

REQUEST FOR PROPOSAL

RFP COVER SHEET

Administrative Information:

TITLE OF RFP:	Independent Reviewer		RFP Number:	DIA/HFD RFP01-2015
Agency:	Iowa Dept. of Inspections & Appeals, Health Facilities Division			
State seeks to purchase:	Iowa licensed attorney meeting statutory criteria to serve as independent reviewer for state informal conferences and federal informal dispute resolution.			
Number of <u>mos.</u> or <u>yrs.</u> of the initial term of the contract:	1 year initially	Number of possible annual extensions:	3 – 1 year periods	
Initial Contract term beginning:	Date: 6/1/2015	Ending:	Date: 5/31/2016	
State Issuing Officer:				
Name: Mindla White				
Phone e-Mail and Fax: 515-281-3752; Mindla.White@dia.iowa.gov ; 515-242-5022				
Mailing Address: Iowa Department of Inspections & Appeals, Health Facilities Division Lucas State Office Building 321 E. 12 th Street Des Moines, IA 50319				
PROCUREMENT TIMETABLE—Event or Action:				Date/Time (Central Time):
State Posts Notice of RFP on TSB website				3/16/2015 9:00 AM
State Issues RFP				3/19/2015 1:00 PM
Proposals Due Date:				Date: 4/17/2015
Proposals Due Time:				Time: 4:30 PM
Anticipated Date to issue Notice of Intent to Award:				Date: 5/15/2015
Anticipated Date to execute contract:				Date: 6/1/2015
Relevant Websites:		Web-address:		
Internet website where Addenda to this RFP will be posted:		http://bidopportunities.iowa.gov/		
Internet website where contract terms and conditions are posted:		http://das.gse.iowa.gov/terms_services.pdf		
Number of Copies of Proposals Required to be Submitted:				1 CD, 1 Original, and 4 copies
Firm Proposal Terms Per Section 3.2.13, the minimum Number of Days following the deadline for submitting proposals that the Contractor guarantees all proposal terms will remain firm:				180 Days

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SECTION 1 INTRODUCTION

1.1 Purpose

The purpose of this Request for Proposals (RFP) is to solicit proposals from Responsible Contractors to provide the goods and/or services identified on the RFP cover sheet and described further in Section 4 of this RFP to the Agency identified on the RFP cover sheet. The Agency intends to award a Contract(s) beginning and ending on the dates listed on the RFP cover sheet, and the Agency in its sole discretion may extend the Contract(s) for up to the number of annual extensions identified on the RFP cover sheet.

1.2 Definitions

For the purposes of this RFP and the resulting contract, the following terms shall mean:

- 1.2.1 **“Proposal”** means the Contractor’s proposal submitted in response to the RFP.
- 1.2.2 **“Contract”** means the contract(s) entered into with the successful Contractor(s) as described in section 6.1.
- 1.2.3 **“Contractor”** means a vendor submitting a Proposal in response to this RFP.
- 1.2.4 **“Agency”** means the agency identified on the RFP cover sheet that is issuing the RFP and any other agency that purchases from the Contract.
- 1.2.5 **“Responsible Contractor”** means a Contractor that has the capability in all respects to perform the requirements of the Contract. In determining whether a Contractor is a Responsible Contractor, the agency may consider various factors including, but not limited to, the Contractor’s competence and qualifications to provide the goods and services requested, the Contractor’s integrity and reliability, the past performance of the Contractor and the best interest of the Agency and the State.
- 1.2.6 **“Responsive Proposal”** means a Proposal that complies with the material provisions of this RFP.
- 1.2.7 **“RFP”** means this Request for Proposals and any attachments, exhibits, schedules or addenda hereto.
- 1.2.8 **“State”** means the State of Iowa, the Agency identified on the contract Declarations & Execution Page(s). and all state agencies, boards, and commissions, and any political subdivisions making purchases for the Contract as permitted by this RFP.

1.3 Overview of the RFP Process

Contractors will be required to submit their Proposals in hardcopy and on CD- ROM. It is the Agency’s intention to evaluate Proposals from all Responsible Contractors that submit timely Responsive Proposals, and award the Contract(s) in accordance with Section 5, Evaluation and Selection.

1.4 Background Information

This RFP is designed to provide Contractors with the information necessary for the preparation of competitive Proposals. The RFP process is for the Agency’s benefit and is intended to provide the Agency with competitive information to assist in the selection process. It is not intended to be comprehensive. Each Contractor is responsible for determining all factors necessary for submission of a comprehensive Proposal.

Iowa Code sections 135C.42, 231B.9A, 231C.9A and 231D.10A require the Agency to provide an independent reviewer meeting the statutory criteria to hold informal conferences with health care facilities desiring to contest a state citation and assisted living programs, elder group homes and adult day services programs desiring to contest the department’s final findings. The independent reviewer must be licensed as an attorney in the state of Iowa, must not be employed or have been employed by the Agency in the past eight years, and must not have appeared in front of the Agency on behalf of a health care facility, assisted living program, elder group home or adult day services program in the past eight years. Preference shall be given to an attorney with background knowledge, experience, or training in long-term care. Iowa Code permits the Agency to issue a request for proposals to enter into a contract for the purpose of providing one or more independent reviewers for informal conferences.

Federal law provides a mechanism for informally challenging certain department actions. Federal regulations (42 CFR 488.331) require the Agency to provide long-term care facilities with one opportunity for Informal Dispute Resolution (IDR) after the facility receives a federal Statement of Deficiencies. Iowa Code requires the Agency to hold the informal conference concurrently with any IDR held pursuant to 42 CFR 488.331 for those facilities eligible for IDR.

The independent reviewer is responsible for holding informal conference / informal dispute resolution meetings at the Lucas State Office building in Des Moines, Iowa, typically scheduled to occur on the same day of each week. At the conclusion of the meeting, the independent reviewer may affirm, modify or dismiss a state citation or a federal deficiency. The independent reviewer must state in writing the specific reasons for the affirmation, modification or dismissal and transmit copies of the decision to the Agency. The independent reviewer will be allotted no more than a total of three hours to a single case, which includes one hour for the meeting and two hours for preparation and decision.

The independent reviewer shall provide monthly statistics to the Agency via email by the 10th day of each month, including the number of IC/IDRs conducted, the number of regulation violations reviewed, and the number and percentage of regulation violations retained, dismissed and/or modified. The statistics must be separated by provider type, including nursing home, residential care facility (RCF), Intermediate Care Facility for the Intellectually Disabled (ICF/ID), assisted living program, elder group home and adult day services program.

The federal Centers for Medicare and Medicaid Services (CMS) holds the State accountable for the federal Informal Dispute Resolution process. Since CMS has ultimate oversight of the State's performance, it may review an IDR decision and make its own binding determination.

The Agency will provide the independent reviewer with training related to state and federal regulations, and reference material necessary to conduct reviews.

1.5 Compensation

Compensation for the successful Contractor will be \$250 per hour, as stated in section 1.6 of the Contract.

SECTION 2 ADMINISTRATIVE INFORMATION

2.1 Issuing Officer

The Issuing Officer identified in the RFP cover sheet is the sole point of contact regarding the RFP from the date of issuance until a Notice of Intent to Award the Contract is issued.

2.2 Restriction on Communication

From the issue date of this RFP until a Notice of Intent to Award the Contract is issued, Contractors may contact only the Issuing Officer. The Issuing Officer will respond only to written questions regarding the procurement process. Questions related to the interpretation of this RFP must be submitted as provided in Section 2. Oral questions related to the interpretation of this RFP will not be accepted. Contractors may be disqualified if they contact any State employee other than the Issuing Officer about the RFP except that Contractors may contact the State Targeted Small Business Office on issues related to the preference for Targeted Small Businesses.

