



Solicitation Cover Page

1. Solicitation #: 3400001575

2. Solicitation Issue Date: 4/12/18

3. Brief Description of Requirement:

To identify a Supplier, or multiple Suppliers, with the capability to offer services that benefit, protect or improve nursing home services for residents of nursing facilities, skilled nursing facilities, and dually-certified skilled nursing facilities

Solicitation Notice: Please note that on a RFP, no pricing shall be released at the time of opening. Should a public opening be requested the only information to be released will be a list of bidders without pricing.

4. Response Due Date¹: 5/2/18

Time: 3:00 PM CST/CDT

5. Issued By and **RETURN SEALED BID TO**²:

U.S. Postal Delivery Address: 5005 N. Lincoln Ste 300

Oklahoma City, OK 73105

Common Carrier Delivery Address: 5005 N. Lincoln Ste 300

Oklahoma City, OK 73105

Electronic Submission Address: N/A

6. Solicitation Type (type "X" at one below):

- ☐ Invitation to Bid
☒ Request for Proposal
☐ Request for Quote

7. Contracting Officer:

Name: **Richard Williams**

Phone: **405-522-1040**

Email: **Richard.Williams@omes.ok.gov**

¹ Amendments to solicitation may change the Response Due Date (read GENERAL PROVISIONS, section 3, "Solicitation Amendments")

² If "U.S. Postal Delivery" differs from "Carrier Delivery, use "Carrier Delivery" for courier or personal deliveries



Responding Bidder Information

*"Certification for Competitive Bid and Contract" **MUST** be submitted along with the response to the Solicitation.*

1. RE: Solicitation # 3400001575

2. Bidder General Information:

FEI / SSN : _____ Supplier ID: _____

Company Name: _____

3. Bidder Contact Information:

Address: _____

City: _____ State: _____ Zip Code: _____

Contact Name: _____

Contact Title: _____

Phone #: _____ Fax #: _____

Email: _____ Website: _____

4. Oklahoma Sales Tax Permit¹:

☐ YES – Permit #: _____

☐ NO – Exempt pursuant to Oklahoma Laws or Rules – Attach an explanation of exemption

5. Registration with the Oklahoma Secretary of State:

☐ YES - Filing Number: _____

☐ NO - Prior to the contract award, the successful bidder will be required to register with the Secretary of State or must attach a signed statement that provides specific details supporting the exemption the supplier is claiming (www.sos.ok.gov or 405-521-3911).

6. Workers' Compensation Insurance Coverage:

Bidder is required to provide with the bid a certificate of insurance showing proof of compliance with the Oklahoma Workers' Compensation Act.

☐ YES – Include with the bid a certificate of insurance.

☐ NO – Exempt from the Workers' Compensation Act pursuant to 85A O.S. § 2(18)(b)(1-11) – Attach a written, signed, and dated statement on letterhead stating the reason for the exempt status.²

¹ For frequently asked questions concerning Oklahoma Sales Tax Permit, see <https://www.ok.gov/tax/Businesses/index.html>

² For frequently asked questions concerning workers' compensation insurance, see <https://www.ok.gov/wcc/Insurance/index.html>

7. Disabled Veteran Business Enterprise Act

- ☐ YES – I am a service-disabled veteran business as defined in 74 O.S. §85.44E. Include with the bid response 1) certification of service-disabled veteran status as verified by the appropriate federal agency, and 2) verification of not less than 51% ownership by one or more service-disabled veterans, and 3) verification of the control of the management and daily business operations by one or more service-disabled veterans.
- ☐ NO – Do not meet the criteria as a service-disabled veteran business.

Authorized Signature

Date

Printed Name

Title



**Certification for Competitive
Bid and/or Contract
(Non-Collusion Certification)**

NOTE: A certification shall be included with any competitive bid and/or contract exceeding \$5,000.00 submitted to the State for goods or services.

Agency Name: Oklahoma State Department of Health Agency Number: 340

Solicitation or Purchase Order #: 3400001575

Supplier Legal Name: _____

SECTION I [74 O.S. § 85.22]:

A. For purposes of competitive bid,

1. I am the duly authorized agent of the above named bidder submitting the competitive bid herewith, for the purpose of certifying the facts pertaining to the existence of collusion among bidders and between bidders and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to said bid;
2. I am fully aware of the facts and circumstances surrounding the making of the bid to which this statement is attached and have been personally and directly involved in the proceedings leading to the submission of such bid; and
3. Neither the bidder nor anyone subject to the bidder's direction or control has been a party:
 - a. to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding,
 - b. to any collusion with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract, nor
 - c. in any discussions between bidders and any state official concerning exchange of money or other thing of value for special consideration in the letting of a contract, nor
 - d. to any collusion with any state agency or political subdivision official or employee as to create a sole-source acquisition in contradiction to Section 85.45j.1. of this title.

B. I certify, if awarded the contract, whether competitively bid or not, neither the contractor nor anyone subject to the contractor's direction or control has paid, given or donated or agreed to pay, give or donate to any officer or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring this contract herein.

SECTION II [74 O.S. § 85.42]:

For the purpose of a contract for services, the supplier also certifies that no person who has been involved in any manner in the development of this contract while employed by the State of Oklahoma shall be employed by the supplier to fulfill any of the services provided for under said contract.

The undersigned, duly authorized agent for the above named supplier, by signing below acknowledges this certification statement is executed for the purposes of:

☐ the competitive bid attached herewith and contract, if awarded to said supplier;

OR

☐ the contract attached herewith, which was not competitively bid and awarded by the agency pursuant to applicable Oklahoma statutes.

Supplier Authorized Signature

Certified This Date

Printed Name

Title

Phone Number

Email

Fax Number

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A. GENERAL PROVISIONS

A.1. Definitions

As used herein, the following terms shall have the following meaning unless the context clearly indicates otherwise:

- A.1.1. "Acquisition" means items, products, materials, supplies, services, and equipment a state agency acquires by purchase, lease purchase, lease with option to purchase, or rental pursuant to the Oklahoma Central Purchasing Act;
- A.1.2. "Addendum" means a written restatement of or modification to a Contract Document executed by the Supplier and State.
- A.1.3. "Bid" means an offer in the form of a bid, proposal, or quote a bidder submits in response to a solicitation;
- A.1.4. "Bidder" means an individual or business entity that submits a bid in response to a solicitation;
- A.1.5. "Solicitation" means a request or invitation by the State Purchasing Director or a state agency for a supplier to submit a priced offer to sell acquisitions to the state. A solicitation may be an invitation to bid, request for proposal, or a request for quotation; and
- A.1.6. "Supplier" or "vendor" means an individual or business entity that sells or desires to sell acquisitions to state agencies.

A.2. Bid Submission

- A.2.1. Submitted bids shall be in strict conformity with the instructions to bidders and shall be submitted with a completed Responding Bidder Information, OMES-FORM-CP-076, and any other forms required by the solicitation.
- A.2.2. Bids shall be submitted to the Central Purchasing Division in a single envelope, package, or container and shall be sealed, unless otherwise detailed in the solicitation. The name and address of the bidder shall be inserted in the upper left corner of the single envelope, package, or container. SOLICITATION NUMBER AND SOLICITATION RESPONSE DUE DATE AND TIME MUST APPEAR ON THE FACE OF THE SINGLE ENVELOPE, PACKAGE, OR CONTAINER.
- A.2.3. The required certification statement, "Certification for Competitive Bid and/or Contract (Non-Collusion Certification)", OMES-FORM-CP-004, must be made out in the name of the bidder and must be properly executed by an authorized person, with full knowledge and acceptance of all its provisions.
- A.2.4. All bids shall be legible and completed in ink or with electronic printer or other similar office equipment. Any corrections to bids shall be identified and initialed in ink by the bidder. Penciled bids and penciled corrections shall NOT be accepted and will be rejected as non-responsive. In addition to a hard copy submittal, the bidder will also be required to submit an electronic copy. Electronic responses must be submitted in the identical format contained in the solicitation (for example Microsoft Word, Microsoft Excel, but not Adobe PDF). In the event the hard copy of the price worksheets and electronic copy of the price worksheets do not agree, the electronic copy will prevail.
- A.2.5. All bids submitted shall be subject to the Oklahoma Central Purchasing Act, Central Purchasing Rules, and other statutory regulations as applicable, these General Provisions, any Special Provisions, solicitation specifications, required certification statement, and all other terms and conditions listed or attached herein—all of which are made part of this solicitation.

A.3. Solicitation Amendments

- A.3.1. If an "Amendment of Solicitation", OMES-FORM-CP-011, is issued, the bidder shall acknowledge receipt of any/all amendment(s) to solicitations by signing and returning the solicitation amendment(s). Amendment acknowledgement(s) may be submitted with the bid or may be forwarded separately. If forwarded separately, amendment acknowledgement(s) must contain the solicitation number and response due date and time on the front of the envelope. The Central

Purchasing Division must receive the amendment acknowledgement(s) by the response due date and time specified for receipt of bids for the bid to be deemed responsive. Failure to acknowledge solicitation amendments may be grounds for rejection.

- A.3.2. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the solicitation. All amendments to the solicitation shall be made in writing by the Central Purchasing Division.
- A.3.3. It is the bidder's responsibility to check the OMES/Central Purchasing Division website frequently for any possible amendments that may be issued. The Central Purchasing Division is not responsible for a bidder's failure to download any amendment documents required to complete a solicitation.

A.4. Bid Change

If the bidder needs to change a bid prior to the solicitation response due date, a new bid shall be submitted to the Central Purchasing Division with the following statement "This bid supersedes the bid previously submitted" in a single envelope, package, or container and shall be sealed, unless otherwise detailed in the solicitation. The name and address of the bidder shall be inserted in the upper left corner of the single envelope, package, or container. SOLICITATION NUMBER AND SOLICITATION RESPONSE DUE DATE AND TIME MUST APPEAR ON THE FACE OF THE SINGLE ENVELOPE, PACKAGE, OR CONTAINER.

A.5. Certification Regarding Debarment, Suspension, and Other Responsibility Matters

By submitting a response to this solicitation:

- A.5.1. The prospective primary participant and any subcontractor certifies to the best of their knowledge and belief, that they and their principals or participants:
 - A.5.1.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal, State or local department or agency;
 - A.5.1.2. Have not within a three-year period preceding this proposal been convicted of or pled guilty or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) contract; or for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - A.5.1.3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph A.5.1.2. of this certification; and
 - A.5.1.4. Have not within a three-year period preceding this application/proposal had one or more public (Federal, State, or local) contracts terminated for cause or default.
- A.5.2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its solicitation response.

A.6. Bid Opening

Sealed bids shall be opened by the Central Purchasing Division at 5005 N. Lincoln Blvd. Suite 300, Oklahoma City, Oklahoma, 73105 at the time and date specified in the solicitation as Response Due Date and Time.

A.7. Open Bid / Open Record

Pursuant to the Oklahoma Public Open Records Act, a public bid opening does not make the bid(s) immediately accessible to the public. The procurement or contracting agency shall keep the bid(s) confidential, and provide prompt and reasonable access to the records only after a contract is awarded or the solicitation is cancelled. This practice protects the integrity of the competitive bid process and prevents excessive disruption to the procurement process. The interest of achieving the best value for the State of Oklahoma outweighs the interest of vendors immediately knowing the contents of competitor's bids. [51 O.S. § 24A.5(5)]

Additionally, financial or proprietary information submitted by a bidder may be designated by the Purchasing Director as confidential and the procurement entity may reject all requests to disclose information designated as confidential pursuant to 62 O.S. (2012) § 34.11.1(H)(2) and 74 O.S. (2011) § 85.10. Bidders claiming any portion of their bid as proprietary or confidential must specifically identify what documents or portions of documents they

consider confidential and identify applicable law supporting their claim of confidentiality. The State Purchasing Director shall make the final decision as to whether the documentation or information is confidential pursuant to 74 O.S. § 85.10. Otherwise, documents and information a bidder submits as part of or in connection with a bid are public records and subject to disclosure after contract award or the solicitation is cancelled.

A.8. Late Bids

Bids received by the Central Purchasing Division after the response due date and time shall be deemed non-responsive and shall NOT be considered for any resultant award.

A.9. Legal Contract

- A.9.1. Submitted bids are rendered as a legal offer and any bid, when accepted by the Central Purchasing Division, shall constitute a contract.
- A.9.2. The Contract resulting from this solicitation may consist of the following documents in the following order of precedence:
 - A.9.2.1. Any Addendum to the Contract;
 - A.9.2.2. Purchase order, as amended by Change Order (if applicable);
 - A.9.2.3. Solicitation, as amended (if applicable); and
 - A.9.2.4. Successful bid (including required certifications), to the extent the bid does not conflict with the requirements of the solicitation or applicable law.
- A.9.3. Any contract(s) awarded pursuant to the solicitation shall be legibly written or typed.

A.10. Pricing

- A.10.1. Bids shall remain firm for a minimum of sixty (60) days from the solicitation closing date.
- A.10.2. Bidders guarantee unit prices to be correct.
- A.10.3. In accordance with 74 O.S. §85.40, ALL travel expenses to be incurred by the supplier in performance of the Contract shall be included in the total bid price/contract amount.

A.11. Manufacturers' Name and Approved Equivalents

Unless otherwise specified in the solicitation, manufacturers' names, brand names, information and/or catalog numbers listed in a specification are for information and not intended to limit competition. Bidder may offer any brand for which they are an authorized representative, and which meets or exceeds the specification for any item(s). However, if bids are based on equivalent products, indicate on the bid form the manufacturer's name and number. Bidder shall submit sketches, descriptive literature, and/or complete specifications with their bid. Reference to literature submitted with a previous bid will not satisfy this provision. The bidder shall also explain in detail the reason(s) why the proposed equivalent will meet the specifications and not be considered an exception thereto. Bids that do not comply with these requirements are subject to rejection.

A.12. Clarification of Solicitation

- A.12.1. Clarification pertaining to the contents of this solicitation shall be directed in writing to the Central Purchasing Contracting Officer specified in the solicitation, and must be prior to the closing date of the solicitation.
- A.12.2. If a bidder fails to notify the State of an error, ambiguity, conflict, discrepancy, omission or other error in the SOLICITATION, known to the bidder, or that reasonably should have been known by the bidder, the bidder shall submit a bid at its own risk; and if awarded the contract, the bidder shall not be entitled to additional compensation, relief, or time, by reason of the error or its later correction. If a bidder takes exception to any requirement or specification contained in the SOLICITATION, these exceptions must be clearly and prominently stated in their response.
- A.12.3. Bidders who believe proposal requirements or specifications are unnecessarily restrictive or limit competition may submit a written request for administrative review

to the contracting officer listed on the solicitation. This request must be made prior to the closing date of the solicitation.

A.13 Negotiations

- A.13.1. In accordance with Title 74 §85.5, the State of Oklahoma reserves the right to negotiate with one, selected, all or none of the vendors responding to this solicitation to obtain the best value for the State. Negotiations could entail discussions on products, services, pricing, contract terminology or any other issue that may mitigate the State's risks. The State shall consider all issues negotiable and not artificially constrained by internal corporate policies. Negotiation may be with one or more vendors, for any and all items in the vendor's offer.
- A.13.2. Firms that contend that they lack flexibility because of their corporate policy on a particular negotiation item shall face a significant disadvantage and may not be considered. If such negotiations are conducted, the following conditions shall apply:
- A.13.3. Negotiations may be conducted in person, in writing, or by telephone.
- A.13.4. Negotiations shall only be conducted with potentially acceptable offers. The State reserves the right to limit negotiations to those offers that received the highest rankings during the initial evaluation phase.
- A.13.5. Terms, conditions, prices, methodology, or other features of the bidders offer may be subject to negotiations and subsequent revision. As part of the negotiations, the bidder may be required to submit supporting financial, pricing, and other data in order to allow a detailed evaluation of the feasibility, reasonableness, and acceptability of the offer.
- A.13.6. The requirements of the Request for Proposal shall not be negotiable and shall remain unchanged unless the State determines that a change in such requirements is in the best interest of the State Of Oklahoma.

A.14. Rejection of Bid

The State reserves the right to reject any bids that do not comply with the requirements and specifications of the solicitation. A bid may be rejected when the bidder imposes terms or conditions that would modify requirements of the solicitation or limit the bidder's liability to the State. Other possible reasons for rejection of bids are listed in OAC 260:115-7-32.

