duly authorized representative as necessary to permit Government surveillance to ensure that the EVMS conforms, and continues to conform, with the requirements referenced in paragraph (a) of this clause.

(g) The Consultant shall require the subConsultants specified below to comply with the requirements of the clause: (*Insert list of applicable subConsultants.*)

(End of clause)

(Alternate I) (October 2008)

As prescribed in 334.203–70(c), the Contracting Officer shall substitute the following paragraphs (a), (b), and (c) for paragraphs (a), (b), and (c) of the basic clause and delete paragraph (e) of the basic clause:

(a) The Consultant shall use an Earned Value Management System (EVMS) that is compliant with the guidelines in ANSI/EIA Standard-748 (current version at the time of award) to manage this contract. If the Consultant's current EVMS is not compliant at the time of award, see paragraph (b) of this clause. The Consultant shall submit EVM reports in accordance with the requirements of this contract.

(b) If, at the time of award, the Consultant's EVM system is not in compliance with the EVMS guidelines in ANSI/EIA Standard-748 (current version at time of award), the Consultant shall—

(1) Apply the current system to the contract; and

(2) Take necessary and timely actions to meet the milestones in the Consultant's EVMS plan approved by the Contracting Officer.

(c) HHS will not formally validate or accept the Consultant's EVMS with respect to this contract. The use of the Consultant's EVMS for this contract does not imply HHS acceptance of the Consultant's EVMS for application to future contracts. The Contracting Officer or designee will conduct a Compliance Review to assess the Consultant's compliance with its approved plan. If the Consultant does not follow the approved implementation schedule or correct all resulting system deficiencies noted during the Compliance Review within a reasonable time, the Contracting Officer may take remedial action that may include, but is not limited to, suspension of or reduction in progress payments, or a reduction in fee.

352.234-4 Partial earned value management system.

Partial Earned Value Management System (October 2008)

(a) The Consultant shall use an Earned Value Management System (EVMS) that has been validated and accepted by the Cognizant Federal Agency (CFA) as being compliant with the schedule-related guidelines in ANSI/EIA Standard-748 (current version at the time of award) to manage this contract. If the Consultant's current EVMS has not been validated and accepted by the CFA at the time of award, see paragraph (b) of this clause. The Consultant shall submit EVM reports in accordance with the requirements of this contract.

(b) If, at the time of award, the Consultant's EVM system has not been validated and accepted by the CFA as complying with the schedule-related EVMS guidelines in ANSI/EIA Standard-748 (current version at time of award), the Consultant shall—

(1) Apply the current system to the contract; and

(2) Take necessary and timely actions to meet the milestones in the Consultant's EVMS plan approved by the

Contracting Officer.

(c) HHS requires the Consultant to obtain validation and acceptance of the schedule-related portions of its EVM system by the CFA during the base period of performance of this contract. The Contracting Officer or designee will conduct a Compliance Review to assess the Consultant's compliance with its approved plan. If the Consultant does not follow the approved implementation schedule or correct all resulting system deficiencies noted during the Compliance Review within a reasonable time, the Contracting Officer may take remedial action, which may include, but is not limited to, suspension of or reduction in progress payments, or a reduction in fee.

(d) HHS will conduct an Integrated Baseline Review (IBR). If a pre-award IBR has not been conducted, a post-award IBR will be conducted by HHS as early as practicable, but no later than 90 days after contract award. The Contracting Officer may also require an IBR as part of the exercise of an option or the incorporation of a major modification.

(e) Unless a waiver is granted by the CFA, Consultant-proposed EVMS changes require approval of the CFA prior to implementation. The CFA will advise the Consultant of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Consultant. If the advance approval requirements are waived by the CFA, the Consultant shall disclose EVMS changes to the CFA at least 14 calendar days prior to the effective date of implementation.

(f) The Consultant shall provide access to all pertinent records and data requested by the Contracting Officer or a duly authorized representative as necessary to permit Government surveillance to ensure that the EVMS conforms, and continues to conform, with the requirements referenced in paragraph (a) of this clause.

(g) The Consultant shall require the subConsultants specified below to comply with the requirements of the clause: (*Insert list of applicable subConsultants.*)

(End of clause)

Alternate 1 (October 2008)

As prescribed in 334.203-70(d), the Contracting Officer shall substitute the following paragraphs (a), (b), and (c) for paragraphs (a), (b), and (c) of the basic clause and delete paragraph (e) of the basic clause:

(a) The Consultant shall use an Earned Value Management System (EVMS) that is compliant with the schedule-related guidelines in ANSI/EIA Standard-748 (current version at the time of award) to manage this contract. If the Consultant's current EVMS is not compliant at the time of award, see paragraph (b) of this clause. The Consultant shall submit EVM reports in accordance with the requirements of this contract.

(b) If, at the time of award, the Consultant's schedule-related EVM system is not in compliance with the schedule-related EVMS guidelines in ANSI/EIA Standard-748 (current version at time of award), or the Consultant does not have an existing schedule control system that is compliant with such guidelines, the Consultant shall—

(1) Apply the current system to the contract; and

(2) Take necessary and timely actions to meet the milestones in the Consultant's EVMS plan approved by the Contracting Officer.

(c) HHS will not formally validate or accept the Consultant's schedule-related EVMS with respect to this contract. The use of the Consultant's EVMS for this contract does not imply HHS acceptance of the Consultant's EVMS for application to future contracts. The Contracting Officer or designee will conduct a Compliance Review to assess the Consultant's compliance with its approved plan. If the Consultant does not follow the approved implementation

schedule or correct all resulting system deficiencies noted during the Compliance Review within a reasonable time, the Contracting Officer may take remedial action that may include, but is not limited to, suspension of or reduction in progress payments, or a reduction in fee.

352.237-70 Pro-Children Act.

(a) Public Law 103–227, Title X, Part C, also known as the *Pro-Children Act of 1994 (Act)*, 20 U.S.C. 7183, imposes restrictions on smoking in facilities where certain Federally funded children's services are provided. The Act prohibits smoking within any indoor facility (or portion thereof), whether owned, leased, or contracted for, that is used for the routine or regular provision of (i) kindergarten, elementary, or secondary education or library services or (ii) health or day care services that are provided to children under the age of 18. The statutory prohibition also applies to indoor facilities that are constructed, operated, or maintained with Federal funds.

(b) By acceptance of this contract or order, the Consultant agrees to comply with the requirements of the Act. The Act also applies to all subcontracts awarded under this contract for the specified children's services. Accordingly, the Consultant shall ensure that each of its employees, and any subconsultant staff, is made aware of, understand, and comply with the provisions of the Act. Failure to comply with the Act may result in the imposition of a civil monetary penalty in an amount not to exceed \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. Each day a violation continues constitutes a separate violation.

(End of clause)

352.237-71 Crime Control Act—reporting of child abuse.