2.3 Downloading the RFP from the Internet

The RFP and any addenda to the RFP will be posted at <http://bidopportunities.iowa.gov/>. The Contractor is advised to check the website periodically for Addenda to this RFP, particularly if the Contractor downloaded the RFP from the Internet as the Contractor may not automatically receive addenda. It is the Contractor's sole responsibility to check daily for addenda to posted documents.

2.4 Procurement Timetable

The dates provided in the procurement timetable on the RFP cover sheet are provided for informational and planning purposes. The Agency reserves the right to change the dates. If the Agency changes any of the deadlines for Contractor submissions, the Agency will issue an addendum to the RFP.

2.5 Amendment to the RFP

The Agency reserves the right to amend the RFP at any time using an addendum. The Contractor shall acknowledge receipt of all addenda in its Proposal. If the Agency issues an addendum after the due date for receipt of Proposals, the Agency may, in its sole discretion, allow Contractors to amend their Proposals in response to the addendum.

2.6 Amendment and Withdrawal of Proposal

The Contractor may amend or withdraw and resubmit its Proposal at any time before the Proposals are due. The amendment must be in writing,

signed by the Contractor and received by the time set for the receipt of Proposals. Electronic mail and faxed amendments will not be accepted. Contractors must notify the Issuing Officer in writing prior to the due date for Proposals if they wish to completely withdraw their Proposals.

2.7 Submission of Proposals

The Agency must receive the Proposal at the Issuing Officer's address identified on the RFP cover sheet before the "Proposals Due" date listed on the RFP cover sheet. **This is a mandatory requirement and will not be waived by the Agency. Any Proposal received after this deadline will be rejected and returned unopened to the Contractor.** Contractors mailing Proposals must allow ample mail delivery time to ensure timely receipt of their Proposals. It is the Contractor's responsibility to ensure that the Proposal is received prior to the deadline. Postmarking by the due date will not substitute for actual receipt of the Proposal. Electronic mail and faxed Proposals will not be accepted.

Contractors must furnish all information necessary to enable the Agency to evaluate the Proposal. Proposals that fail to meet the mandatory requirements of the RFP will be rejected. Oral information provided by the Contractor shall not be considered part of the Contractor's Proposal unless it is reduced to writing.

2.8 Proposal Opening

The Agency will open Proposals after the deadline for submission of Proposals has passed. The Proposals will remain confidential until the Evaluation Committee has reviewed all of the Proposals submitted in response to this RFP and the Agency has issued a Notice of Intent to Award a Contract. See Iowa Code Section 72.3. However, the names of Contractors who submitted timely Proposals will be publicly available after the Proposal opening. The announcement of Contractors who timely submitted Proposals does not mean that an individual Proposal has been deemed technically compliant or accepted for evaluation.

2.9 Costs of Preparing the Proposal

The costs of preparation and delivery of the Proposal are solely the responsibility of the Contractor.

2.10 No commitment to Contract

The Agency reserves the right to reject any or all Proposals received in response to this RFP at any time prior to the execution of the Contract. Issuance of this RFP in no way constitutes a commitment by the Agency to award a contract.

2.11 Rejection of Proposals

The Agency may reject outright and not evaluate a Proposal for reasons including without limitation:

- 2.11.1 The Contractor acknowledges that a mandatory requirement of the RFP cannot be met.
- 2.11.2 The Contractor's Proposal changes a material requirement of the RFP or the Proposal is not compliant with the mandatory requirements of the RFP.
- 2.11.3 The Contractor's Proposal limits the rights of the Agency.
- 2.11.4 The Contractor fails to include information necessary to substantiate that it will be able to meet a requirement of the RFP as provided in Section 3 of this RFP.
- 2.11.5 The Contractor fails to timely respond to the Agency's request for information, documents, or references.
- 2.11.6 The Contractor fails to include Proposal Security, if required.
- 2.11.7 The Contractor fails to include any signature, certification, authorization, stipulation, disclosure or guarantee as provided in Section 3 of this RFP.
- 2.11.8 The Contractor presents the information requested by this RFP in a format inconsistent with the instructions of the RFP or otherwise fails to comply with the requirements of this RFP.
- 2.11.9 The Contractor initiates unauthorized contact regarding the RFP with state employees.
- 2.11.10 The Contractor provides misleading or inaccurate responses.
- 2.11.11 The Contractor's Proposal is materially unbalanced.
- 2.11.12 There is insufficient evidence (including evidence submitted by the Contractor and evidence obtained by the Agency from other sources) to satisfy the Agency that the Contractor is a Responsive Contractor.
- 2.11.13 The Contractor alters the language in Attachment 1, Certification Letter or Attachment 2, Authorization to Release Information letter.

2.12 Nonmaterial Variances

The Agency reserves the right to waive or permit cure of nonmaterial variances in the Proposal if, in the judgment of the Agency, it is in the State's best interest to do so. Nonmaterial variances include but are not limited to: minor failures to comply that do not affect overall responsiveness, that are merely a matter of form or format, that do not change the relative standing or otherwise prejudice other Contractors, that do not change the meaning or scope of the RFP, or that do not reflect a material change in the requirements of the RFP. In the event the Agency waives or permits cure of nonmaterial variances, such waiver or cure will not modify the RFP requirements or excuse the Contractor from full

compliance with RFP specifications or other Contract requirements if the Contractor is awarded the Contract. The determination of materiality is in the sole discretion of the Agency.

2.13 Reference Checks

The Agency reserves the right to contact any reference to assist in the evaluation of the Proposal, to verify information contained in the Proposal and to discuss the Contractor's qualifications and the qualifications of any subcontractor identified in the Proposal.

2.14 Information from Other Sources

The Agency reserves the right to obtain and consider information from other sources concerning a Contractor, such as the Contractor's capability and performance under other contracts, the qualifications of any subcontractor identified in the Proposal, the Contractor's financial stability, past or pending litigation, and other publicly available information.

2.15 Verification of Proposal Contents

The content of a Proposal submitted by a Contractor is subject to verification. If the Agency determines in its sole discretion that the content is in any way misleading or inaccurate, the Agency may reject the Proposal.

2.16 Proposal Clarification Process

The Agency reserves the right to contact a Contractor after the submission of Proposals for the purpose of clarifying a Proposal. This contact may include written questions, interviews, site visits, a review of past performance if the Contractor has provided goods and/or services to the State or any other political subdivision wherever located, or requests for corrective pages in the Contractor's Proposal. The Agency will not consider information received from or through Contractor if the information materially alters the content of the Proposal or the type of goods and/or services the Contractor is offering to the Agency. An individual authorized to legally bind the Contractor shall sign responses to any request for clarification. Responses shall be submitted to the Agency within the time specified in the Agency's request. Failure to comply with requests for additional information may result in rejection of the Proposal.

2.17 Disposition of Proposals

All Proposals become the property of the State and shall not be returned to the Contractor. Once the Agency issues a Notice of Intent to Award the Contract, the contents of all Proposals will be in the public domain and be available for inspection by interested parties, except for information for which Contractor properly requests confidential treatment or according to exceptions provided *in Iowa Code Chapter 22* or other applicable law.

2.18 Public Records and Requests for Confidential Treatment

The Agency will treat all information submitted by a Contractor as public records unless the Contractor properly requests that specific parts of the Proposal be treated as confidential at the time of submitting the Proposal. The Agency's release of public records is governed by *Iowa Code chapter 22*. Contractors are encouraged to familiarize themselves with Chapter 22 before submitting a Proposal. The Agency will copy and produce public records as required to comply with Chapter 22 or other applicable law.

