



Dora

Department of Regulatory Agencies

Procedures for Reviewing and Evaluating Unsolicited Proposals for Public-Private Initiative Agreements with Nonprofit Entities



August 2010

TABLE OF CONTENTS

I. General	1
A. Background	1
B. Definitions	1
C. Colorado Open Records Act	2
D. Timeline	2
II. Unsolicited Proposals	3
A. Other Submission Requirements	3
B. Initial Review of Unsolicited Proposals.....	4
III. Evaluation	5
IV. Comparable Proposals	6
V. Upon Acceptance of an Unsolicited Proposal.....	7
VI. Additional Contract Requirements	7
Exhibit A – House Bill 10-1010	9
Exhibit B - Unsolicited Proposal Submittal Requirements	16
Exhibit C - Unsolicited Proposal Cover Sheet, Certification & Signature Page	20
Exhibit D – Organizational Conflict of Interest Statement.....	21
Exhibit E - Colorado Personal Services Contract	22
Exhibit F – Evaluation Plan	47
Exhibit G – Colorado Purchase Order Terms and Conditions	50
Exhibit H – Vendor Disclosure Statement	51

I. General

A. Background

House Bill 10-1010 (Act) creates the mechanism for public private initiatives (PPI) with nonprofit entities under 24-38-201, et.seq., C.R.S., a copy of which is attached as **Exhibit A**. The Act provides the basis for consideration by state agencies of agreements with a "Nonprofit Entity," as defined under Section 501(c)(3) of the federal Internal Revenue Code, benefitting state agencies in the cost-effective and efficient delivery of public services. The Act acknowledges that Nonprofit Entities that contract for public services can leverage the use of public funds with private funds, thereby furthering the cost-effective and efficient delivery of public services. The Act is intended to provide flexibility to state government in the delivery of public services, and is not intended to authorize or create new programs.

Agreements pursuant to the PPI process may be entered into by a state agency upon receipt, consideration and approval of an Unsolicited Proposal submitted by a qualified Nonprofit Entity. Such agreements may not be in response to or in anticipation of any formal solicitation request from the state agency, i.e. Request for Proposal, Invitation to Bid or Documented Quote. Under no circumstances may an agency solicit or assist with the preparation of any PPI Unsolicited Proposal. Agencies must ensure that Unsolicited Proposals are independently originated and submitted by the Nonprofit Entity.

In accordance with the requirements of the Act, these procedures establish the process pursuant to which the Department of Regulatory Agencies will consider, evaluate and accept or reject Unsolicited Proposals.

B. Definitions

"Cost Savings" means any money that an agency does not expend from its appropriations for a given fiscal year that is a direct result of cost-cutting measures. "Cost savings" includes, including an action that would result in a base reduction due to permanent reductions in spending, but in no case shall "cost savings" include or be a result of a case load reduction or personal services contracts that the agency entered into under a managed competition process.

"Nonprofit Contribution" means the supply by a nonprofit entity of resources to accomplish all or any part of the work on a project or the implementation or administration of a program.

"Nonprofit Entity" means a corporation or organization authorized to do business in the state that is exempt from taxation pursuant to section 501 (a) of the federal "internal revenue code of 1986", 26 u.s.c. Sec. 501 (a), as amended, and is listed as an exempt organization in section 501(c) (3) of the federal "internal revenue code of 1986", 26 u.s.c. Sec. 501 (c) (3), as amended.

"Proposer" means the nonprofit entity submitting an unsolicited proposal

"Public Benefit" means an agency grant of a right or interest in or concerning an agency project or program.

"Public-Private Initiative" means a nontraditional arrangement between an agency and one or more nonprofit entities that provides for:

- (a) acceptance of a nonprofit contribution to an agency project or service in exchange for a public benefit concerning the project or service other than only a money payment;
- (b) sharing of resources and the means of providing projects or services; or
- (c) cooperation in researching, developing, and implementing projects or services.

"Unsolicited Proposal" means a written proposal for a public-private initiative that is submitted by a nonprofit entity for the purpose of entering into an agreement with an agency but that is not in response to a formal solicitation or request issued by the agency,

C. Colorado Open Records Act

All Unsolicited Proposals submitted to DORA may be deemed public records and subject to the Colorado Open Records Act (24-72-201, C.R.S). Proposers are advised to familiarize themselves with the provisions of the Colorado Open Records Act. The State and DORA will not be liable to the Proposer for the disclosure of all or part of an Unsolicited Proposal submitted under these guidelines.

D. Timeline

The following schedule depicts the phases and the estimated time frames for completion of each phase of the Unsolicited Proposal review/selection process. Every attempt will be made to move through the process as expeditiously as possible. However, variations in the following schedule may be necessitated due to volume, complexity of Unsolicited Proposals received, the need for further information, or other unanticipated circumstances. Again, these timeframes are estimates only and they will be adjusted based on size and complexity of each Unsolicited Proposal received.

Initial Review Upon Receipt of Unsolicited Proposal	4 weeks
Program Review	6 to 8 weeks
Comparable Proposal Notice (if needed)	4 weeks
Final Evaluation	4 to 6 weeks
Final Project Selection	4 weeks
Negotiations of Comprehensive Agreement	2 to 4 weeks

II. Unsolicited Proposals

The Department of Regulatory Agencies (DORA) may consider, evaluate and accept Unsolicited Proposals submitted by a Nonprofit Entity. Public Private Initiative consideration of an Unsolicited Proposal submitted by a Nonprofit Entity must not circumvent or eliminate contracting for goods or services that meet known requirements of DORA and are obtained by other competitive means, i.e.: Request for Proposal, Invitation for Bid, or Documented Quote.

Only Unsolicited Proposals that are completely independent of any known requirement, that demonstrates efficient, cost saving methods supporting DORA's mission shall be considered. The criteria for contracting will be determined by how the Unsolicited Proposal meets DORA's delivery of services in carrying out its duties in a cost-effective and efficient manner without replacing existing state employees.

DORA may consider, evaluate and accept an Unsolicited Proposal only if the proposal complies with the following:

1. Will assist DORA in carrying out its duties in a cost-effective and efficient manner without replacing existing state employees;
2. Is independently originated and developed by the Proposer;
3. Is prepared without DORA supervision;
4. Includes sufficient detail and information to allow DORA to evaluate the proposal in an objective and timely manner and to determine if the proposal benefits the agency; and
5. Is not an advance proposal for a known DORA requirement that can be acquired by competitive methods, i.e.: Request for Proposal, Request for Application, Invitation for Bid or Documented Quote, unless DORA has not established a timetable for satisfying the known requirement, or the proposal is likely to significantly shorten a timetable for satisfying the known requirement.

If an Unsolicited Proposal does not meet the requirements stated above, DORA shall return the proposal without further action. If an Unsolicited Proposal meets all the requirements DORA may further evaluate the proposal as provided in Section III below.

Proposers submitting Unsolicited Proposals to DORA are required to follow the instructions in the Submittal Requirements Document, attached as **Exhibit B**. All submissions must be accompanied by an Unsolicited Proposal Cover Sheet, Certification & Signature Page document, attached as **Exhibit C**.

A. Other Submission Requirements

1. Certification of Unsolicited Proposal

As a condition of submission of an Unsolicited Proposal, the Proposer, and in the case of a joint Unsolicited Proposal, each party thereto, certifies as to its own organization, that, in connection with the Unsolicited Proposal, the Unsolicited Proposal in its entirety has been developed independently, without consultation, communication, or participation with DORA.

2. Organizational Non Conflict of Interest Statement

A submission must include an Organizational Conflict of Interest Statement, attached as **Exhibit D**, along with a Transmittal Letter including Proposers affirmation that the proposal is unsolicited, and independently prepared without any encouragement, guidance or assistance from DORA Program Staff.

3. Organizations banned from contract awards.

Any organization banned from receiving federal funds, and any successor organizations, shall not be awarded a public-private initiative contract.

4. Confidentiality

Requests for confidentiality for portions of a submitted Unsolicited Proposal must be considered prior to evaluation and selection of an Unsolicited Proposal. Under no circumstances will an entire proposal be deemed as confidential and proprietary, including cost information. Portions of any Unsolicited Proposal that the Proposer deems as “Confidential and/or Proprietary” information must be separately marked and sealed for review.

The Procurement Director (PD) will make a written determination as to the apparent validity of any written request for confidentiality. In the event the PD does not concur with the Proposers request for confidentiality, the written determination will be sent to the Proposer.

5. Insurance

Proposers and its subcontractors shall obtain and maintain adequate insurance as specified in the Colorado Contract for Services, attached as **Exhibit E**, at all times during the term of any agreement. All policies evidencing the insurance coverage required shall be issued by insurance companies satisfactory to the Proposer and the State.

B. Initial Review of Unsolicited Proposals

DORA’s PD will provide initial review of received Unsolicited Proposals to ensure that they meet all submission requirements identified in Part A of the Submittal Requirements Document (**Exhibit B**). Part of that initial review will be to ensure each Unsolicited Proposal:

1. Is independently originated and developed by the Proposer.
2. Is prepared without DORA supervision, guidance, direction or input.
3. Is not an advance proposal for a DORA requirement that can be acquired by competitive methods, unless:
 - i. DORA has not established a timetable for satisfying a known requirement
 - ii. The Unsolicited Proposal is likely to significantly shorten a timetable satisfying the known requirement

If all submission requirements of Part A of the Submittal Requirements are met, the PD will identify the appropriate division for which the Unsolicited Proposal is intended. The PD will notify the Division Director of receipt of an Unsolicited Proposal. It is the Division Director’s responsibility to assign a Project Manager to oversee the review, evaluation and approval of an Unsolicited Proposal within these guidelines.

The Project Manager will perform a review of Part B of the Submittal Requirements Document to determine if the Unsolicited Proposal:

1. Will assist DORA in carrying out its duties in a cost-effective and efficient manner without replacing existing employees.
2. Includes sufficient detail and information to allow DORA to evaluate the Unsolicited Proposal in an objective and timely manner and to determine if the Unsolicited Proposal benefits DORA.