A.15. Award of Contract

- A.15.1. The State Purchasing Director may award the Contract to more than one bidder by awarding the Contract(s) by item or groups of items, or may award the Contract on an ALL OR NONE basis, whichever is deemed by the State Purchasing Director to be in the best interest of the State of Oklahoma.
- A.15.2. Contract awards will be made to the lowest and best bidder(s) unless the solicitation specifies that best value criteria is being used.
- A.15.3. In order to receive an award or payments from the State of Oklahoma, suppliers must be registered. The vendor registration process can be completed electronically through the OMES website at the following link: <https://www.ok.gov/dcs/vendors/index.php>.

A.16. Contract Modification

- A.16.1. The Contract is issued under the authority of the State Purchasing Director who signs the Contract. The Contract may be modified only through a written Addendum, signed by the State Purchasing Director and the supplier.
- A.16.2. Any change to the Contract, including but not limited to the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the Central Purchasing Division in writing, or made unilaterally by the supplier, is a breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including unauthorized written Addendums, shall be void and without effect, and the supplier shall not be entitled to any claim under this Contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the resultant Contract.

A.17. Delivery, Inspection and Acceptance

- A.17.1. Unless otherwise specified in the solicitation or awarding documents, all deliveries shall be F.O.B. Destination. The supplier(s) awarded the Contract shall prepay all packaging, handling, shipping and delivery charges and firm prices quoted in the bid shall include all such charges. All products and/or services to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the State at destination. "Destination" shall mean delivered to the receiving dock or other point specified in the purchase order. The State assumes no responsibility for goods until accepted by the State at the receiving point in good condition. Title and risk of loss or damage to all items shall be the responsibility of the supplier until accepted by the receiving agency. The supplier(s) awarded the Contract shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.
- A.17.2. Supplier(s) awarded the Contract shall be required to deliver products and services as bid on or before the required date. Deviations, substitutions or changes in products and services shall not be made unless expressly authorized in writing by the Central Purchasing Division.

A.18. Invoicing and Payment

- A.18.1. Pursuant to 74 O.S. §85.44(B), invoices will be paid in arrears after products have been delivered or services provided.
- A.18.2. Payment terms will net 45.
- A.18.3. Additional terms which provide discounts for earlier payment will be evaluated when making an award. Additional terms shall be no less than ten (10) days increasing in five (5) day increments up to thirty (30) days. The date from which the discount time is calculated shall be the date of a valid invoice. An invoice is considered valid if sent to the proper recipient and goods or services have been received.

A.19. Tax Exemption

State agency acquisitions are exempt from sales taxes and federal excise taxes. Bidders shall not include these taxes in price quotes.

A.20. Audit and Records Clause

- A.20.1. As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any Contract with the State, the successful bidder(s) agree any pertinent State or Federal agency will have the right to examine and audit all records relevant to execution and performance of the resultant Contract.
- A.20.2. The successful supplier(s) awarded the Contract(s) is required to retain records relative to the Contract for the duration of the Contract and for a period of seven (7) years following completion and/or termination of the Contract. If an audit, litigation, or other action involving such records is started before the end of the seven (7) year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.

A.21. Non-Appropriation Clause

The terms of any Contract resulting from the solicitation and any Purchase Order issued for multiple years under the Contract are contingent upon sufficient appropriations being made by the Legislature or other appropriate government entity. Notwithstanding any language to the contrary in the solicitation, purchase order, or any other Contract document, the procuring agency may terminate its obligations under the Contract if sufficient appropriations are not made by the Legislature or other appropriate governing entity to pay amounts due for multiple year agreements. The Requesting (procuring) Agency's decisions as to whether sufficient appropriations are available shall be accepted by the supplier and shall be final and binding.

A.22. Choice of Law

Any claims, disputes, or litigation relating to the solicitation, or the execution, interpretation, performance, or enforcement of the Contract shall be governed by the laws of the State of Oklahoma.

A.23. Choice of Venue

Venue for any action, claim, dispute or litigation relating in any way to the Contract shall be in Oklahoma County, Oklahoma.

A.24. Termination for Cause

- A.24.1. The supplier may terminate the Contract for default or other just cause with a 30-day written request and upon written approval from the Central Purchasing Division. The State may terminate the Contract for default or any other just cause upon a 30-day written notification to the supplier.
- A.24.2. The State may terminate the Contract immediately, without a 30-day written notice to the supplier, when violations are found to be an impediment to the function of an agency and detrimental to its cause, when conditions preclude the 30-day notice, or when the State Purchasing Director determines that an administrative error occurred prior to Contract performance.
- A.24.3. If the Contract is terminated, the State shall be liable only for payment for products and/or services delivered and accepted.

A.25. Termination for Convenience

- A.25.1. The State may terminate the Contract, in whole or in part, for convenience if the State Purchasing Director determines that termination is in the State's best interest. The State Purchasing Director shall terminate the Contract by delivering to the supplier a Notice of Termination for Convenience specifying the terms and effective date of Contract termination. The Contract termination date shall be a minimum of 60 days from the date the Notice of Termination for Convenience is issued by the State Purchasing Director.
- A.25.2. If the Contract is terminated, the State shall be liable only for products and/or services delivered and accepted, and for costs and expenses (exclusive of profit) reasonably incurred prior to the date upon which the Notice of Termination for Convenience was received by the supplier.

A.26. Insurance

The successful supplier(s) awarded the Contract shall obtain and retain insurance, including workers' compensation, automobile insurance, medical malpractice, and general liability, as applicable, or as required by State or Federal law, prior to commencement of any work in connection with the Contract. The supplier awarded the Contract shall timely renew the policies to be carried pursuant to this section throughout the term of the Contract and shall provide the Central Purchasing Division and the procuring agency with evidence of such insurance and renewals.

A.27. Employment Relationship

The Contract does not create an employment relationship. Individuals performing services required by this Contract are not employees of the State of Oklahoma or the procuring agency. The supplier's employees shall not be considered employees of the State of Oklahoma nor of the procuring agency for any purpose, and accordingly shall not be eligible for rights or benefits accruing to state employees.

A.28. Compliance with the Oklahoma Taxpayer and Citizen Protection Act of 2007

By submitting a bid for services, the bidder certifies that they, and any proposed subcontractors, are in compliance with 25 O.S.

§1313 and participate in the Status Verification System. The Status Verification System is defined in 25 O.S. §1312 and includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security and available at www.dhs.gov/E-Verify.

A.29. Compliance with Applicable Laws

The products and services supplied under the Contract shall comply with all applicable Federal, State, and local laws, and the supplier shall maintain all applicable licenses and permit requirements.

A.30. Special Provisions

Special Provisions set forth in SECTION B apply with the same force and effect as these General Provisions. However, conflicts or inconsistencies shall be resolved in favor of the Special Provisions.

B. SPECIAL PROVISIONS

B.1. Contract Period:

- B.1.1.** This Contract will begin on July 1, 2018, and terminate on the June 30, 2019. This Contract shall include an option to renew for up to two (2) additional one (1) year periods with each year's approval contingent upon performance and authorization by CMS.
- B.1.2.** This contract shall not take effect and no services may be provided until the OSDH has in its possession a copy containing original signatures of both parties and a purchase order has been issued. No services shall be provided prior to the effective date.

B.2. 90 Day Extension

- B.2.1.** The State may extend the term of this contract for up to 90 day intervals if mutually agreed upon by both parties in writing.

B.3. Indefinite Quantity

- B.3.1.** This Contract is for an indefinite quantity and the State may, or may not buy the quantity mentioned in the contract.

B.4. Terms and Conditions

- B.4.1.** All terms and conditions herein become the contract between the OSDH and the Supplier. The Supplier agrees to comply with all of these terms and conditions. Supplier understands and agrees that when any term and/or condition contained within this contract is, or becomes, applicable to the Supplier's officers and/or employees, Supplier agrees to ensure that its officers and employees (collectively, "organization") abide by the terms and/or condition applicable to organization

B.5. Definitions:

- B.5.1.** As used herein, in addition to the definitions listed in Section A.1., the following terms are specific to the services being solicited
 - B.5.1.1.** **RFP** – Request for Proposal
 - B.5.1.2.** **CMS** – Centers for Medicare & Medicaid Services
 - B.5.1.3.** **CMP** – Civil Money Penalty when in reference to CMS; Civil Monetary Penalty Revolving Fund when in reference to State of Oklahoma statutes.
 - B.5.1.4.** **OSDH** – Oklahoma State Department of Health
 - B.5.1.5.** **OMES/CP** – Office of Management and Enterprise Services/Central Purchasing Division
 - B.5.1.6.** **Nursing Home** – nursing facility (**NF**), skilled nursing facility (**SNF**), or dually- participating skilled nursing facilities (**SNF**)
 - B.5.1.7.** **Secretary** – Secretary of the U.S. Department of Health and Human Services

B.6. Mandatory Vendor Registration for Contract Award (In Addition to Section A.15.3)

- B.6.1.** Acquisitions issued by agencies under the authority of Title 74 require vendors to register with Central Purchasing prior to award. Vendors will not be required to register to submit a bid response but will be required to register prior to being awarded a contract and renew their registration prior to each renewal of an award.
- B.6.2.** Vendors pending contract award to a bid released by the Central Purchasing Division or other Oklahoma state agency MUST register with the state.

Online Registration: <https://www.ok.gov/dcs/vendors2/app/index.php>

- B.6.2.1.** Pursuant to 74 O.S. § 85.33.B: A vendor may register with the Central Purchasing Division to be placed on the Supplier List for bid notification.
- B.6.2.2.** Registration entitles a supplier to receive all bid notices for the commodity classes specified by the vendor in the registration process for a period of one year.
- B.6.2.3.** The Vendor Registration fee is **\$25 for EACH** family code for which the vendor desires registration.
- B.6.2.4.** The following items describe information requested by the vendor registration application. To expedite the application process, vendors are encouraged to have the information readily available prior to beginning the registration application. If your company is not currently transacting business in the State of Oklahoma, you may not have some of the items listed. However, any vendor selected for award of a contract with the state of Oklahoma must meet the requirements prior to the issuance of a purchase order.

- B.6.2.5.** E-mail address - if possible, we encourage all vendors to create a central e-mail address, to which all state bidding e-mail correspondence can be sent. A central e-mail for your organization will assure personnel changes or employee absences do not inhibit your ability to receive timely notifications of State bidding opportunities.
- B.6.2.6.** An Oklahoma Sales Tax Permit Number and its Expiration Date or explanation of the exemption status (FAQs)
- B.6.2.7.** An Oklahoma Secretary of State Filing Number, or explanation of the exemption status (www.sos.ok.gov or 405-521-3911)
- B.6.2.8.** A Workers Compensation Insurance Certificate (PDF file) or explanation of the exemption status (FAQs)
- B.6.2.9.** Vendors must complete all 12 steps of the registration application, which require business information about your company, a substitute W-9 form and designation of the commodity codes/classifications your company is interested in. We recommend vendors search UNSPSC Website Code Posting to identify the applicable commodity codes prior to beginning the registration application. However, you will have the option to select and deselect a family, class and commodity during the online registration process before finalizing your application.
- B.6.2.10.** Payment information related to a bank checking account (example), or VISA, MasterCard or American Express credit card. All payments are made through an encrypted secure server and payment information is not stored after a transaction. You will receive confirmation after your registration is validated and approved by the Vendor Registration Officer.
- B.6.3.** Note to Vendors: The State of Oklahoma does NOT provide legal advice regarding exemptions from Sales Tax Permit, Secretary of State, and Workers Compensation Insurance registrations

B.7. Access to Records Requirements (In Addition to Section A.20.2.):

- B.7.1.** The Supplier agrees to comply with all record retention requirements of 2 CFR § 200.333 - §200.337. The Supplier agrees to maintain required records and supporting documentation, for validation of costs billed to the OSDH, for seven (7) years from the ending date of the contract. The Supplier also agrees to allow the State Auditor's Office, GAO, the Oklahoma Department of Management and Enterprise Services, the OSDH, or their authorized representatives access to the records, books, documents, accounting procedures, practices or any items of the service provider relevant to this contract for purpose of audit and examination. The Supplier further agrees to assure appropriate access by the aforementioned parties to any sub-Supplier's associated records.
- B.7.2.** If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the seven-year period, the records must be retained until completion of the action and resolution of all issues which arise from it; or, until the end of the regular seven-year period, whichever is later.
- B.7.3.** The OSDH may routinely request supporting documentation to validate Supplier payments.

B.8. Addendums, Unavailability or Redirection of Funding and Cancellation:

- B.8.1.** In the event state or federal funds used to support this contract become unavailable, either in full or in part, due to reductions in appropriations, the OSDH may terminate or reduce the contract upon notice in writing to the Supplier by certified mail or by email and send notification of such changes to the Supplier upon making such changes. The OSDH shall be the final authority as to the availability or redirection of funds. The effective date of such contract termination, increase or reduction shall be specified in the notice. All other modifications or amendments to this contract shall be in writing, dated and executed by both the Supplier and the OSDH and must receive final approval by the Office of Management and Enterprise Systems. In the event of a reduction, the Supplier may cancel this contract as of the effective date of the proposed reduction upon advance written notice to the OSDH. With exception of the above, this contract shall be in force until the expiration date, or until 30 days after written notice has been given by either party of its desire to cancel without cause. Notification of cancellation shall be by Certified Mail to the business address of record or by email to the designed Contact Person. In the event this contract is canceled by either party, the OSDH shall be responsible for reimbursement for goods or services received or provided prior to cancellation date. In the event this contract is cancelled under this section, Supplier agrees to take all reasonable steps to minimize termination costs. The OSDH agrees to reimburse Supplier for all work performed prior to the date of notice of termination of this contract for expenditures and non-cancelable commitments incurred in anticipation of performing under this contract. The OSDH shall not be responsible for reimbursement of unreasonable or unnecessary expenditures incurred after receipt of the cancellation notice.

B.9. Assignment and Delegation:

- B.9.1.** The services to be performed under this sub-recipient contract shall not be subrogated, in whole or in part, to any other person or entity without the prior written approval of the OSDH. If the Supplier cannot perform the services as identified in this contract, the Supplier will be responsible for subcontracting the services or making alternative arrangements for the provision of the services. The terms of this contract shall be included in any OSDH approved subcontract. The Supplier will be liable for all additional costs and expenses arising from such subcontract or substitution to cover performance. Approval by the OSDH of a subcontract shall not relieve the Supplier of any responsibility for performance under this contract.

B.10. Audit Requirements (In Addition to Section A.20.1.):

- B.10.1.** Suppliers expending federal funds from all funding sources in excess of the threshold established in 2 CFR Part 200.501 shall be required to have a single audit or a program-specific audit conducted in accordance with 2 CFR Part 200, Subpart F. Audit costs may not be charged to any OSDH contracts when no audit has been performed, or has not been prepared in accordance with this requirement.
- B.10.2.** Suppliers that are required to have an audit conducted for compliance with 2 CFR Part 200.501 shall submit to the Federal clearinghouse (FAC) a single copy of the data collection form and the reporting package as required by 2 CFR Part 200.512 within the earlier of thirty (30) days after receipt of the auditor's report(s), or nine months after the end of the audit period. If an independent audit is not posted in the required time, or there have been findings, the OSDH will have the option to consider taking action under the Failure to Comply (Section B.22.) clause of this contract.
- B.10.3.** If the Supplier is a tribal entity, and has chosen to opt out of audit report submission pursuant to 2 CFR §200.512, the Supplier shall submit a copy of the audit report in paper or electronic form to:

Oklahoma State Department of Health

Internal Audit Unit

1000 NE 10th St.

Oklahoma City, OK 73117-1299

B.11. Binding Effect

- B.11.1.** This Contract shall be binding upon and inure to the benefit of the STATE and the SUPPLIER and shall be binding upon their successors and assigns subject to the limitations of Oklahoma law.

B.12. Breach of Contract (In Addition to Section A.16.2.)

- B.12.1.** Failure to perform any and all of the terms and conditions of this contract shall be deemed a substantial breach thereof and give the STATE cause to cancel this contract on seven (7) days written notice to the SUPPLIER. The STATE then reserves the right to re-award the contract to the next lowest responsible available bidder -OR- should this contract be awarded to multiple Suppliers, the STATE may utilize those vendors. In the event of cancellation of this contract, the SUPPLIER shall not be entitled to damages and agrees not to sue the STATE for damages thereof. After notice of cancellation, the SUPPLIER agrees to perform the terms and conditions of this contract up to and including date of cancellation, as though no cancellation had been made and notwithstanding other legal remedies which may be available to the STATE because of the cancellation, agrees to indemnify the STATE for its costs in procuring the services of a new SUPPLIER.