(a) *Public Law 101–647, also known as the Crime Control Act of 1990 (Act)*, imposes responsibilities on certain individuals who, while engaged in a professional capacity or activity, as defined in the Act, on Federal land or in a Federally-operated (or contracted) facility, learn of facts that give the individual reason to suspect that a child has suffered an incident of child abuse.

(b) The Act designates “covered professionals” as those persons engaged in professions and activities in eight different categories including, but not limited to, physicians, dentists, medical residents or interns, hospital personnel and administrators, nurses, health care practitioners, chiropractors, osteopaths, pharmacists, optometrists, podiatrists, emergency medical technicians, ambulance drivers, alcohol or drug treatment personnel, psychologists, psychiatrists, mental health professionals, child care workers and administrators, and commercial film and photo processors. The Act defines the term “child abuse” as the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child.

(c) Accordingly, any person engaged in a covered profession or activity under an HHS contract or subcontract, regardless of the purpose of the contract or subcontract, shall immediately report a suspected child abuse incident in accordance with the provisions of the Act. If a child is suspected of being harmed, the appropriate State Child Abuse Hotline, local child protective services (CPS), or law enforcement agency shall be contacted. For more information about where and how to file a report, the Childhelp USA, National Child Abuse Hotline (1–800–4–A–CHILD) shall be called. Any covered professional failing to make a timely report of such incident shall be guilty of a Class B misdemeanor.

(d) By acceptance of this contract or order, the Consultant agrees to comply with the requirements of the Act. The Act also applies to all applicable subcontracts awarded under this contract. Accordingly, the Consultant shall ensure that each of its employees, and any subconsultant staff, is made aware of, understand, and comply with the provisions of the Act.

(End of clause)

352.237-72 Crime Control Act—requirement for background checks.

(a) *Public Law 101–647, also known as the Crime Control Act of 1990 (Act)*, requires that all individuals involved with the provision of child care services to children under the age of 18 undergo a criminal background check. “Child care services” include, but are not limited to, social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), and rehabilitative programs. Any conviction for a sex crime, an offense involving a child victim, or a drug felony, may be grounds for denying employment or for dismissal of an employee providing any of the services listed above.

(b) The Contracting Officer will provide the necessary information to the Consultant regarding the process for obtaining the background check. The Consultant may hire a staff person provisionally prior to the completion of a background check, if at all times prior to the receipt of the background check during which children are in the care of the newly-hired person, the person is within the sight and under the supervision of a previously investigated staff person.

(c) By acceptance of this contract or order, the Consultant agrees to comply with the requirements of the Act. The Act also applies to all applicable subcontracts awarded under this contract. Accordingly, the Consultant shall ensure that each of its employees, and any subconsultant staff, is made aware of, understand, and comply with the provisions of the Act.

(End of clause)

352.239-70 Standard for security configurations.

Standard for Security Configurations (January 2010)

(a) The Consultant shall configure its computers that contain HHS data with the applicable Federal Desktop Core Configuration (FDCC) (see <http://nvd.nist.gov/fdcc/index.cfm>) and ensure that its computers have and maintain the latest operating system patch level and anti-virus software level.

Note: FDCC is applicable to all computing systems using Windows XP™ and Windows Vista™, including desktops and laptops—regardless of function—but not including servers.

(b) The Consultant shall apply approved security configurations to information technology (IT) that is used to process information on behalf of HHS. The following security configuration requirements apply:

Note: The Contracting Officer shall specify applicable security configuration requirements in solicitations and contracts based on information provided by the Project Officer, who shall consult with the OPDIV/STAFFDIV Chief Information Security Officer.

(c) The Consultant shall ensure IT applications operated on behalf of HHS are fully functional and operate correctly on systems configured in accordance with the above configuration requirements. The Consultant shall use Security Content Automation Protocol (SCAP)-validated tools with FDCC Scanner capability to ensure its products operate correctly with FDCC configurations and do not alter FDCC settings— see <http://nvd.nist.gov/validation.cfm> . The Consultant shall test applicable product versions with all relevant and current updates and patches installed. The Consultant shall ensure currently supported versions of information technology products meet the latest FDCC major version and subsequent major versions.

(d) The Consultant shall ensure IT applications designed for end users run in the standard user context without requiring elevated administrative privileges.

(e) The Consultant shall ensure hardware and software installation, operation, maintenance, update, and patching will not alter the configuration settings or requirements specified above.

(f) The Consultant shall (1) include Federal Information Processing Standard (FIPS) 201-compliant (see <http://csrc.nist.gov/publications/fips/fips201-1/FIPS-201-1-chng1.pdf>), Homeland Security Presidential Directive 12 (HSPD–12) card readers with the purchase of servers, desktops, and laptops; and (2) comply with FAR Subpart 4.13, *Personal Identity Verification*.

(g) The Consultant shall ensure that its subConsultants (at all tiers) which perform work under this contract comply with the requirements contained in this clause.

(End of clause)

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21511, Apr. 26, 2010]

352.239-71 Standard for encryption language.

(a) The Consultant shall use Federal Information Processing Standard (FIPS) 140–2-compliant encryption (Security Requirements for Cryptographic Module, as amended) to protect all instances of HHS sensitive information during storage and transmission. (Note: The Government has determined that HHS information under this contract is considered “sensitive” in accordance with FIPS 199, Standards for Security Categorization of Federal Information and Information Systems, dated February 2004.)

(b) The Consultant shall verify that the selected encryption product has been validated under the Cryptographic Module Validation Program (see <http://csrc.nist.gov/cryptval/>) to confirm compliance with FIPS 140–2 (as amended). The Consultant shall provide a written copy of the validation documentation to the Contracting Officer and the Contracting Officer's Technical Representative.

(c) The Consultant shall use the Key Management Key (see FIPS 201, Chapter 4, as amended) on the HHS personal identification verification (PIV) card; or alternatively, the Consultant shall establish and use a key recovery mechanism to ensure the ability for authorized personnel to decrypt and recover all encrypted information (see <http://csrc.nist.gov/drivers/documents/ombencryption-guidance.pdf>). The Consultant shall notify the Contracting Officer and the Contracting Officer's Technical Representative of personnel authorized to decrypt and recover all encrypted information.

(d) The Consultant shall securely generate and manage encryption keys to prevent unauthorized decryption of information in accordance with FIPS 140–2 (as amended).

(e) The Consultant shall ensure that this standard is incorporated into the Consultant's property management/control system or establish a separate procedure to account for all laptop computers, desktop computers, and other mobile devices and portable media that store or process sensitive HHS information.

(f) The Consultant shall ensure that its subConsultants (at all tiers) which perform work under this contract comply with the requirements contained in this clause.

(End of clause)

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21511, Apr. 26, 2010]

352.239-72 Security requirements for Federal information technology resources.