If an Unsolicited Proposal does not meet any one of the above initial submission requirements, no further evaluation will be conducted. The Project Manager will provide a written determination to the PD which details how the Unsolicited Proposal does not meet the requirement(s).

The PD will return the Unsolicited Proposal along with a brief summary of the determination. No further action will be taken.

III. Evaluation

If an Unsolicited Proposal meets all submission requirements it will be evaluated by an evaluation team in accordance with the Evaluation Plan, attached as **Exhibit F**.

The Project Manager will establish an evaluation team of three or more persons (recommended not to exceed five evaluators) for the sole purpose of evaluating each eligible Unsolicited Proposal. Evaluators will be selected on the basis of their ability to understand DORA requirements and consider the effect of the Unsolicited Proposal on the overall delivery of DORA services, as applicable, among other factors appropriate to the particular Unsolicited Proposal.

The Project Manager and the evaluation team members will be required to complete a Non-Conflict of Interest Statement within 48 hours of being informed of the identity of the Nonprofit Entity submitting the Unsolicited Proposal.

Evaluation of Unsolicited Proposals will consider the following factors:

1. Unique and innovative methods, approaches, or concepts
2. Potential contribution of the Unsolicited Proposal to DORA's mission
3. Scientific, technical or socioeconomic merits of the Unsolicited Proposal
4. Capabilities, relevant experience, resources or unique combination of these qualities that are integral factors for achieving the Unsolicited Proposal objectives
5. Cost savings, efficient delivery of services, or enhanced quality of service delivered to the recipient

Upon completion of the evaluation process, a written determination notice (notice) by the evaluation team will be submitted to the PD, to include how the Unsolicited Proposal does or does not satisfy DORA requirements, and how it is an efficient and cost-effective method for the delivery of services. The notice must include a statement that the initial submission of the Unsolicited Proposal was unsolicited without DORA assistance beyond providing research data requested by the Nonprofit(s) and void of any known organizational or individual conflict of interest. An Unsolicited Proposal may only be accepted if the Unsolicited Proposal receives a favorable evaluation from the evaluation team.

If the Unsolicited Proposal receives a favorable evaluation from the evaluation team the notice shall be forwarded to the appropriate Division Director for review and approval. The notice shall then go to the DORA executive director for final approval.

In the event the expected agreement amount exceeds \$50,000 in the aggregate for any fiscal year, then DORA shall provide public notice and consider comparable proposals from other Nonprofit Entities in accordance with the provision of Section IV below.

Unsolicited Proposals that do not receive a favorable evaluation shall receive no further consideration. The PD shall notify Proposers of the evaluation team determination.

IV. Comparable Proposals

If an Unsolicited Proposal requires DORA to spend public moneys in an amount that is reasonably expected to exceed \$50,000 in the aggregate for any fiscal year, DORA shall take the following actions before accepting the Unsolicited Proposal:

- A. Provide public notice that comparable proposals (Comparable Proposals) will be considered. The notice shall:
 1. Be given at least fourteen (14) days prior to the date set forth therein for the opening of proposals through any reasonable method, which may include posting on DORA's internet web site, posting on the State's bid information and distribution system (BIDS), or publication in a newspaper or general circulation;
 2. Be provided to any nonprofit entity that expresses, in writing to the agency, an interest in a Public-Private Initiative that is similar in nature and scope to the Unsolicited Proposal;
 3. Outline in summary form the general nature and scope of the Unsolicited Proposal, including the work to be performed on the project and the terms of any nonprofit contributions offered and public benefits requested concerning the project;
 4. Request information to determine if the proposer of a Comparable Proposal has the necessary experience and qualifications to perform the public-private initiative; and

5. Specify the address to and the date by which Comparable Proposals must be submitted, allowing a reasonable time to prepare and submit Comparable Proposals.

B. DORA shall:

1. Determine, in its discretion, if any submitted proposal is comparable in nature and scope to the Unsolicited Proposal and warrants further evaluation;
2. Evaluate each Comparable Proposal, taking relevant factors into consideration; and
3. Conduct good faith discussions and, if necessary, negotiations concerning each Comparable Proposal.

A Comparable Proposal may be accepted if it is determined that the Comparable Proposal is the most advantageous to the DORA in comparison to the original Unsolicited Proposal or other submitted Comparable Proposals. In making the determination, DORA shall use only the Unsolicited Proposal evaluation criteria specified in this section

V. Upon Acceptance of an Unsolicited Proposal.

If an Unsolicited Proposal is accepted, or if a Comparable Proposal is accepted pursuant to these guidelines, DORA shall use such proposal as the basis for negotiation of an agreement.

The PD will post a notice on BIDS and send a letter indicating the Proposer which has been selected and may begin contract development with DORA.

VI. Additional Contract Requirements

A. Colorado Standard Agreements for Services

Prior to starting or proceeding with any part of an Unsolicited Proposal, the Proposer(s) must enter into a comprehensive agreement with DORA. Appropriate DORA staff will be responsible for negotiating the agreement. Each agreement will define the rights and obligations of DORA and the respective Proposer with regard to the project. Depending upon the cost and complexity of the program, either the Colorado Standard Contract for Services, attached as **Exhibit C**, or State of Colorado Purchase Order Terms and Conditions, attached as **Exhibit G**, will be used.

B. Contract Term

Agreements may be for a one year period with four one-year option to renew. No agreement shall exceed five years.

C. Monitoring

If the maximum amount payable to Proposer under any Agreement is \$100,000 or greater, either on the effective date or at anytime thereafter, Proposer agrees to be governed, and to abide, by the provisions of §§24-102-205, 24-102-206, 24-103-601, 24-103.5-101 and 24-105-102, C.R.S., concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Exhibit A – House Bill 10-1010

CHAPTER 90

GOVERNMENT - STATE

HOUSE BILL 10-1010 [Digest]

BY REPRESENTATIVE(S) Ferrandino, Court, Gerou, Apuan, Benefield, Kerr J., Labuda, Miklosi, Schafer S., Todd, Tyler, Merrifield, Pommer, Summers;
also SENATOR(S) Morse, Brophy, Heath, Bacon, Boyd, Hodge, Keller, Newell, Williams.

AN ACT

CONCERNING AUTHORIZATION FOR AGENCIES OF THE STATE TO ENTER INTO PUBLIC-PRIVATE INITIATIVE AGREEMENTS WITH NONPROFIT ENTITIES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 38 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 2 PUBLIC-PRIVATE INITIATIVES

24-38-201. Legislative declaration. THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT STATE GOVERNMENT SHOULD DELIVER PUBLIC SERVICES IN THE MOST COST-EFFECTIVE AND EFFICIENT MANNER, THAT NONPROFIT ENTITIES THAT CONTRACT FOR PUBLIC SERVICES LEVERAGE THE USE OF PUBLIC FUNDS WITH PRIVATE DONATIONS, AND THAT INCREASING OPPORTUNITIES FOR NONPROFIT ENTITIES TO CONTRACT WITH STATE AGENCIES WILL FURTHER THE COST-EFFECTIVE AND EFFICIENT DELIVERY OF PUBLIC SERVICES. IT IS THE INTENT OF THE GENERAL ASSEMBLY IN ENACTING THIS PART 2 ONLY TO PROVIDE FLEXIBILITY TO STATE GOVERNMENT SO THAT IT CAN DELIVER PUBLIC SERVICES MORE COST-EFFECTIVELY AND EFFICIENTLY AND NOT TO ESTABLISH OR AUTHORIZE THE ESTABLISHMENT OF NEW PROGRAMS.

24-38-202. Definitions. AS USED IN THIS PART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "NONPROFIT CONTRIBUTION" MEANS THE SUPPLY BY A NONPROFIT ENTITY OF RESOURCES TO ACCOMPLISH ALL OR ANY PART OF THE WORK ON A PROJECT OR THE IMPLEMENTATION OR ADMINISTRATION OF A PROGRAM.

(2) "NONPROFIT ENTITY" MEANS A CORPORATION OR ORGANIZATION AUTHORIZED TO DO BUSINESS IN THE STATE THAT IS EXEMPT FROM TAXATION PURSUANT TO SECTION 501 (a) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 501 (a), AS AMENDED, AND IS LISTED AS AN EXEMPT ORGANIZATION IN SECTION 501 (c) (3) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 501 (c) (3), AS AMENDED.

(3) "PUBLIC BENEFIT" MEANS AN AGENCY GRANT OF A RIGHT OR INTEREST IN OR CONCERNING AN AGENCY PROJECT OR PROGRAM.

(4) "PUBLIC-PRIVATE INITIATIVE" MEANS A NONTRADITIONAL ARRANGEMENT BETWEEN AN AGENCY AND ONE OR MORE NONPROFIT ENTITIES THAT PROVIDES FOR:

(a) ACCEPTANCE OF A NONPROFIT CONTRIBUTION TO AN AGENCY PROJECT OR SERVICE IN EXCHANGE FOR A PUBLIC BENEFIT CONCERNING THE PROJECT OR SERVICE OTHER THAN ONLY A MONEY PAYMENT;

(b) SHARING OF RESOURCES AND THE MEANS OF PROVIDING PROJECTS OR SERVICES; OR

(c) COOPERATION IN RESEARCHING, DEVELOPING, AND IMPLEMENTING PROJECTS OR SERVICES.

(5) "UNSOLICITED PROPOSAL" MEANS A WRITTEN PROPOSAL FOR A PUBLIC-PRIVATE INITIATIVE THAT IS SUBMITTED BY A NONPROFIT ENTITY FOR THE PURPOSE OF ENTERING INTO AN AGREEMENT WITH AN AGENCY BUT THAT IS NOT IN RESPONSE TO A FORMAL SOLICITATION OR REQUEST ISSUED BY THE AGENCY.

24-38-203. Unsolicited proposals. (1) AN AGENCY MAY CONSIDER, EVALUATE, AND ACCEPT AN UNSOLICITED PROPOSAL ONLY IF THE PROPOSAL COMPLIES WITH ALL OF THE REQUIREMENTS OF THIS SECTION.