B.13. Contract Monitoring Plan:

- B.13.1.** This contract will be monitored by the OSDH based on the completion of a Risk Assessment process. Information related to programmatic requirements, the contract specifications, and responses to the Subrecipient Supplier's Questionnaire (Attachment B) will be utilized to complete a Risk Assessment Tool. The Risk Assessment Tool will be used to determine the level of risk associated with the Contract. A Contract Monitoring Plan and a Contract Administration Plan will be developed to define the activities and level of monitoring and administration that will be required during the contract period. Typical monitoring activities include Supplier site visits, review of contractually required reports, invoice review, invoice validation, and verification of licensure and/or insurance requirements, etc. The level of risk assigned to the contract shall determine the frequency and type of activity within a Contract Monitoring Plan and/or a Contract Administration Plan. The Contract Monitoring and/or Contract Administration Plan may be updated periodically as determined by the OSDH throughout the contract period. Upon development of the Contract Monitoring Plan and Contract Administration Plan, the OSDH will provide a copy of each to the Supplier.
- B.13.2.** All communications related to this contract will be between the Supplier's Contact Person and the OSDH Contract Monitor. The OSDH Contract Monitor for this contract will be given upon award

B.14. Covenant Against Contingent Fees

- B.14.1.** The SUPPLIER warrants that it has not employed or retained any company or person specifically to solicit or secure this Contract, and that it has not paid or agreed to pay any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty the STATE shall have the right to annul this Contract without liability, or at its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage brokerage fee, gift, or contingent fee.

B.15. Dispute Resolution

- B.15.1.** Any dispute concerning the question of fact in connection with the work, not disposed of by the contract between the parties hereto, shall be referred to the STATE agency that initially awarded this contract (e.g., Office of

Management and Enterprise Services). The decision of the administrator of said agency, or his/her duly authorized representatives, shall be final and conclusive on the parties to this contract.

B.16. Disclosures Regarding Lobbyist

- B.16.1.** A vendor may not reimburse itself within its state contract pricing for its costs and expenses of lobbyists.
- B.16.2.** Any vendor using the services of a lobbyist to assist in obtaining a contract shall
- B.16.3.** Disclose all costs, fees, compensation, reimbursements, and other remunerations paid or to be paid to the lobbyist related to the contract
- B.16.4.** Not bill or otherwise charge the State for such and
- B.16.5.** Certify that no such costs were billed to the State.
- B.16.6.** The name and address of each lobbyist or agent of the vendor, Supplier, sub-Supplier who communicated with a State employee about a proposal or potential proposal must be disclosed with proposal response.

B.17. Electronic Signatures/Execution in Counterparts

- B.17.1.** This document may be executed in counterparts, with each such copy considered an original. Facsimile/scanned and PDF signatures shall be accepted as original. Electronic signatures must be an authorized copy of the hand-written signature or created using a technology that allows the process of signature authentication to be validated. In all cases, the name of the authorized signatory shall be identified as visible on the document. Each party will be responsible for maintaining the security of its electronic signature technology and represents through submission of the signed document that the individual's signature is authorized and valid to bind the organization.

B.18. Entire Agreement:

- B.18.1.** This contract, including referenced attachments, represents all of the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind any of the parties hereto.

B.19. Equipment and Other Purchases:

- B.19.1.** It is understood that no items of equipment, property or other capital purchases shall be reimbursed under the provisions of this contract unless specifically allowed in the attached line item budget. Equipment is defined as an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the Supplier for financial statement purposes, or \$5000, pursuant to 2 CFR Part 200.439. If equipment is allowed to be purchased by the Supplier, each purchase must be pre-approved by the OSDH, the Supplier must have an established inventory system compliant with 2 CFR Part 200.313. To be eligible for reimbursement under this contract, equipment must be utilized exclusively for purposes of this contract, and the Supplier must provide a written inventory report within thirty (30) days of the end of the applicable contract period including the information required by 2 CFR Part 200.313 to the OSDH Contract Monitor.

B.20. Event of Default (In Addition to Section A.24.):

- B.20.1.** In the event the Supplier fails to meet the terms and conditions of this contract or fails to provide services in accordance with the provisions of the contract, the State of Oklahoma at its sole discretion, may withhold payments claimed by the Supplier or may by written notice of default to the Supplier, cancel this contract. Cancellation due to default shall not be an exclusive remedy, but shall be in addition to any other rights and remedies provided for by law. In the event a Notice of Cancellation is issued, the Supplier shall have the right to request a review of such decision as provided by the rules and regulations promulgated by the Oklahoma Office of Enterprise and Management Services, Central Purchasing Division (OMES/CP).

B.21. Evidence of Insurability (In Addition to Section A.26.):

- B.21.1.** The Supplier shall obtain and retain insurance, including workers' compensation, automobile insurance, medical malpractice, and general liability as applicable or as required by State or Federal law and shall provide evidence of insurability (Certificate of Insurance) from the insurance carrier prior to commencement of any work in connection with the Contract. The Supplier is also required to comply with applicable Federal and State occupational disease statutes. If occupational diseases are not covered under those statutes, they shall be covered under the employer's section of the insurance policy. The Supplier shall timely renew the policies to be carried pursuant to this section throughout the term of the Contract and shall provide the OSDH Purchasing Division with evidence of such insurance and renewals. Such policy shall require thirty days advance notice of cancellation be provided to the OSDH Purchasing Division.
- B.21.2.** If the Supplier does not carry workers' compensation insurance because it considers their business to be that of an independent Supplier, as defined by the Workers Compensation Act (85A O.S. § 1 et. seq.), and not that of an employee, the Supplier must complete the OSDH Acknowledgment of Independent Supplier Status.
(ATTACHMENT I)

B.22. Failure to Comply Statement (In Addition to Section A.29.):

- B.22.1.** The Supplier agrees that should it be in noncompliance, the OSDH may impose additional conditions as provided in 2 CFR §200.207; or, as provided in 2 CFR § 200.338, temporarily hold cash payments pending correction of the deficiency, disallow all or part of the cost of the activity or action not in compliance, suspend or terminate the contract in part or in whole, withhold further awards for the project or program, or take other remedies legally available. Compliance with the requirements shall be the responsibility of the Supplier, without reliance on or direction by the OSDH.

B.23. Federal Funding Accountability and Transparency Act of 2006 (FFATA):

- B.23.1.** Suppliers shall comply with the requirements of the Federal Funding Accountability and Transparency Act of 2006 (FFATA) as set forth in 2 CFR Part 170. A DUNS number (Data Universal Numbering System) is a requirement for all contracts of \$25,000 or more. Suppliers may be required to submit additional information to satisfy FFATA compliance.

B.24. Force Majeure:

- B.24.1.** The Supplier shall not be liable for any damages resulting from any delay in delivery or failure to give notice of delay that directly or indirectly results from the elements, acts of God, delays in transportation, or delays in delivery by any cause beyond the reasonable control of the Supplier.

B.25. Headings

- B.25.1.** Article headings used in the contract are inserted for convenience of reference only and shall not be deemed a part of this contract for any purpose.

B.26. Indirect Costs

- B.26.1.** Expenses that are not directly related and billed 100% to a particular funding source may be billed using either an indirect cost rate or a cost allocation plan. The Supplier may request reimbursement of indirect costs (IDC) not to exceed the total amount approved for IDC in the current approved line item budget. The Supplier shall bill for IDC costs based on their federally approved IDC rate, or the rate approved by the Supplier's cognizant agency.
- B.26.2.** If the Supplier does not have a negotiated IDC rate, the Supplier shall be required to submit a Cost Allocation Plan to OSDH for the reimbursement of any costs not directly allocable to a particular fund source.
- B.26.3.** This line item is to be based on the Supplier's approved federally negotiated IDC rate or the rate approved by the Supplier's cognizant entity responsible for negotiating the Supplier's IDC rate. If the Supplier does not have a negotiated IDC rate, the Supplier shall be required to submit a Cost Allocation Plan along with the required certification as outlined in 2 CFR Part 200.415(b) to OSDH explaining the allocation methods for reimbursement of any costs not directly allocable to a particular fund source.

B.27. Incorporation of Provisions

- B.27.1.** The SUPPLIER shall include the provisions of the ALL paragraphs of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The SUPPLIER shall take such action with respect to any subcontract or procurement as the STATE may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event the SUPPLIER becomes involved in, or is threatened with, litigation with a sub-Supplier or supplier as a result of such direction, the SUPPLIER may request the STATE to enter into such litigation to protect the interest of the STATE.

B.28. Invoicing and Payment (In Addition to Section A.18.):

- B.28.1.** A properly completed invoice must be submitted within 30 days of the end of the month in which services were delivered and include the following items:
- B.28.1.1.** name, address and FEI number of the Supplier;
 - B.28.1.2.** invoice date;
 - B.28.1.3.** period covered by invoice;
 - B.28.1.4.** purchase order number;
 - B.28.1.5.** any other data, reports, information or documentation required by other conditions of the contract;
 - B.28.1.6.** detail of the services provided and be in accordance with the terms and conditions of this agreement.
- B.28.2.** For invoices involving payment for the Supplier's time, the invoice must be signed and contain the following statement: By my signature I attest that this invoice is an accurate and true representation of my time in relation to the services provided to the OSDH.

B.28.3. The invoice shall be submitted to:

OKLAHOMA STATE DEPARTMENT OF HEALTH

Protective Health Service

CMP Fund Project

1000 NE 10TH Street

Oklahoma City, Oklahoma 73117-1299

B.28.4. The State of Oklahoma has 45 days from presentation of a proper invoice to issue payment to the Supplier.

B.28.5. The OSDH may withhold or delay payment to any Supplier failing to provide required programmatic documentation and/or requested financial documentation.

B.28.6. To comply with 2 CFR § 200.415 (Required Certifications), invoices requesting payment must include a certification, signed by an official who is authorized to legally bind the Supplier, which reads as follows:

B.28.6.1. "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise.

B.28.6.2. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

B.28.7. The Supplier assures that all costs billed will be supported by documentation that will include, but not be limited to, copies of paid invoices, payroll records and time reports as required by the costs principles applicable to their organization (See "Supplier Relationship" section of this contract). The Supplier further assures that all billings will be based on actual costs incurred and paid.

B.28.8. If the Supplier is unable to support any part of their claim to the OSDH and it is determined that such inability is attributed to misrepresentation of fact or fraud on the part of the Supplier, the Supplier shall be liable to OSDH for an amount equal to such unsupported part of the claim in addition to all costs, including legal, attributable to the reviewing and discovery of said part of claim. Liability under this paragraph shall be determined within two years of the discovery of such misrepresentation of fact or fraud by the Supplier.

B.29. Limited English Proficiency:

B.29.1. Where a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program needs service or information in a language other than English in order to effectively be informed of or participate in the program, the Supplier shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide the information in appropriate languages to such persons.

B.29.2. An inability by the Supplier to provide the information in the appropriate language to a significant number or proportion of the population eligible to be served or likely to be directly affected by the program shall result in termination of the contract.

B.30. Mandatory Requirements:

B.30.1. The OSDH has established certain mandatory requirements that must be included in the RFP response. The use of the terms "shall", "must" or "will" (except to indicate simple futurity) in this RFP indicate a mandatory requirement or condition, which by failure to meet or provide will be cause for the RFP response being deemed non-responsive. The word "should" or "may" in this RFP indicate desirable attributes of conditions and are permissive in nature. Deviation from or omission of such a desirable feature will not by itself cause a proposal to be non-responsive.

B.31. Minor Deficiencies or Informalities

B.31.1. "Minor deficiency" or "minor informality" means an immaterial defect in a bid or variation in a bid from the exact requirements of a solicitation that may be corrected or waived without prejudice to other bidders. A minor deficiency or informality does not affect the price, quantity, quality, delivery or conformance to specifications and is negligible in comparison to the total cost or scope of the acquisition.

B.31.2. The State Purchasing Director may waive minor deficiencies or informalities in a bid if the State Purchasing Director determines the deficiencies or informalities do not prejudice the rights of other bidders, or are not a cause for bid rejection.

B.32. Notices

- B.32.1.** Notices under this contract shall be considered properly delivered when sent by certified mail to the business address of record or by email, delivery receipt requested, to the Contact Person identified in the contract.

B.33. Other Certifications:

- B.33.1.** The Supplier certifies compliance with the provisions of Titles VI and VII of the 1964 Civil Rights Act and Section 504 of the Rehabilitation Act 1973; the Age Discrimination Act of 1975; the Hatch Act; the Pro Children Act of 1994; Drug Free Workplace Act of 1988; the American with Disabilities Act of 1990; Title IX or the Education Amendments of 1972; 31 U.S.C. Section 1352, Public Law 105-78; Section 503 of Division F, Title V, of the FY12 Consolidated Appropriations Act; 41 U.S.C. 4712 and the National Defense Authorization Act (NDAA) for Fiscal year (FY) 2013; Contract Work Hours and Safety Standards Act (40 U.S. C. 3701-3708); the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended; mandatory standards and policies relating to energy efficiency as outlined in the State of Oklahoma's energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201); 2 CFR § 200.112 (Conflict of Interest); 2 CFR § 200.113 (Mandatory Disclosures); 2 CFR § 200.322 (Procurement of Recovered Materials); and, the Single Audit Act of 1984; as applicable.

B.34. Personnel Activity Reports:

- B.34.1.** The Supplier and any approved sub-Supplier shall maintain Personnel Activity Reports (PARs) on all employees reimbursed in whole or in part by this contract. PARs must be completed in accordance with the Federal Cost Principles applicable to the Supplier's specific entity type, i.e. State and Local Government, Non-Profit, Colleges and Universities, etc. (Suppliers may refer to 2 CFR Part 200.430, 45 CFR Part 75, 7 CFR Part 3016 to determine the applicable Federal Cost Principles, or as determined by the applicable Federal program guidance.) The above requirements will apply to all Suppliers regardless of the type of funds being reimbursed to the Supplier by the OSDH.

B.35. Privacy Clause:

- B.35.1.** The Supplier shall, at all times, maintain confidential all information pertaining to any person, patient, or client with whom it has a professional relationship, contact or contract. No information shall be released to any person or party not directly employed by the Supplier without first obtaining such person's, patient's or client's expressed written consent therefore. Confidential information pertaining to any minor shall not be released to any person or party without the express written consent of a custodial parent, court appointed guardian, court authorized foster parent, or authorized self-consenting minor, subject however, to all applicable state and federal statutes, rules and regulations.

B.36. Procurement Integrity:

- B.36.1.** The Supplier certifies they have not entered into this contract with this or any other Oklahoma state agency that would result in a substantial duplication of the services or duplication of the end product rendered by the Supplier or its employees.

B.37. Promotional or Incentive Items:

- B.37.1.** Per 2 CFR Part 200.421, costs of promotional items and memorabilia, including models, gifts, and souvenirs are unallowable. Advertising costs for the purpose of program outreach and other specific purposes necessary to meet the requirements of the Federal award are allowable.
- B.37.2.** Incentive items may be used to encourage an individual to participate in a program or survey by performing a specific task for the benefit of the OSDH program and must conform to OSDH Memorandum of Legal Opinion, dated June 1, 2009. The incentive item used for encouragement shall be given to the individual only after the individual has completed the task.

B.38. Protecting and Securing Protected Health Information:

- B.38.1.** Incorporated herein in its entirety, and made a part of this contract, is the attached Business Associate Agreement (Attachment C) signed between the Parties.

B.39. Statement of Responsibility and Liability:

- B.39.1.** The parties intend that each shall be responsible for its own intentional and negligent acts or omissions to act. The OSDH shall be responsible for the acts and omissions to act of its officers and employees while acting within the scope of their employment according to the Oklahoma Governmental Tort Claims Act (51 O.S. §151 et seq.).
- B.39.2.** The Supplier shall be responsible for any damages or personal injury caused by the negligent acts or omissions to act by its officers, employees, or agents acting within the scope of their authority or employment.

B.39.3. The Supplier agrees to hold harmless the OSDH of any claims, demands and liabilities resulting from any act or omission on the part of the Supplier and/or its agents, servants, and employees in the performance of this contract. It is the express intention of the parties hereto that this contract shall not be construed as, or given the effect of, creating a joint venture, partnership or affiliation or association that would otherwise render the parties liable as partners, agents, employer-employee or otherwise create any joint and severable liability.

B.40. Tobacco Free Policy:

B.40.1. Supplier, while performing the duties under this contract shall comply with the smoke free requirements on state property pursuant to 21 O.S. § 1247. For other tobacco products, including e-cigarettes, use of such products is prohibited pursuant to the Governor's Executive Orders 2012-01 and 2013-43.

