



Solicitation Cover Page

1. Solicitation #: 3400001681

2. Solicitation Issue Date: 2/19/20

3. Brief Description of Requirement:

To engage an independent cannabis testing laboratory to conduct quality assurance of sampling techniques, testing processes, quality assurance activities, and reporting processes of commercial testing laboratories on behalf of the Oklahoma medical marijuana authority (OMMA); to implement and administer a proficiency testing program; and to provide consultation services to the OMMA as needed.

4. Response Due Date¹: 4/7/20

Time: 3:00 PM CST/CDT

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

U.S. Postal Delivery Address: 5005 N Lincoln Blvd

OKC, OK 73105

Common Carrier Delivery Address: 5005 N Lincoln Blvd

OKC, 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 #** 3400001681

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 #: 3400001681

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 an entity acquires by purchase, lease purchase, lease with option to purchase, or rental;
- 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. Upon submission of an accurate and proper invoice, the invoice shall be paid in arrears after products have been delivered or services provided and in accordance with applicable law. Invoices shall contain the purchase order number, a description of the products delivered or services provided, and the dates of such delivery or provision of services. An invoice is considered proper if sent to the proper recipient and goods or services have been received.
- A.18.2. State Acquisitions are exempt from sales taxes and federal excise taxes.
- A.18.3. Pursuant to 74 O.S. §85.44(B), invoices will be paid in arrears after products have been delivered or services provided.
- A.18.4. Payment terms will be net 45. Interest on late payments made by the State of Oklahoma is governed by 62 O.S. § 34.72.
- A.18.5. Additional terms which provide discounts for earlier payment may be evaluated when making an award. Any such 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 proper invoice.

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. Terms and Conditions

- B.1.1.** This contract is entered into between the Oklahoma State Department of Health, Oklahoma Medical Marijuana Authority, hereinafter referred to as OSDH, by virtue of the authority vested in it by 74 O.S. § 85.1, et. al., and the awarded Supplier, hereinafter referred to as Contractor.
- B.1.2.** All terms and conditions herein become the contract between the OSDH and the Contractor. The Contractor agrees to comply with all of these terms and conditions. Contractor understands and agrees that when any term and/or condition contained within this contract is, or becomes, applicable to the Contractor's officers and/or employees, Contractor agrees to ensure that its officers and employees (collectively, "organization") abide by the terms and/or condition applicable to organization.

B.2. Glossary of Terms

- B.2.1.** "Medical Marijuana Licensed Entity" or "OMMA Licensed Entity" means a medical marijuana licensee whether a dispensary, grower/cultivator, processor, waste disposal, research, education facility, transporter, or laboratory.
- B.2.2.** API – Application Programming Interface
- B.2.3.** BI – Business Intelligence
- B.2.4.** CIO – Chief Information Officer
- B.2.5.** Complia – Current vendor utilized by OMMA to provide licensing and registration software solution for licensed entities
- B.2.6.** OMES IS – Office of Management and Enterprise Services-Information Services
- B.2.7.** OMMA – Oklahoma Medical Marijuana Authority
- B.2.8.** OSDH – Oklahoma State Department of Health
- B.2.9.** Interoperability Program – Program or solution that works with multiple systems and will at minimum consume data.
- B.2.10.** PMBOK – Project Management Body of Knowledge
- B.2.11.** SOW – Scope of Work

B.3. Contract Period:

- B.3.1.** This Contract will begin on the Date of Award and terminate on June 30, 2020. The Date of Award is the date the OSDH has in its possession a copy of the contract executed by both parties and a purchase order has been issued. This Contract shall include an option to renew for up to nine (9) additional one (1) year periods. This contract shall not take effect and no services may be provided prior to the Date of Award.
- B.3.2.** The State, at its sole option, may choose to exercise an extension for ninety (90) days beyond the final renewal option period, at the Contract pricing rate. If this option is exercised, the State shall notify the Supplier in writing prior to contract end date. The State, at its sole option, may choose to exercise subsequent ninety (90) day extensions, by mutual consent and at the Contract pricing rate, to facilitate the finalization of related terms and conditions of a new award or as needed for transition to a new Supplier.

B.4. Mandatory Vendor Registration for Contract Award (In Addition to Section A.15.3)

- B.4.1.** 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.4.2.** 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.4.2.1.** Pursuant to 74 O.S. § 85.33.B: o A vendor may register with the Central Purchasing Division to be placed on the Supplier List for bid notification.
- B.4.2.2.** 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.4.2.3.** The Vendor Registration fee is **\$25 for EACH** family code for which the vendor desires registration.

- B.4.2.4.** 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.4.2.5.** 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.4.2.6.** An Oklahoma Sales Tax Permit Number and its Expiration Date or explanation of the exemption status (FAQs)
- B.4.2.7.** An Oklahoma Secretary of State Filing Number, or explanation of the exemption status (www.sos.ok.gov or 405-521-3911)
- B.4.2.8.** A Workers Compensation Insurance Certificate (PDF file) or explanation of the exemption status (FAQs)
- B.4.2.9.** 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.4.2.10.** 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.4.3.** 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.5. Access to Records Requirements:

- B.5.1.** The Contractor agrees to comply with all record retention requirements of 2 CFR § 200.333 - §200.337. The Contractor 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 Contractor 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 Contractor further agrees to assure appropriate access by the aforementioned parties to any subcontractor's associated records.
- B.5.2.** 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.5.3.** The OSDH may routinely request supporting documentation to validate Contractor payments.

B.6. Failure to Comply Statement:

The Contractor shall be subject to all applicable state and federal laws, rules and regulations, and all amendments thereto. The Contractor 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 Contractor, without reliance on or direction by the OSDH.