(a) *Applicability.* This clause applies whether the entire contract or order (hereafter “contract”), or portion thereof, includes information technology resources or services in which the Consultant has physical or logical (electronic) access to, or operates a Department of Health and Human Services (HHS) system containing, information that directly supports HHS' mission. The term “information technology (IT)”, as used in this clause, includes computers,

ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services) and related resources. This clause does not apply to national security systems as defined in FISMA.

(b) *Consultant responsibilities.* The Consultant is responsible for the following:

(1) Protecting Federal information and Federal information systems in order to ensure their—

(i) *Integrity*, which means guarding against improper information modification or destruction, and includes ensuring information non-repudiation and authenticity;

(ii) *Confidentiality*, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information; and.

(iii) *Availability*, which means ensuring timely and reliable access to and use of information.

(2) Providing security of any Consultant systems, and information contained therein, connected to an HHS network or operated by the Consultant, regardless of location, on behalf of HHS.

(3) Adopting, and implementing, at a minimum, the policies, procedures, controls, and standards of the HHS Information Security Program to ensure the integrity, confidentiality, and availability of Federal information and Federal information systems for which the Consultant is responsible under this contract or to which it may otherwise have access under this contract. The HHS Information Security Program is outlined in the HHS Information Security Program Policy, which is available on the HHS Office of the Chief Information Officer's (OCIO) Web site.

(c) *Consultant security deliverables.* In accordance with the timeframes specified, the Consultant shall prepare and submit the following security documents to the Contracting Officer for review, comment, and acceptance:

(1) *IT Security Plan (IT-SP)—due within 30 days after contract award.* The IT-SP shall be consistent with, and further detail the approach to, IT security contained in the Consultant's bid or proposal that resulted in the award of this contract. The IT-SP shall describe the processes and procedures that the Consultant will follow to ensure appropriate security of IT resources that are developed, processed, or used under this contract. If the IT-SP only applies to a portion of the contract, the Consultant shall specify those parts of the contract to which the IT-SP applies.

(i) The Consultant's IT-SP shall comply with applicable Federal laws that include, but are not limited to, the Federal Information Security Management Act (FISMA) of 2002 (Title III of the E-Government Act of 2002, Public Law 107-347), and the following Federal and HHS policies and procedures:

(A) Office of Management and Budget (OMB) Circular A-130, Management of Federal Information Resources, Appendix III, Security of Federal Automated Information Resources.

(B) National Institute of Standards and Technology (NIST) Special Publication (SP) 800-18, Guide for Developing Security Plans for Federal Information Systems, in form and content, and with any pertinent contract Statement of Work/Performance Work Statement (SOW/PWS) requirements. The IT-SP shall identify and document appropriate IT security controls consistent with the sensitivity of the information and the requirements of Federal Information Processing Standard (FIPS) 200, Recommended Security Controls for Federal Information Systems. The Consultant shall review and update the IT-SP in accordance with NIST SP 800-26, Security Self-Assessment Guide for Information Technology Systems and FIPS 200, on an annual basis.

(C) HHS-OCIO Information Systems Security and Privacy Policy.

(ii) After resolution of any comments provided by the Government on the draft IT–SP, the Contracting Officer shall accept the IT–SP and incorporate the Consultant's final version into the contract for Consultant implementation and maintenance. On an annual basis, the Consultant shall provide to the Contracting Officer verification that the IT–SP remains valid.

(2) *IT Risk Assessment (IT–RA)*—*due within 30 days after contract award.* The IT–RA shall be consistent, in form and content, with NIST SP 800–30, Risk Management Guide for Information Technology Systems, and any additions or augmentations described in the HHS–OCIO Information Systems Security and Privacy Policy. After resolution of any comments provided by the Government on the draft IT–RA, the Contracting Officer shall accept the IT–RA and incorporate the Consultant's final version into the contract for Consultant implementation and maintenance. The Consultant shall update the IT–RA on an annual basis.

(3) *FIPS 199 Standards for Security Categorization of Federal Information and Information Systems Assessment (FIPS 199 Assessment)*—*due within 30 days after contract award.* The FIPS 199 Assessment shall be consistent with the cited NIST standard. After resolution of any comments by the Government on the draft FIPS 199 Assessment, the Contracting Officer shall accept the FIPS 199 Assessment and incorporate the Consultant's final version into the contract.

(4) *IT Security Certification and Accreditation (IT–SC&A)*—*due within 3 months after contract award.* The Consultant shall submit written proof to the Contracting Officer that an IT–SC&A was performed for applicable information systems— see paragraph (a) of this clause. The Consultant shall perform the IT–SC&A in accordance with the HHS Chief Information Security Officer's Certification and Accreditation Checklist; NIST SP 800–37, Guide for the Security Certification and Accreditation of Federal Information Systems; and NIST SP 800–53, Recommended Security Controls for Federal Information Systems. An authorized senior management official shall sign the draft IT–SC&A and provide it to the Contracting Officer for review, comment, and acceptance.

(i) After resolution of any comments provided by the Government on the draft IT–SC&A, the Contracting Officer shall accept the IT–SC&A and incorporate the Consultant's final version into the contract as a compliance requirement.

(ii) The Consultant shall also perform an annual security control assessment and provide to the Contracting Officer verification that the IT–SC&A remains valid. Evidence of a valid system accreditation includes written results of:

(A) Annual testing of the system contingency plan; and

(B) The performance of security control testing and evaluation.

(d) *Personal identity verification.* The Consultant shall identify its employees with access to systems operated by the Consultant for HHS or connected to HHS systems and networks. The Contracting Officer's Technical Representative (COTR) shall identify, for those identified employees, position sensitivity levels that are commensurate with the responsibilities and risks associated with their assigned positions. The Consultant shall comply with the HSPD–12 requirements contained in “HHS–Controlled Facilities and Information Systems Security” requirements specified in the SOW/PWS of this contract.

(e) *Consultant and subconsultant employee training.* The Consultant shall ensure that its employees, and those of its subConsultants, performing under this contract complete HHS-furnished initial and refresher security and privacy education and awareness training before being granted access to systems operated by the Consultant on behalf of HHS or access to HHS systems and networks. The Consultant shall provide documentation to the COTR evidencing that Consultant employees have completed the required training.

(f) *Government access for IT inspection.* The Consultant shall afford the Government access to the Consultant's and subConsultants' facilities, installations, operations, documentation, databases, and personnel used in performance of this contract to the extent required to carry out a program of IT inspection (to include vulnerability testing), investigation, and audit to safeguard against threats and hazards to the integrity, confidentiality, and availability, of

HHS data or to the protection of information systems operated on behalf of HHS.

(g) *Subcontracts*. The Consultant shall incorporate the substance of this clause in all subcontracts that require protection of Federal information and Federal information systems as described in paragraph (a) of this clause, including those subcontracts that—

(1) Have physical or electronic access to HHS' computer systems, networks, or IT infrastructure; or

(2) Use information systems to generate, store, process, or exchange data with HHS or on behalf of HHS, regardless of whether the data resides on a HHS or the Consultant's information system.

