



STATE OF FLORIDA

Division of Emergency Preparedness and Community Support

Bureau of Public Health Laboratories

REQUEST FOR APPLICATION

RFA # 14-008

Environmental Laboratory Assessments

Stephen Arms, Environmental Laboratory Certification Program
Florida Department of Health
1217 Pearl Street
Jacksonville, Florida 32202

Vendor Name _____

Vendor Mailing Address _____

City-State-Zip _____

Telephone Number _____

Email Address _____

Federal Employer Identification Number (FEID) _____

Authorized Signature (Manual) _____

Authorized Signature (Typed) and Title _____

NOTE: THE RECEIPT OF SUBMISSION IN RESPONSE TO THIS RFA DOES NOT IMPLY OR GUARANTEE THAT ANY ONE OR ALL APPLICANTS WILL BE AWARDED A CONTRACT WITH THE FLORIDA DEPARTMENT OF HEALTH.

This is not a competitive solicitation subject to the notice or challenge provisions of section 120.57(3), Florida Statutes.

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TIMELINE
DOH RFA 14-008

EVENT	DUE DATE	LOCATION
RFA Advertised – Released	September 2, 2014	Vendor Bid System: http://vbs.dms.state.fl.us/vbs/main_menu
Non-Mandatory Pre-Application Conference	N/A	N/A
Questions submitted in writing.	Prior to 5:00 PM EST September 5, 2014	Submit to: Florida Department of Health Attention: <i>Stephen Arms</i> 1217 Pearl Street Jacksonville, FL 32202 Email: steve.arms@flhealth.gov
Answers to Questions	September 12, 2014	Posted electronically via the following Internet site: http://vbs.dms.state.fl.us/vbs/main_menu
Sealed Applications/ Replies Due and Opened	Must be received PRIOR to: 3:00 PM EST September 19, 2014	Submit to: Florida Department of Health Attention: <i>Stephen Arms</i> 1217 Pearl Street Jacksonville, FL 32202
Anticipated Evaluation of Applications	Beginning September 22, 2014	Individual Evaluation of applications
Anticipated Posting of Intent to Award	October 1, 2014	Vendor bid system: http://vbs.dms.state.fl.us/vbs/main_menu

SECTION 1.0 GENERAL INSTRUCTIONS TO APPLICANTS (PUR 1001), as amended.

The General Instructions to Applicants are outlined in PUR 1001 which is a downloadable document incorporated in this Request For Applications (RFA) by reference. There is no need to return the PUR document with the RFA response. <http://dms.myflorida.com/content/download/2934/11780>

SECTION 2.0 INTRODUCTORY MATERIALS

2.1 Statement of Purpose

The purpose of this RFA is to solicit applications from parties with the ability to provide on-site assessments of environmental testing laboratories for the purpose of determining the laboratories' compliance with applicable laws and regulations. The Department seeks to qualify multiple parties through this solicitation to allow choice for the laboratories seeking this service and reduce costs through competitive market forces.

2.2 Term

The term of any contracts resulting from this solicitation shall be for three (3) years, beginning on November 1, 2014 and ending on October 31, 2017.

2.3 Definitions

Accreditation Body: *Authoritative body that performs accreditation or certification of environmental testing laboratories.*

Analyte: *A substance, organism, physical parameter or chemical constituent that is being measured with a method, and in this context, for which certification is offered.*

Assessor: *Person assigned by or on behalf of an accreditation body to perform, alone or as part of an assessment team, an assessment of a laboratory to determine its capability and capacity for meeting certification/accreditation requirements by examining the records and other physical evidence for each one of the Fields of Accreditation for which certification has been requested.*

Assessment: *Process undertaken by or on behalf of an accreditation body to assess the competence of a laboratory, based on particular standard(s), regulations, certified test methods and/or other normative documents and for defined Fields of Accreditation.*

Accreditation: *Third-party attestation related to an environmental testing laboratory conveying formal demonstration of its competence to carry out specific tasks related to the conduct of the testing for which it holds certification. Also, the process by which an agency or organization evaluates and recognizes a laboratory as meeting certain predetermined qualifications or standards.*

Applicant: *Person, group, or entity submitting an application to this RFA*

Certification Application: *Form DH 1762, "Application for Certification of Environmental Testing Laboratories," July 2004 adopted by reference in 64E-1.102(1), Florida Administrative Code. Application form and 64E-1:* <http://www.doh.state.fl.us/lab/EnvLabCert/WaterCert.htm>