(2) AN AGENCY MAY CONSIDER AN UNSOLICITED PROPOSAL ONLY IF THE PROPOSAL:

(a) WILL ASSIST THE AGENCY IN CARRYING OUT ITS DUTIES IN A COST-EFFECTIVE AND EFFICIENT MANNER WITHOUT REPLACING EXISTING STATE EMPLOYEES;

(b) IS INDEPENDENTLY ORIGINATED AND DEVELOPED BY THE PROPOSER;

(c) IS PREPARED WITHOUT AGENCY SUPERVISION;

(d) INCLUDES SUFFICIENT DETAIL AND INFORMATION TO ALLOW THE AGENCY TO EVALUATE THE PROPOSAL IN AN OBJECTIVE AND TIMELY MANNER AND TO DETERMINE IF THE PROPOSAL BENEFITS THE AGENCY; AND

(e) IS NOT AN ADVANCE PROPOSAL FOR A KNOWN AGENCY REQUIREMENT THAT CAN BE ACQUIRED BY COMPETITIVE METHODS UNLESS:

(I) THE AGENCY HAS NOT ESTABLISHED A TIMETABLE FOR SATISFYING THE KNOWN REQUIREMENT; OR

(II) THE PROPOSAL IS LIKELY TO SIGNIFICANTLY SHORTEN A TIMETABLE FOR SATISFYING THE KNOWN REQUIREMENT.

(3) PARAGRAPHS (b) AND (c) OF SUBSECTION (2) OF THIS SECTION SHALL NOT BE DEEMED TO PROHIBIT AN AGENCY FROM ENCOURAGING THE SUBMISSION OF UNSOLICITED PROPOSALS THAT ARE WELL-DEVELOPED AND CONSISTENT WITH THE AGENCY'S GENERAL POLICY PRIORITIES BY PROVIDING WRITTEN OR ORAL INFORMATION TO ANY PERSON REGARDING THE POLICY PRIORITIES OR THE REQUIREMENTS AND PROCEDURES FOR SUBMITTING AN UNSOLICITED PROPOSAL.

(4) IF AN UNSOLICITED PROPOSAL DOES NOT MEET THE REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION, THE AGENCY SHALL RETURN THE PROPOSAL WITHOUT FURTHER ACTION. IF AN UNSOLICITED PROPOSAL MEETS ALL OF THE REQUIREMENTS OF SUBSECTION (2), THE AGENCY MAY FURTHER EVALUATE THE PROPOSAL PURSUANT TO THIS SECTION.

(5) AN AGENCY SHALL BASE ITS EVALUATION OF AN UNSOLICITED PROPOSAL ON THE FOLLOWING FACTORS:

(a) UNIQUE AND INNOVATIVE METHODS, APPROACHES, OR CONCEPTS DEMONSTRATED BY THE PROPOSAL;

(b) SCIENTIFIC, TECHNICAL, OR SOCIOECONOMIC MERITS OF THE PROPOSAL;

(c) POTENTIAL CONTRIBUTION OF THE PROPOSAL TO THE AGENCY'S MISSION;

(d) CAPABILITIES, RELATED EXPERIENCE, FACILITIES, OR TECHNIQUES OF THE PROPOSER OR UNIQUE COMBINATIONS OF THESE QUALITIES THAT ARE INTEGRAL FACTORS FOR ACHIEVING THE PROPOSAL OBJECTIVES;

(e) COST SAVINGS, EFFICIENT DELIVERY OF SERVICES, OR ENHANCED QUALITY OF SERVICE DELIVERED TO THE RECIPIENT; AND

(f) ANY OTHER FACTORS APPROPRIATE TO A PARTICULAR PROPOSAL.

(6) AN AGENCY MAY ACCEPT AN UNSOLICITED PROPOSAL ONLY IF:

(a) THE UNSOLICITED PROPOSAL RECEIVES A FAVORABLE EVALUATION; AND

(b) THE AGENCY MAKES A WRITTEN DETERMINATION BASED ON FACTS AND CIRCUMSTANCES THAT THE UNSOLICITED PROPOSAL IS AN ACCEPTABLE BASIS FOR AN AGREEMENT TO OBTAIN SERVICES EITHER WITHOUT COMPETITION OR, IF APPLICABLE, AFTER THE AGENCY TAKES THE ACTIONS REQUIRED BY SUBSECTION (7) OF THIS SECTION.

(7) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (8) OF THIS SECTION, IF AN UNSOLICITED PROPOSAL REQUIRES AN AGENCY TO SPEND PUBLIC MONEYS IN AN AMOUNT THAT IS REASONABLY EXPECTED TO EXCEED FIFTY THOUSAND DOLLARS IN THE AGGREGATE FOR ANY FISCAL YEAR, THE AGENCY SHALL TAKE THE FOLLOWING ACTIONS BEFORE ACCEPTING THE UNSOLICITED PROPOSAL:

(a) PROVIDE PUBLIC NOTICE THAT THE AGENCY WILL CONSIDER COMPARABLE PROPOSALS. THE NOTICE SHALL:

(I) BE GIVEN AT LEAST FOURTEEN DAYS PRIOR TO THE DATE SET FORTH THEREIN FOR THE OPENING OF PROPOSALS THROUGH ANY REASONABLE METHOD, WHICH MAY INCLUDE PUBLICATION ON THE AGENCY'S INTERNET WEB SITE, POSTING ON THE STATE'S BID INFORMATION AND DISTRIBUTION SYSTEM, OR PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION.

(II) BE PROVIDED TO ANY NONPROFIT ENTITY THAT EXPRESSES, IN WRITING TO THE AGENCY, AN INTEREST IN A PUBLIC-PRIVATE INITIATIVE THAT IS SIMILAR IN NATURE AND SCOPE TO THE UNSOLICITED PROPOSAL;

(III) OUTLINE IN SUMMARY FORM THE GENERAL NATURE AND SCOPE OF THE UNSOLICITED PROPOSAL, INCLUDING THE WORK TO BE PERFORMED ON THE PROJECT AND THE TERMS OF ANY NONPROFIT CONTRIBUTIONS OFFERED AND PUBLIC BENEFITS REQUESTED CONCERNING THE PROJECT;

(IV) REQUEST INFORMATION TO DETERMINE IF THE PROPOSER OF A COMPARABLE PROPOSAL HAS THE NECESSARY EXPERIENCE AND QUALIFICATIONS TO PERFORM THE PUBLIC-PRIVATE INITIATIVE; AND

(V) SPECIFY THE ADDRESS TO AND THE DATE BY WHICH COMPARABLE PROPOSALS MUST BE SUBMITTED, ALLOWING A REASONABLE TIME TO PREPARE AND SUBMIT THE PROPOSALS;

(b) DETERMINE, IN ITS DISCRETION, IF ANY SUBMITTED PROPOSAL IS COMPARABLE IN NATURE AND SCOPE TO THE UNSOLICITED PROPOSAL AND WARRANTS FURTHER EVALUATION;

(c) EVALUATE EACH COMPARABLE PROPOSAL, TAKING RELEVANT FACTORS INTO CONSIDERATION; AND

(d) CONDUCT GOOD FAITH DISCUSSIONS AND, IF NECESSARY, NEGOTIATIONS CONCERNING EACH COMPARABLE PROPOSAL.

(8) THE ACTIONS REQUIRED BY SUBSECTION (7) OF THIS SECTION DO NOT APPLY TO AN UNSOLICITED RESEARCH PROPOSAL IF AN AGENCY REASONABLY DETERMINES THAT THE ACTIONS WOULD IMPROPERLY DISCLOSE EITHER THE ORIGINALITY OF THE RESEARCH OR PROPRIETARY INFORMATION ASSOCIATED WITH THE RESEARCH PROPOSAL.

(9) AN AGENCY MAY ACCEPT A COMPARABLE PROPOSAL SUBMITTED PURSUANT TO SUBSECTION (7) OF THIS SECTION IF THE AGENCY DETERMINES THAT THE COMPARABLE PROPOSAL IS THE MOST ADVANTAGEOUS TO THE STATE IN COMPARISON TO AN UNSOLICITED PROPOSAL OR OTHER SUBMITTED PROPOSALS. IN MAKING THE DETERMINATION, THE AGENCY SHALL USE ONLY THE PROPOSAL EVALUATION CRITERIA SPECIFIED IN THIS SECTION AND SHALL NOT USE THE METHODS OF SOURCE SELECTION SET FORTH IN PART 2 OF ARTICLE 103 OF THIS TITLE.

(10) IF AN UNSOLICITED PROPOSAL IS ACCEPTED OR IF A COMPARABLE PROPOSAL IS ACCEPTED PURSUANT TO SUBSECTION (9) OF THIS SECTION, THE ACCEPTING AGENCY SHALL USE THE PROPOSAL AS THE BASIS FOR NEGOTIATION OF AN AGREEMENT.

(11) SUBJECT TO THE REQUIREMENTS OF THIS SECTION, EACH AGENCY SHALL DETERMINE ITS OWN PROCESS FOR CONSIDERING, EVALUATING, AND ACCEPTING OR REJECTING UNSOLICITED PROPOSALS. IF THE AGENCY DETERMINES THAT AN UNSOLICITED PROPOSAL IS AN ACCEPTABLE BASIS FOR NEGOTIATION OF AN AGREEMENT PURSUANT TO THIS SECTION, THE AGENCY'S PROCUREMENT OFFICER SHALL BE RESPONSIBLE FOR TAKING THE ACTION REQUIRED BY SUBSECTION (10) OF THIS SECTION. BEFORE AN AGENCY CONSIDERS AN UNSOLICITED PROPOSAL OR A COMPARABLE PROPOSAL UNDER THIS PART 2, THE AGENCY SHALL ADOPT EITHER RULES PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE OR OTHER WRITTEN POLICY GUIDELINES THAT IT DETERMINES ARE NECESSARY OR APPROPRIATE TO IMPLEMENT THIS PART 2, INCLUDING RULES OR GUIDELINES ON THE EVALUATION OF UNSOLICITED PROPOSALS AND THE RECEIPT, CONTENT, AND PROPER HANDLING OF UNSOLICITED OR COMPARABLE PROPOSALS. THE RULES OR GUIDELINES SHALL ALSO REQUIRE BOTH THE NONPROFIT ENTITY AND THE AGENCY TO DISCLOSE ANY INDIVIDUAL OR ORGANIZATIONAL CONFLICTS OF INTEREST RELATED TO THE PUBLIC-PRIVATE INITIATIVE AND TO DOCUMENT AND PROPERLY MANAGE ANY DISCLOSURES.