Any request for confidential treatment of specific information must be included in the transmittal letter with the Contractor's Proposal. In addition, the Contractor must enumerate the specific grounds in *Iowa Code Chapter 22* or other applicable law which support treatment of the material as confidential and explain why disclosure is not in the best interest of the public. Pricing information cannot be considered confidential information. The request for confidential treatment of information must also include the name, address, and telephone number of the person authorized by the Contractor to respond to any inquiries by the Agency concerning the confidential status of the materials.

Any Proposal submitted which contains information for which Contractor is requesting Confidential treatment must be conspicuously marked by the Contractor on the outside as containing confidential information, and each page upon which confidential information appears must be conspicuously marked as containing confidential information. **Failure to properly identify specific information as confidential shall relieve Agency or State personnel from any responsibility if confidential information is viewed by the public or a competitor, or is in any way released. If Contractor identifies its entire Proposal as confidential, the Agency may reject the Proposal as non-responsive.**

If the Contractor designates any portion of its Proposal as confidential, the Contractor must submit a copy labeled as "Public Copy" from which the confidential information has been excised. This excised copy is in addition to the number of copies requested in Section 3 of this RFP. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the Proposal as possible.

If Agency receives a request for information that includes information Contractor has marked as confidential, Agency will give written notice to the Contractor at least seven calendar days prior to the release of the information to allow the Contractor to seek injunctive relief pursuant to *Section 22.8* of the *Iowa Code*. After seven calendar days, the Agency will release the information marked confidential unless a court of competent

jurisdiction determines the information is confidential under *Iowa Code Chapter 22* or other applicable law.

The Contractor's failure to request confidential treatment of material will be deemed a waiver of any right to confidentiality the Contractor may have had.

2.19 Copyright Permission

By submitting a Proposal, the Contractor agrees that the Agency may copy the Proposal for purposes of facilitating the evaluation of the Proposal or to respond to requests for public records. By submitting a Proposal, the Contractor consents to such copying and warrants that such copying will not violate the rights of any third party. The Agency shall have the right to use ideas or adaptations of ideas that are presented in Proposals.

2.20 Release of Claims

By submitting a Proposal, the Contractor agrees that it will not bring any claim or cause of action against the Agency based on any misunderstanding concerning the information provided in the RFP or concerning the Agency's failure, negligent or otherwise, to provide the Contractor with pertinent information in this RFP.

2.21 Evaluation of Proposals Submitted

Proposals that are timely submitted and are not rejected will be reviewed in accordance with Section 5 of the RFP. The Agency will award the Contract(s) to the Responsible Contractor(s) whose Responsive Proposal the agency believes will provide the best value to the Agency and the State.

2.22 Respondent Interview

Respondents may be required to be interviewed. The determination as to need for interviews, the location, order, and schedule of the presentations is at the sole discretion of the Agency. The interview shall not materially change the information contained in the Proposal.

2.23 Award Notice and Acceptance Period

Notice of Intent to Award the Contract(s) will be sent to all Contractors submitting a timely Proposal and may be posted at the website shown on the RFP cover sheet. Negotiation and execution of the Contract(s) shall be completed no later than thirty (30) days from the date of the Notice of Intent to Award or such other time as designated by Agency. If the successful Contractor fails to negotiate and deliver an executed Contract by that date, the Agency, in its sole discretion, may cancel the award and award the Contract to the remaining Contractor the Agency believes will provide the best value to the State.

2.24 No Contract Rights until Execution

No Contractor shall acquire any legal or equitable rights regarding the Contract unless and until the Contract has been fully executed by the successful Contractor and the Agency.

2.25 Choice of Law and Forum

This RFP and the Contract shall be governed by the laws of the State of Iowa. Changes in applicable laws and rules may affect the award process or the Contract. Contractors are responsible for ascertaining pertinent legal requirements and restrictions. Any and all litigation or actions commenced in connection with this RFP shall be brought in the appropriate Iowa forum.

2.26 Restrictions on Gifts and Activities

Iowa Code Chapter 68B restricts gifts which may be given or received by State employees and requires certain individuals to disclose information concerning their activities with State government. Contractors are responsible to determine the applicability of this Chapter 68B to their activities and to comply with its requirements. In addition, pursuant to *Iowa Code section 722.1*, it is a felony offense to bribe or attempt to bribe a public official.

2.27 Appeals

Appeals of the Notice of Intent to Award are governed by the Agency's vendor appeal process. Contractors may obtain information about the appeal process from the Issuing Officer and at Iowa Administrative Code chapters 11-7 and 11-105.

SECTION 3 FORM AND CONTENT OF PROPOSALS

3.1. Instructions

These instructions prescribe the format and content of the Proposal. They are designed to facilitate a uniform review process. Failure to adhere to the Proposal format may result in the rejection of the Proposal.

- 3.1.1. The Proposal shall be typewritten on 8.5" x 11" paper and sent in sealed envelope. The envelopes shall be numbered in the following fashion: 1 of 4, 2 of 4, etc. The envelopes shall be labeled with the following information:

RFP Number: DIA/HFD RFP01-2013
RFP Title: Independent Reviewer
Issuing Officer Name: Mindla White

Lead Agency Address:
Iowa Department of Inspections & Appeals
Health Facilities Division
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319-0083

The Agency shall not be responsible for misdirected packages or premature opening of Proposals if a Proposal is not properly labeled.

- 3.1.2. One (1) original, one (1) CD, and four copies of the Proposal, each in a sealed envelope, shall be timely submitted to the Issuing Officer.
- 3.1.3. If the Contractor designates any information in its Proposal as confidential pursuant to Section 2, the Contractor must also submit one (1) copy of the Proposal from which confidential information has been excised as provided in Section 2 and which is marked "Public Copy".
- 3.1.4. Proposals shall not contain promotional or display materials.
- 3.1.5. Attachments shall be referenced in the Proposal.
- 3.1.6. If a Contractor proposes more than one solution to the RFP requirements, each shall be labeled and submitted separately and each will be evaluated separately.

3.2 Technical Proposal

The following documents and responses shall be included in the Technical Proposal in the order given below:

3.2.1 Transmittal Letter (Required)

An individual authorized to legally bind the Contractor shall sign the transmittal letter. The letter shall include the Contractor's mailing address, electronic mail address, fax number, and telephone number. Any request for confidential treatment of information shall be included in the transmittal letter in accordance with the provisions of Section 2.

3.2.2 Table of Contents

The Contractor shall include a table of contents of its Proposal and submit the check list of submittals per Attachment # 3.

3.2.3 Executive Summary

The Contractor shall prepare an executive summary and overview of the goods and/or services it is offering, including all of the following information:

- 3.2.3.1** Statements that demonstrate that the Contractor has read, understands and agrees with the terms and conditions of the RFP including the contract provisions in Section 6.
- 3.2.3.2** An overview of the Contractor's plans for complying with the requirements of this RFP.
- 3.2.3.3** Any other summary information the Contractor deems to be pertinent.

3.2.4 Specifications and Technical Requirements

The Contractor shall answer whether or not it will comply with each requirement in Section 4 of the RFP. Where the context requires more than a yes or no answer or the specific requirement so indicates, Contractor shall explain how it will comply with the requirement. Merely repeating the Section 4 requirements may be considered non-responsive and result in the rejection of the Proposal. Proposals must identify any deviations from the requirements of the RFP or requirements the Contractor cannot satisfy. If the Contractor deviates from or cannot satisfy the requirement(s) of this section, the Agency may reject the Proposal.