B.7. Assignment and Delegation:

The services to be performed under this contract shall not be assigned or transferred, in whole or in part, to any other person or entity without the prior written approval of the OSDH. If the Contractor cannot perform the services as identified in this contract, the Contractor 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 Contractor 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 Contractor of any responsibility for performance under this contract.

B.8. Contract Monitoring Plan:

- B.8.1.** As a vendor with the OSDH, your contract will be monitored to ensure compliance with the Terms and Conditions outlined in this contract. Typical monitoring activities may include Contractor site visits, review of contractually required deliverables, invoice review, and verification of licensure and/or insurance required and other monitoring activities.
- B.8.2.** All communications related to this contract will be between the Contractor's Contact Person and the OSDH Contract Monitor. The OSDH Contract Monitor for this contract will be identified upon contract award.

B.9. Contractor's Relation to the OSDH:

The Contractor is in all respects an independent Contractor and is neither an agent nor an employee of the OSDH. Neither the Contractor nor any of its officers, employees, agents, or members shall have authority to bind the OSDH nor are they entitled to any of the benefits or worker's compensation provided by the OSDH to its employees. In the event the independent contractor relationship ends in any way, this contract shall automatically terminate without notice. The Contractor shall notify the OSDH Contract Monitor of the change in relationship.

B.10. Electronic Signatures/Execution in Counterparts

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.11. Equipment and Other Purchases:

It is understood that no items of equipment, property or other capital purchases shall be reimbursed under the provisions of this contract. 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 Contractor for financial statement purposes, or \$5000.

B.12. Maintenance of Insurance, Payment of Taxes, and Workers' Compensation:

- B.12.1.** As a condition of this contract, Contractor shall procure at its own expense, and provide proof of, insurance coverage with the applicable liability limits set forth below. Such proof of coverage shall be provided to the OSDH Procurement if services will be provided by any of Contractor's employees, agents or subcontractors at any State premises and/or employer vehicles will be used in connection with performance of work for the OSDH. Contractor may not commence performance hereunder until such proof has been provided. Additionally, Contractor shall promptly provide proof to the OSDH Procurement of any renewals, additions, or changes to such insurance coverage. Contractor's obligation to maintain insurance coverage under the contract is a continuing obligation through the term of the contract and each purchase order issued to Contractor in connection with the contract. The minimum acceptable insurance limits of liability are as follows:
 - B.12.1.1.** Workers' Compensation and Employer's Liability Insurance in accordance with and to the extent required by applicable law;
 - B.12.1.2.** Commercial General Liability Insurance covering the risks of personal injury, bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
 - B.12.1.3.** Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence and in the aggregate, with coverage, if applicable, for all owned vehicles, all non-owned vehicles, and all hired vehicles;
 - B.12.1.4.** Professional Errors and Omissions Insurance which shall include Consultant's Computer Errors and Omissions Coverage, if information technology services are provided under the Contract, with limits not less than \$1,000,000 per claim and in the aggregate;
 - B.12.1.5.** Medical Malpractice insurance, if applicable;
 - B.12.1.6.** 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; and
 - B.12.1.7.** Additional coverage required by State in writing in connection with a particular purchase or service.

- B.12.2.** Contractor shall be entirely responsible during the existence of the contract for the liability and payment of taxes payable by or assessed to Contractor or its employees, agents and subcontractors of whatever kind, in connection with the contract. Contractor further agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and Workers' Compensation. The OSDH shall not be liable to the Contractor, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or Workers' Compensation or any benefit available to a State employee.
- B.12.3.** Contractor agrees to indemnify and hold harmless the OSDH and its employees, agents, representatives, contractors, and/or assignees from any and all liability, actions, claims, demands, or suits, and all related costs and expenses and attorneys' fees relating to tax liability, unemployment insurance and/or assignees from any and all liability, actions, claims, demands, or suits, and all related costs and expenses and attorneys' fees relating to tax liability, unemployment insurance and/or Workers' Compensation in connection with its performance under the Contract.
- B.12.4.** If the Contractor does not carry workers' compensation insurance because it considers their business to be that of an independent Contractor, as defined by the Workers Compensation Act (85A O.S. § 1 et. seq.), and not that of an employee, the Contractor must complete the Affidavit of Exempt Status.

B.13. Information Technology Access Clause:

- B.13.1.** Vendor shall comply with federal and state laws, rules and regulations related to information technology accessibility, as applicable, including but not limited to Oklahoma Information Technology Accessibility Standards ("Standards") set forth at http://www.ok.gov/cio/documents/isd_itas.pdf and Vendor shall provide a Voluntary Product Accessibility Template ("VPAT") describing such compliance, which may be provided via a URL linking to the VPAT.
- B.13.2.** If the Products will require development or customization, additional requirements and documentation may be required and compliance shall be necessary by Vendor. Such requirements may be stated in appropriate documents including but not limited to state bids, request for proposals, statements of work, riders, agreements, purchase orders and Amendments. Accordingly, in each statement of work or similar document issued pursuant to this Contract, Vendor shall describe such compliance and identify, if and as applicable, (i) which exception to the Standards applies or (ii) a description of the tasks and estimated cost to make the proposed products and/or services compliant with applicable Standards.
- B.13.3.** All representations contained in the VPAT provided will be relied upon by the State for accessibility compliance purposes.