(h) *Consultant employment notice*. The Consultant shall immediately notify the Contracting Officer when an employee either begins or terminates employment (or is no longer assigned to the HHS project under this contract), if that employee has, or had, access to HHS information systems or data.

(i) *Document information*. The Consultant shall contact the Contracting Officer for any documents, information, or forms necessary to comply with the requirements of this clause.

(j) *Consultant responsibilities upon physical completion of the contract*. The Consultant shall return all HHS information and IT resources provided to the Consultant during contract performance and certify that all HHS information has been purged from Consultant-owned systems used in contract performance.

(k) *Failure to comply*. Failure on the part of the Consultant or its subConsultants to comply with the terms of this clause shall be grounds for the Contracting Officer to terminate this contract.

(End of clause)

352.239-73 Electronic information and technology accessibility.

(a) Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998, and the Architectural and Transportation Barriers Compliance Board Electronic and Information (EIT) Accessibility Standards (36 CFR Part 1194), require that, unless an exception applies, all EIT products and services developed, acquired, maintained, or used by any Federal department or agency permit—

(1) Federal employees with disabilities to have access to and use information and data that is comparable to the access and use of information and data by Federal employees who are not individuals with disabilities; and

(2) Members of the public with disabilities seeking information or services from a Federal agency to have access to and use of information and data that is comparable to the access and use of information and data by members of the public who are not individuals with disabilities.

(b) Accordingly, any vendor submitting a proposal/quotation/bid in response to this solicitation must demonstrate compliance with the established EIT accessibility standards. Information about Section 508 is available at <http://www.section508.gov/>. The complete text of Section 508 Final Provisions can be accessed at <http://www.access-board.gov/sec508/provisions.htm>.

(c) The Section 508 accessibility standards applicable to this solicitation are identified in the Statement of Work/Specification/Performance Work Statement. In order to facilitate the Government's evaluation to determine whether EIT products and services proposed meet applicable Section 508 accessibility standards, offerors must prepare an HHS Section 508 Product Assessment Template, in accordance with its completion instructions, and provide a binding statement of conformance. The purpose of the template is to assist HHS acquisition and program

officials in determining that EIT products and services proposed support applicable Section 508 accessibility standards. The template allows vendors or developers to self-evaluate their products or services and document in detail how they do or do not conform to a specific Section 508 accessibility standard. Instructions for preparing the HHS Section 508 Evaluation Template may be found under Section 508 policy on the HHS Office on Disability Web site (<http://www.hhs.gov/od>).

(d) Respondents to this solicitation must also provide any additional detailed information necessary for determining applicable Section 508 accessibility standards conformance, as well as for documenting EIT products or services that are incidental to the project, which would constitute an exception to Section 508 requirements. If a vendor claims its products or services, including EIT deliverables such as electronic documents and reports, meet applicable Section 508 accessibility standards in its completed HHS Section 508 Product Assessment Template, and it is later determined by the Government— *i.e.*, after award of a contract/order, that products or services delivered do not conform to the described accessibility standards in the Product Assessment Template, remediation of the products or services to the level of conformance specified in the vendor's Product Assessment Template will be the responsibility of the Consultant and at its expense.

(End of provision)

(b) As prescribed in 339.201–70(b), the Contracting Officer shall insert the following clause:

Electronic and Information Technology Accessibility (January 2010)

(a) Pursuant to Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998, all electronic and information technology (EIT) products and services developed, acquired, maintained, or used under this contract/order must comply with the “Electronic and Information Technology Accessibility Provisions” set forth by the Architectural and Transportation Barriers Compliance Board (also referred to as the “Access Board”) in 36 CFR part 1194. Information about Section 508 is available at <http://www.section508.gov/>. The complete text of Section 508 Final Provisions can be accessed at <http://www.access-board.gov/sec508/provisions.htm>.

(b) The Section 508 accessibility standards applicable to this contract/order are identified in the Statement of Work/Specification/Performance Work Statement. The Consultant must provide a written Section 508 conformance certification due at the end of each contract/order exceeding \$100,000 when the contract/order duration is one year or less. If it is determined by the Government that EIT products and services provided by the Consultant do not conform to the described accessibility standards in the Product Assessment Template, remediation of the products or services to the level of conformance specified in the Consultant's Product Assessment Template will be the responsibility of the Consultant at its own expense.

(c) In the event of a modification(s) to this contract/order, which adds new EIT products or services or revises the type of, or specifications for, products or services the Consultant is to provide, including EIT deliverables such as electronic documents and reports, the Contracting Officer may require that the Consultant submit a completed HHS Section 508 Product Assessment Template to assist the Government in determining that the EIT products or services support Section 508 accessibility standards. Instructions for documenting accessibility via the HHS Section 508 Product Assessment Template may be found under Section 508 policy on the HHS Office on Disability Web site (<http://www.hhs.gov/od>).

(c) As prescribed in 339.201–70(c), the Contracting Officer shall add the following paragraph to the end of clause 352.239–73(b):

Prior to the Contracting Officer exercising an option for a subsequent performance period/additional quantity or adding funding for a subsequent performance period under this contract, as applicable, the Consultant must provide a Section 508 Annual Report to the Contracting Officer and Project Officer. Unless otherwise directed by the Contracting Officer in writing, the Consultant shall provide the cited report in accordance with the following schedule. Instructions for completing the report are available in the Section 508 policy on the HHS Office on Disability Web site

under the heading Vendor Information and Documents. The Consultant's failure to submit a timely and properly completed report may jeopardize the Contracting Officer's exercising an option or adding funding, as applicable.

(End of clause)

352.242-70 Key personnel.

The key personnel specified in this contract are considered to be essential to work performance. At least 30 days prior to diverting any of the specified individuals to other programs or contracts (or as soon as possible, if an individual must be replaced, for example, as a result of leaving the employ of the Consultant), the Consultant shall notify the Contracting Officer and shall submit comprehensive justification for the diversion or replacement request (including proposed substitutions for key personnel) to permit evaluation by the Government of the impact on performance under this contract. The Consultant shall not divert or otherwise replace any key personnel without the written consent of the Contracting Officer. The Government may modify the contract to add or delete key personnel at the request of the Consultant or Government.

(End of clause)

352.242-71 Tobacco-free facilities.

In accordance with Department of Health and Human Services (HHS) policy, the Consultant and its staff are prohibited from using tobacco products of any kind (e.g., cigarettes, cigars, pipes, and smokeless tobacco) while on any HHS property, including use in personal or company vehicles operated by Consultant employees while on an HHS property. This policy also applies to all subcontracts awarded under the contract or order. The term "HHS properties" includes all properties owned, controlled and/or leased by HHS when totally occupied by HHS, including all indoor and outdoor areas of such properties. Where HHS only partially occupies such properties, it includes all HHS-occupied interior space. Where HHS leases space in a multi-occupant building or complex, the tobacco-free HHS policy will apply to the maximum area permitted by both law and current lease agreements. The Consultant shall ensure that each of its employees, and any subconsultant staff, is made aware of, understand, and comply with this policy.