3.2.5 Vendor Background Information

The Contractor shall provide the following general background information:

- 3.2.5.1** Name, address, telephone number, fax number and e-mail address of the Contractor including all d/b/a's or assumed names or other operating names of the Contractor and any local addresses and phone numbers

- 3.2.5.2** Form of business entity, i.e., corporation, partnership, proprietorship, limited liability company
- 3.2.5.3** State of incorporation, state of formation, or state of organization.
- 3.2.5.4** The location(s) including address and telephone numbers of the offices and other facilities that relate to the Contractor's performance under the terms of this RFP
- 3.2.5.5** Number of employees
- 3.2.5.6** Type of business
- 3.2.5.7** Name, address and telephone number of the Contractor's representative to contact regarding all contractual and technical matters concerning the Proposal
- 3.2.5.8** Name, address and telephone number of the Contractor's representative to contact regarding scheduling and other arrangements
- 3.2.5.9** Contractor's accounting firm
- 3.2.5.10** The successful Contractor will be required to register to do business in Iowa before payments can be made.
For vendor registration documents, go to:
http://das.gse.iowa.gov/procurement/vendor_reg.html

3.2.6 Experience

The Contractor must provide the following information regarding its experience:

- 3.2.6.1** Number of years in business
- 3.2.6.2** Number of years experience with providing the types of goods and/or services sought by the RFP
- 3.2.6.3** The level of technical experience in providing the types of goods and/or services sought by the RFP
- 3.2.6.4** A list of all goods and/or services similar to those sought by this RFP that the Contractor has provided to other businesses or governmental entities
- 3.2.6.5** Letters of reference from three (3) previous customers or clients knowledgeable of the Contractor's performance in providing goods and/or services similar to the goods and/or services described in this RFP and a contact person and telephone number for each reference
- 3.2.6.6** An attestation that the Contractor is an Iowa attorney of good standing.

3.2.6.7 Three (3) legal writing samples.

3.2.7 Personnel

The Contractor must provide resumes for all key personnel who will be involved in providing the goods and/or services contemplated by this RFP. The following information must be included in the resumes:

3.2.7.1 Full name

3.2.7.2 Education

3.2.7.3 Years of experience and employment history particularly as it relates to the requirements of the RFP

3.2.8 Termination, Litigation, Debarment

The Contractor must provide the following information for the past five (5) years:

3.2.8.1 Has the Contractor had a contract for goods and/or services terminated for any reason? If so, provide full details regarding the termination.

3.2.8.2 Describe any damages or penalties assessed against or dispute resolution settlements entered into by Contractor under any existing or past contracts for goods and/or services. Provide full details regarding the circumstances, including dollar amount of damages, penalties and settlement payments.

3.2.8.3 Describe any order, judgment or decree of any Federal or State authority barring, suspending or otherwise limiting the right of the Contractor to engage in any business, practice or activity.

3.2.8.4 A list and summary of all litigation or threatened litigation, administrative or regulatory proceedings, or similar matters to which the Contractor or its officers have been a party.

3.2.8.5 Any irregularities discovered in any of the accounts maintained by the Contractor on behalf of others. Describe the circumstances and disposition of the irregularities.

Failure to disclose these matters may result in rejection of the Proposal or termination of any subsequent Contract. The above disclosures are a continuing requirement of the Contractor. Contractor shall provide written notification to the Agency of any such matter commencing or occurring after submission of a Proposal, and with respect to the successful Contractor, following execution of the Contract.

3.2.9 Acceptance of Terms and Conditions

The Contractor shall specifically agree that by submitting the Proposal, the Contractor is accepting all terms and conditions stated in the RFP. However, if the Contractor objects to any term or condition, the Contractor must specifically refer to the RFP page and section number and provide the reason for the objection. Objections or responses that materially alter the RFP may be deemed non-responsive and result in rejection of the Proposal.

3.2.10 Certification Letter

The Contractor shall sign and submit with the Proposal, the document included as Attachment #1 (Certification Letter) in which the Contractor shall make the certifications included in Attachment #1.

3.2.11 Authorization to Release Information

The Contractor shall sign and submit with the Proposal the document included as Attachment #2 (Authorization to Release Information Letter) in which the Contractor authorizes the release of information to the Agency.

3.2.12 Firm Proposal Terms

The Contractor shall guarantee in writing the goods and/or services offered in the Proposal are currently available and that all Proposal terms, including price, will remain firm 180 days following the deadline for submitting Proposals.

SECTION 4 SPECIFICATIONS AND TECHNICAL REQUIREMENTS

4.1 Overview

The successful Contractor shall provide the goods and/or services to Agency and to Buyers issuing Purchase Instruments against the Contract in accordance with the specifications and technical requirements as provided in this Section. The Contractor shall address each requirement in this Section and indicate whether or not it will comply with the requirement. If the context requires more than a yes or no answer or the section specifically indicates, Contractor shall explain how it will comply with the requirement. Proposals must address each requirement. Merely repeating the requirements may be considered non-responsive and may disqualify the Contractor. Proposals must identify any deviations from the requirements of this RFP or requirements the Contractor cannot satisfy. If the Contractor deviates from or cannot satisfy the requirement(s) of this section, the Agency may reject the Proposal.

There are three types of requirements addressed in these specifications:

- **Mandatory (pass/fail) Requirements:** A Contractor must be able to satisfy all these requirements to be deemed a Responsible Contractor.
- **Scored Mandatory Technical Requirements:** Proposals which pass the Mandatory Requirements review will be reviewed by the evaluation committee and scored in accordance with the evaluation criteria described in Section 5. Compliance with the Scored Technical Requirements is also mandatory.
- **Optional Scored Requirements:** These are scored non-mandatory requirements the Agency may be interested in having.

4.2 Mandatory (Pass/Fail) Technical Requirements

All items listed in this section are Mandatory Requirements. A pass/fail evaluation will be utilized for these requirements. Contractors must mark either “**yes**” or “**no**” to each requirement in their Proposals. By indicating “yes” a Contractor agrees that it shall comply with that requirement throughout the full term of the Contract, if the Contractor is successful. In addition, if specified by the requirements or if the context otherwise requires, the Contractor shall provide references and/or supportive materials to verify the Contractor’s compliance with the requirement. The Agency shall have the right to determine whether the supportive information and materials submitted by the Contractor demonstrate the Contractor will be able to comply with the Mandatory Requirements. If the Agency determines the responses and supportive materials do not

demonstrate the Supplier will be able to comply with the Mandatory Requirements, the Agency may reject the Proposal.

- 4.2.1 A licensed attorney in the state of Iowa.
- 4.2.2 Not employed by the Agency currently or within the past eight years.
- 4.2.3 Has not appeared in front of the Agency on behalf of a health care facility, assisted living program, elder group home or adult day services program in the past eight years.
- 4.2.4 Does not have any financial interest or any ownership interest in a health care facility, assisted living program, elder group home or adult day services program in Iowa.

4.3 Mandatory Scored Technical Requirements

All items listed below are Mandatory Scored Technical Requirements. All requirements must be met; they will be evaluated and scored by the evaluation committee in accordance with Section 5. Proposals that do not have a minimum score of 90 on these requirements will be rejected.

- 4.3.1 Demonstrated knowledge, experience or training in long-term care, including state and federal law.
- 4.3.2 Ability to manage informal conference / informal dispute resolution meetings by clearly communicating with participants; ability to state clearly in writing the specific reasons for affirmation, modification or dismissal of a state citation or federal deficiency.
- 4.3.3 Ability to analyze state and federal law and apply it to the facts presented.
- 4.3.4 Ability to conduct an independent, objective review of the facts, acting as a neutral decision-maker.
- 4.3.5 Ability to attend in-person and effectively lead and manage informal conference / informal dispute resolution meetings at the Lucas State Office Building in Des Moines, Iowa, typically scheduled to occur on the same day of each week.
- 4.3.6 Ability to provide for substitute independent reviewer in case of illness, emergency or conflict of interest.