B.14. Invoicing:

- B.14.1.** A properly completed invoice must be submitted within thirty (30) days of the end of the month in which services were delivered or products provided and include the following items:
- B.14.1.1.** name, address and FEI number of the Contractor;
 - B.14.1.2.** invoice date;
 - B.14.1.3.** period covered by invoice;
 - B.14.1.4.** purchase order number;
 - B.14.1.5.** any other data, reports, information or documentation required by other conditions of the contract;
 - B.14.1.6.** detail of the services provided and be in accordance with the terms and conditions of this agreement.
- B.14.2.** For invoices involving payment for the Contractor'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.14.3.** The invoice shall be submitted to:

OKLAHOMA STATE DEPARTMENT OF HEALTH
Oklahoma Medical Marijuana Authority
Quality Assurance Lab
1000 NE 10TH Street
Oklahoma City, Oklahoma 73117-1299

- B.14.4.** The State of Oklahoma has forty-five (45) days from presentation of a proper invoice to issue payment to the Contractor.
- B.14.5.** The OSDH may withhold or delay payment to any Contractor failing to provide required programmatic documentation and/or requested financial documentation.

- B.14.6.** The OSDH reserves the right not to process invoices submitted by the Contractor to OSDH more than thirty (30) days after the month in which services were delivered. The OSDH will not pay invoices received more than ninety (90) days after the end of the applicable contract period.
- B.14.7.** Contractor agrees to provide a prompt pay discount of ____% for any invoices paid within thirty (30) days of receipt of a proper invoice.

B.15. Licensure:

Contractor shall submit proof of professional license to the OSDH upon execution of this contract and at such other times as the OSDH may request. If such professional license should expire or be revoked during the term of this contract, Contractor shall immediately renew such license and provide the OSDH with copies thereof. If Contractor is an organization that provides services through individual licensed practitioners, the Contractor will maintain proof of professional license for each individual and will provide the OSDH with copies when requested.

B.16. Open Records Act:

Contractor acknowledges that the State is subject to the Oklahoma Open Records Act set forth at 51 O.S. §24A-1 et seq. Contractor also acknowledges that State will comply with the Oklahoma Open Records Act and with all opinions of the Oklahoma Attorney General concerning this Act. Except for a provision of the Contract specifically designated as confidential in a writing executed by both parties or a provision protected from disclosure in the Open Records Act or other applicable law, no Contract provision is confidential information and any provision is subject to disclosure.

B.17. Other Certifications:

The Contractor certifies compliance with the provisions of the 1964 Civil Rights Act, Education Amendment of 1972; 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 of 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); Anti-Lobbying Law (31 U.S.C. 1325); Internal Revenue Service Publication 1075 (regarding use, access and disclosure of Federal Tax Information); 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); registered as business entity licensed to do business in the State, having obtained a sales tax permit, and be current on franchise tax payments to the State, as applicable; and, the Single Audit Act of 1984; as applicable.

B.18. Privacy Clause:

The Contractor 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 Contractor 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.19. Procurement Integrity:

The Contractor 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 Contractor or its employees.

B.20. Protecting and Securing Protected Health Information:

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

B.21. Statement of Responsibility and Liability:

- B.21.1.** 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.21.2.** The Contractor 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.21.3.** The Contractor agrees to hold harmless the OSDH of any claims, demands and liabilities resulting from any act or omission on the part of the Contractor 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.22. Travel and Related Expenses:

All costs associated with the execution of this contract are included in the costs described in the Contract Expense Cap section of this contract. Additional costs, including travel expenses, will not be reimbursed.

B.23. Use of OSDH Name or Logo:

Contractor may not use the OSDH name or logos without the explicit written permission of OSDH.

B.24. Minor Deficiencies or Informalities

- B.24.1.** "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.24.2.** 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.

C. SOLICITATION SPECIFICATIONS

C.1. Purpose:

- C.1.1.** The OMES, on behalf of the OSDH is issuing this RFP to solicit proposals for a Supplier to provide Quality Assurance services on behalf of Oklahoma Medical Marijuana Authority (OMMA) in monitoring adherence to state rules and regulations by Commercial Cannabis Testing Laboratories operating within the State of Oklahoma.
- C.1.2.** The Quality Assurance Laboratory will be necessary for the OMMA and Cannabis Testing Laboratories licensed by OMMA statewide to be in compliance with the 63 O.S. § 420 et seq.; 63 O.S. § 427; the Oklahoma Medical Marijuana and Patient Protection Act, 63 O.S. § 427.1 et seq.; and the Oklahoma Medical Marijuana Waste Management Act, 63 O.S. § 427a et seq., which requires all medical marijuana sold in the state to be tested for certain contaminants, and testing laboratories to adhere to certain standards when testing medical marijuana for those contaminants.
- C.1.3.** The overall scope of work (SOW) for this contract will encompass, in conjunction with OMMA, a site visit regimen of each licensed cannabis testing laboratory that includes document review of SOPs, COAs, test reports, Quality Control/Quality Assurance reports, policies, personnel qualifications and training. The Supplier will conduct staff interviews to evaluate knowledge of and adherence to Oklahoma Law and the OMMA's rules. The Supplier will conduct an inspection of the facility testing environment and equipment. The supplier will test cannabis samples to assess the accuracy of the method in use by the testing laboratory. The supplier will also administer an inter-laboratory comparison program using blind samples for required contaminant analysis.
- C.1.4.** OSDH is seeking a single provider, and award of multiple contracts will not be considered.

C.2. Background

- C.2.1.** Since initial program implementation in August 2018, OMMA has issued over 230,000 patient licenses and over 7,000 business licenses as of December 2019. OMMA has since implemented statutory modifications to the program made during the 2019 legislative session, including changes required by HB 2612, SB 882, and HB 2601, as well as additional trailer bills impacting the program. OMMA implemented changes through a series, or 'flights,' of emergency rule promulgation activities occurring in August and November 2019, which will be followed by permanent rule promulgation activities (including opportunity for public comment as set forth in the Administrative Procedures Act) occurring in 2020.
- C.2.2.** The legislative changes built on to the current requirements for licensees, as well as added on seven (7) additional license categories within the program. The new medical marijuana license categories include: Transporter, Transporter Agent, Testing Laboratory, Education Facility, Short Term Patient, Waste Disposal Facility and Waste Permits. Other requirements included expanding testing requirements, packaging and labeling standards and compliance authority. HB 2612 also authorizes OMMA to contract with a private laboratory for the purpose of compliance testing and quality assurance for licensed testing laboratories.