(End of clause)

352.242-72 Native American Graves Protection and Repatriation Act.

(a) Public Law 101–601, dated November 16, 1990, also known as the *Native American Graves Protection and Repatriation Act* (Act), imposes certain responsibilities on individuals and organizations when they discover Native American cultural items (including human remains) on Federal or Tribal lands.

(b) In the event the Consultant discovers Native American cultural items (including human remains, associated funerary objects, unassociated funerary objects, sacred objects and cultural patrimony), as defined in the Act during contract performance, the Consultant shall—

(i) Immediately cease activity in the area of the discovery;

(ii) Notify the Contracting Officer of the discovery; and

(iii) Make a reasonable effort to protect the items discovered before resuming such activity. Upon receipt of the Consultant's discovery notice, the Contracting Officer will notify the appropriate authorities as required by the Act.

(c) Unless otherwise specified by the Contracting Officer, the Consultant may resume activity in the area on the 31st

calendar day following the date that the appropriate authorities certify receipt of the discovery notice. The Contracting Officer shall provide to the Consultant the date that the appropriate authorities certify receipt of the discovery notice and the date on which the Consultant may resume activities.

(End of clause)

352.242-73 Withholding of contract payments.

Notwithstanding any other payment provisions of this contract, failure of the Consultant to submit required reports when due or failure to perform or deliver required work, supplies, or services, may result in the withholding of payments under this contract unless such failure arises out of causes beyond the control, and without the fault or negligence of the Consultant as defined by the clause entitled "Excusable Delays" or "Default," as applicable. The Government will immediately notify the Consultant of its intention to withhold payment of any invoice or voucher submitted.

(End of clause)

352.242-74 Final decisions on audit findings.

For the purpose of issuing final decisions under the Disputes clause of this contract concerning monetary audit findings, the Contracting Officer is the individual authorized to make such decisions.

(End of clause)

352.270-1 Accessibility of meetings, conferences, and seminars to persons with disabilities.

The Consultant agrees as follows:

(a) *Planning.* The Consultant shall develop a plan to assure that any meeting, conference, or seminar held pursuant to this contract will meet or exceed the minimum accessibility standards set forth in 28 CFR 36.101–36.500 and Appendix A: ADA Accessibility Guidelines (ADAAG). The Consultant shall submit the plan to the Contracting Officer's Technical Representative for approval prior to initiating action. (The Consultant may submit a consolidated or master plan for contracts requiring numerous meetings, conferences, or seminars in lieu of separate plans.)

(b) *Facilities.* Any facility the Consultant intends to utilize for meetings, conferences, or seminars in performance of this contract shall be in compliance with 28 CFR 36.101–36.500 and Appendix A. The Consultant shall determine, by an on-site inspection, that the facility meets these requirements.

(1) *Parking.* Parking shall be in compliance with 28 CFR 36.101–36.500 and Appendix A.

(2) *Entrances.* Entrances shall be in compliance with 28 CFR 36.101–36.500 and Appendix A.

(3) *Meeting Rooms.* Meeting rooms, including seating arrangements, shall be in compliance with 28 CFR 36.101–36.500 and Appendix A. In addition, stages, speaker platforms, *etc.* which are to be used by persons in wheelchairs must be accessible by ramps or lifts. When used, the ramp may not necessarily be independently negotiable if space does not permit. However, the Contracting Officer's Technical Representative must approve any slope over 1:12, and the Consultant must provide assistance to negotiate access to the stage or platform.

(4) *Restrooms.* Restrooms shall be in compliance with 28 CFR 36.101–36.500 and Appendix A.

(5) *Eating Facilities.* Eating facilities in the meeting facility must also comply with 28 CFR 36.101–36.500 and

Appendix A.

(6) *Overnight Facilities.* If overnight accommodations are required, the facility providing the overnight accommodations shall also comply with 28 CFR 36.101–36.500 and Appendix A.

(7) *Water Fountains.* Water fountains shall comply with 28 CFR 36.101–36.500 and Appendix A.

(8) *Telephones.* Public telephones shall comply with 28 CFR 36.101–36.500 and Appendix A.

(c) Provisions of Services for Attendees with Sensory Impairments.

(1) The Consultant, in planning the meeting, conference, or seminar, shall include in all announcements and other materials pertaining to the meeting, conference, or seminar a notice indicating that services will be made available to persons with sensory impairments attending the meeting, if requested within five (5) days of the date of the meeting, conference, or seminar. The announcement(s) and other material(s) shall indicate that persons with sensory impairments may contact a specific person(s), at a specific address and phone number(s), to make their service requirements known. The phone number(s) shall include a telecommunication device for the deaf (TDD).

(2) The Consultant shall provide, at no additional cost to the individual, those services required by persons with sensory impairments to ensure their complete participation in the meeting, conference, or seminar.

(3) At a minimum, when requested in advance, the Consultant shall provide the following services:

(i) For persons with hearing impairments, qualified interpreters. Also, the meeting rooms shall be adequately illuminated so signing by interpreters can be easily seen.

(ii) For persons with vision impairments, readers and/or cassette materials, as necessary, to enable full participation. Also, meeting rooms shall be adequately illuminated.

(iii) Agenda and other conference material(s) shall be translated into a usable form for persons with sensory impairments. Readers, Braille translations, large print text, and/or tape recordings are all acceptable. These materials shall be available to individuals with sensory impairments upon their arrival.

(4) The Consultant shall make a reasonable effort to ascertain the number of individuals with sensory impairments who plan to attend the meeting, conference, or seminar. However, if the Consultant can determine that there will be no person with sensory impairment in attendance, the provision of those services under paragraph (c) of this clause for the non-represented group, or groups, is not required.

(End of clause)

352.270-2 Indian preference.

(a) The Consultant agrees to give preference in employment opportunities under this contract to Indians who can perform required work, regardless of age (subject to existing laws and regulations), sex, religion, or Tribal affiliation. To the extent feasible and consistent with the efficient performance of this contract, the Consultant further agrees to give preference in employment and training opportunities under this contract to Indians who are not fully qualified to perform regardless of age (subject to existing laws and regulations), sex, religion, or Tribal affiliation. The Consultant also agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of any subcontracts to the extent feasible and consistent with the efficient performance of this contract. The Consultant shall maintain statistical records as are necessary to indicate compliance with this paragraph.

(b) In connection with the Indian employment preference requirements of this clause, the Consultant shall provide opportunities for training incident to such employment. Such training shall include on-the-job, classroom or apprenticeship training which is designed to increase the vocational effectiveness of an Indian employee.

(c) If the Consultant is unable to fill its employment and training opportunities after giving full consideration to Indians as required by this clause, the Consultant may satisfy those needs by selecting persons other than Indians in accordance with the clause of this contract entitled "Equal Opportunity."