B.41. Travel and Related Expenses:

B.41.1. If travel costs and related expenses are a part of the contract, such expenses must be compliant with 2 CFR Part 200.474. The Supplier's request for reimbursement shall be based on the organization's written travel policies. OSDH will monitor the travel-related expenses based on reasonableness (2 CFR Part 200.404) as compared to those rates authorized by the Federal Conus Rates published at the GSA Website located at <http://www.gsa.gov/portal/category/100000>. All out-of-state travel where reimbursement is requested must be pre-approved in writing by the OSDH. In addition, OSDH allowable travel costs must be directly related to the activities of the contract and therefore may require allocation of those costs to all programs benefitted based on an equitable allocation methodology.

B.42. Waiver of Breach:

B.42.1. No failure by the OSDH to enforce any provisions hereof after any event of default by the Supplier shall be deemed a waiver of the OSDH's rights with regard to that event, or any subsequent event. Waiver shall not be construed to be a modification of the terms of the contract.

C. SOLICITATION SPECIFICATIONS

C.1. Background:

C.1.1. The OSDH serves as the State Survey Agency in Oklahoma under an agreement entered pursuant to Section 1864 of the Social Security Act between the State of Oklahoma and the Secretary of the U.S. Department of Health and Human Services. The OSDH surveys or inspects nursing facilities for compliance with requirements of the Medicare and Medicaid programs. As a result of information gathered during such surveys, the OSDH or Centers for Medicare & Medicaid Services (CMS) may find that the facilities are not in compliance with federal requirements. Civil Money Penalties (CMPs) are collected from nursing facilities (NFs), skilled nursing facilities (SNFs), and from dually-participating skilled nursing facilities (SNFs) that have failed to maintain compliance with Federal requirements. A portion of the funds is returned to States for use in activities for the protection and benefit of nursing home residents. By law, CMP funds cannot be used for any other purposes by States.

C.1.2. Sections 1819(h)(2)(B)(ii)(IV)(ff) and 1919(h)(3)(ii)(IV)(ff) of the Social Security Act (the Act) incorporate specific provisions pertaining to the collection and uses of CMPs imposed by CMS when nursing homes do not meet requirements for Long Term Care Facilities. Final amendments to the federal regulations implementing the uses of CMP funds by States were published March 18, 2011 in the Federal Register, Vol. 76, No. 53, p. 15127. The federal regulations may be found at 42 CFR 488.433 (10-1-2012 version). On March 11, 2011, CMS issued guidance regarding use of CMPs in a Survey and Certification Memorandum (Ref: S&C: 11-12-NH). Additionally, CMS on December 16, 2011 issued updated guidance in a Survey and Certification Memorandum (Ref: S&C:12-13-NH).

C.2. Purpose:

C.2.1. The Oklahoma State Department of Health (OSDH) is issuing this Request for Proposals (RFP) using funds from the Civil Monetary Penalty Revolving Fund, pursuant to 63 O.S. 2013, § 1-107.4, to support and provide quality assurance and process improvement through root cause analysis and quality improvement support for NF/SNF that have high level and/or frequency of deficiency citations, recurring deficiency citations, and/or poor performance quality measures as reported to the CMS national Minimum Data Set 3.0.

C.2.2. The objective is to identify a Supplier, or multiple Suppliers, with the capability to offer services that benefit, protect or improve nursing home services for residents of nursing facilities, skilled nursing facilities, and dually-certified skilled nursing facilities, in accordance with CMS requirements.

C.2.3. The goal of the OSDH is to fund up to two projects through one (1) or more Suppliers that are knowledgeable, skilled, and capable of meeting the project's purpose in its area of expertise. For the first 12-month period, approximately 1.5 million dollars will be made available to support up to two projects of varying amounts; each project will supply QAPI-RCA to thirty (30) SNF/NF and QI-STAT to five (5) SNF/NF each contract year. Additional funds may be available for multi-year projects.

C.2.4. Suppliers must meet all the requirements of a Qualified Organization, as described in the next sentence and Section C.5. Examples of Suppliers that could qualify for funding include, but are not limited to, consumer advocacy organizations, resident or family councils, professional or State nursing home associations, State Long-term Care Ombudsman programs, quality improvement organizations, and private Suppliers.

C.3. Contract Expense:

C.3.1. The OSDH has a total of \$1,500,000.00 to make up to two (2) awards. Payments will be made upon approval of valid invoice in accordance with the Invoice clause (Section B.28.) and the line item budget.

C.4. Mandatory Requirements:

C.4.1. Complete Attachment A = Application for CMP Funds CMS Region VI

C.5. Minimum Qualifications:

C.5.1. CMS on December 16, 2011 issued updated guidance in a Survey and Certification Memorandum (Ref: S& C:12-13-NH). Examples of organizations that could qualify include, but are not limited to, consumer advocacy organizations, resident or family councils, professional or State nursing home associations, State Long-term Care Ombudsman programs, quality improvement organizations, private Suppliers, etc. The Supplier must describe how the Supplier meets the requirements for consideration as a qualified organization and including responses to each of the items below:

C.5.1.1. Organization is qualified and capable of carrying out the intended project(s) or use(s);

C.5.1.2. Not in any conflict of interest relationship with the entity(ies) who will benefit from the intended project(s) or use(s);

C.5.1.3. Not a recipient of a contract or grant or other payment from Federal or State sources for the same project(s) or use(s);

C.5.1.4. Not paid by a State or Federal source to perform the same function as the CMP project(s) or use(s). CMP funds may not be used to enlarge or enhance an existing appropriation or statutory purpose that is substantially the same as the intended project(s) or use(s).

C.6. Scope of Work:

C.6.1. Qualified Suppliers will provide two (2) services to Medicare and/Medicaid certified nursing homes.

C.6.1.1. The first service is referenced as QAPI-RCA: regular on-site consultation services for the purposes of establishing an effective Quality Assurance and Process Improvement program that incorporates root cause analysis of poor performance in clinical quality metrics. QAPI-RCA principles must ensure compliance with CMS mandates and guidance and interventions must be evidence-based. Data-entry and chart review should be a component of the consulting services.

C.6.1.2. The second service is referenced as QI-Stat: an on-demand consulting service for nursing homes identified by OSDH as needing immediate consultation to address areas of care. More information is provided below, and Suppliers should describe their approach to delivering these services. All materials must meet OSDH Communications standards and guidelines.

C.7. Supplier Duties

C.7.1. **QAPI-RCA:** recruit thirty (30) nursing homes to provide ongoing "QAPI-RCA" support

C.7.1.1. The number of homes participating in ongoing on-site QAPI-RCA support project will not exceed thirty-five (35) and should not fall below twenty-five (25) homes at any time during the contract. Services provided by the Supplier must be equitably offered and distributed to all SNF/NF regardless of geographic location, for-profit status, religious affiliation, or ownership type. The goal of providing these services is to improve the quality of care delivered in nursing homes. Suppliers should describe the work plan from recruitment through one (1) year of consultation services relative to frequency of onsite services, number of QAPI projects, and other relevant information.

C.7.2. **QI-Stat:** quick response to address deficiencies in up to five SNF/NF each contract year.

C.7.2.1. Suppliers must be able to respond with on-site support within five business days to deliver services to a NF/SNF when referred by OSDH; in this scenario the SNF/NF may be required to file a plan of correction to address deficiency citations, and/or may have been observed to need a high-level of expertise and assistance to improve quality. At all other times during the contract period, the Supplier will engage in ongoing recruitment of the nursing homes performing in the bottom decile of select quality measures of care. After stabilizing with QI-STAT, the designated facility will transfer into the ongoing support group of QAPI. Suppliers should describe the work plan from recruitment through one (1) year of consultation services relative to frequency of onsite services and other relevant information.

C.7.3. A participation agreement for each facility.

C.7.3.1. The document must outline the responsibilities of the home, the services to be delivered by the Supplier, and the stipulation that failure to fulfill the agreement will result in the nursing home being considered ineligible to participate in any other CMP Fund project for at least one year. The document should also state that the fees associated with the described services are paid for by OSDH and the facility will not be billed separately. OSDH must approve the agreement form in advance of recruitment.

C.7.4. A business case promotion to encourage participation.

C.7.4.1. Suppliers should also prepare a promotional style business case document to assist with recruitment. The promotional materials should include various versions to assure buy-in at various levels: direct care staff, charge nurses, directors of nursing, nursing home administrators, owners, and the like.

C.8. OSDH Duties

C.8.1. The OSDH shall:

C.8.1.1. Meet regularly with selected Suppliers not limited to a kick-off meeting, progress meetings throughout the contract, and at the conclusion of the contract.

C.8.1.2. Provide OSDH Communications standards and guidelines.

C.8.1.3. Provide data for key quality measures using MDS 3.0 quality and clinical measures.

C.8.1.4. Provide necessary data for comparison to facilities not receiving interventions.

C.8.1.5. Provide lists of facilities for targeted and/or directed participation.

C.8.1.6. Provide feedback on process and reports in a timely manner.

C.8.1.7. Conduct site visits to assure performance and delivery of services.

C.8.1.8. Facilitate technical assistance and subject matter experts as appropriate.

C.8.1.9. Provide a networking forum for CMP Fund Program Suppliers.

C.8.1.10. Review and process invoices for payment.

D. EVALUATION

D.1. Proposal Evaluation Process

D.1.1. Proposals will be evaluated on the "best value" determination in accordance with Title 74, §85. The best value criteria for this proposal is listed below and all proposals will be reviewed and awarded based on the following evaluation criteria:

D.1.1.1. Organizations' ability to complete the project

D.1.1.2. Project aim(s)

D.1.1.2.1. Non-supplanting nature of the project;

D.1.1.2.2. Consumer and stakeholder involvement;

D.1.1.2.3. Benefit(s) to residents and breadth of affected population;

D.1.1.2.4. Timeline feasibility;

D.1.1.2.5. Responsible use of budget and financial feasibility;

D.1.1.2.6. Prospect for sustainability of project upon completion;

D.1.1.2.7. Prospect for project duplication in another nursing facility Application for CMS Funds;

D.1.1.2.8. Evidence of effectiveness of proposed or similar;

D.1.1.2.9. Prior performance as an OSDH Supplier.

D.1.1.3. CMS approval.

D.1.1.3.1. Upon receipt of CMS approval, OMES will award contract(s).

E. INSTRUCTIONS TO BIDDER

E.1. Introduction

- E.1.1.** Prospective Bidders are urged to read this solicitation carefully. Failure to do so will be at the Bidder's risk.
- E.1.2.** Provisions, terms, and conditions may be stated or phrased differently than in previous solicitations. Irrespective of past interpretations, practices or customs, proposals will be evaluated and any resultant contract(s) will be administered in strict accordance with the plain meaning of the contents hereof. The Bidder is cautioned that the requirements of this solicitation can be altered only by written amendment approved by the state and that verbal communications from whatever source are of no effect. In no event shall the Bidder's failure to read and understand any term or condition in this solicitation constitute grounds for a claim after contract award.

E.2. Submissions/Copies

- E.2.1.** Supplier is to submit two (2) electronic copies of their complete response on TWO (2) separate USBs (one (1) on each USB) which includes scanned images of the required completed and signed forms. Electronic copy can be in Word, Excel, or PDF format; but, is to be an unprotected document provided on a USB drive/flash drive/thumb drive.
- E.2.2.** Faxed or emailed responses will not be accepted. Original hard copies are not required or preferred. This overrides hard copy submittal requirements of Section A.2.4. PDF is an acceptable format for solicitation responses. This overrides requirements of Section A.2.4.
- E.2.3.** Suppliers must respond to each request for information in section C.4., Mandatory Requirements, of this RFP, showing how their organization will meet or exceed the conditions.
- E.2.4.** Suppliers must complete and submit Attachment B, Application for CMP Funds for CMS Region VI.
- E.2.5.** Suppliers submitting more than one proposal shall assign a unique letter and title to each proposal. For example: LTC Organization: (Proposal A) Staff Training Project; LTC Organization: (Proposal B) Culture Change Project, etc.
- E.2.6.** If the Supplier intends to use sub-Suppliers in the performance of this contract, the organization shall so state in their proposal and identify the sub-Suppliers to be used.
- E.2.7.** The Supplier may be asked to participate in oral presentations and demonstrations for this proposal to define their solicitation, to introduce their team, and to respond to any and all questions regarding their proposal if requested by the State prior to award.
- E.2.8.** In addition to any requirements of law or through a professional code of ethics or conduct, the Supplier is required to disclose any outside activities or interests that conflict or may conflict with the best interests of the State. Further, the successful Supplier shall not plan, prepare or engage in any activity that conflicts or may conflict with the best interests of the State during the period of this agreement without prior written notification of OSDH and written approval by OSDH and final approval by the Office of Management and Enterprise Services (OMES) Central Purchasing Division. Prompt disclosure is required under this paragraph if the activity or interest is related, directly or indirectly, to any person or entity currently under contract with or seeking to do business with the State, its employees, other third-party individuals or entities holding contracts with OSDH.

E.3. Questions

- E.3.1.** All questions regarding this solicitation must be submitted in writing and are to be emailed to no later than 4/19/18 at 3:00pm CST. Questions are to be emailed to Richard.Williams@omes.ok.gov. Questions received after this date will not be answered. An Amendment will be posted after this deadline listing all questions received and their answers.

E.4. Negotiations

- E.4.1.** In accordance with Title 74 §85.5, the State of Oklahoma reserves the right to negotiate with one, all or none of the Suppliers responding to this solicitation to obtain the best value for the State.
- E.4.2.** Negotiations could entail discussions on products, services, pricing, contract terminology or any other issue that may mitigate the State's risks.
- E.4.3.** The State shall consider all issues negotiable and not artificially constrained by internal corporate policies. Negotiation may be with one (1) or more Suppliers, for any and all items in the Supplier's offer.
- E.4.4.** Firms that contend that they lack flexibility because of their corporate policy on a particular negotiation item shall face a significant disadvantage and may not be considered. If such negotiations are conducted, the following conditions shall apply:
 - E.4.4.1.** Negotiations may be conducted in person, in writing, or by telephone.
 - E.4.4.2.** Negotiations shall only be conducted with potentially acceptable offers. The State reserves the right to limit negotiations to those offers that received the highest rankings during the initial evaluation phase.

- E.4.4.3.** Terms, conditions, prices, methodology, or other features of the Supplier's offer may be subject to negotiations and subsequent revision. As part of the negotiations, the Supplier's may be required to submit supporting financial, pricing, and other data in order to allow a detailed evaluation of the feasibility, reasonableness, and acceptability of the offer.
- E.4.4.4.** The requirements of the Request for Proposal shall not be negotiable and shall remain unchanged unless the State determines that a change in such requirements is in the best interest of the State Of Oklahoma.

F. CHECKLIST

F.1. Listed below is a checklist of items that are to be completed and returned with the proposal. This is not an all-inclusive list and it is the vendor's responsibility to ensure that they submit all required/requested documentation:

- F.1.1.** Responding Bidder Information Form CP-076
- F.1.2.** Non-Collusion Certification Form CP-004
- F.1.3.** All Amendment signed (If Applicable)
- F.1.4.** Application for CMP funds for Region VI - Attachment A
- F.1.5.** Proof of Liability Insurance and Workers Compensation Insurance
- F.1.6.** Oklahoma State Department of Health Proposed Budget Form - Attachment H.1.
- F.1.7.** Business Associates Agreement - Attachment C
- F.1.8.** Sub-recipient supplier's Questionnaire Attachment - Attachment B
- F.1.9.** Vendor payee form if applicable - Attachment D
- F.1.10.** Registration (OSDH website) if applicable

G. OTHER

G.1. Attachment H.1. Budget Form

H. PRICE AND COST

H.1. Contract Expense Cap

- H.1.1.** The OSDH has a total of \$1,500,000.00 to make up to two (2) awards Payments will be made upon approval of valid invoice in accordance with the Invoice clause (Section B.28.) and the line item budget

H.2. Budget Overview

- H.2.1.** A line item budget and budget justification must be submitted with the RFP response. Failure to submit these documents will cause the Supplier's response to be deemed non-responsive and not evaluated for an award. Please use the provided budget forms. (See Attachment H.1.)
- H.2.2.** The line item budget and budget justification submitted with the RFP response are proposed budgets and adjustments/corrections or additional documentation supporting the budget may be required before or after award.
- H.2.3.** Keep the following in mind while preparing the project budget:
 - H.2.3.1.** Budgets must reflect allowable expenditures for the cost of providing the services detailed in this RFP. Allowable expenditures are defined in 2 CFR Part 200
 - H.2.3.2.** http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl
 - H.2.3.3.** Reimbursement is made in accordance with the approved line item budget and only after the Supplier has received and paid for the goods or services. The requested budget amount may not be the awarded amount.
 - H.2.3.4.** Reimbursement of some categories of expenses must be approved in advance by the OSDH as the pass-through entity. See 2 CFR § 200.407.
 - H.2.3.5.** Once the final budget amount is approved, the total contract amount cannot be increased without justification from the Supplier and approval by OSDH and OMES.