Certification: *Regulatory recognition given to a laboratory that meets minimum quality standards and analytical performance standards.*

Corrective Action Plan (Plan of Correction) : *The actions taken to eliminate the causes of an existing deficiency, nonconformity, defect or other undesirable situation in order to prevent recurrence.*

Deficiency: *An assessment conclusion referenced to a laboratory certification standard and supported by objective evidence that identifies a deviation from a laboratory certification standard requirement.*

Department: *The Department of Health*

External Evaluation: *A systematic examination of an accreditation body by an external organization to determine the conformance to quantitative and qualitative specifications of NELAP.*

Fields of Accreditation: *Those matrix, method, and analyte combinations for which certification is offered.*

Internal Audit: *A systematic evaluation conducted by an organization on itself to determine the conformance to quantitative and qualitative specifications of some operational function or activity.*

Matrix: *The substrate of a test sample further defined in this context for certification purposes as:*

Drinking Water Matrix: *any aqueous sample that has been designated a potable or potential potable water source.*

Non-Potable Water Matrix: *any aqueous sample excluded from the definition of Drinking Water matrix. Includes source water, groundwater, effluents, water treatment chemicals, and Toxicity Characteristic Leaching Procedure-(TCLP) or other extracts.*

Solid and Chemical Materials Matrix: *includes soils, sediments, sludges, products and by-products of an industrial process that results in a matrix not previously defined.*

Biological Tissue Matrix: *any sample of a biological origin such as fish tissue, shellfish, or plant material. Such samples shall be grouped according to origin.*

Air and Emissions Matrix: *whole gas or vapor samples including those contained in flexible or rigid wall containers and the extracted concentrated analytes of interest from a gas or vapor that are collected with a sorbent tube, impinger solution, filter, or other device.*

NELAC: *National Environmental Laboratory Accreditation Conference*

NELAP: *National Environmental Laboratory Accreditation Program*

Provider: *The entity to which a contract has been awarded, by the Department, in accordance with a application submitted in response to this RFA.*

Application: **An Applicant's entire submittal to the RFA**

Standard Operating Procedure (SOP): *A written document which details the method of an operation, analysis or action whose techniques and procedures are thoroughly prescribed and which is accepted as the method for performing certain routine or repetitive tasks.*

TNI: *The NELAC Institute*

SECTION 3.0 TECHNICAL SPECIFICATIONS

3.1 Scope of Service

The provider(s) shall conduct periodic on-site inspections (assessments) of environmental testing laboratories seeking certification by the Florida Department of Health Environmental Laboratory Certification Program, for determining the laboratories' compliance with applicable laws and regulations. After receipt and processing of an application for initial or additional certification or for renewal of annual certification, the Department will provide the laboratory a list of approved providers. When the provider notifies the Department of a pending inspection, the department will forward the application information to the provider for review and use in its assessment of the laboratory.

3.2 Programmatic Authority

The Provider must comply with all applicable Federal and State laws, regulations, action transmittals, program instructions, review guides and similar documentation related to the following:

- Chapters 119, 120, and 403, Florida Statutes
- Florida Administrative Code Chapter 64E-1
- 40 Code of Federal Regulations, Part 141 and Part 143

3.3 Major Program Goals

The Department of Health is responsible for certifying competent and qualified drinking water and environmental testing laboratories. The Department's goal is to establish contracts for the certification application process of on-site assessment of laboratory facilities, management, personnel, quality systems and analytical activities at competitive rates that will be used by the laboratory facilities seeking certification.

3.4 Applicants shall provide to the department:

1. Verification of its assessors' credentials (whether subcontractor or employee) including, but not limited to college transcripts, certifications, and training records. These records must show explicit conformance to TNI Standard EL-V2M1-2009 and EL-V2M3-2009 and/or Chapter III, Sections 4.1 and 4.2 of the United States Environmental Protection Agency's (EPA) Manual for the Certification of Laboratories Analyzing Drinking Water, Fifth Edition.
<http://water.epa.gov/scitech/drinkingwater/labcert/index.cfm#two>

In addition to meeting education and training requirements above, the assessors shall also have the following attributes:

- a. Be familiar with the relevant regulations, certification procedures, and certification requirements;
 - b. Have a thorough knowledge of the relevant assessment methods and assessment documents;
 - c. Be thoroughly familiar with the various forms of records (hardcopy and electronic) used by environmental laboratories;
 - d. Be thoroughly cognizant of data reporting, analysis, and reduction techniques and procedures;
 - e. Have a working knowledge and be conversant with the specific tests or types of tests for which the certification is sought and, where relevant, with the associated sampling and preservation procedures;
 - f. Be able to communicate effectively, both orally and in writing;
 - g. Exhibit sound judgment and appropriate conduct when performing duties associated with any contract awarded through this solicitation; and
 - h. Sign a statement before conducting an assessment certifying that no conflict of interest exists and provide any supporting information as required by the ELCP. Failure to provide this information makes the proposed assessor ineligible to participate in the assessment.
 - i. Applicants shall include in their application a proposed staffing plan for technical, administrative, and clerical support.
2. Copies of at least two on-site assessment reports issued for assessments conducted previously by each assessor. All information identifying the subject laboratory should be removed or redacted prior to submittal
 3. Copies of documentation of the provider's review and conclusions regarding the laboratory's Corrective Action Plan for deficiencies cited in the on-site assessment reports submitted in response to paragraph 2.
 4. Documentation for each assessor attesting as to whether or not he/she has ever been investigated by any state or federal Inspectors General or other investigatory entities and indicating whether the allegations were substantiated.
 5. Documentation for each assessor attesting that he/she is not currently employed by or under contract to any laboratory certified by the Department.

3.5 Experience

Applicants are required to submit with their applications, contact information for three (3) entities it has provided with services similar to those requested in this solicitation. The Department reserves the right to contact any and all entities to verify the information provided. The Department will make only two attempts to contact each entity.

3.6 Responsive and Responsible. The Applicants shall complete and submit the following mandatory information or documents as a part of their application. Any application which does not include the following shall be deemed non-responsive and will not be considered for evaluation and award:

- **Title Page**

- Attachment I - Experience Form
- Attachment III - Required Certifications
- Attachment IV- Cost Application

3.7 Evaluation of Application

Each application shall be evaluated based on the criteria outlined in Attachment II. Evaluation sheets shall be used by the Evaluation Team to determine if the Applicant meets the criteria. The Department reserves the right to accept or reject any and all applications, or separable portions thereof, and to waive any minor irregularity, technicality, or omission if the Department determines that doing so shall serve the State's best interests. The Department may reject any response not submitted in the manner specified by the solicitation documents. **A minimum score of 75 will be required to be an approved provider under this Request for Applications (RFA).**

3.8 Description of Approach to Performing Task

The application shall include a section to provide insight into the Applicants' approach to providing the services as specified in this solicitation. Applicants shall address all areas of work within the Task List, Section 6.4. Applicants' technical approach shall demonstrate a thorough understanding and insight into this project. At a minimum, this section should address:

1. A narrative of the methods of service delivery that shall be initiated to fulfill all Department requirements.
2. Any activities that the Respondent is unable to provide.

Technical Requirements: Applicants should demonstrate the ability to meet the criteria for knowledge and expertise in Section 3.10, as applied to the specifications indicated in the Section 6.4 Task List section .

3.9 Description of Staffing and Organizational Capacity

The Respondent's application must also include:

1. Documentation that Applicant has experience conducting on-site laboratory assessments to determine compliance with the 2003 NELAC standards adopted by reference into the rules contained in Florida Administrative Code Chapter 64E-1.
2. Documentation that assessors employed or contracted by the Applicant, meet or exceed the requirements given in TNI Standard EL-V2M1-2009 and EL-V2M3-2009 and/or Chapter III, Sections 4.1 and 4.2 of the United States Environmental Protection Agency's (EPA) Manual for the Certification of Laboratories Analyzing Drinking Water, Fifth Edition.
3. Documentation attesting as to whether or not that Applicant or Applicant's assessors have ever been investigated by the Department's or other's Inspector Generals and indicate whether the allegations were substantiated.

4.0 SPECIAL INSTRUCTIONS TO APPLICANTS

The following Special Instructions shall take precedence over Section 1.0 General Instructions to Applicants PUR1001 unless a statutorily required provision in the PUR 1001 supersedes.