(12) AT THE TIME A PRINCIPAL DEPARTMENT OF STATE GOVERNMENT SUBMITS ITS ANNUAL BUDGET REQUEST TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY, THE DEPARTMENT SHALL REPORT TO THE COMMITTEE REGARDING ANY PUBLIC-PRIVATE INITIATIVE AGREEMENT THEN IN EFFECT THAT THE DEPARTMENT OR AN AGENCY WITHIN THE DEPARTMENT HAS ENTERED INTO PURSUANT TO THIS PART 2. THE INFORMATION REPORTED SHALL INCLUDE, AT A MINIMUM, A BRIEF DESCRIPTION OF THE PURPOSE AND TERMS OF THE AGREEMENT, THE AMOUNT OF PUBLIC MONEYS REQUIRED TO BE EXPENDED BY THE STATE UNDER THE TERMS OF THE AGREEMENT, AND THE IDENTITY OF THE PRIVATE PARTNER THAT IS A PARTY TO THE AGREEMENT.

24-38-204. Public-private initiative agreements - cost savings. (1) AN AGENCY SHALL ENTER INTO AN AGREEMENT FOR EACH PUBLIC-PRIVATE INITIATIVE THAT IT ACCEPTS.

(2) AN AGENCY SHALL INCLUDE TERMS AND CONDITIONS IN THE AGREEMENT THAT IT DETERMINES ARE APPROPRIATE IN THE PUBLIC INTEREST.

(3) IF AN AGENCY ACHIEVES COST-SAVINGS IN A FISCAL YEAR BY ENTERING INTO A PUBLIC-PRIVATE INITIATIVE AGREEMENT, THE AGENCY SHALL BE ELIGIBLE TO RETAIN A PORTION OF ANY COST SAVINGS RESULTING FROM THE AGREEMENT AS PROVIDED IN SECTION 24-38-103.

(4) AN AGENCY THAT ENTERS INTO A PUBLIC-PRIVATE INITIATIVE AGREEMENT WITH A NONPROFIT ENTITY IS NOT A PARTNER OR A JOINT VENTURER WITH THE NONPROFIT ENTITY FOR ANY PURPOSE.

24-38-205. Organizations banned from contract awards. NOTWITHSTANDING ANY PROVISION OF THIS PART 2 TO THE CONTRARY, ANY ORGANIZATION BANNED FROM RECEIVING FEDERAL FUNDS, AND ANY SUCCESSOR ORGANIZATIONS, SHALL NOT BE AWARDED A PUBLIC-PRIVATE INITIATIVE CONTRACT PURSUANT TO THIS PART 2.

SECTION 2. 24-38-102 (2), Colorado Revised Statutes, is amended to read:

24-38-102. Definitions. As used in this article, unless the context otherwise requires:

(2) "Cost savings" means any money that an agency does not expend from its general fund appropriations for a given fiscal year that is a direct result of cost-cutting measures, ~~"Cost savings" includes~~ INCLUDING an action that would result in a base reduction due to permanent reductions in spending. ~~but~~ In no case shall "cost savings" include or be a result of a case load reduction or personal services contracts that the agency entered into under a managed competition process; EXCEPT THAT "COST SAVINGS" DOES INCLUDE SAVINGS REALIZED FROM PERSONAL SERVICES CONTRACTS ENTERED INTO PURSUANT TO A PUBLIC-PRIVATE INITIATIVE AGREEMENT BETWEEN THE AGENCY AND A NONPROFIT ENTITY IN ACCORDANCE WITH PART 2 OF THIS ARTICLE.

SECTION 3. 24-103-201 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-103-201. Methods of source selection. (1) Unless otherwise authorized by law, all state contracts shall be awarded by competitive sealed bidding pursuant to section 24-103-202, except as provided in:

(g) PART 2 OF ARTICLE 38 OF THIS TITLE, CONCERNING PUBLIC-PRIVATE INITIATIVES.

SECTION 4. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on the date of the official declaration of the vote thereon by the governor.

Approved: April 15, 2010

Exhibit B - Unsolicited Proposal Submittal Requirements

Unsolicited Proposals may be submitted by a Nonprofit Entity, as defined under §24-38-202(2), C.R.S. to the Department of Regulatory Agencies at the following address:

Department of Regulatory Agencies Purchasing Office
Attention Purchasing Director
1560 Broadway, Suite 1550
Denver, CO 80202

Submittal Format

The Department of Regulatory Agencies requires that Unsolicited Proposals:

- Include recycled paper as much as possible
- Are printed on 8 ½ by 11” paper
- Are bound to facilitate filing; three-ring binders and bulky submittals are not permitted
- Include One (1) original and 5 (five) copies of the Unsolicited Proposal, along with an electronic copy of the Unsolicited Proposal in Word 2003 or 2007 on a disk.
- Are delivered “sealed” with the words “Public-Private Initiative Unsolicited Proposal” and the name of the division intended for, if known (i.e. Division of Real Estate), on the outside of the envelope Be advised that telegraphic, facsimile or electronic offers cannot be accepted.
- Follow the outline specified below under “Content”.

Content

Unsolicited Proposals must be submitted in two parts: Part A Requirements, and Part B Evaluative Features, as described below. Part A and Part B of each Unsolicited Proposal should be separated.

Part A: Requirements

Company Information

Complete and attach the Unsolicited Proposal Cover Sheet, Certification & Signature Page, attached as Exhibit C that includes the following:

- Name, address, telephone number and FEIN for the Nonprofit Entity submitting the Unsolicited Proposal
- Name, title, telephone number and e-mail address of a single contact person representing the Proposer regarding the Unsolicited Proposal who can provide clarifications.
- Title, printed name and signature of the person authorized to commit the Nonprofit Entity.
- Certification that the Proposer meets all certification and submission requirements.

Proof of Nonprofit Entity Status

Submit a copy of your 501(c)(3) letter from the Internal Revenue Service.

Executive Summary

Give an overview of the main features of your Unsolicited Proposal. Indicate for which Division in the Department of Regulatory Agencies the Unsolicited Proposal is intended.

Include sufficient detail for the Department and Division to determine if your Unsolicited Proposal warrants further evaluation.

Be aware that your executive summary (excluding cost information):

- a) will be used to determine if the Unsolicited Proposal meets the requirements of §24-38-203(2), C.R.S., and
- b) may be made available to the public and may be used if public notice of the Unsolicited Proposal is required before final evaluation (see 24-38-203 (7), C.R.S.

Do not include any information in the Executive Summary that cannot or should not be shared publicly before the evaluation of the Unsolicited Proposal is complete.

Information concerning original research ideas or proprietary information shall not be included in the executive summary.

Certifications

Certify that:

- Your Unsolicited Proposal was independently originated and developed.
- Your Unsolicited Proposal has been prepared without supervision from any agency or employee of the Department of Regulatory Agencies.
- Your Unsolicited Proposal is not an advance Unsolicited Proposal for a known requirement of the Department of Regulatory Agencies that can be acquired by competitive methods.
- That your Nonprofit Entity has not received any negative audits in the past five years, or received any notice to revoke its 501(c)(3) status.

Insurance

Submit proof of adequate insurance coverage.

Vendor Disclosure Statement

Submit a Vendor Disclosure Statement (attached as **Exhibit H**).

Organization Conflict of Interest Disclosure

Disclose any individual or organizational conflicts of interest related to the Unsolicited Proposal by completing the Organizational Conflict of Interest Statement (attached as **Exhibit D**).

Part B: Evaluative Features

Implementation

Give a detailed description of how your Unsolicited Proposal will be implemented. Include all relevant information such as:

- How the Unsolicited Proposal contributes to the agency's mission
- Approach and methods which will be employed
- Scientific, technical, or socioeconomic concepts or principles to be employed in implementing the Unsolicited Proposal
- The use of any subcontractors, and their role in the Unsolicited Proposal
- Schedules and timeframes (use approximate timeframes in the policy, if necessary)
- Any required agency contribution in terms of resources of staff time (aside from normal staff time required for contract oversight and monitoring for a contract of this size and complexity)
- Other required agency resources (non-staff)

Capabilities, Experience, Facilities, Techniques

- Give your qualifications and qualifications of specific individuals who will be responsible for implementing the Unsolicited Proposal.
- Describe your experience in implementing similar Unsolicited Proposals. Give references if relevant.

Cost, Cost Savings and Efficiencies

Give a full disclosure of all costs to implement the Unsolicited Proposal. Include in-kind or cash contributions your entity is committing to the implementation of the Unsolicited Proposal. You will be required to provide documentation guaranteeing any in-kind or cash contributions.

Cost Savings and Efficiencies should be a detailed narrative which clearly lays out how they will be achieved and the impact on DORA's current program(s).

Additional Information

Include any additional information that is germane to the evaluation of the Unsolicited Proposal.

Exhibit C - Unsolicited Proposal Cover Sheet, Certification & Signature Page

Department of Regulatory Agencies



Unsolicited Proposal Cover Sheet, Certification & Signature Page



Submit Sealed Unsolicited Proposals to: Department of Regulatory Agencies
Attention Purchasing Office
1560 Broadway, Suite 1550
Denver, CO 80202

Number of Copies: One Original plus
Five Hard Copies and One Electronic Copy on CD/Disk Required

By submitting and signing this Unsolicited Proposal Cover Sheet, Certification & Signature Page, the Proposer hereby certifies that it has read the Department of Regulatory Agencies Procedures for Reviewing and Evaluating Unsolicited Proposals for Public-Private Initiative Agreements with Nonprofit Entities document and meets all the submission and certification requirements identified therein.