- H.2.3.6.** It is the Supplier's responsibility to monitor the individual line items from month to month in order to prevent overspending in a line item during the contract period.
- H.2.3.7.** Budget revisions that do not change the total contract amount must be submitted the OSDH and approved in advance and are limited to one per quarter. The final budget revision of the year is due 60 days before the end of the contract period.
- H.2.3.8.** The OSDH will review the Supplier's expenditures throughout the term of the contract and may require a reduction in the contract amount if expenditure patterns demonstrate a funding lapse. Any reductions made during the contract will be made in accordance with RFP Section B.8.

H.3. Proposed Budget

- H.3.1.** The budget provides a summary of the costs to be reimbursed for providing the services detailed in this RFP. The following additional information is being provided for preparation of the proposed budget:
 - H.3.1.1.** Line Item Budget Preparation – The submitted proposed budget must cover the period July 1, 2018 through [June 30, 2019]. Figures should be rounded to the next whole dollar amount.
 - H.3.1.2.** Complete a proposed contract budget form for each year of the agreement period – a total of 3 budget forms.
 - H.3.1.3.** Proposed budgets must be prepared on the attached OSDH Contract Budget forms (See Attachment H.1.).
 - H.3.1.4.** All costs to be reimbursed must allowable per 2 CFR Part 200 or other applicable grant or program guidance.

H.4. Budget Justification

- H.4.1.** The budget justification is a separate document written in a narrative format that details what is proposed for reimbursement for the contract period and how the figures in the proposed budget were determined.
- H.4.2.** The budget form requires the Supplier to provide sufficient detail in each category to justify how funds support programmatic and administrative activities to accomplish the requirements of the RFP.
- H.4.3.** .

H.5. Matching Funds

- H.5.1.** This RFP does not require matching funds.
- H.5.2.** Use this if matching funds are not required.
- H.5.3.** The content of sections A.6 – A.12 may not be customized by programs pursuant to specific grant or program requirements. Use section A.13 for any grant or program-specific guidelines, requirements, or lists of allowable/unallowable costs. Note that items that are routinely determined to be allowable should not be mentioned in A.13 – this is to define exceptions as may be provided for in a specific grant.

H.6. Personnel/Salaries

- H.6.1.** Actual salaries and wages paid to Supplier's own personnel working on a specific OSDH program. Identify individuals by job title and percentage FTE. One FTE is equal to 2,080 hours per year. See 2 CFR § 200.430.

H.7. Fringe Benefits

- H.7.1.** Actual fringe benefits paid to the Supplier's personnel working on a specific OSDH program. For budget purposes, a percentage rate for fringe benefits may be used. However, Supplier will be reimbursed for actual fringe benefits paid. For audit purposes, the Suppliers' financial records must clearly define each actual fringe benefit cost as a separate expense applicable only to the approved budgeted salaries. Fringe benefits (e.g., retirement program, FICA, insurance, worker's compensation, etc.) are usually applicable to direct salaries and wages. If fringe benefits are to be reimbursed, then a clear description must be included of how the computation of fringe benefits was determined. See 2 CFR § 200.431.

H.8. Travel/Training

- H.8.1.** See RFP Section B.41. and 2 CFR § 200.474. All out-of-state travel where reimbursement is requested must be pre-approved in writing by the OSDH. In addition, OSDH allowable travel costs must be directly related to the activities of the contract and therefore may require allocation of those costs to all programs benefitted based on an equitable allocation methodology.

H.9. Travel/Training expenditures may include:

- H.9.1.** Mileage to and from consultation meetings with referral agencies;
- H.9.2.** Mileage to and from public awareness/public education sessions;

- H.9.3.** Per diem for attending in-state training meetings or conferences; and/or,
- H.9.4.** Overnight lodging expenses for attending in –state training meetings or conferences (including direct payments to hotels/motels/conferences.)
- H.9.5.** Attendance at program approved designated training(s) required to fulfill the requirements of the program (written approval must be received from the OSDH before attendance).

H.10. Supplies:

- H.10.1.** Supplies are materials necessary to conduct the program as direct costs and may include, but are not limited to:
 - H.10.1.1.** Materials used to promote the programs in the community such as pamphlets and brochures;
 - H.10.1.2.** Educational materials such as video tapes, pamphlets, brochures, books, curricula;
 - H.10.1.3.** Office supplies such as paper, pens, pencils, file folders
 - H.10.1.4.** Printing and copying
 - H.10.1.5.** Postage

H.11. Contractual

- H.11.1.** Contractual expenditures include essential consultation or other program services that cannot be provided by the Supplier. Subcontracts and other contractual agreements must be clearly defined in the proposed budget. A Professional Service Evaluation must be submitted for each sub-Supplier at the end of their contract. (See Attachment E)
 - H.11.1.1.** Contractual expenditures may include:
 - H.11.1.1.1. Subcontracts with other agencies to provide specific program-related services;
 - H.11.1.1.2. Subcontracts with program consultants;
 - H.11.1.1.3. Subcontracts with trainers

H.12. Administrative Costs/IDC

- H.12.1.** Costs in this category are expenses which are not related to or billed to 100% of a particular funding source. See RFP Section B.26. Indirect costs may be billed using either an indirect cost rate or a cost allocation plan, but not both. Provide a copy of the federally approved IDC rate or the Cost Allocation Plan. A Cost Allocation Plan must show how each amount was determined to allocate costs to the services detailed in this RFP.

H.13. Other

- H.13.1.** Other direct costs which do not fall into the Personnel, Travel/Training, Supplies, or Contractual categories. Such costs must be 100% allocable to the OSDH program. Costs which are not 100% allocable would be reimbursed under Administrative Costs/IDC pursuant to a negotiated IDC rate or cost allocation plan.

Application for CMP Funds**CMS Region VI****Date of Request****Background Information**

Organization Name

Address Line 1

Address Line 2

City, State, ZIP code

Tax Identification Number

CMS Certification Number (CCN)

Internet E-mail Address

Work Telephone Number

Have other funding sources been ☐ YES
applied for and/or granted for this
proposal ☐ NO

If yes, please explain and identify
sources and amounts:

Certified Nursing Home Requesting Use of CMP Funds

Facility Name

Address Line 1

Address Line 2 (City, State, ZIP code)

CMS Certification Number

Date of Last Recertification Survey

Administrator's Name

Owner of Provider Agreement

Name of Management Company

Chain Affiliation

Chain Affiliation Address

NOTE: The entity is accountable and responsible for all Civil Money Penalty (CMP) funds entrusted to it. If a change in ownership occurs after CMP funds are given or during the course of the project completion, the project leader shall notify the Centers for Medicare & Medicaid Services (CMS) and the State within five (5) calendar days. The new ownership shall be disclosed as well as information regarding how the project shall be completed. A written letter regarding the change in ownership and its impact on the project supported by CMP funds shall be sent to CMS and the State.

Project Category – Place an “X” in the box in front of the project category for which you are requesting CMP funding.

- ☐ Direct Improvement to Quality of Care
- ☐ Resident or Family Council(s)
- ☐ Culture Change / Quality of Life
- ☐ Consumer Information
- ☐ Transition Preparation (Discharge Planning)
- ☐ Training
- ☐ Resident Transition due to Facility Closure or Downsizing
- ☐ Other – Please Specify

Project Title

Purpose and Summary

Summarize your proposal, *briefly* introducing your organization and explaining the purpose of the project. Include the amount of funding you are requesting, the population it will serve and the need it will help solve. Include an anticipated start date and the duration of the project.

Expected Outcomes (*Measureable Goals/Objectives*)

Project Abstract

Summarize the proposed project. The summary should describe what problem/issue this project will attempt to address and any problems that might be encountered in the implementation of the project. Articulate the contingency plan to address issues.

Program Description

Describe the project or program and provide information on how it will be implemented. Include information on what will be accomplished and the desired outcomes. Include a timeline which outlines benchmarks, deliverables and dates. Attach supplemental materials such as brochures, efficacy studies and peer review literature. Do not exceed 5 pages.

Results Measurement

For each expected outcome (goal/objective) include a description of the methods by which the project results will be assessed. Include specific measures. Multi-year projects shall include a provision for submission of interim progress reports and updates from the project leader to the State coordinator. Staff attending training should articulate how knowledge/skills learned will be shared among other long term care employees to improve resident outcomes.

Benefits to Nursing Home (NH) Residents

Include a detailed description of the manner in which the project will directly benefit and enhance the well-being of nursing home residents.

Non-Supplanting | Non-Duplicative Statement

Describe how the project will not supplant the existing responsibilities of the nursing home to meet Medicare/Medicaid requirements or other statutory and regulatory requirements. **CMP funds may not be used to pay entities to perform functions for which they are already paid by State or Federal sources.**

Consumer/Stakeholder Involvement

Describe how the nursing home community (including resident and/or family councils and direct care staff) will be involved in the development and implementation of the project. Describe how the governing body shall lend support to the project.

FUNDING

Provide a narrative explanation of the costs, including the specific amount of CMP funds to be used for the project, the time period for such use, and an estimate of any non-CMP funds that the State or other entity expects to contribute to the project.

NOTE: CMS cannot approve the use of CMP funds for refreshments and/or meals for participants at training/educational functions. Use of CMP funds for presenter meals and incidental expenses (MI&E) will be determined on a case by case basis in accordance with Government Services Agency rules.

Involved Organizations

List contact name, address, internet e-mail address and telephone number of all organizations that will receive funds through this project. List any sub-contractors and organizations that are expected to carry out and be responsible for components of the project. Copies of contracts and subcontracts shall be available upon request to CMS and the State.

Include the name and contact information for the individual with the State responsible for the project.

OKLAHOMA STATE DEPARTMENT OF HEALTH

SUB-RECIPIENT CONTRACTOR'S QUESTIONNAIRE

The financial and business responsibility of Oklahoma State Department of Health (OSDH) as a

SECTION A: PURPOSE & INSTRUCTIONS
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Pass Through Entity (PTE) must ensure proper discharge of the Public Trust which accompanies the authority to expend Federal Funds. As such, adequate Business Management and Financial Management systems of Sub-grantees and Financial Assistance Contractors must meet the criteria outlined in OSDH's grant agreement, OMB Circulars, Code of Federal Regulations and Program Law. The accounting system should be integrated with an adequate system of internal controls to safeguard funds and assets, check accuracy and reliability of accounting data, promote operational efficiency and encourage adherence to prescribed policies.

The OSDH is required to complete a risk assessment process for each sub-recipient award. Failure to complete this questionnaire will result in the inability of the OSDH to meet its requirements as a pass-through entity to file required FFATA reports, as well as inhibit the ability to OSDH to assess sub-grantee risk. Contractors who fail to provide a completed questionnaire will automatically be deemed high risk and subject to increased monitoring.

Page 2 must be completed for each new sub-recipient award.

The remainder of the questionnaire may be re-used as long as the information provided does not substantially change. Information provided regarding sub-grantee budgets, contracts, and revenue should cover the entirety of the organization's fiscal year.

Please answer every question, attaching material & providing explanations/comments where requested.

SUB-RECIPIENT CONTRACTOR'S QUESTIONNAIRE

SECTION A: GENERAL INFORMATION

NAME OF ORGANIZATION:

"DOING BUSINESS AS" NAME

ADDRESS:

CITY, STATE, ZIP+4, CONGRESSIONAL DISTRICT:

PRINCIPAL PLACE OF PERFORMANCE: *Primary site where work will be performed.*

ADDRESS:

CITY, STATE, ZIP+4:

EMPLOYER ID # _____ DUNN & BRAD# _____

DUNS 4 DIGIT EXTENSION # _____ PARENT DUNS # _____

SUBAWARD PROJECT DESCRIPTION: *Description should capture overall purpose of the sub-award.*

HIGHLY COMPENSATED OFFICERS: Does the public have access to information about the compensation of the five most highly compensated senior executives of your organization through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?

YES _____ NO _____ If YES, skip to section A, if NO please list the names and total compensation of the five most highly compensated officers of your organization:

1. Number of employees in the organization: Full Time _____ Part Time _____
2. Are employees who control funds bonded against loss by reason of fraud or dishonesty? YES ____ NO ____
3. Indicate whether your organization is:

a. Local City Government _____	Local County Government _____
b. State Government _____	c. Federal Government _____
d. College or University _____	e. Sovereign Entity _____
f. Governmental Trust Authority _____	g. Non-Profit 501(c) (3) _____
h. For Profit _____	i. Association/Coalition _____
j. Other (Identify) _____	

Provide eligibility documentation i.e., Tax Exempt status as a 501(c) (3) Organization and etc.

4. Is your organization subject to board oversight? YES ____ NO ____
If yes, please attach a list of Board Members.
If no, skip to question #5.

- 4a) Does your organization's board have approved Bylaws? YES ____ NO ____
If yes, please attach a copy of the Board's approved Bylaws.
If no, skip to question #5d.

- 4b) Does your organization conduct business in accordance with the boards approved Bylaws? YES ____ NO ____

- 4c) Have the members of your organization's board been appointed in accordance with the approved Bylaws? YES ____ NO ____

- 4d) What was the date of your organization's most current board meeting in which there was a quorum? ____/____/_____
Please attach a copy of the approved minutes from this board meeting.

- 4e) Does your organization's board include individuals who are related family members of:
(Check all that apply)

Position	YES	NO
The Chief Financial Officer		
The Executive Director		
The Program Director		

- 4f) Do employees of your organization serve as board members? YES ____ NO ____

5. How many years has your organization been in business? _____

6. Does your organization maintain any accreditation/licensure related to the services it is providing for the OSDH? YES ____ NO ____

If yes, please list.

If no, skip to question 7.

6a) Is your organization in good standing with the accreditation/licensure it maintains?

YES ____ NO ____

7. Has your organization taken on new activities or services in the past 12 months?

If yes, please explain.

YES ____ NO ____

8. Has your organization experienced more than 33% increase or decrease in overall revenue/funding in the past 12 months? YES ____ NO ____

9. Has your organization experienced turnover or changes in assignments in any of the following key personnel in the past 12 months? *(Check all that apply)*

Position	YES	NO
The Chief Financial Officer		
Executive Director		
The Program Director		

10. Have there been any lawsuits filed or any undecided litigation against your organization in the past 12 months. YES ____ NO ____

11. Did your organization receive 80% or more of its annual gross revenues in Federal awards during your preceding fiscal year? YES ____ NO ____ If YES, continue to question 12, if NO skip to Section B.

12. Did your organization receive \$25,000.00 or more in annual gross revenues from Federal awards during your preceding fiscal year? YES ____ NO ____

SECTION B: BUSINESS MANAGEMENT SYSTEMS

13. Does your organization have established written Policies and Procedures (P&P) to cover the following business management areas?

Check each area.

Attach a copy only if requested.

AREA	YES	NO	NOT SURE
Human Resource/Personnel			
Procurement			
Accounting			
Property			
Travel			
Equal Employment Opportunity (EEOC)			
Health Insurance Portability Act of 1996 (HIPPA)			
Tobacco Use			

14. Does your organization have a record retention policy for the following documents? How long is the required retention period for the organization to maintain the following types of documents? *Match each box.*

Type of Record	YES	NO	# of Years
Programmatic Documents			
Financial Documents			
Other types of Documents			

15. Are time and activity distribution records (Personal Activity Reports) maintained by funding source and project for each employee to account for total hours (100%) devoted to your organization? YES ____ NO ____

All types of organizations, please provide a sample copy of the Time and Effort document used by your organization.

- 15a) If your organization is not a college or university, does your organization maintain Time and Effort or Personal Activity Reports that:

	YES	NO
include the employee's signature		
include a supervisor's signature		
Include a reporting of time which delineates between programs worked on by the employee		
include a reporting of total time worked by the employee		

- 15b) If your organization is a college or university, does your organization maintain Personal Activity Reports in accordance with 2 CFR Part 200 Cost Principles for Educational Institutions?
YES ____ NO ____
16. Are non-federal cash and/or third party in-kind cost share or matching funds supported by appropriate documentation? YES ____ NO ____
17. Does the organization have a written budgetary process and controls to preclude incurring obligations in excess of the grant amount of individual cost categories? YES ____ NO ____
18. Are purchase approval methods communicated and documented?
YES ____ NO ____
19. Are appropriate duties separated to ensure one individual is not controlling all aspects of a financial transaction/process? YES ____ NO ____ NOT SURE ____

SECTION C: ACCOUNTING SYSTEM & FUNDS MANAGEMENT
--

20. What type of accounting software does your organization utilize?

21. Does the accounting system account for cost by individual projects?
YES ____ NO ____
22. Does the accounting system accurately and completely track receipt and disbursement of funds by each grant and/or funding source?
YES ____ NO ____ NOT SURE ____
23. Does the accounting system provide for recording of actual expenditures for each contract/grant by component project and budget cost categories reflected in the approved budget? YES ____ NO ____
24. Which of the following best describes your organization's accounting system?
Manual ____ Automated ____ Combination ____ Other _____
25. How frequently do you post to the general ledger?
Daily ____ Weekly ____ Monthly ____ Other _____
26. Are common or indirect costs accumulated into cost pools for allocation to projects contracts and grants?
YES ____ NO ____ NOT SURE ____

27. Are the following books of account maintained?

TYPE	YES	NO
General Ledger		
Cash Receipts Journal		
Payroll Journal		
Purchase Journal		
General Journal		
Other: _____ Describe: _____		

28. Is the organization familiar with criteria and procedures for determination of allowable costs in connection with Federal grants and contracts?