4.1 Instructions For Submitting Applications

- Applications may be sent via U.S. Mail, Overnight delivery, Courier, or Hand-Delivered to the location identified in the Timeline. Electronic submission of applications shall not be accepted for this solicitation. ***This Special Instruction takes precedence over General Instruction #3 in PUR1001.***
- Applications must be submitted in a sealed envelope/package with the solicitation number and the date and time of the bid opening clearly marked on the outside.
- The Department is not responsible for any envelope which is not properly marked.
- It is the responsibility of the Respondent to assure its application is submitted at the proper place and time indicated in the Timeline. The Department's clocks shall provide the official time for bid receipt and opening.
- **Late applications/offers shall not be accepted.**

4.2 Instructions For Formatting Applications

- Applicants are required to complete, sign, and return the "Title Page" with their applications.
- The application should be single-spaced and include (example: method of service delivery):
 - 1) Table of contents
 - 2) Index
 - 3) Appendices
 - 4) Experience
 - 5) Other support materials
- The pages should be numbered and one-inch margins should be used.
- The font size and type is at the discretion of the Respondent but must be at least as large as the font type you are currently reading (Arial 11).
- One (1) original application, three (3) copies of the application, and one electronic copy of the application on CD. The electronic copy should contain the entire application/offer as submitted, including all supporting and signed documents.

Materials submitted shall become the property of the State of Florida. The state reserves the right to use any concepts or ideas contained in the response.

4.3 Public Records and Trade Secrets

Notwithstanding any provisions to the contrary, public records shall be made available pursuant to the provisions of the Public Records Act. If the Respondent considers any portion of its response to this solicitation to be confidential, exempt, trade secret or otherwise not subject to disclosure pursuant to Chapter 119, Florida Statutes, the

Florida Constitution or other authority, the Respondent must segregate and clearly mark the document(s) as “**CONFIDENTIAL.**”

Simultaneously, the Respondent shall provide the Department with a **separate redacted paper and electronic copy** of its response with the claimed protected information redacted and briefly describe in writing the grounds for claiming exemption from the public records law, including the specific statutory citation or other legal authority for such exemption. This redacted copy shall contain the Solicitation name, number, and the name of the Respondent on the cover, and shall be clearly titled “**REDACTED COPY.**”

The Redacted Copy shall be provided to the Department at the same time the Respondent submits its response and must only exclude or redact those exact portions that are claimed confidential, proprietary, or trade secret. The Respondent shall be responsible for defending its determination that the redacted portions of its response are confidential, trade secret or otherwise not subject to disclosure. Further, the Respondent shall protect, defend, and indemnify the Department for any and all claims arising from or relating to the determination that the redacted portions of its response are confidential, proprietary, trade secret or otherwise not subject to disclosure. If the Respondent fails to submit a redacted copy with its response, all records submitted are public records and the Department shall produce all documents, data or records submitted by the Respondent in answer to a public records request.

4.4 Applicants Inquiries

These instructions take precedence over General Instruction #5 in PUR1001.

Questions related to this RFA must be received, in writing (either via U.S. Mail, courier, e-mail, fax, or hand-delivery), by the contact person listed below, within the time indicated in the Timeline. Oral inquiries or those submitted after the period specified in the Timeline shall not be addressed.

Answers to questions submitted in accordance with the RFA Timeline and/or during a pre-bid conference, if applicable (see Section 4.4) shall be posted on the Vendor Bid System web site: http://vbs.dms.state.fl.us/vbs/main_menu.

All inquiries must be submitted to:

Florida Department of Health
Environmental Laboratory Certification Program
Attention: *Stephen Arms*
1217 Pearl Street
Jacksonville, Florida 32202
Email: Steve.Arms@flhealth.gov

NOTE: FLORIDA LAW:

Applicants to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the end of the 72-hour period following the agency posting the notice of intended award, excluding Saturdays, Sundays, and state holidays, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the procurement

officer as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response. Section 287.057(23), Florida Statutes

4.5 Special Accommodations

Any person who requires special accommodations at DOH Purchasing because of a disability should contact the DOH Purchasing Office at (850) 245-4199 at least five (5) business days prior to any pre-application conference, application opening, or meeting. If you are hearing or speech impaired, please make contact through the Florida Relay Service at 1-800-955-8771 (TDD).

4.6 Minority and Service-Disabled Veteran Business - Participation

The Department of Health encourages minority and women-owned business (MWBE) and service-disabled veteran business enterprise (SDVBE) participation in all its solicitations. Applicants are encouraged to contact the Office of Supplier Diversity at 850/487-0915 or visit its website at <http://osd.dms.state.fl.us> for information on becoming a certified MWBE or SDVBE or for names of existing businesses that may be available for subcontracting or supplier opportunities.