C.3. Contractor Relationship:

In accordance with 2 CFR Part 200 (Uniform Grant Guidance), the relationship between the OSDH and the Contractor for this contract is that of a Vendor.

C.4. Contract Expense Cap

- C.4.1.** This contract will be paid per the agreed-upon pricing attached to this contract.

- C.4.2.** Deliverables, acceptance criteria, and timelines for deliverables are defined within this RFP. Payment for each milestone will be approved once all acceptance criteria for the milestone are achieved, and payment is approved by the OSDH Contract Monitor. No additional costs will be paid or reimbursed.
- C.4.3.** The OSDH anticipates additional work not currently envisioned will be required during the agreement period. All such additional work will be defined by a statement of work including deliverables, milestones, timelines, acceptance criteria, and firm fixed price cost. No additional work will be undertaken by the Supplier until **both** parties have executed the statement of work **and** additional funds to support that work have been encumbered by the OSDH in the form of a purchase order or change order, as applicable.

C.5. State and Federal Regulations

- C.5.1.** In developing the following deliverables, the contractor shall work within the parameters of:
 - C.5.1.1.** Health Insurance Portability and Accountability Act (HIPAA) of 1996 and any subsequent amendments or updates.
 - C.5.1.2.** 42 CFR Part 2 and any subsequent amendments or updates, and all other applicable statutory and regulatory requirements set forth in Title 63 O.S. § 420 *et seq.* and OAC 310:681.
 - C.5.1.3.** Meet the requirements for privacy and protection set forth in State Question 788, HB 2612, and all other applicable statutory and regulatory requirements set forth in Title 63 O.S. § 420 *et seq.* and OAC 310:681.

C.6. Mandatory Requirements

- C.6.1.** The Quality Assurance Laboratory must meet the requirements to obtain a Testing Laboratory License and Transporter License as defined in OAC 310:681-5 and OAC 310:681-8, including the following:
 - C.6.1.1.** 75% of the ownership of the laboratory must meet the Oklahoma Residency requirements. Documentation must establish either:
 - C.6.1.2.** Oklahoma residency for at least two (2) years immediately preceding the application submission date; or
 - C.6.1.3.** Five (5) years continuous Oklahoma residency during the twenty-five (25) years immediately preceding the application submission date.
- C.6.2.** Be able to perform the required cannabis testing as specified in OMMA rule OAC 310:681-8. Provide a description of each analyzer that will be used in testing, including the following:
 - C.6.2.1.** Reliability: Average time between unscheduled maintenance/repairs
 - C.6.2.2.** Accuracy: Proficiency Test results, including Standard Deviation Index
 - C.6.2.3.** Precision: Within-run and between-run coefficients of variation
 - C.6.2.4.** Throughput: Samples per day.
 - C.6.2.5.** The average turnaround time for completion of testing for each of the required analytes.
- C.6.3.** Possess documented expertise in evaluating quality assurance techniques and processes, including proficiency testing, quality control, safety procedures, and corrective action effectiveness. Documentation shall include:
 - C.6.3.1.** Proficiency testing results, including documentation of successful corrective actions regarding proficiency testing if performed.
 - C.6.3.2.** Successful accreditation, documented acceptance of a plan of correction submitted to an accreditation body if performed.
- C.6.4.** Utilize a Laboratory Information System capable of creating a library of test results.
- C.6.5.** Provide documentation of experience and expertise in microbiology and chemistry techniques used in cannabis testing. Include the following:
 - C.6.5.1.** The Curriculum Vitae of the Medical Director. At a minimum must meet the requirements in OAC 310:681-8-2.
 - C.6.5.2.** The education and experience of testing personnel. At a minimum must meet the requirements in OAC 310:681-8-2.
 - C.6.5.3.** Documentation of Accreditation to the ISO 17025 standards by an International Laboratory Accreditation Cooperation (ILAC) signatory.
- C.6.6.** Documentation of Accreditation to the ISO 17025 standards by an International Laboratory Accreditation Cooperation (ILAC) signatory.

C.7. Non-Mandatory Requirements

Possess or able to obtain ISO: 17043- proficiency testing.

C.8. Deliverable 1: Quality Assurance Plan of Medical Marijuana Testing

C.8.1. Description:

C.8.1.1. The Quality Assurance Laboratory shall provide to OMMA a comprehensive plan for the validation and implementation of an independent quality assurance program for cannabis testing laboratories in the state of Oklahoma that focuses on minimizing the overall risk of marijuana product contamination. The plan shall include:

C.8.1.1.1. Sampling technique, including collection and processing.

C.8.1.1.2. Evaluation of the development and adequacy of internal calibrators and control materials used in testing laboratories.

C.8.1.1.3. How to perform independent, statistically valid, random testing of product samples, controls, and calibrators.

C.8.1.1.4. Development of an Inter-Laboratory Competency Performance Assessment system for monitoring testing processes in cannabis testing laboratories using either a recognized Proficiency Testing Program, or other means of independent validation of testing accuracy.

C.9. Deliverable 2: On-Going Quality Assurance

C.9.1. Description:

C.9.1.1. The Quality Assurance Laboratory shall implement the Quality Assurance Plan and execute it on a continual basis. OMMA will collaborate with the Quality Assurance Laboratory in developing surveillance and reporting processes.