F.E.I.N.: _____

Authorized Signature: _____

Typed/Printed Name: _____

Title: _____

Company Name: _____

Address: _____

City: _____ **State:** _____ **Zip:** _____

Phone Number: _____ **Fax Number:** _____

Contact for Clarifications: _____

Title: _____

Phone Number: _____ **Fax Number:** _____

E-mail Address: _____

Please be advised that telegraphic or electronic Unsolicited Proposals (Fax, Western Union, Telex, e-mail, etc.) cannot be accepted in the Purchasing Office as a sealed Unsolicited Proposal. Proposers are urged to read the Procedures for Reviewing and Evaluating Unsolicited Proposals for Public-Private Initiative Agreements with Nonprofit Entities document thoroughly before submitting an Unsolicited Proposal.

RETURN THIS PAGE WITH YOUR UNSOLICITED PROPOSAL

Exhibit D – Organizational Conflict of Interest Statement

Organizational Conflict of Interest Statement

The State of Colorado prohibits any business entity or person to be awarded a contract if they have an “Organizational Conflict of Interest” with regard to this initiative and submission of an “UNSOLICITED PROPOSAL”, and the resulting contract.

An Organizational Conflict of Interest exists when a person or business entity has an unfair competitive advantage because of other activities or relationships with other persons. No person or business entity who was engaged by the State of Colorado in the preparation and submission of a proposal to the Department of Regulatory Agencies, in accordance with the Public Private Initiative (PPI) program 24-38-201 C.R.S Part 2, or who had access prior to the proposal submission to procurement sensitive information related to this procurement including but not limited to Requirements, Statements of Work, or Evaluation Criteria will be eligible to directly submit or participate in the submittal of a proposal for this initiative. The State of Colorado considers this to be an Organizational Conflict of Interest. For purposes of this initiative, organizational conflict of interest means that because of other activities or relationships with other persons, a person or business entity has an unfair competitive advantage. All proposers who wish to participate in this initiative and submission of an “UNSOLICITED PROPOSAL” must certify that no organizational conflict of interest exists by completing and signing this certification.

Organizational Conflicts of Interest Prohibition and Non-Conflict Certification

The proposer warrants that, to the best of his/her/its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances, which could give rise to organizational conflicts of interest. The proposer agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the State of Colorado, which must include a description of the action, which the successful proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State of Colorado may, at its discretion, cancel the Contract award. In the event the successful proposer was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the contracting officer, the State of Colorado may terminate the Contract for default. The provisions of this clause must be included in all subcontracts for work to be performed similar to the service provided by the prime contractor, and the terms “contract,” “contractor,” and “contracting officer” modified appropriately to preserve the State of Colorado’s rights.

Organizational Conflict of Interest - Proposer’s Signature and Certification

The undersigned on behalf of the proposer hereby certifies that the information contained in this certification is accurate, complete, and current.

Signature and Date

Typed or Printed Name

Title

Company Name and Address

Exhibit E - Colorado Personal Services Contract

routing # COFRS or CMS (after 7/1/09)

STATE OF COLORADO
Insert Agency's Full Legal Name
Contract
with
Insert Grantee's Full Legal Name

TABLE OF CONTENTS

PARTIES.....	23
EFFECTIVE DATE AND NOTICE OF NONLIABILITY.....	23
RECITALS.....	23
DEFINITIONS	23
TERM and EARLY TERMINATION.....	24
STATEMENT OF WORK	25
PAYMENTS TO CONTRACTOR	25
REPORTING - NOTIFICATION	26
CONTRACTOR RECORDS.....	27
CONFIDENTIAL INFORMATION-STATE RECORDS	28
CONFLICTS OF INTEREST	29
REPRESENTATIONS AND WARRANTIES.....	29
INSURANCE	30
BREACH	31
REMEDIES	32
NOTICES and REPRESENTATIVES.....	34
RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE	35
GOVERNMENTAL IMMUNITY	35
STATEWIDE CONTRACT MANAGEMENT SYSTEM	35
GENERAL PROVISIONS.....	36
COLORADO SPECIAL PROVISIONS	39
SIGNATURE PAGE	42
EXHIBIT A – STATEMENT OF WORK	43
EXHIBIT B - PRICES AND RATES.....	45
EXHIBIT C - OPTION LETTER	46

PARTIES

This Contract (hereinafter called "Contract") is entered into by and between Insert Grantee's Name (hereinafter called "Contractor"), and the STATE OF COLORADO acting by and through the Insert Dept or IHE name (hereinafter called the "State" or "Insert Dept or IHE Acronym"). Contractor and the State hereby agree to the following terms and conditions.

EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Contract shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse Contractor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

RECITALS

Authority, Appropriation, and Approval

Authority to enter into this Contract exists in Please add statutory or other legal reference here and funds have been budgeted, appropriated and otherwise made available pursuant to Please add statutory or other legal reference here and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Contract.

Purpose

Briefly describe the Grant's purpose

References

All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

Budget

"Budget" means the budget for the Work described in **Exhibit Insert letter of applicable Exhibit (A, B, C, etc)**.

Contract

"Contract" means this Contract, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Contract, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

Contract Funds

"Contract Funds" means funds available for payment by the State to Contractor pursuant to this Contract.

Evaluation

“Evaluation” means the process of examining Contractor’s Work and rating it based on criteria established in **§6** and **Exhibit Insert letter of applicable Exhibit (A, B, C, etc)**.

Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Statement of Work), **Exhibit B** (Prices and Rates), and **Exhibit C** (Option Letter).

Goods

“Goods” means tangible material acquired, produced, or delivered by Contractor either separately or in conjunction with the Services Contractor renders hereunder.

Party or Parties

“Party” means the State or Contractor and “Parties” means both the State and Contractor.

Review

“Review” means examining Contractor’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in **§6** and **Exhibit Insert letter of applicable Exhibit (A, B, C, etc)**

Services

“Services” means the required services to be performed by Contractor pursuant to this Contract.

Subcontractor

“Subcontractor” means third-parties, if any, engaged by Contractor to aid in performance of its obligations.

Work

“Work” means the tasks and activities Contractor is required to perform to fulfill its obligations under this Contract and **Exhibit Insert letter of applicable Exhibit (A, B, C, etc)**., including the performance of the Services and delivery of the Goods.

Work Product

“Work Product” means the tangible or intangible results of Contractor’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

TERM and EARLY TERMINATION

Initial Term-Work Commencement

The Parties’ respective performances under this Contract shall commence on the later of either the Effective Date or Month Day, Year. This Contract shall terminate on Month Day, Year unless sooner terminated or further extended as specified elsewhere herein.

Two Month Extension

The State, at its sole discretion upon written notice to Contractor as provided in **§16**, may unilaterally extend the term of this Contract for a period not to exceed two months if the Parties are negotiating a replacement Contract (and not merely seeking a term extension) at or near the end of any initial term or renewal term. The provisions of this Contract in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two-month extension. The

two month extension shall immediately terminate when and if a replacement Contract is approved and signed by the Colorado State Controller.

State’s Option to Extend

The State may require continued performance for a period of Insert number of years at the same rates and same terms specified in the Contract. If the State exercises this option, it shall provide written notice to Contractor at least 30 days prior to the end of the current contract term in form substantially equivalent to **Exhibit Insert letter of applicable Exhibit (A, B, C, etc)**. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Contract. The total duration of this Contract, including the exercise of any options under this clause, shall not exceed Insert number of years.”

STATEMENT OF WORK

Completion

Contractor shall complete the Work and its other obligations as described herein and in **Exhibit** Insert letter of applicable Exhibit (A, B, C, etc) on or before Month Day, Year. The State shall not be liable to compensate Contractor for any Work performed prior to the Effective Date or after the termination of this Contract.

Goods and Services

Contractor shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Contract Funds and shall not increase the maximum amount payable hereunder by the State.

Employees

All persons employed by Contractor or Subcontractors to perform Work under this Contract shall be Contractor’s or Subcontractors’ employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Contract.

PAYMENTS TO CONTRACTOR

The State shall, in accordance with the provisions of this §7, pay Contractor in the amounts and using the methods set forth below:

Maximum Amount

The maximum amount payable under this Contract to Contractor by the State is Insert Max \$ Amount, as determined by the State from available funds. Payments to Contractor are limited to the unpaid obligated balance of the Contract set forth in **Exhibit Insert letter of applicable Exhibit (A, B, C, etc)**. The maximum amount payable by the State to Contractor during each State fiscal year of this Contract shall be:

in FY

Payment

Advance, Interim and Final Payments

Any advance payment allowed under this Contract or in **Exhibit Insert letter of applicable Exhibit (A, B, C, etc)** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Contract or such Exhibit. Contractor shall initiate

any payment requests by submitting invoices to the State in the form and manner set forth in approved by the State.

Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Contractor previously accepted by the State. Uncontested amounts not paid by the State within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Contractor shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, Contractor's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, If federal funds are used to fund this Contract, in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Contract shall be made only from available funds encumbered for this Contract and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may terminate this Contract immediately, in whole or in part, without further liability in accordance with the provisions hereof.

Erroneous Payments

At the State's sole discretion, payments made to Contractor in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Contractor, may be recovered from Contractor by deduction from subsequent payments under this Contract or other contracts, grants or agreements between the State and Contractor or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

Use of Funds

Contract Funds shall be used only for eligible costs identified herein and/or in the Budget.

REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this §8 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §19, if applicable.

Performance, Progress, Personnel, and Funds

Contractor shall submit a report to the State upon expiration or sooner termination of this Contract, containing an Evaluation and Review of Contractor's performance and the final status of Contractor's obligations hereunder. In addition, Contractor shall comply with all reporting requirements, if any, set forth in **Exhibit Insert letter of applicable Exhibit (A, B, C, etc)**

Litigation Reporting

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Contract or which may affect Contractor's ability to perform its obligations hereunder, Contractor shall notify the State of such

action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of Insert Dept or IHE Acronym.

Noncompliance

Contractor's failure to provide reports and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds and/or termination as provided under this Contract.

Subcontracts

Copies of any and all subcontracts entered into by Contractor to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subcontracts entered into by Contractor related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subcontracts be governed by the laws of the State of Colorado.