YES _____ NO _____ NOT SURE _____

29. Does the organization have a working knowledge of the 2CFR Part 200 Supercircular?

YES _____ NO _____ NOT SURE _____

30. Does your organization expect to expend more than \$750,000 in federal funds during its current fiscal year, including federally funded contracts or grants awarded by other state agencies or other entities?

YES _____ NO _____

30a) What is the highest level of audit that your organization has undergone within the past 2 years?

A-133 _____

Yellowbook Audit in accordance with GAAS _____

Other audit, please specify type: _____

No audit done in past 2 years _____

Provide copy of last audit.

30b) What is your organization's fiscal year? (mm/yy to mm/yy) _____ to _____

31. Has your organization ever had a cost reimbursement grant?

YES _____ NO _____

32. Has your organization received funding from OSDH in the last two years?

YES _____ NO _____

33. Has your organization had a contract/grant with OSDH to provide these same services before?

YES _____ NO _____

34. Is your organization receiving funding from other sources to provide same or similar services to the services being provided in this contract/grant?

YES _____ NO _____

35. Please attach a schedule showing the total Federal dollars awarded to your organization by Program/Project identifying Federal Agencies and Pass Through Entitys for the two most recently completed fiscal years.

36. Please list any contracts/grants that your organization has with other state agencies in Oklahoma.

No other contracts/grants with the state agencies in Oklahoma. _____

Agency	Program	Amount
	Total	

37. What is the total amount of your organization's operating budget?

Please list all types of revenues Sources and their total amounts.

Source of Revenue	Amount
Total	

38. What is the capitalization level established by your organization for financial statement purposes to define an item as an asset/piece of equipment? \$ _____

COMMENTS/EXPLANATIONS

The total number of attachments is: _____

Attach numbered sheets as necessary.

PREPARED BY (SIGNATURE):

TITLE AND TYPED NAME:

DATE: _____

TELEPHONE/FAX/EMAIL:

I, _____, the undersigned do, under penalty of perjury,
declare that the information contained in this document and any attachments is true and
correct to the best of my knowledge and belief.

Signature of CEO

Date

I, _____, the undersigned do, under penalty of perjury,
declare that the information contained in this document and any attachments is true and
correct to the best of my knowledge and belief.

Signature of CFO

Date

**OKLAHOMA STATE DEPARTMENT OF HEALTH
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (BAA), effective on the last signature date below, is entered into by and between the Oklahoma State Department of Health (Covered Entity) and _____ (Business Associate).

BACKGROUND AND PURPOSE: The Parties have entered into, and may in the future enter into, one or more written agreements that require Business Associate to be provided with, to have access to, and/or to create Protected Health Information (PHI), (the “underlying Contract(s)”), that is subject to the federal regulations issued pursuant to the Health Insurance Portability and Accountability Act (HIPAA) and codified at 45 CFR, parts 160 and 164 (HIPAA Regulations). This BAA shall supplement and/or amend each of the Underlying Contract(s) only with respect to the Business Associate’s Use, Disclosure, and creation of PHI under the Underlying Contract(s) to allow Covered Entity to comply with Sections 164.502(c) and 164.314(a)(2)(i) of the HIPAA Regulations. Business Associate acknowledges that it is to comply with the HIPAA Security and Privacy regulations pursuant to Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), Title XIII, of the American Recovery and Reinvestment Act of 2009, including Sections 164.308, 164.310, 164.312 and 164.316 of title 45 of the Code of Federal Regulations. Except as so supplemented and/or amended, the terms of the Underlying Contract(s) shall continue unchanged and shall apply with full force and effect to govern the matters addressed in the BAA and in each of the Underlying Contract(s).

DEFINITIONS: Unless otherwise defined in this BAA, all capitalized terms used in this BAA have the meanings ascribed in the HIPAA Regulations, provided, however, that “PHI” and “ePHI” shall mean Protected Health Information and Electronic Protected Health Information, respectively, as defined in 45 CFR § 160.103, limited to the information Business Associate received from or created or received on behalf of the Oklahoma State Department of Health (OSDH) as OSDH’s Business Associate. “Administrative Safeguards” shall have the same meaning as the term “administrative safeguards in 45 CFR § 164.304, with the exception that it shall apply to the management of the conduct of Business Associate’s workforce, not OSDH’s workforce, in relation to the protection of that information.

Business Associate. “Business Associate” shall generally have the same meaning as the term “Business Associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the entity whose name appears below.

Covered Entity. “Covered Entity” shall generally have the same meaning as the term “Covered Entity” at 45 CFR 160.103.

HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164, all as may be amended.

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By law, Secretary, Security Incident, Subcontractor, Unsecured PHI, and Use.

Obligations of Business Associate: Business Associate may use Electronic PHI and PHI (collectively, “PHI”) solely to perform its duties and responsibilities under this Agreement and only as provided in this Agreement. Business Associate acknowledges and agrees that PHI is confidential and shall not be used or disclosed, in whole or in part, except as provided in this Agreement or as required by law. Specifically, Business Associate agrees it will:

- (a) use or further disclose PHI only as permitted in this Agreement or as Required by Law, including, but not limited to the Privacy and Security Rule;
- (b) use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;
- (c) implement and document appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of PHI that it creates, receives, maintains, or transmits for or on behalf of Covered Entity in accordance with 45 CFR 164;
- (d) implement and document administrative safeguards to prevent, detect, contain, and correct security violations in accordance with 45 CFR 164;
- (e) make its policies and procedures required by the Security Rule available to Covered Entity solely for purposes of verifying BA’s compliance and the Secretary of the Department of Health and Human Services (HHS);
- (f) not receive remuneration from a third party in exchange for disclosing PHI received from or on behalf of Covered Entity;
- (g) in accordance with 45 CFR 164.502(e)(1) and 164.308(b), if applicable, ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information; this shall be in the form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor;
- (h) report to Covered Entity in writing any use or disclosure of PHI that is not permitted under this Agreement as soon as reasonably practicable but in no event later than five (5) calendar days from becoming aware of it and mitigate, to the extent practicable and in cooperation with Covered Entity, any harmful effects known to it of a use or disclosure made in violation of this Agreement;
- (i) promptly report to Covered Entity in writing and without unreasonable delay and in no case later than five (5) calendar days any Security Incident, as defined in the Security Rule, with respect to Electronic PHI;
- (j) with the exception of law enforcement delays that satisfy the requirements of 45 CFR 164.412, notify Covered Entity promptly, in writing and without unreasonable delay and in no case later than five (5) calendar days, upon the discovery of a breach of Unsecured PHI. Such notice shall include, to the extent possible, the name of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach. Business Associate shall also, to the extent possible, furnish Covered Entity with any other available information that Covered Entity is required to include in its notification to Individuals under 45 CFR § 164.404(c) at

the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available. As used in this Section, "breach" shall have the meaning given such term at 45 CFR 164.402;

- (k) to the extent allowed by law, indemnify and hold Covered Entity harmless from all claims, liabilities, costs, and damages arising out of or in any manner related to the disclosure by Business Associate of any PHI or to the breach by Business Associate of any obligation related to PHI;
- (l) provide access to PHI in a Designated Record Set to Covered Entity, or if directed by Covered Entity to an Individual in order to meet the requirements of 45 CFR 164.524. In the event that any Individual request access to PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within five (5) working days of receiving a request. This shall be in the form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor. Any denials of access to the PHI requested shall be the responsibility of Covered Entity;
- (m) make PHI available to Covered Entity for amendment and incorporate any amendments to PHI in accordance with 45 CFR 164.526;
- (n) document disclosure of PHI and information related to such disclosure as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI, in accordance with 45 CFR 164.528, and within five (5) working days of receiving a request from Covered Entity, make such disclosure documentation and information available to Covered Entity. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall forward within five (5) working days of receiving a request such request to Covered Entity;
- (o) make its internal practices, books, and records related to the use and disclosure of PHI received from or created or received by Business Associate on behalf of Covered Entity available to the Secretary of the Department of HHS, authorized governmental officials, and Covered Entity for the purpose of determining Business Associate's compliance with the Privacy Rule. Business Associate shall give Covered Entity advance written notice of requests from DHHS or government officials and provide Covered Entity with a copy of all documents made available; and
- (p) ensure that all of its subcontractors, vendors, and agents to whom it provides PHI or who create, receive, use, disclose, maintain, or have access to Covered Entity's PHI shall agree in writing to requirements, restrictions, and conditions at least as stringent as those that apply to Business Associate under this Agreement, including but not limited to implementing reasonable and appropriate safeguards to protect PHI, and shall ensure that its subcontractors, vendors, and agents agree to indemnify and hold harmless Covered Entity for their failure to comply with each of the provisions of this Agreement.

Permitted Uses and Disclosures of PHI by Business Associate: Except as otherwise provided in this Agreement, Business Associate may use or disclose PHI on behalf of or to provide services to Covered Entity for the purposes specified in this Agreement, if such use or disclosure of PHI would not violate the Privacy Rule if done by Covered Entity. Unless otherwise limited herein, Business Associate may:

- (a) use PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate;

- (b) disclose PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that (i) the disclosure is Required by Law; or (ii) Business Associate obtains reasonable assurances from any person to whom the PHI is disclosed that such PHI will be kept confidential and will be used or further disclosed only as Required by Law or for the purpose(s) for which it was disclosed to the person, and the person commits to notifying Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached;
- (c) disclose PHI to report violations of law to appropriate federal and state authorities; or
- (d) aggregate the PHI with other data in its possession for purposes of Covered Entity's Health Care Operations;
- (e) make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures;
- (f) de-identify any and all PHI obtained by Business Associate under this BAA, and use such de-identified data, all in accordance with the de-identification requirements of the Privacy Rule [45 CFR §(d)(1)].

Obligations of Covered Entity:

- (a) Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (b) Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.
- (c) Covered Entity shall not request Business Associate use or disclose PHI in any manner that would violate the Privacy Rule if done by Covered Entity.
- (d) OSDH agrees to timely notify Business Associate, in writing, of any arrangements between OSDH and the Individual that is the subject of PHI that may impact in any manner the use and/or disclosure of the PHI by Business Associate under this BAA.

Term and Termination:

- (a) Term. The Term of this Agreement shall be effective as of the date of the underlying agreement, and shall terminate on the date the underlying agreement terminates or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- (b) Termination for Cause. Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement (and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity if a cure period is specified).
- (c) Obligations of Business Associate Upon Termination.

Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

1. Retain only that PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
2. Return to Covered Entity (or, if agreed to by Covered Entity, destroy) the remaining PHI that the Business Associate still maintains in any form;
3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
4. Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at above under "Permitted Uses and Disclosures By Business Associate" that applied prior to termination; and
5. Return to Covered Entity (or, if agreed to by Covered Entity, destroy) the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

(d) All other obligations of Business Associate under this Agreement shall survive termination.

Should OSDH become aware of a pattern of activity or practice that constitutes a material breach of a material term of this BAA by Business Associate, OSDH shall provide Business Associate with written notice of such a breach in sufficient detail to enable **Business Associate** to understand the specific nature of the breach. OSDH shall be entitled to terminate the Underlying Contract associated with such breach if, after OSDH provides the notice to Business Associate, Business Associate fails to cure the breach within a reasonable time period not less than thirty (30) days specified by OSDH in such notice; provided, however, that such time period specified by OSDH shall be based on the nature of the breach involved [45 CFR §§ 164.504(e)(1)(ii)(A),(B) & 164.314 (a)(2)(i)(D)].

MISCELLANEOUS:

Interpretation: The terms of this BAA shall prevail in the case of any conflict with the terms of any Underlying Contract to the extent necessary to allow OSDH to comply with the HIPAA Regulations. The bracketed citations to the HIPAA Regulations in several paragraphs of this BAA are for reference only and shall not be relevant in interpreting any provision of this BAA.

No Third Party Beneficiaries: Nothing in this BAA shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

Business Associate recognizes that any material breach of this Agreement or breach of confidentiality or misuse of PHI may result in the termination of this Agreement and/or legal action. Said termination may be immediate and need not comply with any termination provision in the parties' underlying agreement, if any.

The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or BA to comply with the requirements of the Privacy Rule and related laws and regulations.

- (a) ODSH's Notice of Privacy Practices is available on its website: www.ok.gov/health.
- (b) Any ambiguity in this Agreement shall be resolved in a manner that causes this Agreement to comply with HIPAA.
- (c) This Agreement embodies and constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior Business Associate agreements, oral or written agreements, commitments, and understandings pertaining to the subject matter hereof.
- (d) If Business Associate maintains a designated record set in an electronic format on behalf of Covered Entity, then Business Associate agrees that within 30 days of expiration or termination of the parties' agreement, Business Associate shall provide to Covered Entity a complete report of all disclosures of and access to the designated record set covering the three years immediately preceding the termination or expiration. The report shall include patient name, date and time of disclosures/access, description of what was disclosed/accessed, purpose of disclosure/access, name of individual who received or accessed the information, and, if available, what action was taken within the designated record set.

Amendment: To the extent that any relevant provision of the HIPAA Regulations is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this BAA to give effect to these revised obligations. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or to comply with the requirements of the Privacy Rule and related laws and regulations.

A signed copy of this agreement shall be accorded the same force and effect as the original.

IN WITNESS WHEREOF, each of the undersigned has caused this BAA to be duly executed in its name and on its behalf.

OKLAHOMA STATE DEPARTMENT OF HEALTH

CONTRACTOR

By: _____

By: _____

Print Name: Robert Morey, MHR

Print Name: _____

Print Title: OSDH Privacy Officer

Print Title: _____

Date: _____

Date: _____



Vendor/Payee Form

Agency: OMES Vendor Management requires the following information for all new non-registered vendors (payees) before payments may be processed. Information is used to establish the payee in the State's PeopleSoft vendor file for payment and procurement activities.

DO NOT use this form for:

- **Garnishment Payees:** Use [OMES Form GarnVendor](#)
- **State Employees:** Use [OMES FORM Employee Vendor Request](#)
- **Vendors pending contract award** to a solicitation released by the division of Central Purchasing or another Oklahoma state agency MUST first register online with the state unless exempt per statute. For additional information, please refer to [Central Purchasing Vendor Registration](#).

AGENCY SECTION (To be completed by state agency representative):

State agency should email completed and signed form to vendor.form@omes.ok.gov or fax to 405-522-3663.

VENDOR/PAYEE SECTION (To be completed by vendor/payee)

Please print legibly or type this information. Form must be completed and signed by authorized individual. Email or fax to requesting state agency.

Agency Name				Contact Name			
Phone #		Fax #		Email			
Agency Request To – Please select all applicable request types							
<input type="checkbox"/> Add New Vendor	<input type="checkbox"/> Update Existing Vendor	PeopleSoft 10-digit Vendor ID _____					
<input type="checkbox"/> Add New Address	<input type="checkbox"/> Change Address/Location	PeopleSoft Address # _____		PeopleSoft Location # _____			
<input type="checkbox"/> Change Vendor Tax ID	<input type="checkbox"/> Change Vendor Name	<input type="checkbox"/> Add Alternate Payee Name		PeopleSoft Location # _____			
<input type="checkbox"/> Other	Explain _____						
Vendor 1099 Reportable Status	Attention Paying Agency: Please check the Add box on the left if payments to this vendor/payee are represented by Account Codes listed on page 3 of this form. If the vendor is incorrectly showing as 1099 Reportable, check the Remove box. The PeopleSoft system requires specific details regarding the type of transaction. Please check the box that applies to this vendor:						
<input type="checkbox"/> Add:	<input type="checkbox"/> 1 - Rents		<input type="checkbox"/> 2 - Royalties		<input type="checkbox"/> 3 – Other Income		
<input type="checkbox"/> Remove:	<input type="checkbox"/> 6 - Medical & Health Care		<input type="checkbox"/> 7 - Non-Employee Compensation		<input type="checkbox"/> 10 - Crop Insurance Proceeds		
	<input type="checkbox"/> 14 - Gross Proceeds to an Attorney						

VENDOR/PAYEE SECTION (To be completed by vendor/payee)

Please print legibly or type this information. Form must be completed and signed by authorized individual. Email or fax to requesting state agency.