C.9.1.1.1. In conjunction with OMMA personnel, the Quality Assurance Laboratory shall conduct routine biannual site visits to each testing laboratory, more often if necessary, to review the following:

C.9.1.1.1.1. Inspect and assess the testing environment and equipment.

C.9.1.1.1.2. Review laboratory documents and records of standard operating procedures (SOP's), Certificates of Analysis (COA's), Test reports, Quality Control/Quality assurance programs, safety and other policies, inventory management, document control, personnel qualifications and training.

C.9.1.1.1.3. Interview testing laboratory staff to evaluate knowledge of and adherence to Oklahoma law and OMMA rules.

C.9.1.1.1.4. Submit a written assessment to OMMA of each site visit within fourteen (14) days of the site visit.

C.9.1.1.2. In the absence of in-matrix proficiency testing in Oklahoma, the Quality Assurance Laboratory shall implement an in-matrix inter-laboratory comparison program.

C.9.1.1.3. Perform random analysis of reserve batch samples obtained from testing laboratories. Results of testing shall be reported to OMMA and testing laboratories, with a bias calculation being performed. Submit the results of testing within one (1) week to OMMA.

C.9.1.1.4. Perform random testing of batches of cannabis for potential contaminants not specifically required to be routinely tested for by OMMA rules, including pesticides and residual solvents.

C.9.1.1.5. Analyze LQC samples from testing laboratories.

C.9.1.1.6. Submit a written report and interpretation of overall surveillance activities to OMMA on a monthly basis.

C.9.1.1.7. Provide technical consultation to the OMMA for marijuana testing related issues.

C.9.1.1.8. Provide an annual report of the effectiveness of the quality assurance program for each testing laboratory.

C.9.1.1.9. Compile information and data to assist the OMMA in developing and promoting best practices for cannabis testing laboratories.

C.9.1.1.10. At OMMA's request, provide consultation to the marijuana testing laboratory industry in the state to support intra-laboratory quality improvement.

C.9.1.1.11. At OMMA's request, provide consultation and education to the business and patient community about testing related issues.

C.10. Deliverable 3

C.10.1. Description: The Quality Assurance Laboratory shall conduct quality assurance functions within the following parameters:

C.10.1.1. Maintain continuous accreditation from an appropriate accrediting body that demonstrates the ISO 17025 standards by an International Laboratory Accreditation Cooperation (ILAC) signatory.

- C.10.1.2.** The Quality Assurance Laboratory must be licensed as a medical marijuana testing laboratory in the State of Oklahoma within six (6) months of being awarded the contract. Refer to Acknowledgement of Licensing Requirements attached.
- C.10.1.3.** The Quality Assurance Laboratory must obtain a Marijuana Transporter License within six (6) months of being awarded the contract.
- C.10.1.4.** The Quality Assurance Laboratory must utilize the OMMA Seed to Sale system to track test samples when available.
- C.10.1.5.** Comply with OSHA's Occupational Exposure to Hazardous Chemicals in Laboratories Standard, 29 CFR 1910.1450.
- C.10.1.6.** Commit all equipment to ONLY run testing for the OSDH OMMA. There can be no cross utilization of equipment for other lab purposes.
- C.10.1.7.** Test marijuana, marijuana concentrate, and marijuana products "in house/on- site". Subcontracting of these services to a different lab shall not be permitted.

C.11. Duties of the OSDH:

- C.11.1.** The OSDH shall:
 - C.11.1.1.** Guarantee at least 8,500 samples a year.
 - C.11.1.2.** Provide contact information for stakeholders, including the list of labs to be surveilled.
 - C.11.1.3.** Provide timely review and feedback to Supplier as needed to ensure requested revisions can be incorporated into deliverables.
 - C.11.1.4.** Provide access to the State's Seed to Sale system.
 - C.11.1.5.** Provide access to the OSDH OMMA Laboratory Oversight Manager.
 - C.11.1.6.** Provide a reporting format for surveillance activities.

C.12. Option to Purchase

OSDH prefers the option to purchase and take over operation of the quality assurance laboratory after the end of this agreement. Purchase price and terms will be subject to a separate process. Supplier is required to maintain records of all equipment and supplies purchased, as well as all other costs related to operation of the laboratory to be available for OSDH review if OSDH chooses to pursue this option.

D. EVALUATION

D.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.** Work Plan/ Response to Requirements (Section C)
- D.1.2.** Company Information
- D.1.3.** Work Plan
- D.1.4.** Cost (Section H)

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. 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.1.2.** By submitting a proposal in response to this RFP, the supplier represents they have read and understand the scope of services and have familiarized itself with all federal, state, and local laws, ordinances, and rules and regulations that in any manner may affect the cost, progress, or performance of the contract work.

- E.1.3.** The failure or omission of any supplier to receive or examine any form, instrument, addendum, or other documents or to acquaint itself with conditions existing will in no way relieve any supplier from any obligations with respect to its proposal or to the contract.

E.2. Submissions/Copies

- E.2.1.** Supplier is to submit TWO (2) complete copies of their response with ONE (1) copy on TWO (2) separate USB/Flash Drives which includes the completed proposal, including the scanned images of the OMES signed forms. USB/Flash Drives must be an unprotected document.
- 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 A.2.4. PDF is an acceptable format for solicitation responses. This overrides requirements of A.2.4