SECTION 5 EVALUATION AND SELECTION

5.1 Introduction

This section describes the evaluation process that will be used to determine which Proposal(s) provides the greatest benefit to the State. The Agency will award the Contract whose Responsive Proposal the Agency believes will provide the best value to the State.

5.2 Evaluation Committee

The Agency intends to conduct a comprehensive, fair, and impartial evaluation of Proposals received in response to this RFP. The Agency will use an evaluation committee to review and evaluate the Proposals.

The evaluation committee will make a recommendation to the person or entity who must approve the recommendation. The Director will select the Contractor to receive the award. The Director is not bound by the evaluation committee's recommendation.

5.3 Overview of Evaluation

All Proposals will be first evaluated to determine if they comply with the Mandatory Requirements and Scored Mandatory Technical Requirements described in Section 4.2 and 4.3 and meet the minimum score as provided in Section 4.3. The evaluation committee will fully evaluate and score all Responsive Proposals submitted by Responsible Contractors in accordance with this Section. To be deemed a Responsible Contractor and a Responsive Proposal, the Proposal must:

- answer "Yes" to all parts of Section 4.2 and include supportive materials as required to demonstrate the Contractor will be able to comply with the Mandatory Requirements in that section and
- obtain a minimum score of 90 for the Mandatory Scored Technical Requirements outlined in Section 4.

5.4 Evaluation Criteria

Evaluation of Proposals will be based on the following criteria, which are not listed in any particular order of importance.

Maximum score possible: 170

5.4.1 Contractor's professional experience and performance record, including but not limited to satisfactory performance on previous and present contracts similar in scope to the subject of this RFP. (20 points)

5.4.2 Demonstrated knowledge, experience or training in long-term care, including state and federal law. (20 points)

- 5.4.3** Communication skills (writing and oral). (20 points)
- 5.4.4** Analytical skills. (20 points)
- 5.4.5** Ability to conduct an independent, objective review of the facts, acting as a neutral decision-maker. (20 points)
- 5.4.6** Ability to attend in-person and effectively lead and manage informal conference / informal dispute resolution meetings at the Lucas State Office Building in Des Moines, Iowa, typically scheduled to occur on the same day of each week. (20 points)
- 5.4.7** Ability to provide for substitute independent reviewer in case of illness, emergency or conflict of interest. (5 points)
- 5.4.8** References. (5 points)
- 5.4.9** Demonstrated quality of proposed services and/or products. (15 points)
- 5.4.10** Plans for assurance of high quality service to DIA, including but not limited to the provision of monthly statistics to DIA. (20 points)
- 5.4.11** Financial stability of Contractor. (10 points)

SECTION 6 CONTRACTURAL TERMS AND CONDITIONS

6.1 Contract Terms and Conditions

The Contract that the Agency expects to award as a result of this RFP shall comprise the specifications, terms and conditions of the RFP, written clarifications or changes made in accordance with the provisions of the RFP, the contract terms and conditions contained at the web-address indicated on the RFP cover sheet, the offer of the successful Contractor contained in its Proposal, and any other terms deemed necessary by the Agency. No objection or amendment by a Contractor to the provisions or terms and conditions of the RFP shall be incorporated into the Contract unless Agency has explicitly accepted the Contractor's objection or amendment in writing.

The contract terms and conditions contained at the web-address indicated on the RFP cover sheet will be incorporated into the Contract. The contract terms and conditions may be supplemented at the time of contract execution and are provided to enable Contractors to better evaluate the costs associated with the RFP requirements and the Contract.

By submitting a Proposal, each Contractor acknowledges its acceptance of the RFP specifications and the contract terms and conditions without change except as otherwise expressly stated in its Proposal. If a Contractor takes exception to a provision, it must state the reason for the exception and set forth in its Proposal the specific RFP or contract language it proposes to include in place of the provision. Exceptions that materially change the contract terms and conditions or the requirements of the RFP may be deemed non-responsive by the Agency, in its sole discretion, resulting in possible rejection of the Proposal. The Agency reserves the right to either award a Contract(s) without further negotiation with the successful Contractor or to negotiate Contract terms with the successful Contractor if the best interests of the State would be served.

6.2 Contract Length

The term of the Contract will begin and end on the dates indicated on the RFP cover sheet. The Agency shall have the sole option to renew the Contract upon the same or more favorable terms and conditions for up to the number of annual extensions identified on the RFP cover sheet.

**Attachment # 1
Certification Letter**

Alterations to this document are prohibited, see section 2.14.15.

[Date]

Mindla White, Issuing Officer
Iowa Department of Inspections and Appeals
Health Facilities Division
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319-0083

Re: Request for Proposal Number DIA/HFD RFP01-2015
PROPOSAL CERTIFICATIONS

Dear **Mindla White**:

I certify that the contents of the Proposal submitted on behalf of [**Name of Contractor**]_____ (Contractor) in response to **Iowa Department of Inspections & Appeals, Health Facilities Division** for Request for Proposal Number DIA/HFD RFP01-2015 for Independent Reviewer are true and accurate. I also certify that Contractor has not knowingly made any false statements in its Proposal.

Certification of Independence

I certify that I am a representative of Contractor expressly authorized to make the following certifications in behalf of Contractor. By submitting a Proposal in response to the RFP, I certify in behalf of the Contractor the following:

1. The Proposal has been developed independently, without consultation, communication or agreement with any employee or consultant to the Agency or with any person serving as a member of the evaluation committee.
2. The Proposal has been developed independently, without consultation, communication or agreement with any other contractor or parties for the purpose of restricting competition.
3. Unless otherwise required by law, the information found in the Proposal has not been and will not be knowingly disclosed, directly or indirectly prior to Agency's issuance of the Notice of Intent to Award the contract.
4. No attempt has been made or will be made by Contractor to induce any other contractor to submit or not to submit a Proposal for the purpose of restricting competition.

5. No relationship exists or will exist during the contract period between Contractor and the Agency or any other State agency that interferes with fair competition or constitutes a conflict of interest.

Certification Regarding Debarment

6. I certify that, to the best of my knowledge, neither Contractor nor any of its principals: (a) are presently or have been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal Agency or State Agency; (b) have within a three year period preceding this Proposal been convicted of, or had a civil judgment rendered against them for commission of fraud, a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of antitrust statutes; commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property; (c) are presently indicted for or criminally or civilly charged by a government entity (federal, state, or local) with the commission of any of the offenses enumerated in (b) of this certification; and (d) have not within a three year period preceding this Proposal had one or more public transactions (federal, state, or local) terminated for cause.

This certification is a material representation of fact upon which the Agency has relied upon when this transaction was entered into. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to other remedies available, the Agency may pursue available remedies including suspension, debarment, or termination of the contract.

Certification Regarding Registration, Collection, and Remission of Sales and Use Tax

7. Pursuant to *Iowa Code sections 423.2(10) and 423.5(8) (2011)* a retailer in Iowa or a retailer maintaining a business in Iowa that enters into a contract with a state agency must register, collect, and remit Iowa sales tax and Iowa use tax levied under *Iowa Code chapter 423* on all sales of tangible personal property and enumerated services. The Act also requires Contractors to certify their compliance with sales tax registration, collection, and remission requirements and provides potential consequences if the certification is false or fraudulent.