Payee Information: Please provide the requested information for the payee receiving funds from the Oklahoma state agency. All information should match U.S. Internal Revenue Service filing records for the business, individual or government entity receiving payment.								
Name					Contact Name			
Payee Legal Name for Business, Individual or Government Entity as filed with IRS					Contact Title			
DBA Name					Phone #			
Doing Business As "DBA", or Disregarded Entity Name if different than Legal Name					Fax #			
Tax Identification Number (TIN) and Type:								<input type="checkbox"/> Federal Employer ID (FEIN) <input type="checkbox"/> Social Security Number (SSN)
Business Address -- Please provide primary business address as filed with the U.S. Internal Revenue Service								
Address					City			
State		Zip+4		Remittance Email				
Optional Addresses – Please select address type as applicable								
Type:	<input type="checkbox"/> Remitting	<input type="checkbox"/> Ordering	<input type="checkbox"/> Pricing	<input type="checkbox"/> Returning	<input type="checkbox"/> Mailing	<input type="checkbox"/> Other:		
Address					City			
State		Zip+4		Remittance Email				
Financial Registration: Please provide contact information for the Authorized Individual who can provide financial information used for ACH Electronic Funds Transfer payment processes. An email will be sent providing instructions for accessing the State of Oklahoma online registration system.								
Name				Title			Email	

The information below is requested under U.S. Tax Laws. Failure to provide this information may prevent you from being able to do business with the state, or may result in the state having to deduct backup withholding amounts from future payments.

U.S. Taxpayer Identification Number (TIN)

Federal Employer Identification Number (FEIN) _____ If none, but applied for, date applied _____

U.S. Social Security Number (SSN) _____ If none, but applied for, date applied _____

Entity Filing Classification:

☐ Domestic (U.S.) Sole Proprietor or Individual ☐ Domestic (U.S.) Partnership ☐ Domestic (U.S.) Corporation Type: _____

☐ Limited Liability Company Type: _____

LLC Disregarded Entity: ☐ YES ☐ NO **Must be verified by LLC's tax division. If applicable, parent name/tax id is required.**

☐ Domestic (U.S.) Other Explain: _____

☐ Foreign (Non-U.S.) Sole Proprietor or Individual* ☐ Foreign (Non-U.S.) Partnership* ☐ Foreign (Non-U.S.) Type: _____

☐ Foreign (Non-U.S.) Other* Explain: _____

FOREIGN VENDOR INSTRUCTIONS: * ADDITIONAL DOCUMENTATION IS REQUIRED.

Please submit the proper U.S. Internal Revenue Service (IRS) Form W-8, Certificate of Foreign Status. Select form below matching the payee's entity or individual description. Please refer to IRS for additional instructions (<http://www.irs.gov/pub/irs-pdf/iw8.pdf>).

- **Form W-8BEN:** Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals). <http://www.irs.gov/pub/irs-pdf/iw8ben.pdf>
- **Form W-BEN-E:** Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities). <http://www.irs.gov/pub/irs-pdf/iw8bene.pdf>
- **Form W-8ECI:** Certificate of Foreign Person's Claim That Income is Effectively Connected With the Conduct of a Trade or Business in the United States. <http://www.irs.gov/pub/irs-pdf/iw8eci.pdf>
- **Form W-8EXP:** Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting. <http://www.irs.gov/pub/irs-pdf/iw8exp.pdf>
- **Form W-8IMY:** Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting. <http://www.irs.gov/pub/irs-pdf/iw8imy.pdf>

This may exempt you from backup withholding. Form W-8 does not exempt you from the 30% (or lower percentage by treaty) non-resident withholding taxes. To claim this exemption, you must file IRS Form 8233 with us. For more information, refer to IRS Publication 519.

SIGNATURE - AND SUBSTITUTE IRS FORM W-9 CERTIFICATION

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below), and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions: You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement account (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN.

Signature of Vendor Representative or Individual Payee

Date

Title of individual signing form for company

Vendor/Payee (Must be the same as Payee Name from page 1)

Account Codes for 1099 Reporting - By Category (TO BE COMPLETED BY AGENCY REPRESENTATIVE)

<input type="checkbox"/> 1 - RENTS 532110 Rent of Office Space 532120 Rent of Land 532130 Rent of Other Building Space 532140 Rent of Equipment and Machinery 532150 Rent of Telecommunications Equip 532160 Rent of Electronic Data Processing Equipment 532170 Rent of Electronic Data Processing Software 532190 Other Rents	<input type="checkbox"/> 1- RENTS (continued) 532141 Rent of Motor Vehicles 532142 Lease of Motor Vehicles <input type="checkbox"/> 2 – ROYALTIES 553170 Royalties	<input type="checkbox"/> 3 – OTHER INCOME 552120 Incentive Awards – Monetary & Material 552160 Incentive Payments – Oklahoma Horse Breeders & Owners 552170 Incentive Payments – Oklahoma Film Enhancement Rebate 553165 Current/Former Employee Reportable Court Ordered or Legal Settlements 553220 Other IRS Reportable Income		
<input type="checkbox"/> 6 - MEDICAL & HEALTH CARE PAYMENTS <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> 515530 Veterinary Services 515700 Offices of Physicians (except Mental Health Specialists) 515710 Offices of Physicians, Mental Health Specialists 515720 Offices of Dentists 515730 Offices of Chiropractors 515740 Offices of Optometrists 515750 Offices of Mental Health Practitioners (except Physicians) 515760 Offices of Physical, Occupational & Speech Therapists, & Audiologists 515770 Offices of Podiatrists 515780 Offices of all other Miscellaneous Health Practitioners 515790 Family Planning Centers 515800 Outpatient Mental Health & Substance Abuse Centers 515810 Other Outpatient Care Centers 515820 Medical and Diagnostic Laboratories </td> <td style="width: 50%; vertical-align: top;"> 515830 Home Health Care Services 515840 Ambulance Services 515850 All other Ambulatory Health Care Services 515860 General Medical & Surgical Hospitals 515870 Psychiatric & Substance Abuse Hospitals 515880 Specialty Hospitals (except Psychiatric & Substance Abuse) 515890 Nursing Care Facilities 515900 Residential Services for People with Developmental Disabilities 515910 Residential Mental Health & Substance Abuse Facilities 515920 Community Care Facilities for the Elderly 515930 Other Residential Care Facilities 537210 Laboratory Services & Supplies 551230 Medical Services to Indigents (from agencies other than DHS) 551240 Hospital Services to Indigents (from agencies other than DHS) 551250 Other Health Services to Indigents (from agencies other than DHS) </td> </tr> </table>			515530 Veterinary Services 515700 Offices of Physicians (except Mental Health Specialists) 515710 Offices of Physicians, Mental Health Specialists 515720 Offices of Dentists 515730 Offices of Chiropractors 515740 Offices of Optometrists 515750 Offices of Mental Health Practitioners (except Physicians) 515760 Offices of Physical, Occupational & Speech Therapists, & Audiologists 515770 Offices of Podiatrists 515780 Offices of all other Miscellaneous Health Practitioners 515790 Family Planning Centers 515800 Outpatient Mental Health & Substance Abuse Centers 515810 Other Outpatient Care Centers 515820 Medical and Diagnostic Laboratories	515830 Home Health Care Services 515840 Ambulance Services 515850 All other Ambulatory Health Care Services 515860 General Medical & Surgical Hospitals 515870 Psychiatric & Substance Abuse Hospitals 515880 Specialty Hospitals (except Psychiatric & Substance Abuse) 515890 Nursing Care Facilities 515900 Residential Services for People with Developmental Disabilities 515910 Residential Mental Health & Substance Abuse Facilities 515920 Community Care Facilities for the Elderly 515930 Other Residential Care Facilities 537210 Laboratory Services & Supplies 551230 Medical Services to Indigents (from agencies other than DHS) 551240 Hospital Services to Indigents (from agencies other than DHS) 551250 Other Health Services to Indigents (from agencies other than DHS)
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<input type="checkbox"/> 14 - GROSS PROCEEDS TO AN ATTORNEY 553180 Settlements – Paid To/Thru Attorney				



State of Oklahoma
Office of Management and Enterprise Services
Central Purchasing Division

Professional Service Evaluation

In accordance with 74 O.S. § 85.41(B), a state agency that acquires professional services shall evaluate the performance of the professional services provided pursuant to the professional services contract and retain the evaluation in the agency acquisition file.

NOTE: If a contract contains multiple periods or years of performance, an evaluation is required for **each** performance period.

Agency Name _____ Agency # _____

Area of agency utilizing service _____

Supplier Name _____ Supplier FEI or SSN # _____

Type of Contract (check one): ☐ Fixed Rate ☐ Sole Source ☐ Agency Bid ☐ OMES Bid ☐ Interagency ☐ GSA

This evaluation covers the Contract term from: _____ Month / _____ Day / _____ Year to _____ Month / _____ Day / _____ Year

Contract amount \$ _____ Contract # _____

Type or nature of service received:

Describe "quality" of service or work product received:

Was service satisfactory?

- ☐ YES - please: ☐ Retain this evaluation in the acquisition/contract file.
- ☐ NO - please:
- ☐ **Prepare and attach a detailed explanation.**
 - ☐ **Submit** a copy of this completed performance evaluation form and the detailed explanation, by fax or mail, within 60 calendar days of contract completion, to:

State Purchasing Director
 Central Purchasing
 Office of Management and Enterprise Services
 P.O. Box 528803
 Oklahoma City, OK 73152-8803
 Fax: (405) 522-4865
 - ☐ **Complete and Submit** a Vendor Performance Quality Report to the Office of Management and Enterprise Services to report complaints against vendors.

 Signature

 Date


 Printed Name


 Title


 () - , ext.
 Phone

MEMORANDUM OF LEGAL OPINION

TO: Sarah Waters
Administrative Programs Officer
Protective Health Services, QIES

THROUGH: Don D. Maisch 
General Counsel

Patricia K. Cantrell 
Deputy General Counsel

FROM: Marcia Johns 
Paralegal

RE: NLDB No. 13-015
Incentive/Promotional Items in Workshops/Trainings for
Nursing Home and Home Health Agency Providers

DATE: November 21, 2013


The question asked was if anything had changed regarding incentives and promotional items since the Memorandum of Legal Opinion issued by our office dated June 1, 2009.


In response, we would refer you to a Memorandum of Legal Opinion issued by our office on that same subject dated June 29, 2012, a copy of which is attached. Additional research has been conducted, and all information referred to therein continues to be applicable and unchanged.


COPY

MEMORANDUM OF LEGAL OPINION

TO: Ginger James, RN
Occupational Health Nurse Manager
Human Resources

THROUGH: Don D. Maisch 
General Counsel

Patricia K. Cantrell 
Deputy General Counsel

FROM: Marcia Johns 
Paralegal

RE: NLDB No. 12-029
Employee Wellness Program/T-Shirt Incentive

DATE: June 29, 2012

Questions

1. Does any state law or merit rule prohibit the OSDH from purchasing t-shirts or other incentive items or gifts with the intention of giving them to OSDH employees?
2. If allowed, does any state law or merit rule restrict the amount of money that can be spent per employee for such incentives or gifts from the agency to its employees?

Discussion

Question No. 1:

This question has been previously addressed by the Office of General Counsel ("OGC") in memoranda for other program areas.

In April of 2008, an OGC opinion was written to answer the question "Can program areas of the OSDH use incentives and/or promotional items given to individuals to include those individuals to participate and/or complete a program or part of a program." In this situation, a particular program area wanted to use VISA gift cards as incentives to increase participation in specific programs and services. While it is not clear whether the participants in the program, i.e. the intended recipients of the VISA gift cards, were employees, the short answer to this question was:

“The use of incentives and promotional items that are used by programs in exchange for participation in program activities are not considered a ‘gift’ and therefore do not violate the constitutional proscription of ‘gifting’ state assets as set out in Article 10 Section 15 of the Oklahoma Constitution.”

That same 2008 opinion went on to state:

“A program area may use incentives and/or promotional items to accomplish the goals of the program area. The program area should be able to articulate how the use of the specific incentive and/or promotional item will benefit the program area and without the specific incentive and/or promotional item what will be the detriment. In other words, the recipient must give some type of ‘consideration’ in exchange for the incentive. Consideration takes away from the transaction its donative character.”

In conjunction with the April, 2008 opinion, a policy was drafted by OGC in November of 2008 addressing the issues of “incentive payment(s) and promotional items”, a copy of which is attached. However, it is unclear whether this policy was ever approved and/or implemented by OSDH.

In January of 2011, the Emergency Preparedness and Response Service (“EPRS”) requested an OGC opinion, in part, on whether it could purchase, with state funds, promotional and/or incentive items to induce individuals to participate and/or complete a program (i.e. lanyards, pens, etc. to assist in building recruitment). In response, they were referred to the 2008 opinion described above.

Question No. 2:

In the Oklahoma Statutes, Title 74 “State Government”, Chapter 62, App., Title 257 “Ethics Commission”, Chapter 20, Standard 257:20-1-3 “Accountability” states:

“(a) All state officers and **all state employees:**

(1) shall support, obey, and defend the Constitution and laws of the State of Oklahoma; and

(2) **shall not knowingly receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to his or her office, other than the compensation allowed by law.”** (emphasis added)

Standard 257:20-1-9 “Restraints on Solicitation or Acceptance of Anything of Value” of that same title, in subparagraph (c)(1) states:

“(c) Calendar year limits on things of value.

(1) State offices and state employees. No state officer, state employee or an immediate family member of such state officer or state employee shall, directly or indirectly, ask, demand, exact, solicit, seek, **accept, assign, receive or agree to receive things of value in a calendar year which, in the aggregate, are valued at more than one hundred dollars (\$100)**” (emphasis added)

followed in subparagraph (d) with:

“... Subsection (c) shall not apply to public members when things of value are received but are not given as a result of the public member’s status as a public member”. (emphasis added)

Conclusion

Question No. 1: Does any state law or merit rule prohibit the OSDH from purchasing t-shirts or other incentive items or gifts with the intention of giving them to OSDH employees?

Answer: No.

Question No. 2: If allowed, does any state law or merit rule restrict the amount of money that can be spent per employee for such incentives or gifts from the agency to its employees?

Answer: No.

A program area may use incentives and/or promotional items to accomplish their goals, to be paid for with state funds, as long as the recipients perform some act or type of “consideration” in exchange for the incentive and/or promotional item outside of their normal job description. Obviously, proper discretion should be used as to the monetary value of such incentives and/or promotional items.



Oklahoma State
Department of Health
Creating a State of Health

Office of General Counsel
Phone: 271-6017 Facsimile: 271-1288

MEMORANDUM OF LEGAL OPINION

TO: Lisa Martin
Chief of Procurement

THROUGH: Nick Slaymaker
General Counsel

FROM: Tom L. Cross
Deputy General Counsel

CC: James M. Crutcher, MD, MPH
Secretary of Health and Commissioner of Health

Steve Ronck, MPH, Deputy Commissioner
Community Health Services

Sheila Vick
Procurement

RE: Incentives and Promotional Items used by Programs, NLDB #08-035

DATE: April 18, 2008

Question Presented

Can program areas of the Oklahoma State Department of Health use incentives and/or promotional items given to individuals to induce those individuals to participate and/or complete a program or part of a program?

Short Answer

The use of incentives and promotional items that are used by Programs in exchange for participation in program activities are not considered a "gift" and therefore do not violate the constitutional proscription of "gifting" state assets as set out in Article 10 Section 15 of the Oklahoma Constitution.

Discussion

The program area has asked about the legality of using VISA gift cards as incentives to

increase participation in specific programs and services. The program area's experience is these incentives are necessary to insure sufficient data is collected to validate the conclusions that are drawn from the data. Each participant is given a \$10 VISA gift card when that participant completes a specific part of the program, i.e. completion of a survey, keeping an appointment or completing a follow-up examination.

The \$10 value of the gift card is based on a Memorandum issued by the Office of General Counsel for the Oklahoma State Department of Health dated October 9, 2000. This Memorandum has its origin in a letter from Tom Jaworsky, State Purchasing Director, Department of Central Services, dated October 2, 2000. In this letter Mr. Jaworsky stated the position of Central Purchasing is the Central Purchasing Act does not prohibit the acquisition of promotional items with a nominal value. Mr. Jaworsky set a \$10 value for promotional items. The Oklahoma Constitution does not contain an exception for "nominal" gifts.