CONTRACTOR RECORDS

Maintenance

Contractor shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services or Goods hereunder. Contractor shall maintain such records until the last to occur of: **(i)** a period of three years after the date this Contract expires or is sooner terminated, or **(ii)** final payment is made hereunder, or **(iii)** the resolution of any pending Contract matters, or **(iv)** if an audit is occurring, or Contractor has received notice that an audit is pending, until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

Inspection

Contractor shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records related to this Contract during the Record Retention Period for a period of three years following termination of this Contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Contract, including any extensions or renewals. If the Work fails to conform with the requirements of this Contract, the State may require Contractor promptly to bring the Work into conformity with Contract requirements, at Contractor's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Contractor to take necessary action to ensure that future performance conforms to Contract requirements and exercise the remedies available under this Contract, at law or in equity, in lieu of or in conjunction with such corrective measures.

Monitoring

Contractor shall permit the State, the federal government, and governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Contractor pursuant to the terms of this Contract using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Contractor's performance hereunder.

Final Audit Report

If an audit is performed on Contractor's records for any fiscal year covering a portion of the term of this Contract, Contractor shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

CONFIDENTIAL INFORMATION-STATE RECORDS

Contractor shall comply with the provisions on this §10 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, any state records, personnel records, and information concerning individuals. Such information shall not include information required to be disclosed pursuant to the Colorado Open Records Act, CRS §24-72-101, et seq.

Confidentiality

Contractor shall keep all State records and information confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Contractor shall be immediately forwarded to the State's principal representative.

Notification

Contractor shall notify its agent, employees, Subcontractors and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before permitting them to access such records and information.

Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by this Contract or approved in writing by the State. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Contractor or its agents, except as permitted in this Contract or approved in writing by the State.

Disclosure-Liability

Disclosure of State records or other confidential information by Contractor for any reason may be cause for legal action by third parties against Contractor, the State or their respective agents. Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to this **§10**.

CONFLICTS OF INTEREST

Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations hereunder. Contractor acknowledges that with respect to this Contract, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations to the State hereunder. If a conflict or appearance exists, or if Contractor is uncertain whether a conflict or the appearance of a conflict of interest exists, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Contract.

REPRESENTATIONS AND WARRANTIES

Contractor makes the following specific representations and warranties, each of which was relied on by the State in entering into this Contract.

Standard and Manner of Performance

Contractor shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession and in the sequence and manner set forth in this Contract.

Legal Authority – Contractor Signatory

Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, and by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind Contractor to its terms. If requested by the State, Contractor shall provide the State with proof of Contractor's authority to enter into this Contract within 15 days of receiving such request.

Licenses, Permits, Etc.

Contractor represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. Contractor warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Contract, without reimbursement by the State or other adjustment in Contract Funds. Additionally, all employees, agents, and Subcontractors of Contractor performing Services under this Contract shall hold all required licenses or certifications, if any, to perform their responsibilities. Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform the terms of this Contract is a material breach by Contractor and constitutes grounds for termination of this Contract.

INSURANCE

Contractor and its Subcontractors shall obtain and maintain insurance as specified in this section at all times during the term of this Contract. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Contractor and the State.

Contractor

Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Contractor shall maintain at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Contractor shall show proof of such insurance satisfactory to the State, if requested by the State. Contractor shall require each contract with a Subcontractor that is a public entity, to include the insurance requirements necessary to meet such Subcontractor's liabilities under the GIA.

Non-Public Entities

If Contractor is not a "public entity" within the meaning of the GIA, Contractor shall obtain and maintain during the term of this Contract insurance coverage and policies meeting the same requirements set forth in **§13(B)** with respect to subcontractors that are not "public entities".

Contractors - Subcontractors

Contractor shall require each contract with subcontractors other than those that are public entities, providing Goods or Services in connection with this Contract, to include insurance requirements substantially similar to the following:

Worker's Compensation

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Contractor or subcontractor employees acting within the course and scope of their employment.

General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: **(a)** \$1,000,000 each occurrence; **(b)** \$1,000,000 general aggregate; **(c)** \$1,000,000 products and completed operations aggregate; and **(d)** \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, subcontractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Contractor a certificate or other document satisfactory to Contractor showing compliance with this provision.

Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

Additional Insured

The State shall be named as additional insured on all Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of Contractor and any subcontractors hereunder.

Primacy of Coverage

Coverage required of Contractor and subcontractor shall be primary over any insurance or self-insurance program carried by Contractor or the State.

Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to Contractor and the State by certified mail and in accordance with §16.

Subrogation Waiver

All insurance policies in any way related to this Contract and secured and maintained by Contractor or its subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

Certificates

Contractor and all subcontractors shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Contract. No later than 15 days prior to the expiration date of any such coverage, Contractor and each subcontractors shall deliver to the State or Contractor certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Contract or any sub-contract, Contractor and each subcontractors shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

BREACH

Defined

In addition to any breaches specified in other sections of this Contract, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §16. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §15. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Contract in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

REMEDIES

If Contractor is in breach under any provision of this Contract, the State shall have all of the remedies listed in this §15 in addition to all other remedies set forth in other sections of this Contract following the notice and cure period set forth in §14(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

Termination for Cause and/or Breach

The State may terminate this entire Contract or any part of this Contract. Exercise by the State of this right shall not be a breach of its obligations hereunder. Contractor shall continue performance of this Contract to the extent not terminated, if any.

Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Contract's terms. At the sole discretion of the State, Contractor shall assign to the State all of Contractor's right, title, and interest under such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest. All materials owned by the State in the possession of Contractor shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Contractor to the State and shall become the State's property.

Payments

The State shall reimburse Contractor only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Contract had been terminated in the public interest, as described herein.

Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Contract by Contractor and the State may withhold any payment to Contractor for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Contractor is determined. The State may withhold any amount that may be due Contractor as the State deems necessary to protect the State against loss, including loss as a result of outstanding liens, claims of former lien holders, or for the excess costs incurred in procuring similar goods or services. Contractor shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

Early Termination in the Public Interest

The State is entering into this Contract for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Contract ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Contract in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Contract by the State for cause or breach by Contractor, which shall be governed by **§15(A)** or as otherwise specifically provided for herein.

Method and Content

The State shall notify Contractor of such termination in accordance with **§16**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract.

Obligations and Rights

Upon receipt of a termination notice, Contractor shall be subject to and comply with the same obligations and rights set forth in **§15(A)(i)**.

Payments

If this Contract is terminated by the State pursuant to this **§15(B)**, Contractor shall be paid an amount which bears the same ratio to the total reimbursement under this Contract as Contractor's obligations that were satisfactorily performed bear to the total obligations set forth in this Contract, less payments previously made. Additionally, if this Contract is less than 60% completed, the State may reimburse Contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by Contractor which are directly attributable to the uncompleted portion of Contractor's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor hereunder.

Remedies Not Involving Termination

The State, its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

Suspend Performance

Suspend Contractor's performance with respect to all or any portion of this Contract pending necessary corrective action as specified by the State without entitling Contractor to an adjustment in price/cost or performance schedule. Contractor shall promptly cease performance and incurring costs in accordance with the State's

directive and the State shall not be liable for costs incurred by Contractor after the suspension of performance under this provision.

Withhold Payment

Withhold payment to Contractor until corrections in Contractor's performance are satisfactorily made and completed.

Deny Payment

Deny payment for those obligations not performed, that due to Contractor's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

Removal

Notwithstanding any other provision herein, the State may demand immediate removal of any of Contractor's employees, agents, or subcontractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Contract is deemed to be contrary to the public interest or the State's best interest.

Intellectual Property

If Contractor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Contract, Contractor shall, at the State's option **(a)** obtain for the State or Contractor the right to use such products and services; **(b)** replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, **(c)** if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

State:

Name and/or Title
Department Name
Address
Address
Town, State Zip
Email

Contractor:

Name
Department Name
Address
Address
City, State Zip
Email

RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Contractor in the performance of its obligations under this Contract shall be the exclusive property of the State and, all Work Product shall be delivered to the State by Contractor upon completion or termination hereof. The State’s exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Contractor shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Contractor’s obligations hereunder without the prior written consent of the State.

GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act §24-10-101, et seq. and the risk management statutes, CRS §24-30-1501, et seq., as amended.

STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §19 applies.

Contractor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Contractor’s performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor’s performance shall be part of the normal contract administration process and Contractor’s performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor’s obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor’s obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Insert Dept or IHE Acronym, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon showing of good cause.

GENERAL PROVISIONS

Assignment and Subcontracts

Contractor's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments, subcontracts, or subcontractors approved by Contractor or the State are subject to all of the provisions hereof. Contractor shall be solely responsible for all aspects of subcontracting arrangements and performance.

Binding Effect

Except as otherwise provided in **§20(A)**, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

Captions

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

Counterparts

This Contract may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

Entire Understanding

This Contract represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.

Indemnification

Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this Contract; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

Jurisdiction and Venue

All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

Modification

By the Parties

Except as specifically provided in this Contract, modifications of this Contract shall not be effective unless agreed to in writing by both parties in an amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules. Modifications permitted under this Contract, other than contract amendments, shall be conform the Policies of the Office of the State Controller, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTS - TOOLS AND FORMS.

By Operation of Law

This Contract is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Contract on the effective date of such change, as if fully set forth herein.

Order of Precedence

The provisions of this Contract shall govern the relationship of the State and Contractor. In the event of conflicts or inconsistencies between this Contract and its exhibits and attachments, including, but not limited to, those provided by Contractor, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

Colorado Special Provisions,

The provisions of the main body of this Contract,

Exhibit A,

Exhibit B,

Exhibit C.

Severability

Provided this Contract can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Contract in accordance with its intent.

Survival of Certain Contract Terms

Notwithstanding anything herein to the contrary, provisions of this Contract requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Contractor fails to perform or comply as required.

Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services are rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Contractor shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Contractor for such taxes.

Third Party Beneficiaries

Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

Waiver

Waiver of any breach under a term, provision, or requirement of this Contract, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

COLORADO SPECIAL PROVISIONS

The Special Provisions apply to all Contracts except where noted in italics.

1. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee.