By submitting a Proposal in response to the (RFP), the Contractor certifies the following: (check the applicable box)

- Contractor is registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by *Iowa Code Chapter 432*; or
- Contractor is not a “retailer” or a “retailer maintaining a place of business in this state” as those terms are defined in *Iowa Code subsections 423.1(42) and (43)*.

Contractor also acknowledges that the Agency may declare the Contractor's Proposal or resulting contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Agency or its representative filing for damages for breach of contract in addition to other remedies available to Agency.

Sincerely,

[Name and Title]

Attachment #2

Authorization to Release Information Letter

Alterations to this document are prohibited, see section 2.14.15.

[Date]

Mindla White, Issuing Officer
Iowa Department of Inspections and Appeals
Health Facilities Division
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319-0083

Re: Request for Proposal Number DIA/HFD RFP 01-2015
AUTHORIZATION TO RELEASE INFORMATION

Dear Mindla White:

[Name of Contractor]_____ **(Contractor)** hereby authorizes the Iowa Department of Inspections & Appeals ("Agency") or a member of the Evaluation Committee to obtain information regarding its performance on other contracts, agreements or other business arrangements, its business reputation, and any other matter pertinent to evaluation and the selection of a successful Contractor in response to Request for Proposal (RFP) Number DIA/HFD RFP 01-2015.

The Contractor acknowledges that it may not agree with the information and opinions given by such person or entity in response to a reference request. The Contractor acknowledges that the information and opinions given by such person or entity may hurt its chances to receive contract awards from the State or may otherwise hurt its reputation or operations. The Contractor is willing to take that risk.

The Contractor hereby releases, acquits and forever discharges the State of Iowa, the Agency, their officers, directors, employees and agents from any and all liability whatsoever, including all claims, demands and causes of action of every nature and kind affecting the undersigned that it may have or ever claim to have relating to information, data, opinions, and references obtained by the Agency or the Evaluation Committee in the evaluation and selection of a successful Contractor in response to the RFP.

The Contractor authorizes representatives of the Agency or the Evaluation Committee to contact any and all of the persons, entities, and references which are, directly or indirectly, listed, submitted, or referenced in the Contractor's Proposal submitted in response to RFP.

The Contractor further authorizes any and all persons and entities to provide information, data, and opinions with regard to its performance under any contract, agreement, or other business arrangement, its ability to perform, business reputation, and any other matter pertinent to the evaluation of the Contractor's Proposal. The Contractor hereby releases, acquits and forever discharges any such person or entity and their officers, directors,

employees and agents from any and all liability whatsoever, including all claims, demands and causes of action of every nature and kind affecting the Contractor that it may have or ever claim to have relating to information, data, opinions, and references supplied to the Agency or the Evaluation Committee in the evaluation and selection of a successful Contractor in response to RFP.

A photocopy or facsimile of this signed Authorization is as valid as an original.

Sincerely,

[Printed Name of Contractor Organization]

[Name and Title of Authorized Representative]

Date

**Attachment #3
Vendor Requirement Check List**

RFP REFERENCE SECTION	RESPONSE INCLUDED		LOCATION OF RESPONSE
	Yes	No	
3.1.2 one (1) Original, (1) CD and four (4) copies of the Proposal			
3.1.3 One (1) Public Copy with Confidential Information Excised			
3.2.1 Transmittal Letter			
3.2.2 Table of Contents			
3.2.3 Executive Summary			
3.2.4 Specifications and Technical Requirements			
3.2.5 Background Information			
3.2.6 Experience			
3.2.7 Personnel			
3.2.8 Termination, Litigation, Debarment			
3.2.9 Acceptance of Terms and Conditions			
3.2.10 Certification Letter			
3.2.11 Authorization to Release Information			
3.2.12 Firm Proposal Terms			
4.2 Mandatory Requirements			
4.3 Mandatory Scored Requirements			

Attachment 4

CONTRACT AGREEMENT

1.1 INTRODUCTORY CONTRACT LANGUAGE

This Contract is for an Iowa licensed attorney to serve as an independent reviewer for state informal conferences and federal informal dispute resolution meetings for the Iowa Department of Inspections and Appeals, Health Facilities Division. The Contract is between the State of Iowa, Iowa Department of Inspections and Appeals, hereinafter referred to as the "DIA" or "Department" and **[Name of the Vendor]**. The parties agree as follows:

1.2 IDENTITY OF THE PARTIES

- A. The Department is authorized to enter into this Contract. The Department's address is

Iowa Department of Inspections and Appeals
Lucas State Office Building
321 East 12th Street
Des Moines, IA 50319-0083.

- B. **[Full legal name of the vendor]** ("Vendor") **[Vendor's business form]** is organized under the laws of the state of Iowa and authorized to do business in the state of **[state where Vendor is organized or incorporated]**. The vendor's address is **[vendor's address]**

1.3 PURPOSE

The parties have entered into this Contract for the purpose of retaining the Vendor to provide services as an independent reviewer for state informal conferences and federal informal dispute resolution meetings for the Iowa Department of Inspections and Appeals, Health Facilities Division, pursuant to the requirements of Request for Proposal No. **DIA/HFD RFP01-2015**.

1.4 DURATION OF CONTRACT

The term of this Contract shall be effective upon signature of both parties through **5/31/2016**.

1.5 SCOPE OF SERVICES

The Vendor shall provide services as an independent reviewer for the Iowa Department of Inspections and Appeals pursuant to the requirements of Request for Proposal No. **DIA/HFD RFP01-2015**. (Attached)

Services rendered pursuant to this Contract shall be performed in a professional manner in accordance with the terms of this Contract.

The Vendor shall attend in person and lead informal conferences and informal dispute resolution meetings at the Lucas State Office Building in Des Moines, Iowa, typically scheduled to occur on the same day of each week. At the conclusion of the informal conference / informal dispute resolution, the Vendor shall provide to the Department a

written decision within the timeframe established by the Department, stating the specific reasons for affirming, modifying or dismissing the citation or deficiency.

If the Independent Reviewer, for reasons of illness, emergency or conflict of interest, is unable to attend in person and lead a previously-scheduled informal conference / informal dispute resolution, the Independent Reviewer shall provide a qualified substitute. The Department shall be provided advance notice of a substitution and retains final approval thereof.

The Vendor shall provide monthly statistics to the Department via email by the 10th day of each month. The statistics shall include the number of informal conferences / informal dispute resolution meetings conducted, the number of regulations reviewed, and the number and percentage of regulations retained, dismissed and/or modified. The statistics shall be separated by provider type.

During the term of the Contract, the Department shall furnish the Vendor with reasonable office space and access to DIA personnel and information necessary to carry out the Vendor's required duties. The Department's Bureau Chief - Compliance will be the coordinating individual and assist in meeting the Vendor's needs.

The Department shall provide training on federal and state regulations and provide reference material necessary in order to conduct reviews.

1.6 COMPENSATION

The Vendor shall be compensated \$250 / hour, based upon successful and timely completion of informal conferences scheduled during the preceding month and submittal of an invoice, **if agreed upon by the DIA. In no case shall the Vendor be compensated for more than a total of three (3) hours for a single case, which includes one hour for the informal conference / informal dispute resolution meeting and two (2) hours for preparation and decision.** The total hourly compensation shall constitute the entire compensation due the Vendor for the required services and all of the vendor's obligations including but not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Vendor. **This entire compensation shall include Vendor's travel, meal, and lodging expenses.** The hourly rate under this Contract is firm for the duration of the Contract and is not subject to escalation for any reason unless amended.