4.7 Subcontractors

Provider may, only with prior written approval of the Department, enter into written subcontracts for performance of specific services under the contract resulting from this solicitation. Anticipated subcontract agreements known at the time of application submission must be identified in the application. If a subcontract has been identified at the time of application submission, a copy of the proposed subcontract must be submitted to the Department. No subcontract that the Applicant enters into with respect to performance under the contract shall in any way relieve the Applicant of any responsibility for performance of its contract responsibilities with the Department. The Department reserves the right to request and review information in conjunction with its determination regarding a subcontract request.

Provider shall provide a monthly Subcontract Report (Attachment VII) summarizing all subcontracting performed during the prospective contract period. This report shall include the name and address, Federal Employment Identification number and dollar amount expended for any subcontractor. A copy of this form shall be submitted to the DOH Contract Manager of the Department of Health. The Department of Health encourages the use of MWBE and SDVBE vendors for subcontracting opportunities. For assistance locating a certified MWBE or a SDVBE, contact the Department of Health's Minority Coordinator (850-245-4198) or the Office of Supplier Diversity (850-487-0915), as needed.

In accordance with Executive Order 11-116, "The provider agrees to utilize the U.S. Department of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all new employees hired during the contract term by the Provider. Provider shall also include a requirement in subcontracts that the subcontractor shall utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term. Providers meeting the terms and conditions of the E-Verify System are deemed to be in compliance with this provision."

SECTION 5.0 SPECIAL CONDITIONS

The following Special Conditions shall take precedence over Section 2.0 General Contract Conditions PUR1000 unless a statutorily required provision in the PUR 1000 supersedes:

5.1 Cost of Preparation

Neither the Department nor the State of Florida is liable for any costs incurred by a Respondent in responding to this solicitation.

5.2 Vendor Registration

Each vendor doing business with the State of Florida for the sale of commodities or contractual services as defined in Section 287.012, Florida Statutes, shall register in the MyFloridaMarketPlace system, unless exempted under Florida Administrative Code Rule 60A-1.030(3), . State agencies shall not enter into an agreement for the sale of commodities or contractual services as defined in Section 287.012, Florida Statutes, with any vendor not registered in the MyFloridaMarketplace system, unless exempted by rule. A vendor not currently registered in the MyFloridaMarketPlace system shall do so within 5 days after posting of intent to award. Registration may be completed at: http://dms.myflorida.com/business_operations/state_purchasing/myflorida_marketplace/vendors.

Those lacking internet access may request assistance from the MyFloridaMarketPlace Customer Service at 866-352-3776 or from State Purchasing, 4050 Esplanade Drive, Suite 300, Tallahassee, Florida 32399.

5.3 Identical Tie Applications

When evaluating vendor responses to solicitations where there is identical pricing or scoring from multiple Applicants, the Department shall determine the order of award in accordance with Florida Administrative Code Rule 60A-1.011

5.4 Renewal

This Special Condition takes precedence over General Conditions #26 in PUR1000.

The contract(c) resulting from this solicitation may be renewed, in whole or in part, for a period not to exceed three (3) years or the term of the original contract(s), whichever is longer. Any renewal shall be contingent upon satisfactory performance evaluations by the Department and subject to the availability of funds.

5.5 Verbal Instructions Procedure

The Respondent shall not initiate or execute any negotiation, decision, or action arising from any verbal discussion with any State employee. Only written communications from the Department of Health's Purchasing Office may be considered as a duly authorized expression on behalf of the State. Additionally, only written communications from Applicants are recognized as duly authorized expressions on behalf of the Respondent.

5.6 Addenda

If the Department finds it necessary to supplement, modify or interpret any portion of the specifications or documents during the RFA period a written addendum will be posted on the MyFlorida.com Vendor Bid System, http://vbs.dms.state.fl.us/vbs/main_menu. It

is the responsibility of the Applicant to be aware of any addenda that might affect the submitted application.

5.7 Unauthorized Aliens

The employment of unauthorized aliens by any vendor is considered a violation of section 274A(a) of the Immigration and Nationality Act, 8 U.S.C. § 1324a (2006). A vendor who knowingly employs unauthorized aliens will be subject to a unilateral cancellation of the resulting contract.

5.8 Certificate of Authority

All corporations, limited liability companies, corporations not for profit, and partnerships seeking to do business with the State of Florida must be registered with the Florida Department of State in accordance with the provisions of Chapters 607, 608, 617, and 620, Florida Statutes, as applicable. .