2. FUND AVAILABILITY. CRS §24-30-202(5.5).

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. GOVERNMENTAL IMMUNITY.

No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

4. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits shall be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall not have authorization, express or implied, to bind the State to any contract, liability or understanding, except as expressly set forth herein. Contractor shall **(a)** provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, **(b)** provide proof thereof when requested by the State, and **(c)** be solely responsible for its acts and those of its employees and agents.

5. COMPLIANCE WITH LAW.

Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

6. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Contract, to the extent capable of execution.

7. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.

[Not Applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.

[Not Applicable to Agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Contract and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall

comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she **(a)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(b)** shall comply with the provisions of CRS §24-76.5-101 et seq., and **(c)** has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Contract.

SPs Effective 1/1/09

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGE

Contract Routing Number

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

*** Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.**

<p>CONTRACTOR INSERT-Legal Name of Grantee By: INSERT-Name of Authorized Individual Title: INSERT-Official Title of Authorized Individual</p> <hr/> <p>*Signature</p> <p>Date: _____</p>	<p>STATE OF COLORADO Bill Ritter, Jr. GOVERNOR</p> <p>INSERT-Name of Agency or IHE INSERT-Name & Title of Head of Agency or IHE</p> <hr/> <p>By: INSERT-Name & Title of Person Signing for Agency or IHE Signatory avers to the State Controller or delegate that Contractor has not begun performance or that a Statutory Violation waiver has been requested under Fiscal Rules</p> <p>Date: _____</p>
<p>2nd Contractor Signature if Needed By: INSERT-Name of Authorized Individual Title: INSERT-Official Title of Authorized Individual</p> <hr/> <p>*Signature</p> <p>Date: _____</p>	<p>LEGAL REVIEW John W. Suthers, Attorney General</p> <p>By: _____ Signature - Assistant Attorney General</p> <p>Date: _____</p>

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER

David J. McDermott, CPA

By: _____

INSERT-Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval

Date: _____

EXHIBIT A – STATEMENT OF WORK

1. GENERAL DESCRIPTION
2. DEFINITIONS
3. CONTRACTOR'S OBLIGATIONS

4. PERSONNEL

0.1. Responsible Administrator

Contractor's performance hereunder shall be under the direct supervision of _____, an employee or agent of Contractor, who is hereby designated as the responsible administrator of this Contract.

0.2. Other Key Personnel

0.3. Replacement

Contractor shall immediately notify the State if any Key Personnel cease to serve. Provided there is a good-faith reason for the change, if Contractor wishes to replace its Key Personnel, it shall notify the State and seek its approval. Such approval is at the State's sole discretion, as the State issued this Contract in part reliance on Contractor's representations regarding Key Personnel. Such notice shall specify why the change is necessary, who the proposed replacement is, what their qualifications are, and when the change would take effect. Anytime Key Personnel cease to serve, the State, in its sole discretion, may direct Contractor to suspend Work until such time as their replacements are approved. All notices sent under this subsection shall be sent in accordance with the Notices and Representatives provisions of this Contract.

ACCEPTANCE CRITERIA

- 0.1. Annual and Final Report(s)
- 0.2. Annual Report Due Date(s)
- 0.3. Final Report Due Date
- 0.4. Additional Reporting

PAYMENTS

Payments shall be made in accordance with the provisions set forth in the Contract and this **Exhibit A** and are scheduled as follows:

3. ADMINISTRATIVE REQUIREMENTS

0.1. Accounting

0.1.1. At all times from the Effective Date of this Contract until completion of the Work, Contractor shall maintain properly segregated books of State Contract Funds, matching funds, and other funds associated with the Work.

0.1.2. All receipts and expenditures associated with the Work shall be documented in a detailed and specific manner, and shall accord with the Budget set forth herein.

0.1.3. Contractor shall make and maintain accounting and financial books and records documenting its performance under the Contract in a form consistent with good accounting practices

BUDGET

3.1. Matching Funds

3.2. Contract Funds

<u>Line Item</u>	<u>Budget \$</u>
Personnel	
Materials & Supplies	
Equipment Use Fees	
Field Trials	
Other Fees	
Publications	
TOTAL DIRECT	
INDIRECT COSTS	
TOTAL	

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

EXHIBIT B - PRICES AND RATES

EXHIBIT C - OPTION LETTER

Exhibit F – Evaluation Plan

UNSOLICITED PROPOSAL CONSIDERATION AND EVALUATION

Unsolicited Proposals shall be reviewed by the Department of Regulatory Agencies (DORA) as outlined below, to determine if they have met the requirements of the Public Private Initiative Act. Unsolicited Proposals that meet the requirements will be further evaluated.

The Evaluation Committee shall review Unsolicited Proposals based on the criteria listed below. All Unsolicited Proposals will receive fair and equal treatment.

Nonprofits submitting Unsolicited Proposals should not assume that they will have an opportunity to participate in discussions or clarifications of their Unsolicited Proposals, so Unsolicited Proposals should include full details and true cost information.

For Unsolicited Proposals where expenditures by the Department of Regulatory Agencies can be reasonably expected to exceed \$50,000 in any fiscal year, notice will be given in accordance with §24-38-203(7) C.R.S. that DORA will consider Comparable Proposals, and all Unsolicited Proposals will be considered equally.

The Department of Regulatory Agencies may accept a Comparable Proposal submitted in response to a Notice if it determines that the Comparable Proposal is the most advantageous to the State in comparison to the Unsolicited Proposal and other Comparable Proposals.

While a numerical evaluation method may be used as an aid to evaluation, the selection ultimately is a business judgment that will reflect an integrated assessment of the relative merits of Unsolicited Proposals using the factors identified below.

Part A: Requirements

Company Information

The elements of the cover letter must be complete.

Proof of Nonprofit Entity Status

Proof of Nonprofit Entity Status is required.

Executive Summary

The executive summary:

- Accurately summarizes, in some detail, the full Unsolicited Proposal described in Part B.
- The Unsolicited Proposal will assist the Department in carrying out its duties in a cost-effective and efficient manner
- The Unsolicited Proposal is consistent with the definition of "Public-Private Initiative" in §24-38-202(4) C.R.S.
- Include sufficient detail for the Department and Division to determine if your Unsolicited Proposal warrants further evaluation.

Cost Summary

The cost summary is a consistent representation of the cost detail presented in Part B.

Certifications

The certifications are complete.

Insurance

Provided proof of adequate insurance.

Vendor Disclosure Statement

Vendor Disclosure statement is complete

Organizational Conflict of Interest Statement

Submitted disclose any organizational conflicts of interest related to the Unsolicited Proposal.

Part B: Evaluative Features

Implementation

- How the Unsolicited Proposal contributes to the agency's mission
- Approach and methods which will be employed
- Scientific, technical, or socioeconomic concepts or principles to be employed in implementing the Unsolicited Proposal
- The use of any subcontractors, and their role in the Unsolicited Proposal
- Schedules and timeframes (use approximate timeframes in the policy, if necessary)
- Any required agency contribution in terms of resources of staff time (aside from normal staff time required for contract oversight and monitoring for a contract of this size and complexity.)
- Other required agency resources (non-staff)

Capabilities, Experience, Facilities, Techniques

- Qualifications of specific individuals who will be responsible for implementing the Unsolicited Proposal.
- Experience in implementing similar Unsolicited Proposals. Give references if relevant.

Cost Savings and Efficiencies

Costs, In-kind or cash contributions

Clearly describes how cost savings and efficiencies will be obtained.

Additional Information

Additional information that is germane to the evaluation of the Unsolicited Proposal.

Exhibit G – Colorado Purchase Order Terms and Conditions

Purchase Order Terms and Conditions

1. Offer/Acceptance. If this purchase order ("PO") refers to vendor's bid or proposal, this PO is an ACCEPTANCE of vendor's OFFER TO SELL in accordance with the terms and conditions of the "solicitation" identified in vendor's bid or proposal. The solicitation includes an RFP, IFB, or any other form of order by buyer. If a bid or proposal is not referenced, this PO is an OFFER TO BUY, subject to vendor's acceptance, demonstrated by vendor's performance or written acceptance of this PO. Any COUNTER-OFFER TO SELL automatically CANCELS this PO, unless a change order is issued by buyer accepting a counter-offer. This PO shall supersede and control over any vendor form(s) or part(s) thereof included in or attached to any bid, proposal, offer, acknowledgment, or otherwise, in the event of inconsistencies or contradictions, regardless of any statement to the contrary in such form(s) or parts thereof. **2. Safety Information.** All chemicals, equipment and materials proposed and/or used in the performance of this PO shall conform to the requirements of the Occupational Safety and Health Act of 1970. Vendor shall furnish all Material Safety Data Sheets (MSDS) for any regulated chemicals, equipment or hazardous materials at the time of delivery.

3. Changes. Vendor shall furnish products and/or services strictly in accordance with the specifications and price set forth for each item. This PO shall not be modified, superseded or otherwise altered, except in writing signed by purchasing agent and accepted by vendor. Each shipment received or service performed shall comply with the terms of this PO, notwithstanding invoice terms or acts of vendor to the contrary, unless this PO has been modified, superseded or otherwise altered in accordance with this section.

4. Delivery. Unless otherwise specified in the solicitation or this PO, delivery shall be FOB destination. Buyer is relying on the promised delivery date, installation, and/or service performance set forth in vendor's bid or proposal as material and basic to buyer's acceptance. If vendor fails to deliver or perform as and when promised, buyer, in its sole discretion, may cancel its order, or any part thereof, without prejudice to its other rights, return all or part of any shipment so made, and charge vendor with any loss or expense sustained as a result of such failure to deliver or perform as promised. Time is of the essence.

5. Intellectual Property. Any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials (collectively "materials") delivered by vendor in performance of its obligations under this PO shall be the exclusive property of buyer. Ownership rights shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the materials. Vendor shall comply with all applicable Cyber Security Policies of the State of Colorado (the "State"), or buyer, as applicable, and all confidentiality and non-disclosure agreements, security controls, and reporting requirements.

6. Quality. Buyer shall be the sole judge in determining "equals" with regard to quality, price and performance. All products delivered shall be newly manufactured and the current model, unless otherwise specified.