E.3. Bid Deliverables

- E.3.1.** Bids should be tabbed by section and clearly marked as Original or Copy.
- E.3.2.** Note: Bid deliverables are to be submitted in electronic copy on flash/thumb drive machine-readable format
- E.3.3.** Section One – Introduction
- E.3.3.1.** Letter of Introduction- Provide a cover letter on company letterhead, signed by a representative authorized to legally bind the Company in a contractual relationship.
- E.3.3.2.** Completed “Responding Bidder Information” OMES Form 076.
- E.3.3.3.** Completed “Certification for Competitive Bid and Contract” OMES Form 004.
- E.3.3.4.** Signed Amendment(s), if any.
- E.3.3.5.** Any exceptions to solicitation terms and conditions or a statement acknowledging there are no exceptions to disclose.
- E.3.3.6.** Signed Copy of The Acknowledgement of Licensing Requirements (Attachment B).
- E.3.4.** Section Two – References
- E.3.4.1.** Provide three (3) references from customers where similar laboratory cannabis testing was performed. References provided must contain a contact person with full contact information (i.e., current employer, telephone number, mailing address, e-mail address, and fax number).
- E.3.5.** Section Three – Company Information
- E.3.5.1.** Bidder must provide detailed information on its company, including principals involved, number of employees, location, years in existence, a statement of financial stability, and any litigation or pending litigation for the past five years, or a statement indicating there is no litigation activity to report.
- E.3.5.2.** Provide documentation of experience and expertise in microbiology and chemistry techniques used in cannabis testing. Include the following:
- E.3.5.2.1.** The Curriculum Vitae of the Medical Director. At a minimum must meet the requirements in OAC 310:681-8-2.
- E.3.5.2.2.** The education and experience of testing personnel. At a minimum must meet the requirements in OAC 310:681-8-2.
- E.3.5.2.3.** Documentation of Accreditation to the ISO 17025 standards by an International Laboratory Accreditation Cooperation (ILAC) signatory.
- E.3.5.3.** Be able to perform the required cannabis testing as specified in OMMA rule OAC 310:681-8. Provide a description of each analyzer, including the following:
- E.3.5.3.1.** Reliability: Average time between unscheduled maintenance/repairs
- E.3.5.3.2.** Accuracy: Proficiency Test results, including Standard Deviation Index.
- E.3.5.3.3.** Precision: Within- run and between- run coefficient of variation.
- E.3.5.3.4.** Throughput: Samples per day.
- E.3.5.3.5.** The average turnaround time for completion of testing for each of the required analytes.
- E.3.5.4.** Possess documented expertise in evaluating quality assurance techniques and processes, including proficiency testing, quality control, safety procedures, and corrective action effectiveness. Documentation may include:
- E.3.5.4.1.** Proficiency testing results, including documentation of successful corrective actions regarding proficiency testing if performed.

E.3.5.4.2. Successful accreditation, including documented acceptance of a plan of correction submitted to an accreditation body if performed.

E.3.6. Section Four – Work Plan

E.3.6.1. The Quality Assurance Laboratory Bidder shall provide to OMMA a comprehensive plan for the validation of cannabis testing reliability in the state of Oklahoma that focuses on the overall risk of marijuana product contamination. The plan shall include:

E.3.6.1.1. Sampling technique validation, including collection and processing.

E.3.6.1.2. Evaluation of the development and adequacy of internal calibrators and control materials used in testing laboratories.

E.3.6.1.3. Independent performance of statistically valid random testing of product samples, controls, and calibrators.

E.3.6.1.4. Development of an Inter-Laboratory Comparison system for external control monitoring of testing processes. Either a recognized Proficiency Testing Program, or other means of independent validation of testing accuracy using blind samples.

E.3.7. Section Five – Response to Specifications/Requirements

E.3.7.1. Provide detailed response to all mandatory and non-mandatory specifications/requirements listed in sections C.6 and C.7.

E.3.8. Pricing

E.3.8.1. All information relating to costs is to be sent in a separate folder on the flash/thumb drives and clearly marked as "Price/Cost." See Section H for additional information and instructions.

E.4. Awardee Financial Status

E.4.1. Prior to award the State may choose to request information from the Bidder to demonstrate its financial status and performance, in the form of the last three (3) years audited financial statements or the last three (3) years of tax returns. A certified review may be accepted (clarification may be required). If the Bidder is a subsidiary of another entity, the last three (3) years audited financial statements of three (3) years tax returns for the parent company must also be submitted. The State reserves the right to withhold award to a Bidder who is deemed financially weak. The State reserves the right to determine financial status at its sole discretion.

E.4.2. Clarification or additional documents may be requested.

E.5. Notice of Award

A notice of award in the form of a purchase order or other Contract Documents resulting from this Solicitation shall be furnished to the successful Bidder and shall result in a binding Contract.

F. CHECKLIST

F.1. A Checklist of Submission Requirements is found below. The checklist may be of value to the Bidder in ensuring compliance with RFP requirements. It is recommended that the Checklist be completed and submitted with the proposal package. Submission of this checklist, however, is not mandatory so the failure to submit the Checklist will not result in the rejection of the proposal. This is not meant to be an all-inclusive list and it is the responsibility of the bidder to complete all the mandatory requirements.

No.	Description	Yes	No
F.1.1.	Form 076		
F.1.2.	Form 004		
F.1.3.	Certificate of Insurance/Workers' Compensation Form		
F.1.4.	Vendor Payee form (if applicable). The Vendor Payee form is provided for the responding Supplier that is a new, non-registered payee. OMES Vendor Management requires the information in the attached form before payments can be made to the supplier.		
F.1.5.	Signed Amendment(s) if any		
F.1.6.	Cost/price		
F.1.7.	Technical Proposal/Mandatory and Non-Mandatory Requirements -Section C.6 & C.7		
F.1.8.	Work Plan		
F.1.9.	Company Information		
F.1.10.	References (3)		
F.1.11.	Signed Acknowledgement of Licensing Requirements		
F.1.12.	Mandatory Vendor Registration for Contract Award - Section B.4. (In Addition to Section A.15.3)		

G. OTHER

G.1. Questions

All questions regarding this solicitation must be submitted in writing and are to be emailed no later than 3:00 PM CDT/CST on 3/5/20 to the OMES/Central Purchasing Division Buyer via emailed to – Richard.Williams@omes.ok.gov. Questions received after this date may not be answered. If any questions are received, an amendment to this solicitation will be posted on our website after this deadline listing all questions received and their answers. In addition, vendors will be notified the amendment is on our website. Any communication regarding this RFP must be sent to the OMES/Central Purchasing Division Buyer listed above. Contacting any other agency personnel may result in your proposal being deemed as non-responsive. Please be sure to reference the RFP number when emailing questions

G.2. Email

Best form of communication for the contracting officer.