5.9 Standard Contract/Purchase order

Each Applicant shall review and become familiar with the Department's Standard Contract and/or Direct order, which contains administrative, financial and non-programmatic terms and conditions mandated by federal or state statute and policy of the Department of Financial Services. Use of one of these documents is mandatory for departmental contracts as they contain the basic clauses required by law. The terms and conditions contained in the Standard Contract or Purchase Order are non-negotiable. The standard contract/direct order terms and conditions are Attachment VI. Acknowledge acceptance on Required Certifications, Attachment III.

5.10 Licenses, Permits, and Taxes

Applicant shall pay for all licenses, permits and taxes required to operate in the State of Florida. Also, the Applicant shall comply with all Federal, State & Local codes, laws, ordinances, regulations and other requirements at no cost to the Florida Department of Health.

5.11 Conflict of Interest

Section 287.057(17)(c), Florida Statutes, provides "A person who receives a contract that has not been procured pursuant to subsections (1)-(3) to perform a feasibility study of the potential implementation of a subsequent contract, who participates in the drafting of a solicitation or who develops a program for future implementation, is not eligible to contract with the Department for any other contracts dealing with that specific subject matter, and any firm in which such person has any interest in not eligible to receive such contract. However, this prohibition does not prevent a Respondent who responds to a request for information form being eligible to contract with a department." The Department of Health considers participation through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, or auditing or any other advisory capacity to constitute participation in drafting of the solicitation.

Acknowledge acceptance on Required Certifications, Attachment III.

5.12 Termination

This Invitation to Bid Special Condition takes precedence over General Condition #22 and #23 in PUR1000.

Termination shall be in accordance with Department of Health Standard Contract, Attachment IV, Section III B or Department of Health Direct order Terms and Conditions, Attachment VI.

5.13 Conflict of Law and Controlling Provisions

Any contract resulting from this RFA, plus any conflict of law issue, shall be governed by the laws of the State of Florida.

5.14 E-Verify

In accordance with Executive Order 11-116, "The provider agrees to utilize the U.S. Department of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all new employees hired during the contract term by the Provider. Provider shall also include a requirement in subcontracts that the subcontractor shall utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term. Contractors meeting the terms and conditions of the E-Verify System are deemed to be in compliance with this provision."

5.15 Scrutinized Companies

In accordance with Section 287.135, Florida Statutes, agencies are prohibited from contracting with companies, for goods or services over \$1,000,000, that are on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List which have been combined to one [PFIA List of Prohibited Companies](#) which is updated quarterly. This list is created pursuant to section 215.473, Florida Statutes which provides that false certification may subject company to civil penalties, attorney's fees, and/or costs.

5.16 Required Certifications

All Applicants must sign and return with its response the Required Certifications form, Attachment III. **ANY VENDOR FAILING TO RETURN THE REQUIRED CERTIFICATIONS FORM SHALL BE CONSIDERED NONRESPONSIVE.**

5.17 Preference to Florida businesses.

Section 287.084, Florida Statutes, is applicable to this RFA:

(1)(a) When an agency, university, college, school district, or other political subdivision of the state is required to make purchases of personal property through competitive solicitation and the lowest responsible and responsive bid, application, or reply is by a vendor whose principal place of business is in a state or political subdivision thereof which grants a preference for the purchase of such personal property to a person whose principal place of business is in such state, then the agency, university, college, school district, or other political subdivision of this state shall award a preference to the lowest responsible and responsive vendor having a principal place of business within this state, which preference is equal to the preference granted by the state or political subdivision thereof in which the lowest responsible and responsive vendor has its principal place of business. In a competitive solicitation in which the lowest bid is submitted by a vendor whose principal place of business is located outside the state and that state does not grant a preference in competitive solicitation to vendors having a principal place of business in that state, the preference to the lowest responsible and responsive vendor having a principal place of business in this state shall be 5 percent.

(b) Paragraph (a) does not apply to transportation projects for which federal aid funds are available.

(c) As used in this section, the term “other political subdivision of this state” does not include counties or municipalities.

(2) A vendor whose principal place of business is outside this state must accompany any written bid, application, or reply documents with a written opinion of an attorney at law licensed to practice law in that foreign state, as to the preferences, if any or none, granted by the law of that state to its own business entities whose principal places of business are in that foreign state in the letting of any or all public contracts.