The Oklahoma Constitution contains a proscription against the State from gifting assets of the state to "any company, association or corporation¹." The Oklahoma Supreme Court has defined the term "gift" as used in Article X Section 15 as "all appropriations for which there is no authority or enforceable claim on which rests alone some material equitable obligation which in the mind of a generous or even just individual dealing with his own money might induce him to recognize as worthy of his reward²." "Where specific constitutional prohibitions against gifts of public money exist, public money cannot be lawfully appropriated to meet an obligation, however just and equitable, unless it is of such a character that it could be enforced in a court of law³." The Court has further defined a "gift" as a "voluntary transfer of his property by one to another without any consideration or compensation therefore. The donor must intend gratuitously to pass the title to the donee⁴."

A program area may use incentives and/or promotional items to accomplish the goals of the program area. The program area should be able to articulate how the use of the specific incentive and/or promotional item will benefit the program area and without the specific incentive and/or promotional item what will be the detriment. In other words, the recipient must give some type of "consideration" in exchange for the incentive. Consideration takes away from the transaction its donative character⁵."

The recipient of the incentive must be required to complete a specific task or exchange something of value in exchange for the incentive prior to the incentive being delivered. OSDH is prohibited from paying for services or products prior to those services or products being delivered⁶. The amount of the incentive should be

¹ Oklahoma Constitution Article 10 Section 15

² *Hawks v Bland*, 1932 OK 101, 9 P.2d 720, 156 Okla. 48 (1932); *Veterans of Foreign Wars v Childers*, 197 Okla. 331, 171 P.2d 618, 1946 OK 211

³ *Veterans of Foreign Wars v Childers*, *Id.*

⁴ *In the Matter of the Petition of University Hospitals Authority, an agency of the State of Oklahoma and University Hospitals Trust, a public trust*, 953 P.2d 314, 1997 OK 162

⁵ *Id.*

⁶ 74 O.S. §85.44B

reasonable in value to the specific task or exchange of information that is being exchanged. While the courts have decided that the use of incentives is legal, there is a policy issue that should be established to ensure the incentives used are reasonable.

Conclusion:

Program Areas of the OSDH may use gift cards or other items as incentives and/or promotional items to induce participation in specific programs or activities. The Program Area should articulate the specific benefit of using the incentive and if the incentive was not used the detriment suffered. Recipients of the incentive must be required to complete a specific task or exchange something of value for the incentive prior to receiving the incentive. OSDH should establish policy guidelines that will direct program areas what is an acceptable incentive program and when can that program be used.

OKLAHOMA STATE DEPARTMENT OF HEALTH
ADMINISTRATIVE PROCEDURES MANUAL

TITLE: Incentive Payment & Promotional Items

RESPONSIBLE
SERVICE:

Administrative Services

Number: 3-00
Effective: December 2008
New

APPROVED:

James M. Crutcher, M.D., M.P.H.
Commissioner of Health and
State Health Officer

OBJECTIVE:

1. To reduce the barriers of participation and increase public awareness in OSDH sponsored program activities.
2. To ensure that all payments of cash equivalent items used as incentives for the completion of surveys, participation in focus groups, other forms of human research activities, evidence based services, or quality improvement projects are properly disbursed, accounted for, and reported.
3. To provide incentives or non-monetary promotional items to increase public awareness and participation of OSDH services.
4. To ensure procedures for survey techniques, acceptance and acknowledgement of financial incentives by the recipients are clear.
5. To ensure the purchase of incentive or promotional items with federal funds is specifically approved by the federal award, and
6. To ensure the incentive items are provided in exchange for something of value from the recipient and the amount of the incentive are reasonable in value to the service or item being exchanged.

This policy does not include incentives provided by an outside partner or a third party.

PROCEDURE:

Definitions

Financial Incentive: The use of gift certificates, debit cards, coupons, vouchers and stipends as incentives for the completion of surveys, participation in focus groups, other forms of human research activities, evidence based services, or quality improvement projects.

Reward Incentive: The used of tangible rewards to motivate a participant or group to behave in a certain way that increases the return on investment of program areas or county health departments services objective goals.

Donated Incentives: Items received from the community and various organizations, such as local movie theaters, grocery stores, food outlets, retail stores, from profit organizations, and community, fraternal or

services organizations. These items may be used to satisfy program areas and county health departments services function goals.

Institution Review Board (IRB): A OSDH committee whose primary responsibility is to protect the rights and welfare of human research participants.

Use of Incentive Payments

Incentive payments are contingent upon funding availability and based upon a variety of initiatives expressed in this policy.

The use and amount of incentive payments is based on the return on investment. Any incentive in excess of the \$10.00 limit must have the appropriate Deputy Commissioner's approval.

Some examples of the appropriate use of incentive payments includes, but are not limited to:

1. **Child Care, Elder Care, or Care for Special Needs Individuals:** Contractual agreements with appropriate facilities may be available to reduce out of pocket costs for seeking health department services.
2. **Transportation Costs:** Gas Cards, bus tokens or taxi coupons that do not exceed \$10.00 to offset transportation costs for services may reduce out of pocket cost. Contractual agreements may be developed to provide for services.
3. **Survey and/or Evidence Based Service Participation:** Providing incentive to an individual participating in a survey, evidence based service or focus group to compensate the individuals for their time and contribution. Participant is aware of incentive and the incentive is provided at the completion of survey or focus group or after the completion of a set number of classes of the participatory action.
4. **Quality Improvement Programs:** Supplies may be given to an agency when they participate in a Quality Improvement Program. Some examples: the Cancer Registry software package or portal for online use so program service may obtain essential data, the Center of Health Care Information could provide software or used equipment to facilitate reporting of death, births, or hospitalizations.

Process

The program areas and/or county health departments shall provide the following incentive payment information:

1. Identify activity to provide incentive, the benefit of providing the incentive, and the detriment created without providing the incentive item.

2. Identify source of funding. If the program is federally funded, determine if the federal award is specifically approved for the purchase of incentives.
3. Determine the processing procedures including accountability and monitoring procedures of purchases and distribution of incentives items.
4. Determine cost of each incentive item in dollar amount. The amount of the incentive items must be reasonable in value to the service or items being exchanged.
5. Obtain approval for purchases and distribution. The Service Chief and Deputy Commissioner must approve purchases of individual incentives over \$10.00. County health department administrators must approve purchases of incentive items with local funding.
6. Submit P/Card request or bid proposal requisition for approval of incentive item purchases to Procurement Service.

Request for Incentive Payments

1. The Program areas or county health departments shall prepare a written justification for the use and purchase of incentive items to include:
 - A description of the service or survey
 - The target populations including ages, and
 - The desired outcomes the program areas or county health departments' wishes to accomplish through the distribution. Include justification of benefits expected as well as the detriment to the agency if not implemented.
2. The use of federal funds by programs areas must provide the following requirements: justification, grant period, CFDA number, and section of the grant award approving the use of incentives. Additionally, certain grant programs may require the name of the funding source listed (i.e., grant name on the back of a T-shirt) and document of justification.
3. The applicable procedures for receipt and distribution should be based on the participant involvement in the program service or the returned of investment in exchange. The incentive payment amount must be reasonable in value to the service or the item exchanged. (See *On-Site Log* example for survey documentation of cash incentives). If a child or youth is the participant, the program areas should discuss the procedure used for obtaining parental approval or parental participation.
4. The justification shall include the dollar amount to be distributed, a distribution plan and accountability processes.
5. The program areas and county health departments shall document the approval of incentives items by the Institute Review Board (IRB) for human research projects.
6. The program areas and county health departments shall establish

1
2
3 inventory procedures to account for the incentive items purchases.
4 Include documentation of receipt of incentive items; inventory on hand,
5 distribution procedures specifying when, how, and to whom items were
6 dispersed;

- 7 • Program areas must collaborate with Procurement Service to
- 8 ensure products are purchased in accordance with state and
- 9 federal purchasing laws and submit prior to purchasing incentive
- 10 items.
- 11 • Program areas are accountable for all incentives purchased and
- 12 must collaborate with Accounting Services to sustain inventory
- 13 control to uphold joint responsibility in handling monetary
- 14 rewards.
- 15 • The Deputy Commissioner shall provide written notification to
- 16 Accounting Service of their appointed designee to authorize
- 17 activation approval of monetary awards and examination of
- 18 internal audits.

- 19 7. Following the written signature approval by the Deputy Commissioner
- 20 or their designee for the purchase of incentive or promotional items, the
- 21 program areas and county health departments shall forward the
- 22 justification and requisition to Procurement Service for review and
- 23 approval. P/Cards may be used for the purchase of incentives and
- 24 promotional items and must have prior approval by Procurement
- 25 Service.
- 26

OKLAHOMA STATE DEPARTMENT OF HEALTH
ON-SITE LOG

Survey Title: _____

Survey Date: _____

Participant's name and address:

Name: _____

Address: _____

City: _____ State: _____ Zip code: _____

Phone number: () _____

To be completed by initiating Program Service:

I certify that the attached survey form has been completed and approve payment \$ _____.

Signature: _____ Print Name: _____

Account Code	Fund/Project	Service	Program
_____	_____	_____	_____

Identification Number: _____

[illegible]

ATTACHMENT G

Restrictions: Prohibited uses of CMP funds

Appropriate uses of CMP funds: The Social Security Act provides that collected CMP funds be used to support activities that benefit nursing home residents. Projects that fulfill these activities will meet the descriptions of at least one of the described categories in section E.10 of this RFP.

- 1) Conflict of Interest: Projects will not be approved if a conflict of interest exists or appears to exist.
- 2) Duplication: CMP funds may not be used to pay entities to perform functions for which they are already paid by State or Federal sources.
- 3) Capital Improvements: CMP funds may not be used to pay for capital improvements to a nursing home, or to build a nursing home, as the value of such capital improvement accrues to a private party (the owner).
- 4) Nursing Home Services or Supplies: CMP funds may not be used to pay for services or supplies that are already the responsibility of the nursing home, such as laundry, linen, food, heat, staffing costs, etc. This prohibition, however, does not prevent the temporary payment of salary for an individual who will work in the nursing home as part of an evaluated demonstration of a new service, skill set, or other innovation that the nursing home has not previously had in place and which the nursing home may sustain after the demonstration if resources permit.
- 5) Temporary Manager Salaries: CMP funds may not be used to pay the salaries of temporary managers who are actively managing a nursing home.
- 6) Supplementary Funding of Federally Required Services: CMP funds may not be used to recruit or provide Long-Term Care Ombudsman certification training for staff or volunteers to investigate and work to resolve complaints. However, there is no prohibition to an Ombudsman program receiving CMP funds to conduct or participate in approved projects, or to carry out other quality improvement projects that are not within the Ombudsman program's existing set of responsibilities under the Older Americans Act (OAA). Nor is there any prohibition to Ombudsman program staff or volunteers to participate in training that is paid by CMP funds but open to a broad audience, such as nursing home staff, surveyors, consumers, or other.
- 7) CMS cannot approve the use of CMP funds for refreshments and/or meals for participants at training/educational functions. Use of CMP funds for presenter meals and incidental expenses (MI&E) incurred during travel status due to the delivery of approved proposals will be determined on a case by case basis in accordance with Government Services Agency rules.

Dollar Amount: \$_____

Budget Line Item	OSDH Amount	Match (if applicable)	TOTAL
Personnel/Salaries			
Fringe Benefits			
Travel/Training			
Supplies			
Contractual			
Admin Costs/IDC			
Other			
Total			

Personnel/Salaries							
Position Title	Staff Name	Annual Salary	No. Months	% Time	STATE	MATCH (if applicable)	TOTAL
Category Total							

**OKLAHOMA STATE DEPARTMENT OF HEALTH
CONTRACT BUDGET FORM**

Contractor Name: _____ Date: _____

Narrative/Detail Budget Request (Continued):

Fringe Benefits	STATE	MATCH (if applicable)	TOTAL
Category Totals			
Travel-PerDiem/Training	STATE	MATCH (if applicable)	TOTAL
Category Totals			
Supplies	STATE	MATCH (if applicable)	TOTAL
Category Totals			
Contractual	STATE	MATCH (if applicable)	TOTAL
Category Totals			
Admin Costs/IDC	STATE	MATCH (if applicable)	TOTAL
Category Totals			
Other	STATE	MATCH (if applicable)	TOTAL
Category Totals			
	STATE	MATCH (if applicable)	TOTAL
Category Totals			
TOTAL PROGRAM COSTS			

Contractor's Signature: _____ Date: _____

Printed Name: _____ Title: _____

**OKLAHOMA STATE DEPARTMENT OF HEALTH
CERTIFICATION OF INDEPENDENT CONTRACTOR STATUS**

1. I, _____ (Name of Individual) operating as _____ (independent contractor's business name), have agreed to provide services to Oklahoma State Department of Health (OSDH).
2. I have read the fact sheet on page two of this certification and understand that an independent contractor is one who engages to perform certain services for another, according to his own manner, method, free from control and direction of his contractor in all matters connected with the performance of the service, except as to the result or product of the work.
3. I understand that based upon the representations in this Affidavit of Independent Contractor Status, I am requesting **OSDH's Policyholder** to classify my business to be that of an independent contractor; that **I am not an employee under the Worker's Compensation Act** and the policy held by the OSDH for Worker's Compensation Insurance for its employees; and that no premium be charged for the services performed pursuant to this job/project by my business during the policy year.
4. **I am an independent contractor, not an employee of the OSDH. I do not want worker's compensation insurance and understand that I am not eligible for Workers' Compensation benefits.**
5. I will obtain workers' compensation and employers' liability insurance for my employees if I have employees, unless they are otherwise exempt from the requirements of the Workers' Compensation Act.
6. I have read and signed the fact sheet describing what is an Independent Contractor on page two of this certification, and the information provided is not the result of force, threats, coercion, compulsion or duress.
7. I understand that any person who knowingly and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of any insurance policy containing false, incomplete or misleading information is guilty of a felony.

Independent Contractor Signature

Date _____ Printed Name _____ Title _____

Signature _____ Business Name _____

INDEPENDENT CONTRACTOR FACT SHEET

An independent contractor is defined by law as one who engages to perform certain services for another, according to his own manner, method, free from control and direction of his contractor in all matters connected with the performance of the service, except as to the result or product of the work.

Below are statements to help you decide if you are an independent contractor. No one statement is controlling, and your status is based on all the facts in your situation. If a statement describes your situation, then check the box. If at least six of the statements below do not describe your business and are unchecked, you should not sign the attached affidavit.

1. The nature of the contract between you and the contractor shows you are independent from the contractor. For example: Is there a written contract where you agree that you are an independent contractor? Are you a corporation or limited liability company? Do you maintain commercial general liability insurance or other business insurance?
2. The contractor exercises very little control over your work. For example: By the agreement, can the contractor exercise control on the details of the work or your independence? Do you exercise control over most of the details of the work? Do you create plans or specifications for the job? Do you set your own work schedule (i.e. hours and days that will be worked)?
3. You are engaged in a distinct occupation or business for others. For example: Do you work for companies or individuals other than the Contractor? Do you work for competitors of the Contractor? Does your business have a logo or uniform?
4. Your job is the kind of occupation where the work is usually performed by a specialist without supervision, and not under the direction of the contractor. For example: Is your work supervised by the Contractor?
5. Your occupation requires special skills, license, education or training.
6. The Contractor does not supply the things needed to perform your job such as the tools and the place of work. For example: Do you supply any of the materials or tools for the work? Do you operate a vehicle owned by the Contractor? Was the work performed at your business or the Contractor's business location or jobsite? Do you wear a uniform supplied by the Contractor?
7. The length of the job and how long you have worked for the Contractor does not show that you are really an employee. For example: Is this a one-time job, or will you be doing this for the Contractor regularly?
8. You are paid as a separate contractor, not as an employee. For example: Do you invoice the Contractor for your services? Are you paid by the job? Do you file a federal income tax return for your business? Do you expect to receive an IRS Form 1099 from the Contractor? Does the Contractor pay your expenses?
9. Your work is not the regular business of the employer. For example: Is your work customarily done in the Contractor's line of business or as part of the Contractor's daily work? Have you ever been an employee of the Contractor? Do you work with other people hired by the Contractor on the work you perform?
10. You do not consider yourself an employee of the Contractor. For example: Will the Contractor withhold taxes or monies from your payment? Have you ever been an employee of the Contractor? Have you or your employees ever filed an insurance claim against the Contractor?
11. You do not have the right to terminate the relationship without liability. For example: If you quit before the job is finished, is there a penalty?

Any person who knowingly and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of any insurance policy containing false, incomplete or misleading information is guilty of a felony.