H. PRICE AND COST

H.1. Payments will be made based on final and approved deliverables. Provide total cost by deliverable. Include breakdown within each deliverable for further detailed description, if necessary. Price proposed will be a firm fixed price to accomplish completion of the deliverable. The price is to be a firm-fixed, all-inclusive price. No additional costs, including travel, will be reimbursed.

H.1.1. Deliverables Cost

DELIVERABLE ITEMS	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10
1: Site visit and report: Hourly rate										
2: Terpene Testing : Per test										
3: Potency Testing: Per test										
4: Microbial Testing: Per test										
5: Heavy Metal Testing: Per test										
6: Residual Solvent Testing: Per test										
7: Pesticide Testing: Per test										
8: Mycotoxin Testing: Per test										
9. Water activity/moisture content: Per test										
10. Hourly rate for consultation services.										

H.1.2. Additional Consultation and Support Services Cost (As needed)

H.1.2.1. Provide labor categories and proposed cost per category (hourly rate) applicable to additional work that may be required due to statutory or business processes changes during the agreement period. Provide confirmation the hourly rate will remain fixed throughout the agreement period or provide hourly rate(s) per contract year. Travel costs must be included in the hourly rate(s). All work performed pursuant to this line item must be approved through a mutually agreed-upon statement of work (SOW) detailing work to be performed, timelines, deliverables, acceptance criteria, and cost. No additional work will be performed or costs incurred by the Supplier prior to execution of an SOW by both parties and a purchase order or change order has been issued and provided to the Supplier.

Acknowledgement of Licensing Requirements

The selected Supplier for this contract must obtain an OMMA Testing Laboratory license and an OMMA Transporter license within 6 months of the contract award. To obtain these licenses, the Supplier must be able to meet all requirements of each license as required by State Question 788 (63 O.S. § 420 et seq), the Oklahoma Medical Marijuana and Patient Protection Act (63 O.S. § 427.1 et seq), and OMMA rules (OAC 310:681). These requirements include:

- Applicants/owners must be 25 or older and provide proof of identity.
- Individual applicants must be Oklahoma residents.
- Members, managers, and board members of entity applicants must all be Oklahoma residents.
- Entities must show that at least 75% ownership is held by an Oklahoma resident. Proof of residency for the last two years preceding the date of license application or five continuous years of the last 25 years preceding the date of license application is required. Documentation proving residency for the duration of two or five years will be required at application.
- All owners and officers must provide a background check; nonviolent felony convictions in the last two years and any other felony conviction in the last five years for any owner will disqualify the applicant.
- Unless the business entity is a Sole Proprietorship or General Partnership, the applying entity must submit a copy of the Oklahoma Secretary of State's certificate of good standing document. For more information, visit the Oklahoma Secretary of State at www.sos.ok.gov.
- Each owner will need to supply an Affidavit of Lawful Presence Form and supporting documentation if he or she is not a U.S. citizen.
- Applicants must supply a Certificate of Compliance for their business location.
- No individual with ownership interest in the business can be a sheriff, deputy sheriff, police officer or prosecuting officer, or an officer or employee of OMMA or a municipality in which the commercial entity is located.
- Applicants must supply ownership disclosure documentation.
- Applicants must provide proof of good standing from the Secretary of State (SOS) and/or their permit from the Oklahoma Tax Commission (OTC), if applicable, depending on the business type and business structure.

Proof of identity can be established by providing a digital, color copy of one of the following unexpired, valid documents:

- Oklahoma driver's license (front and back)
- Oklahoma identification card (front and back)
- U.S. passport or other photo identification issued by the U.S government
- Tribal identification card approved for identification purposes by the Oklahoma Department of Public Safety: United States Bureau of Indian Affairs identification card or a Oklahoma tribal photo identification cards: Muscogee (Creek) Nation of Oklahoma, Kiowa, Comanche, Apache of Oklahoma, Absentee Shawnee, Cheyenne-Arapaho, Choctaw, Delaware, Caddo Nation of Oklahoma issued on or after January 8, 2008.

Proof of Oklahoma residency can be established by providing a digital, color copy of a combination of the following documents:

- Oklahoma driver's license (front and back)
- Oklahoma identification card (front and back)
- Oklahoma voter identification card
- Utility bills, excluding cellular telephone and internet bills
- A residential property deed to property in the State of Oklahoma
- A current rental agreement for residential property located in the State of Oklahoma
- Other documentation deemed sufficient by OMMA

More information is available at omma.ok.gov.

I have read and understand the licensing requirements. I certify that, to the best of my knowledge, the Supplier will meet these requirements.

Supplier Name: _____

Signature of Authorized Representative: _____

Printed Name of Authorized Representative: _____

Attachment “B”

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 OSDH–BAA (Rev 2/2018) (Signature 7-2018)

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) Covered Entity agrees to timely notify Business Associate, in writing, of any arrangements between Covered Entity 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 Covered Entity (CE) become aware of a pattern of activity or practice that constitutes a material breach of a material term of this BAA by Business Associate, Covered Entity 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. CE shall be entitled to

terminate the Underlying Contract associated with such breach if, after CE 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 CE 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 CE 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) OSDH's Notice of Privacy Practices is available on its website: www.health.ok.gov
- (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.