The Vendor shall submit invoices, in form and substance acceptable to the DIA with all of the necessary supporting documentation, prior to any payment. The invoices shall be submitted to:

Mindla White
Iowa Department of Inspections and Appeals
Health Facilities Division
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319- 0083

1.7 TERMINATION FOR CAUSE

If the Vendor fails to fulfill its obligations under this Contract in a timely or proper manner, or if the Vendor violates any term of this Contract, the DIA shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Vendor shall not be relieved of liability to the DIA for damages sustained by virtue of any breach of this Contract by the Vendor.

1.8 TERMINATION FOR CONVENIENCE

The Contract may be terminated by either party by giving written notice to the other, at least fifteen (15) days before the effective date of the termination. Should the DIA exercise this provision, the Vendor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Should the Vendor exercise this provision, the DIA shall have no liability to the Vendor except for documented services which can be effectively used by the DIA. The final decision as to what these services are shall be determined solely by the DIA.

1.9 TERMINATION DUE TO LACK OF FUNDS OR CHANGE IN THE LAW

The DIA shall have the right to terminate this Contract without penalty by giving thirty (30) days' written notice to the Vendor if funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the DIA to make any payment hereunder are insufficient or unavailable for any other reason as determined by DIA in its sole discretion.

1.10 SUBCONTRACTING

The Vendor shall not assign or enter into a subcontract for any of the services performed under this Contract.

1.11 CONFLICT OF INTEREST

The Vendor warrants that it has no interest and shall not acquire any interest that would conflict in any manner or degree with the performance of the required services under this Contract. A conflict of interest includes, but is not limited to, any financial interest or any ownership interest in a health care facility or assisted living program in Iowa.

A conflict of interest exists where an immediate family member of the Independent Reviewer currently resides in or is employed by a health care facility, assisted living program or corporation with an ownership interest in a facility or program in Iowa, if the facility or program has requested an informal conference / independent dispute resolution. "Immediate family member" includes a husband or wife; natural or adoptive parent, child, or sibling; stepparent, stepchild or stepsibling; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; or grandparent or grandchild. If such a conflict arises, the Independent Reviewer shall provide for a qualified substitute. The Department shall be provided advance notice of a substitution and retains final approval thereof.

A conflict of interest exists where an attorney practicing law with the same law firm as the Vendor represents a health care facility, assisted living program, elder group home, adult day services program or home health agency in any capacity. The Vendor shall disclose

the conflict of interest and shall not serve as independent reviewer for a federal informal dispute resolution or state informal conference meeting involving the health care facility, assisted living program, elder group home, adult day services program or home health agency.

The Vendor agrees to refrain from ex-parte communication with any attorney representing a health care facility, assisted living program, elder group home, adult day services program or home health agency in federal informal dispute resolution or state informal conference meetings.

1.12 INDEMNIFICATION

A. By the Vendor. The Vendor agrees to indemnify and hold harmless the State of Iowa and the DIA, its officers, employees and agents appointed and elected and volunteers from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value and time spent by the Attorney General's Office, and the costs and expenses and reasonable attorney's fees of the other counsel required to defend the State or Iowa or DIA, relating to or arising from:

A 1 – Any breach of this Contract;

A 2 – Any negligent, intentional or wrongful act or omission of the Vendor or any agent or subcontractor utilized or employed by the Vendor;

A 3 – The Vendor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Vendor;

A 4 – Any failure by the Vendor to comply with the Compliance with the Law provision of this Contract;

A 5 – Any failure by the Vendor to make all reports, payments and withholdings required by federal and state laws with respect to social security, employee income and other taxes, fees or costs required by the Vendor to conduct business in the State of Iowa;

A 6 – Any infringement of copyright, trademark, patent, trade dress, or other intellectual property right; or

A 7 – Any failure by the Vendor to adhere to the confidentiality provisions of this Contract.

B. Indemnification by the DIA

The DIA shall, only to the extent consistent with Article VII, Section 1 of the Iowa Constitution and Iowa Code Chapter 669, indemnify and hold harmless the Vendor from and against any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments arising directly out of the negligence or wrongful acts or omissions of any employee of the DIA while acting within the scope of the employee's office of employment in connection with the performance of this contract.

At the option of the DIA, the Vendor shall be represented by the Attorney General of the State or special counsel retained by the State or Attorney General of the State with respect to any litigation brought by or against the DIA or such persons with respect to any and all

costs, expenses, losses, claims, damages, liabilities, settlements and judgments to which such persons may be subject and to which they are entitled to be indemnified hereunder.

If the DIA makes any indemnity payment pursuant to this Section and the person to or on behalf of whom such payments are made thereafter collects any such amounts from others, that person shall promptly repay such amounts to the DIA, without interest.

C. Survives Termination

Indemnification obligations of the parties shall survive termination of this Contract.

1.13 INSURANCE

A. Insurance requirements. The Vendor, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at the Vendors expense, insurance covering its work during the entire term of this Contract and any extensions. The Vendor's insurance shall, among other things, be occurrence based and shall insure against any loss or damage resulting from or relating to the Vendor's performance of this Contract regardless of the date the claim is filed or expiration of the policy. The State of Iowa and the DIA shall be named as additional insured or loss payees, or the Vendor shall obtain an endorsement to the same effect, as applicable.

B. Types and Amounts of Insurance Required. Unless otherwise requested by the DIA in writing, the Vendor shall cause to be issued the insurance coverage's set forth below:

B 1 – Worker Compensation – As required by Iowa law
Employer's Liability – As required by Iowa law

B 2 – Comprehensive General Liability
\$1,000,000.00 combined single limit
\$1,000,000.00 umbrella coverage

B 3 – Automobile Liability
\$1,000,000.00 combined single limit
\$1,000,000.00 umbrella coverage

B 4 – Property Damage
\$1,000,000.00 combined single limit
\$1,000,000.00 umbrella coverage

C. Certificates of Insurance. All insurance policies required by this Contract shall remain in full force and effect during the entire term of this Contract and any extensions thereof and shall not be cancelled or amended except with the advance written approval of the DIA. The Vendor shall submit certificates of insurance, which indicates coverage and notice provisions as required by this Contract, to the DIA upon execution of this Contract. The certificates shall be subject to approval by the DIA. The insurer shall state in the certificates that no cancellation of the insurance will be made without at least thirty (30) days prior written notice to DIA. Approval of insurance certificates by the DIA shall not relieve the Vendor of any obligations under this Contract.

1.14 LIMITATION OF LIABILITY

The Vendor expressly acknowledges that the consulting services scope of work is subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the DIA's project, the Vendor shall not hold the DIA liable in any manner for the resulting changes. The DIA shall use the best efforts to provide thirty (30) days written notice to the Vendor of any legislative change. During the thirty (30) day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative changes. Nothing in this section shall affect or impair the DIA's right to terminate the Contract pursuant to the termination provisions.

1.15 COMMUNICATIONS AND CONTACT

All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by e-mail, facsimile transmission, by overnight courier service, addressed to the respective party at the appropriate e-mail address, facsimile number or address as set forth below or to such other parties as may be necessary for the project completion.

The DIA:

Mindla White
Iowa Department of Inspections and Appeals
Health Facilities Division
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319-0083
(515) 281-3765
(515) 242-5022
Mindla.white@dia.iowa.gov

The Vendor:

[Vendor's Contact Information]
[Vendor's Name]
[Vendor's Address]
[Vendor's City, State, Zip]
[Vendor's Phone]
[Vendor's Facsimile]
[Vendor's E-mail Address]

1.16 WARRANTIES

- A. Construction of Warranties Expressed in this Contract with Warranties Implied by Law.** All warranties made by the Vendor in all provisions of this Contract and the Proposal by the Vendor, whether or not this Contract specifically denominates the Vendor's promise as a warranty or whether the warranty is created only by the Vendor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the DIA, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Vendor. The provisions of this section apply during the term of this Contract and any extensions thereof.