(d) If no Indian organizations or Indian-owned economic enterprises are available under reasonable terms and conditions, including price, for awarding of subcontracts in connection with the work performed under this contract, the Consultant agrees to comply with the provisions of this contract involving utilization of small businesses; HUBZone small businesses; service-disabled, veteran-owned small businesses; 8(a) small businesses; veteran-owned small businesses; women-owned small businesses; or small disadvantaged businesses.

(e) As used in this clause,

(1) "Indian" means a person who is a member of an Indian Tribe. If the Consultant has reason to doubt that a person seeking employment preference is an Indian, the Consultant shall grant the preference but shall require the individual to provide evidence within 30 days from the Tribe concerned that the person is a member of the Tribe.

(2) "Indian Tribe" means an Indian Tribe, pueblo, band, nation, or other organized group or community, including Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(3) "Indian organization" means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451).

(4) "Indian-owned economic enterprise" means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent of the enterprise, and that ownership shall encompass active operation and control of the enterprise.

(f) The Consultant agrees to include the provisions of this clause, including this paragraph (f) of this clause, in each subcontract awarded at any tier under this contract.

(g) In the event of noncompliance with this clause, the Contracting Officer may terminate the contract in whole or in part or may impose any other sanctions authorized by law or by other provisions of the contract.

(End of clause)

352.270-3 Indian preference program.

(a) In addition to the requirements of the clause of this contract entitled "Indian Preference," the Consultant agrees to establish and conduct an Indian preference program which will expand opportunities for Indians to receive preference for employment and training in connection with the work to be performed under this contract, and which will expand the opportunities for Indian organizations and Indian-owned economic enterprises to receive a preference in the awarding of subcontracts. In this connection, the Consultant shall perform the following:

(1) Designate a liaison officer who will maintain liaison with the Government and the Tribe(s) on Indian preference matters; supervise compliance with the provisions of this clause; and administer the Consultant's

Indian preference program.

(2) Advise its recruitment sources in writing and include a statement in all advertisements for employment that Indian applicants will be given preference in employment and training incident to such employment.

(3) Not more than 20 calendar days after award of the contract, post a written notice in the Tribal office of any reservations on which or near where the work under this contract is to be performed that sets forth the Consultant's employment needs and related training opportunities. The notice shall include the approximate numbers and types of employees needed; the approximate dates of employment; the experience or special skills required for employment, if any; training opportunities available; and other pertinent information necessary to advise prospective employees of any other employment requirements. The Consultant shall also request the Tribe(s) on or near whose reservation(s) the work is to be performed to provide assistance to the Consultant in filling its employment needs and training opportunities. The Contracting Officer will advise the Consultant of the name, location, and phone number of the Tribal officials to contact in regard to the posting of notices and requests for Tribal assistance.

(4) Establish and conduct a subcontracting program which gives preference to Indian organizations and Indian-owned economic enterprises as subConsultants and suppliers under this contract. The Consultant shall give public notice of existing subcontracting opportunities and, to the extent feasible and consistent with the efficient performance of this contract, shall solicit bids or proposals only from Indian organizations or Indian-owned economic enterprises. The Consultant shall request assistance and information on Indian firms qualified as suppliers or subConsultants from the Tribe(s) on or near whose reservation(s) the work under the contract is to be performed. The Contracting Officer will advise the Consultant of the name, location, and phone number of the Tribal officials to be contacted in regard to the request for assistance and information. Public notices and solicitations for existing subcontracting opportunities shall provide an equitable opportunity for Indian firms to submit bids or proposals by including—

(i) A clear description of the supplies or services required, including quantities, specifications, and delivery schedules which facilitate the participation of Indian firms;

(ii) A statement indicating that preference will be given to Indian organizations and Indian-owned economic enterprises in accordance with section 7(b) of Public Law 93-638 [88 Stat. 2205; 25 U.S.C. 450e(b)];

(iii) Definitions for the terms "Indian organization" and "Indian-owned economic enterprise" as prescribed under the "Indian Preference" clause of this contract;

(iv) A statement to be completed by the bidder or offeror that it is an Indian organization or Indian-owned economic enterprise; and

(v) A closing date for receipt of bids or proposals which provides sufficient time for preparation and submission of a bid or proposal. If after soliciting bids or proposals from Indian organizations and Indian-owned economic enterprises, no responsive bid or acceptable proposal is received, the Consultant shall comply with the requirements of paragraph (d) of the "Indian Preference" clause of this contract. If one or more responsible bids or acceptable proposals are received, award shall be made to the low responsible bidder or acceptable offeror if the price is determined to be reasonable. If the low responsive bid or acceptable proposal is determined to be unreasonable as to price, the Consultant shall attempt to negotiate a reasonable price and award a subcontract. If a reasonable price cannot be agreed upon, the Consultant shall comply with the requirements of paragraph (d) of the "Indian Preference" clause of this contract.

(5) Maintain written records under this contract which indicate—

- (i) The numbers of Indians seeking employment for each employment position available under this contract;
 - (ii) The number and types of positions filled by Indians and non-Indians;
 - (iii) The total number of Indians employed under this contract;
 - (iv) For those positions where there are both Indian and non-Indian applicants, and a non-Indian is selected for employment, the reason(s) why the Indian applicant was not selected;
 - (v) Actions taken to give preference to Indian organizations and Indian-owned economic enterprises for subcontracting opportunities which exist under this contract;
 - (vi) Reasons why preference was not given to Indian firms as subConsultants or suppliers for each requirement where it was determined by the Consultant that such preference would not be consistent with the efficient performance of the contract; and
 - (vii) The number of Indian organizations and Indian-owned economic enterprises contacted, and the number receiving subcontract awards under this contract.
- (6) Submit to the Contracting Officer for approval a quarterly report which summarizes the Consultant's Indian preference program and indicates the number and types of available positions filled by Indians and non-Indians, and the dollar amounts of all subcontracts awarded to Indian organizations and Indian-owned economic enterprises, and to all other firms.
- (7) Maintain records pursuant to this clause and keep them available for review by the Government for one year after final payment under this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulation.
- (b) For purposes of this clause, the following definitions of terms shall apply:
- (1) The terms "Indian," "Indian Tribe," "Indian Organization," and "Indian-owned economic enterprise" are defined in the clause of this contract entitled "Indian Preference."
 - (2) "Indian reservation" includes Indian reservations, public domain Indian Allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the *Alaska Native Claims Settlement Act* (85 Stat. 688; 43 U.S.C. 1601 *et seq.*)
 - (3) "On or near an Indian Reservation" means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a work day.
- (c) Nothing in the requirements of this clause shall be interpreted to preclude Indian Tribes from independently developing and enforcing their own Indian preference requirements. Such requirements must not conflict with any Federal statutory or regulatory requirement dealing with the award and administration of contracts.
- (d) The Consultant agrees to include the provisions of this clause, including this paragraph (d), in each subcontract awarded at any tier under this contract and to notify the Contracting Officer of such subcontracts.
- (e) In the event of noncompliance with this clause, the Contracting Officer may terminate the contract in whole or in part or may impose any other sanctions authorized by law or by other provisions of the contract.