(3)(a) A vendor whose principal place of business is in this state may not be precluded from being an authorized reseller of information technology commodities of a state contractor as long as the vendor demonstrates that it employs an internationally recognized quality management system, such as ISO 9001 or its equivalent, and provides a warranty on the information technology commodities which is, at a minimum, of equal scope and length as that of the contract.

(b) This subsection applies to any renewal of any state contract executed on or after July 1, 2012.

5.18 W9 Initiative

The State of Florida, Department of Financial Services requires vendors doing business with the State to submit a Substitute Form W-9 electronically. Vendors who do not have a verified Substitute Form W-9 on file will experience delays in processing contracts or payments from the State of Florida. For more information go to: <https://flvendor.myfloridacfo.com/>

SECTION 6.0 GENERAL CONTRACT CONDITIONS (PUR 1000), as amended.

<http://dms.myflorida.com/content/download/2933/11777>

6.1 Client General Description

The Department certified 390 environmental testing laboratories by Matrix-Method-Analyte (Matrix = Drinking Water, Non-Potable Water, Solid and Chemical Materials, Air and Emissions, or Biological Tissue) as of January 17, 2012. Except for those that are reciprocally certified, each of these laboratories must be reassessed at 2-year intervals, not to exceed 2.5 years.

Breakdown by Laboratory Type

- Commercial: 208
- Water and Wastewater: 132
- State: 15
- County Health Department: 9
- University: 9
- Federal: 5
- Other: 16

- Mobile labs: 10

Approximate Breakdown by Matrix

- Drinking Water: 229
- Non-Potable Water: 326
- Solid and Chemical Materials: 182
- Biological Tissue: 21
- Air and Emissions: 28

Approximate Breakdown by Scientific Discipline

- Chemistry: 314
- Microbiology: 226
- Radiochemistry: 21
- Toxicity: 19

Approximate breakdown by relative size (matrix-methods)

- 1-10: 155
- 11-50: 155
- >50: 80

In-State vs. Out-of-State

- In-State: 278
- Out-of-State: 112

6.2 Client Eligibility

The Department shall be solely responsible for determining eligibility for certification. Eligibility criteria and standards for certification are established by statutes and rules adopted pursuant thereto. Eligibility criteria may change but certification determinations are only the responsibility of the Department of Health.

6.3 Contract Limits Provider

Numbers indicated in the Client General Description portion herein (Section 6.1) are provided for planning purposes only. The Department reserves the right to alter the number of certification applicants by any amount.

6.4 Task List

Providers shall perform the tasks listed below:

1. *Review Applications:* Review any applicable application a laboratory has submitted for initial, ongoing, or additional certification as assigned by the Department and as necessary to determine on-site assessment needs.
2. *Select Assessors:* Assemble an assessment team consisting of a Lead Assessor and additional assessors in sufficient numbers for the size and scope of the laboratory to be assessed comprehensively and within a reasonable number of contiguous workdays. Verification of any newly hired or contracted assessors'

credentials as above, (see 3.4) before the assessor conducts an assessment on behalf of the Florida Department of Health. Copies of at least two on-site assessment reports issued for assessments conducted previously by each newly hired or contracted assessor. All information identifying the subject laboratory should be removed or obliterated prior to submittal.