- B. Concepts, Materials, and Work Produced.** Vendor represents and warrants that all the concepts, materials and Works produced or provided to the DIA pursuant to the terms of this Contract shall be wholly original with the Vendor or that the Vendor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials, and Works. The Vendor represents and warrants that all concepts, materials, and Works and the DIA's use of same and the exercise by the DIA of the rights granted by this Contract shall not infringe upon any other work, other than materials provided by the Contract to the Vendor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Vendor represents and warrants that it is the owner of or otherwise has the right to use and distribute the software, materials owned by the Vendor and any other materials, Works and methodologies used in connection with providing the services contemplated by this Contract.
- C. Professional Practices.** The Vendor represents and warrants that all of the services to be performed hereunder will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.
- D. Conformity and Contractual Requirements.** The Vendor represents and warrants that the Works will appear and operate in conformance with the terms and conditions of this Contract.
- E. Authority to Enter into Contract.** The Vendor represents and warrants that it has full authority to enter into this Contract and that it has not granted and will not grant any rights or interest to any person or entity that might derogate, encumber or interface with the rights granted to the DIA.
- F. Obligations Owed to Third Parties.** The Vendor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Vendor pursuant to this Contract are or will be fully satisfied by the Vendor so that the DIA will not have any obligations with respect thereto.
- G. Title to Property.** The Vendor represents and warrants that title to any property assigned, conveyed or licensed to the DIA is good and that transfer of title or license to the DIA is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.
- H. Industry Standards.** The Vendor represents and expressly warrants that all aspects of the goods and services provided or used by it shall conform to the standards in DIA operations in the performance of this Contract.

1.17 CONTRACT ADMINISTRATION

- A. Independent Contractor.** The status of the Vendor shall be that of an independent contractor. The Vendor, its employees, agents and any subcontractors performing under this Contract are not employees or agents of the State of Iowa or any agency, division or department of the state. Neither the Vendor nor its employees shall be considered employees of the DIA or the State of Iowa for federal or state tax purposes. The DIA will not withhold taxes on behalf of the Vendor.

- B. Incorporation of Documents.** The RFP, and amendments and written responses to Vendor's questions (collectively RFP) and the Vendor's Proposal submitted in response to the RFP, form the Contract between the Vendor and the DIA and are incorporated herein by reference. The parties are obligated to perform all services described in the RFP and Proposal unless the Contract specifically directs otherwise.
- C. Order of Priority.** In the event of a conflict between the Contract, the RFP, the Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the Contract; (2) the RFP; (3) Proposal.
- D. Compliance with the Law.** The Vendor, its employees, agents and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing the services under this Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small business as subcontractors or suppliers. The Vendor, its employees, agents and subcontractors shall also comply with all federal, state, and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract.
- E. Amendments.** This Contract may be amended in writing from time to time by mutual consent of the parties. All amendments to this Contract must be in writing and fully executed by the parties.
- F. Third Party Beneficiaries.** There are no third party beneficiaries to this Contract. This Contract is intended only to benefit the State, the DIA and the Vendor.
- G. Choice of Law and Forum.** The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of laws provision of Iowa law. In the event any proceeding of a quasi-judicial or judicial nature commenced in connection with this Contract, the exclusive jurisdiction for the proceeding shall be brought in Polk County District Court for the State of Iowa, Des Moines, Iowa. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the DIA or the State of Iowa.
- H. Assignment and Delegation.** This Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party. For the purpose of construing this clause, a transfer of a controlling interest in the Vendor shall be considered an assignment.
- I. Use of Third Parties.** The DIA acknowledges that the Vendor may contract with third parties for the performance of any of the Vendor's obligations under this Contract. All subcontracts shall be subject to prior approval by the DIA. The Vendor may enter into these contracts to complete the project providing that the Vendor remains responsible for all services performed under the Contract. All restrictions, obligations and responsibilities of the Vendor under the Contract shall also apply to the subcontractors. The DIA shall have the right to request the removal of a subcontractor from the Contract for good cause.
- J. Integration.** This Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in this Contract.

- K. Headings or Captions.** The paragraph headings or captions used in this Contract are for identification purposes only and do not limit or construe the contents of the paragraph.
- L. Not a Joint Venture.** Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent contractor contracting for services and acting towards the mutual benefits expected to be derived here from. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Contract.
- M. Joint and Several Liability.** If the Vendor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Contract, and for any default of activities and obligations.
- N. Supersedes Former Contracts or Agreements.** This Contract supersedes all prior Contracts or Agreements between the DIA and the Vendor for the services provided in connection with this Contract.
- O. Waivers.** Except as specifically provided for in a waiver signed by duly authorized representatives of the DIA and the Vendor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.
- P. Cumulative Rights.** The various rights, powers, options, elections and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.
- Q. Severability.** If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.
- R. Time is of the Essence.** Time is of the essence with respect to the performance of the terms of this Contract.
- S. Authorization.** Each party to this Contract represents and warrants to the other parties that:
- It has the right, power and authority to enter into and perform its obligations under this Contract.
- It has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Contract and this Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.
- T. Successors in Interest.** All the terms, provisions, and conditions of the Contract shall be binding upon and insure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

- U. Record Retention and Access.** The Vendor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the DIA throughout the term of this Contract for a period of three (3) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. The Vendor shall permit the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Vendor relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Vendor shall not impose a charge for audit or examination of the Vendor's books and records.
- V. Solicitation.** The Vendor warrants that no person or selling agency has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingency except bona fide employees or selling agents maintained for the purpose of securing business.
- W. Obligations beyond Contract Term.** This Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Contract. All obligations of the DIA and the Vendor incurred or existing under this Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of this Contract.
- X. Counterparts.** The parties agree that this Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.
- Y. Additional Provisions.** The parties agree that if an Addendum, Rider or Exhibit is attached hereto by the parties, and referred to herein, and then the same shall be deemed incorporated herein by reference.
- Z. Further Assurances and Corrective Instruments.** The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Contract.
- AA. Delay or Impossibility of Performance.** The Vendor shall not be in default under this Contract if performance is delayed or made impossible by an act of God, flood, fire or similar events. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of the Vendor. If delay results from a subcontractor's conduct, negligence or failure to perform, the Vendor shall not be excused from compliance with the terms and obligations of this Contract.

1.18 CONFIDENTIALITY OF DOCUMENTS

- A.** The Vendor acknowledges and agrees that the Department is the custodian of any and all documents provided to the Vendor or generated by the Vendor during the informal conference / informal dispute resolution process, including but not limited to: documents gathered by the Department during the course of its survey or investigation; documents submitted by the facility for the informal conference / informal dispute resolution; and notes,

drafts or other pre-decisional materials generated by the Vendor. Documents provided to the Vendor may be in hard copy or electronic format, and may include audio recordings.

- B. The Vendor agrees to maintain the confidentiality of any and all documents as described in paragraph 1.18(A) to the extent required by law.
- C. The Vendor agrees to return to the Department any and all documents as described in paragraph 1.18(A) as soon as reasonably possible after the Vendor's written report has been submitted to the Department and provided to the facility.

1.19 EXECUTION

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other goods and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Contract and have caused their duly authorized representatives to execute this Contract.

**STATE OF IOWA
DEPARTMENT OF INSPECTIONS AND APPEALS**

Signature _____
Date

Title

[Name of Vendor]

Signature _____
Date

Title