(End of clause)

Prostitution and Related Activities (January 2010)

(a) The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing and contribute to the phenomenon of trafficking in persons.

(b) Neither the Consultant nor any Subconsultant(s) shall use Government funds provided under this contract to promote or advocate the legalization or practice of prostitution or sex trafficking. (Note: The term “contract” includes “order” wherever it appears in this clause.) The Consultant shall not construe anything in the preceding sentence to preclude providing individuals with palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

(c) The Government does not require the Consultant to endorse or utilize a multisectoral approach to combating HIV/AIDS, or endorse, utilize, or participate in a prevention method or treatment program to which it has a religious or moral objection. Any information the Consultant provides about the use of condoms as part of projects or activities that are funded in connection with this contract shall be medically accurate and shall include the public health benefits and failure rates of such use.

(d) In addition, the Consultant shall have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any “exempt organizations” (*i.e.* , the Global Fund to Fight AIDS, Tuberculosis and Malaria; the World Health Organization; the International AIDS Vaccine Initiative; and any United Nations agency), or to any Consultants that are awarded “specified types of commercial contracts” as set forth below.

(e) The following definitions apply for purposes of this clause:

(1) “Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

(2) “Prostitution” means procuring or providing any commercial sex act.

(3) “Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act [22 U.S.C. 7102(9)].

(4) “Specified types of commercial contracts” means contracts awarded for commercial items and services as defined in Federal Acquisition Regulation (FAR) 2.101, such as pharmaceuticals, medical supplies, logistics support, data management, and freight forwarding. Notwithstanding the preceding definition of “specified types of commercial contracts,” contracts for the purposes specified in paragraphs (e)(4)(i) through (iii) of this clause, that are awarded to implement HIV/AIDS programs, require that the Consultant have a policy explicitly opposing prostitution and sex trafficking—

(i) Supplies or services provided directly to the final populations receiving such supplies or services in host countries;

(ii) Technical assistance and training furnished directly to host country individuals or entities for the provision of supplies or services to the final populations receiving such supplies and services; or

(iii) The types of services listed in FAR 37.203(b)(1)-(6) that involve giving advice about substantive policies of a recipient, giving advice regarding the activities referenced in paragraphs (e)(4)(i) and (ii) of this clause, or making decisions or functioning in a recipient's chain of command (e.g., providing managerial or supervisory services; approving financial transactions, personnel actions, *etc.*).

(f) The Consultant must have and maintain “objective integrity and independence” from any organization that engages in activities inconsistent with a policy opposing prostitution and sex trafficking. HHS will consider the Consultant to have objective integrity and independence from such an organization if the—

(1) Organization is a legally separate entity;

(2) Organization receives no transfer of Leadership Act funds, and Leadership Act funds do not subsidize activities inconsistent with a policy opposing prostitution and sex trafficking; and

(3) Consultant is physically and financially separate from the organization. Mere bookkeeping separation of Leadership Act funds from other funds is not sufficient. HHS will determine, on a case-by-case basis, and based on the totality of the facts, whether sufficient physical and financial separation exists. The presence or absence of any one factor below will not be determinative. Factors relevant to this determination shall include, but not be limited to, the following:

(i) The existence of separate personnel, management, and governance.

(ii) The existence of separate accounts, accounting records, and timekeeping records.

(iii) The degree of separation from facilities, equipment, and supplies used by the organization to conduct activities inconsistent with a policy opposing prostitution and sex trafficking, and the extent of such activities by the organization.

(iv) The extent to which—

(A) Signs and other forms of identification that distinguish the Consultant from the organization are present, and

(B) Signs and materials that could be associated with the organization or activities inconsistent with a policy opposing prostitution and sex trafficking are absent.

(v) The extent to which the U.S. Government, HHS, and the project name are protected from public association with an organization and its activities that are inconsistent with a policy opposing prostitution and sex trafficking in materials, such as publications, conferences, and press or public statements.

(g) The Consultant shall include, as express terms and conditions, the applicable provisions of this clause in all subcontract solicitations and subcontracts awarded under this contract. The Consultant agrees that HHS may, at any reasonable time, inspect the documents and materials the Consultant maintains or prepares in the usual course of its operations that relate to the Consultant's compliance with this clause.

(h) As a prerequisite to award and payment of any Government funds under this contract, the Consultant shall certify compliance with this clause for the performance period funded by the contract. The Consultant shall provide the three following compliance certifications in a written statement addressed to the Contracting Officer:

(1) Organizational Integrity Certification:

“I certify that (*insert Consultant's name*), which will be the recipient of Government funds made available through this contract, has objective integrity and independence from any organization that engages in activities inconsistent with a policy opposing prostitution and sex trafficking.”

(2) Subconsultant Compliance Certification:

"I certify that (*insert Consultant's name*) will include the Organizational Integrity certification in any subcontract awarded under this contract and will require such subconsultant to provide the same certification that the Consultant provided."

(3) Acknowledgment Certification:

"I certify that (*insert Consultant's name*) acknowledges that these certifications are a prerequisite to receipt of Government funds in connection with this contract, and that any violation of these certifications by the Consultant or subconsultant(s) at any level shall be grounds for termination of the contract by HHS in accordance with the Federal Acquisition Regulation, Part 49, as well as any other remedies provided by law."

Note: In the case of existing contracts, the Contracting Officer shall add the certification requirements whenever the contract is modified to extend the period of performance or add funds, including any options that may be exercised. In so doing, the Contracting Officer shall delete in paragraph (h) the language "As a prerequisite to award and payment of any Government funds under this contract," and replace it with: "As a prerequisite to continuation of this contract and payment of any Government funds under it."

(i) A person(s) authorized to bind the Consultant and any subconsultant(s) shall execute the certifications. The Consultant shall provide its certifications to the Contracting Officer. A subconsultant(s) shall provide its certifications to the Consultant. The Contracting Officer may request that the Consultant provide any subconsultant certifications. In addition, the Consultant and any subconsultants shall provide *renewed* certifications for any modification that extends the contract period of performance or adds funds to the contract, including any options that may be exercised.

(j) This clause does not affect the applicability of the FAR clause at 52.222-50 entitled, "Combating Trafficking in Persons."

(End of clause)

Non-discrimination for Conscience (January 2010)

(a) Section 301(d) of the *United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act, as amended*, provides that an organization, including a faith-based organization, that is otherwise eligible to receive assistance under section 104A of the Foreign Assistance Act of 1961, under the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, under the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008, or under any amendment to the foregoing Acts for HIV/AIDS prevention, treatment, or care—

(1) Shall not be required, as a condition of receiving such assistance, to—

(i) Endorse or utilize a multisectoral or comprehensive approach to combating HIV/AIDS; or

(ii) Endorse, utilize, make a referral to, become integrated with, or otherwise participate in any program or activity to which the organization has a religious or moral objection.