7. Warranties. All provisions and remedies of the Colorado Uniform Commercial Code, CRS, Title 4 ("CUCC"), relating to implied and/or express warranties are incorporated herein, in addition to any warranties contained in this PO or the specifications.

8. Inspection and Acceptance. Final acceptance is contingent upon completion of all applicable inspection procedures. If products or services fail to meet any inspection requirements, buyer may exercise all of its rights, including those provided in the CUCC. Buyer shall have the right to inspect services provided under this PO at all reasonable times and places. "Services" as used in this section includes services performed or tangible material produced or delivered in the performance of services. If any of the services do not conform to PO requirements, buyer may require vendor to perform the services again in conformity with PO requirements, without additional payment. When defects in the quality or quantity of service cannot be corrected by re-performance, buyer may (a) require vendor to take necessary action to ensure that future performance conforms to PO requirements and (b) voluntarily reduce the payment due vendor to reflect the reduced value of the services performed. These remedies do not limit the remedies otherwise available in this PO, at law, or in equity.

9. Cash Discount. The cash discount period will start from the later of the date of receipt of acceptable invoice, or from date of receipt of acceptable products/services at the specified destination by an authorized buyer representative.

10. Taxes. Buyer and the State are exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code [No. 94-730123K] and from all State and local government sales and use taxes [CRS, Title 39, Article 26, Parts I and II]. Such exemptions apply when materials are purchased for the benefit of State, except that in certain political subdivisions (e.g., City of Denver) vendor may be required to pay sales or use taxes even though the ultimate product or service is provided to buyer. Buyer shall not reimburse such sales or use taxes.

11. Payment. Buyer shall pay vendor for all amounts due within 45 days after receipt of products or services and a correct notice of amount due. Interest on the unpaid balance shall begin to accrue on the 46th day at the rate set forth in CRS §24-30-202(24) until paid in full. Interest shall not accrue if a good faith dispute exists as to buyer's obligation to pay all or a portion of the amount due. Vendor shall invoice buyer separately for interest on delinquent amounts due, referencing the delinquent payment, number of day's interest to be paid, and applicable interest rate.

12. Vendor Offset. [Not Applicable to Inter-governmental POs] Under CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

13. Assignment and Successors. Vendor shall not assign rights or delegate duties under this PO, or subcontract any part of the performance required under this PO, without the express, written consent of buyer. This PO shall inure to the benefit of and be binding upon vendor and buyer and their respective successors and assigns. Assignment of accounts receivable may be made only upon written notice furnished to buyer.

14. Indemnification. If any article sold or delivered under this PO is covered by a patent, copyright, trademark, or application therefore, vendor shall indemnify and hold harmless buyer from any and all loss, liability, cost, expense and legal fees incurred on account of any claims, legal actions or judgments arising out of manufacture, sale or use of such article in violation of or infringement of rights under such patent, copyright, trademark or application. If this PO is for services, vendor shall indemnify, save, and hold harmless buyer, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related expenses, incurred as a result of any act or omission by vendor, or its employees, agents, subcontractors or assignees, arising out of or in connection with performance of services under this PO.

15. Independent Contractor. Vendor shall perform its duties hereunder as an independent contractor and not as an employee. Neither vendor nor any agent or employee of vendor shall be deemed to be an agent or employee of buyer. Vendor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through buyer and buyer shall not pay for or otherwise

provide such coverage for vendor or any of its agents or employees. Unemployment insurance benefits will be available to vendor and its employees and agents only if coverage is made available by vendor or a third party. Vendor shall pay when due all applicable employment, income, and local head taxes incurred pursuant to this PO. Vendor shall not have authorization, express or implied, to bind buyer to any agreement, liability or understanding, except as expressly set forth herein. Vendor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by buyer, and (c) be solely responsible for its acts and those of its employees and agents.

16. Communication. All communication concerning administration of this PO, prepared by vendor for buyer's use, shall be furnished solely to purchasing agent.

17. Compliance. Vendor shall strictly comply with all applicable federal and state laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

18. Insurance. Vendor shall obtain, and maintain, at all times during the term of this PO, insurance as specified in the solicitation, and provide proof of such coverage as requested by purchasing agent.

19. Termination Prior to Shipment. If vendor has not accepted this PO in writing, buyer may cancel this PO by written or oral notice to vendor prior to shipment of goods or commencement of services.

20. Termination for Cause. (a) If vendor refuses or fails to timely and properly perform any of its obligations under this PO with such diligence as will ensure its completion within the time specified herein, buyer may notify vendor in writing of non-performance and, if not corrected by vendor within the time specified in the notice, terminate vendor's right to proceed with the PO or such part thereof as to which there has been delay or a failure. Vendor shall continue performance of this PO to the extent not terminated and be liable for excess costs incurred by buyer in procuring similar goods or services elsewhere. Payment for completed services performed and accepted shall be at the price set forth in this PO. (b) Buyer may withhold amounts due to vendor as buyer deems necessary to reimburse buyer for excess costs incurred in curing, completing or procuring similar goods and services. (c) If after rejection, revocation, or other termination of vendor's right to proceed under the CUCC or this clause, buyer determines for any reason that vendor was not in default or the delay was excusable, the rights and obligations of buyer and vendor shall be the same as if the notice of termination had been issued pursuant to termination under §21.

21. Termination in Public Interest. Buyer is entering into this PO for the purpose of carrying out the public policy of the State, as determined by its Governor, General Assembly, and Courts. If this PO ceases to further the public policy of the State, buyer, in its sole discretion, may terminate this PO in whole or in part and such termination shall not be deemed to be a breach of buyer's obligations hereunder. This section shall not apply to a termination for vendor's breach, which shall be governed by §20. Buyer shall give written notice of termination to vendor specifying the part of the PO terminated and when termination becomes effective. Upon receipt of notice of termination, vendor shall not incur further obligations except as necessary to mitigate costs of performance. For services or specially manufactured goods, buyer shall pay (a) reasonable settlement expenses, (b) the PO price or rate for supplies and services delivered and accepted, (c) reasonable costs of performance on unaccepted supplies and services, and (d) a reasonable profit for the unaccepted work. For existing goods, buyer shall pay (e) reasonable settlement expenses, (f) the PO price for goods delivered and accepted, (g) reasonable costs incurred in preparation for delivery of the undelivered goods, and (h) a reasonable profit for the preparatory work. Buyer's termination liability under this section shall not exceed the total PO price plus a reasonable cost for settlement expenses. Vendor shall submit a termination proposal and reasonable supporting documentation, and cost and pricing data as required by CRS §24-106-101, upon request of buyer.

22. PO Approval. This PO shall not be valid unless it is executed by purchasing agent. Buyer shall not be responsible or liable for products or services delivered or performed prior to proper execution hereof.

23. Fund Availability. Financial obligations of buyer payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this PO is funded in whole or in part with federal funds, this PO is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. Buyer represents that it has set aside sufficient funds to make payment for goods delivered in a single installment, in accordance with the terms of this PO.

24. Choice of Law. State laws, rules and regulations shall be applied in the interpretation, execution, and enforcement of this PO. The CUCC shall govern this PO in the case of goods unless otherwise agreed in this PO. Any provision included or incorporated herein by reference which conflicts with such laws, rules, and regulations is null and void. Any provision incorporated herein by reference which purports to negate this or any other provision in this PO in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of claim, defense, or otherwise. Unless otherwise specified in the solicitation or this PO, venue for any judicial or administrative action arising out of or in connection with this PO shall be in Denver, Colorado. Vendor shall exhaust administrative remedies in CRS §24-109-106, prior to commencing any judicial action against buyer.

25. Public Contracts for Services. [Not Applicable to offer, issuance, or sale of securities, investment advisory services, fund management services, sponsored projects, intergovernmental POs, or information technology services or products and services] Vendor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this PO and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this PO, through participation in the E-Verify Program or the Department program established pursuant to CRS §§-17.5-102(5)(c). Vendor shall not knowingly employ or contract with an illegal alien to perform work under this PO or enter into a contract or PO with a subcontractor that fails to certify to vendor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this PO. Vendor shall (a) not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants during performance of this PO, (b) notify subcontractor and buyer within three days if vendor has actual knowledge that subcontractor is employing or contracting with an illegal alien for work under this PO, (c) terminate the subcontract if subcontractor does not stop employing or contracting with the illegal alien within three days of receiving notice, and (d) comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §§-17.5-102(5), by the Colorado Department of Labor and Employment. If vendor participates in the Department program, vendor shall deliver to the buyer a written, notarized affirmation that vendor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If vendor fails to comply with any requirement of this provision or CRS §§-17.5-101 et seq., buyer may terminate this PO for breach and, if so terminated, vendor shall be liable for damages.

26. Public Contracts with Natural Persons. Vendor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced a form of identification required by CRS §24-76.5-103 prior to the date vendor delivers goods or begins performing services under terms of the PO.

Effective Date 01/01/09

Exhibit H – Vendor Disclosure Statement

VENDOR DISCLOSURE STATEMENT Contract Performance Outside the United States or Colorado Colorado Revised Statute 24-102-206

To the extent the vendor has not disclosed the following information in the Statement of Work, this form shall be completed and returned to the contracting agency. This applies to all state contracts and solicitation for services executed after August 3, 2007.

1. Are any services under the contract or any subcontracts anticipated to be performed outside the United States or Colorado?

Yes

No

If “Yes”, please complete the following three questions:

2. Where will the services be performed under the contract, including any subcontracts?
(List country(ies) and/or state(s).
3. Explain why it is necessary or advantageous to go outside of the United States or the State of Colorado to perform the contract or any subcontracts.
4. Contract Routing Number (to be filled in by the contracting agency):
5. Vendor name:

Not required for contracts to which the State is a party under:

- Medicare
- The “Colorado Medical Assistance Act”, Article 4 to 6 of Title 25.5, CRS
- The “Children/s Basic Health Plan Act”, Article 8 of Title 25.5, CRS
- The “Colorado Indigent Care Program”, Part I of Article 4 of Title 25.5, CRS