APPROVED:

Representing
Oklahoma State Department

Kim Bailey

Chief Operating Officer

Date

Representing
Business Associate

Name

Title

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 Employee Vendor Request Form](#)
- **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 representative should provide form to payee for completion of the vendor section shown below. Upon receipt of the completed form the agency should enter request instructions below. Please email completed and signed form to vendor.form@omes.ok.gov or fax to 405-522-3663.

Agency Name		Contact Name	
Phone #	Fax #	Email	
Agency Request To – Please select all applicable request types			
☐ Add New Vendor	☐ Update Existing Vendor	PeopleSoft 10-digit Vendor ID _____	
☐ Add New Address	☐ Change Address/Location	PeopleSoft Address # _____	PeopleSoft Location # _____
☐ Change Vendor Tax ID	☐ Change Vendor Name	☐ Add Alternate Payee Name	PeopleSoft Location # _____
☐ 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:		
☐ Add:	☐ 1 - Rents	☐ 2 - Royalties	☐ 3 - Other Income
☐ Remove:	☐ 6 - Medical & Health Care	☐ 7 - Non-Employee Compensation	☐ 10 - Crop Insurance Proceeds
	☐ 14 - Gross Proceeds to an Attorney		

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

Please print legibly or type 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:		☐ Federal Employer ID (FEIN) ☐ Social Security Number (SSN)	
Business Address -- Please provide primary address as reflected on payee's annual U.S. Internal Revenue Service tax documentation			
Address		City	
State	Zip+4	Remittance Email	
Optional Addresses -- Please select address type as applicable			
Type:	☐ Remitting	☐ Ordering	☐ Pricing
	☐ Returning	☐ Mailing	☐ 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)

Please provide tax identification number applicable for payee IRS tax reporting

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-8BEN-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)

☐ 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	☐ 1- RENTS (continued) 532141 Rent of Motor Vehicles 532142 Lease of Motor Vehicles ☐ 2 – ROYALTIES 553170 Royalties	☐ 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
☐ 6 - MEDICAL & HEALTH CARE PAYMENTS 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)		
☐ 7 - NON-EMPLOYEE COMPENSATION 515010 Office of Lawyers 515020 Offices of Notaries 515030 Other Legal Services 515060 Accounting, Tax Preparation, Bookkeeping & Payroll Services 515210 Payments for Contract Mentor Services 515220 Architectural Services 515230 Landscape Architectural Services 515240 Engineering Services 515250 Drafting Services 515260 Building Inspection Services 515270 Geophysical Surveying & Mapping Services 515280 Surveying and Mapping (except geophysical) Services 515290 Testing Laboratories 515300 Interior Design Services 515310 Industrial Design Services 515320 Graphic Design Services 515330 Other Specialized Design Services 515350 Custom Computer Programming Services 515360 Computer Systems Design Services 515370 Computer Facilities Management Services 515380 Other Computer Related Services 515400 Administrative Management & General Management Consulting Services 515410 Human Resources & Executive Search Consulting Services 515420 Marketing Consulting Services 515430 Process, Physical Distribution, & Logistics Consulting Services 515440 Other Management Consulting Services 515450 Environmental Consulting Services 515460 Other Scientific & Technical Consulting Services 515470 Research & Development in the Physical, Engineering, & Life Sciences 515480 Research & Development in the Social Sciences & Humanities 515490 Advertising and Related Services 515500 Marketing Research & Public Opinion Polling 515510 Photographic Services 515520 Translation & Interpretation Services 515540 All other Professional, Scientific and Technical Services 515550 Management of Companies & Enterprises 515560 Office Administrative Services 515570 Employment Placement Services 515580 Business Support Services 515590 Document Preparation Services 515600 Telephone Call Centers 515610 Business Service Centers 515620 Collection Agencies 515630 Credit Bureaus 515640 Other Business Support Services 515650 Investigation & Security Services 515660 Educational Services 515940 Individual & Family Services 515950 Community Food, Housing & Emergency & Other Relief Services 515960 Vocational Rehabilitation Services 515970 Child Day Care Services 515980 Arts, Entertainment and Recreation 515990 Other Services (except Public Administration) 517110 Moving Expense – Employee Transfer 531150 Printing and Binding Contract 531160 Advertising 531170 Informational Services 531190 Exhibitions, Shows and Special Events 531220 Burial Charges 531330 Jury and Witness Fees 531500 Moving Expenses – General 533100 Maintenance & Repair – Other Items 533110 Maintenance & Repair of Buildings & Grounds (outside vendors) 533120 Maintenance & Repair – Equipment (outside vendors) 533130 Maintenance & Repair of Telephone Equipment (outside vendors) 533140 Maintenance & Repair of Data Processing Equipment (outside vendors) 533150 Maintenance & Repair of Data Processing Software (outside vendors) 533190 Maintenance & Repair – Employee Uniforms 545110 Purchase of Land Improvements 545210 CIP (Construction in Progress) – Land Improvements 546210 Buildings and Other Structures – Construction and Renovation 546220 Major Maintenance and Repair of Equipment 547110 Highway and Bridge Construction Expense – Contractual 547120 Maintenance and Repairs to Highways and Bridges 547210 Major Maintenance and Renovation – Bridges 552100 Stipends – Other 552120 Teacher Stipends ("Incentive" payments) 552130 Oklahoma Police Corps Stipends 553160 Non-Employee Reportable Court Ordered or Legal Settlements 554190 Voter Registration Services 561140 Pollution Remediation		
☐ 14 - GROSS PROCEEDS TO AN ATTORNEY 553180 Settlements – Paid To/Thru Attorney		