(2) Shall not be discriminated against under the provisions of law in subparagraph (a) for refusing to meet any requirement described in paragraph (a)(1) in this solicitation.

(b) Accordingly, an offeror who believes this solicitation contains work requirements that would require it to endorse or utilize a multisectoral or comprehensive approach to combating HIV/AIDS, or to endorse, utilize, make referral to,

become integrated with, or otherwise participate in a program or activity to which it has a religious or moral objection, shall identify those work requirements it has excluded in its technical proposal.

(c) The Government acknowledges that an offeror has specific rights, as cited in paragraph (b) of this provision, to exclude certain work requirements in this solicitation from its proposal. However, the Government reserves the right to not make an award to an offeror whose proposal does not comply with the salient work requirements of the solicitation. Any exercise of that Government right will be made by the Head of the Contracting Activity.

(End of provision)

ATTACHMENT A

**Mono County Cover Sheet
CAPIT/ PSSF RFP**

General Information

Organization Name: _____

Start Date: _____

Name of Contact Person: _____

Address: _____ **City:** _____ **Zip:** _____

Phone: _____ **Email Address:** _____

Fax: _____ **Tax ID Number:** _____

Name of Person Authorized to Sign Contracts: _____

Authorized Signature: _____ **Date:** _____

Name of Fiscal Agent: _____ **Date:** _____

TYPE OF ORGANIZATION

- | | |
|---|--|
| <input type="checkbox"/> Community-Based Organization | <input type="checkbox"/> School-Based Organization |
| <input type="checkbox"/> Education | <input type="checkbox"/> Non-Profit |
| <input type="checkbox"/> Faith-Based Organization | <input type="checkbox"/> For Profit |
| <input type="checkbox"/> Other – Please Specify: | |

TAX STATUS

- Community-Based Organization
- Education
- Faith-Based Organization

GEOGRAPHIC AREAS SERVED BY THIS PROJECT

- Mammoth Lakes
- South County- Chalfant, Crowley Lake, Paradise, Swall Meadows
- North County- Bridgeport, Walker, Coleville
- East County- Benton, Oasis
- All of the Above

ATTACHMENT B

EVALUATION PLAN MATRIX AND DESCRIPTION

OUTCOMES	INDICATORS	METHOD OF DATA COLLECTION	TOOLS	WHO COLLECTS DATA	TIMEFRAME
<i>Degree of change</i>	<i>Performance Measures — How will you track change?</i>	<i>List Methods: Interviews, surveys, observation checklist, other</i>	<i>List Specific Tools</i>	<i>Staff, participants, etc.</i>	<i>Milestones and Activities Delivery</i>
Short Term Outcomes					
Intermediate Outcomes					
Long Term Outcomes					

ATTACHMENT C

Attach Data Collection Forms Used to Collect Outcome Measures

ATTACHMENT D

LOGIC MODEL

Organization Name: _____

Manager/Contact Person: _____

PROJECT GOAL:

Need/Problem Risk-Protective Factors and Problem Area	STRATEGIES ACTIVITIES	Short-Term Outcomes	Long-Term Outcomes
<i>List Risk/Protective Factors and Problem Area</i>	<i>Activities: 1 What does program do? 2 Which Problem Statement addressed? 3. Identify Target Population</i>	<i>Changes/Results in: 1. Knowledge 2. Skills 3 Attitude 4 Behavior</i>	

ATTACHMENT E
BUDGET AND NARRATIVE

Budget — Provide the details on your proposed budget capturing all costs, including other grants or in-kind contributions.

Organization Name: _____

Start Date: _____ End Date: _____

PERSONNEL EXPENSES

POSTIONS	SALARY	% TIME	Requested Budget Amount	In-Kind Budget Amount	TOTAL Budget Amount
Total Salaries					
Total Benefits					
TOTAL PERSONNEL EXPENSES					

OPERATING EXPENSES

	Requested Budget Amount	In-Kind Budget Amount	TOTAL Budget Amount
General Operating Expenses			
Office Supplies			
Educational Materials			
Travel — Training			
Media			
Consultants			
Other Expenses (Specify)			
Total Operating Expenses			

IN-KIND AND MATCH FUNDS:

TOTAL BUDGET

Requested Budget Amount	In-Kind Budget Amount	TOTAL Budget Amount

Attach your 2012/13 Budget Narrative to this section to justify requested funds.

I. Proposed Project Budget that includes dollar amounts (\$) for:

a. Personnel Costs

- Title/position and brief description of major duties.
- Existing or new position?
- Annual Salary of position with benefits and % of position if not full time.
- Portion of the salary requested through this grant.

b. Operating Expenses

Include cost of all operating expenses, along with narrative justifications where additional clarity on purpose may be needed.

c. Administrative Expenses

Supply summary of needs and total amount along with the percentage of entire project budget dedicated to administrative costs.

d. Total of in-kind funds

Supply summary, total amount, and percentage of entire project budget for any in-kind funds to be contributed.

II. Current Fiscal Year Organization/Agency Budget (This is the year during which the application is being made. Numbers will be estimates for the full budget year based on actual revenue and expenditures.)

III. Estimated Organization/Agency Budget for the Next Budget Year

IV. Attach Organization's Current Fiscal Year Budget (FY 2012/13)

ATTACHMENT F

Letters of Support

Describe partner agency/collaborative support. (e.g. referral of clients, office space, support services, serving on MDT, etc). Include letters of support.

ATTACHMENT G

Additional Background Materials to be Attached

The following materials must be attached to Application:

- Organizational Chart
- List of members/participants with affiliation
- Memorandum of Understanding or Letter of Intent for collaborative programs
- Proof of non-profit status of business license, if applicable
- Copy of recent CPA audit, unless exempt
- Letters of commitment from any key partners
- Clinic/agency/daycare license, if applicable

Background Materials to be submitted Only by Private Non-Profit Agencies:

The Agency/Organization certifies that all documents listed below are valid as of the date of this application and that current, dated copies have been submitted with this application). **Please submit only one copy of these documents, unattached to the application.**

- IRS Status Certification (e.g. 501 (c)(3)) and Articles of Incorporation
- By-Laws
- Current Board of Directors Roster (agency name on roster, dated) for private non-profit organizations only
- Proof of General Liability Insurance (\$1,000,000 min. required)*
- Worker's compensation insurance—current certificate and endorsement showing 30-day cancellation notification
- A statement, signed by chief officer of organization, certifying compliance with Federal and State law prohibiting discrimination in the provision of services on the basis of color, race, religion, national origin, sex, age, or physical or mental disabilities
- Copy of licenses, permits, etc. required to legitimately operate the programs funded through this application