3. *Schedule Assessments:* Schedule an assessment with the laboratory within 15 days after receiving notification from laboratory that the Provider has been selected to perform the assessment for compliance with the requirements of the laboratory's certification. The assessment shall be conducted no later than 60 calendar days following the scheduling. At the time of scheduling, the Contractor shall notify the Department of all assessments scheduled on the Department's behalf.
4. *Conduct Assessments:* Responsibility for conducting comprehensive on-site laboratory assessments to determine compliance with the rules contained in 64E-1, Florida Administrative Code (FAC) and the 2003 NELAC standards adopted by reference therein. These assessments shall encompass all Fields of Accreditation (Matrix-Method-Analyte combinations) for which the laboratory holds or seeks certification. *Preparation of a Report:* Prepare a report documenting any findings (deficiencies) found by the assessment team and link each of these deficiencies directly to the applicable NELAC (2003) and TNI (2009) Standard. Deficiencies shall also be cited for the laboratory's failure to follow certified test method specifications. This report shall be known as an on-site assessment report. The Provider must ensure the assessment team completes the report according to the timelines, content guidelines and formatting required by the Florida Department of Health. Upon request all materials gathered and used during a laboratory assessment, within 7 business days of a request, any and all materials gathered and used during a laboratory assessment. These materials may include but are not limited to checklists, correspondence, quality manuals, laboratory data, conflict of interest forms, and confidential business information forms. On-site assessment reports must meet the specifications given in TNI Standard EL-V2M1-2009 and EL-V2M3-2009 and 64E-1.104(5), FAC, including the use of the form specified by this rule. On-site assessment reports, including itemized deficiencies, must be issued to laboratories within 30 calendar days of the final day of the on-site assessment with electronic copies sent simultaneously to the Florida Department of Health.
5. *Post-Assessment Activities:* Require the laboratory assessed to respond, using the form specified by rule, within 30 calendar days of its receipt of the on-site assessment report with a proposed Plan of Correction (i.e., corrective action plan) for each deficiency identified in the on-site assessment report. The Provider shall submit to the Florida Department of Health an itemized report of recommendations to approve or disapprove the proposed corrective actions within 20 days of receipt of the laboratory's Plans of Correction. Any recommendation to reject a laboratory's proposed Plan of Correction for a specific deficiency must be accompanied by the rationale.
6. *Technical Support:* Ensure the lead assessor and other assessment team members are available, at no cost to the Department of Health, for interviews related to internal audits and external evaluations of the Department of Health or to resolve legal matters or other disputes resulting from observations documented on an assessment report prepared by the Provider.

Deliverables: Provider shall submit the following to the Department:

1. An electronic copy of the on-site assessment report, including itemized deficiencies, which was also issued to the laboratory, within 30 calendar days of the final day of an on-site assessment.
2. An itemized electronic report of recommendations to approve or disapprove the laboratory's proposed corrective actions, including the rationale for any recommendation to reject a laboratory's proposed Corrective Action Plan for a specific deficiency, within 20 days of receipt of the Laboratory's Correction action Plan for deficiencies cited in the on-site assessment report..
3. A copy of the cost estimate supplied to the subject laboratory at the time of the scheduling of the assessment.
4. A copy of the actual invoice that was billed to the laboratory.
5. A copy of the laboratory's payment, within 15 days of receipt of the payment.
6. Submit quarterly reports within 15 calendar days of the month to the Department summarizing the number of laboratories inspected and the fees collected per laboratory.

6.6 Staffing

Provider shall replace any employee whose continued presence would be detrimental to the success of the project as determined by the Department, with an employee of equal or superior qualifications. The Department shall exercise exclusive judgment in this matter.

6.7 Professional Qualifications

Provider must ensure its employees and sub-contractors are competent and comply with the applicable provisions of state laws and rules as well as the terms of any contract awarded through this solicitation.

6.8 Conflict of Interest

Provider shall ensure its employees and sub-contractors have no conflict of interest which would compromise impartiality in the assessment process.

6.10 Reports

Where the resulting contract requires the delivery of reports to the Department, mere receipt by the Department shall not be construed to mean or imply acceptance of those reports. It is specifically intended by the parties that acceptance of required reports shall constitute a separate act. The Department reserves the right to reject reports as incomplete, inadequate, or unacceptable according to the parameters set forth in the resulting contract. The Department, at its option, may allow additional time where the Provider may remedy the objections noted by the Department. The Department may, after having given the Provider a reasonable opportunity to complete, make adequate or acceptable its response, and declare this agreement to be in default.

6.11 Records and Documentation

To the extent that information is utilized in the performance of the resulting contract or generated as a result of it, and to the extent that information meets the definition of "public record" as defined in subsection 119.011(1), F.S., said information is hereby

declared to be and is hereby recognized by the parties to be a public record and absent a provision of law or administrative rule or regulation requiring otherwise, shall be made available for inspection and copying by any person upon request as provided in Art. I, Sec. 24, Fla. Const. and Chapter 119, Florida Statutes. It is expressly understood that any state contractor's refusal to comply with these provisions of law shall constitute an immediate breach of the contract resulting from this RFA entitling the Department to unilaterally terminate the contract. The Provider shall be required to notify the Department of any requests made for public records.

Unless state or federal law requires a greater retention period, all documents pertaining to the program contemplated by this RFA shall be retained by the Provider for a period of six (6) years after the termination of the resulting contract or longer as may be required by any renewal or extension of the contract. During this period, the Provider shall provide any documents requested by the Department in its standard word processing format (currently Microsoft Word 2003). If this standard should change, the successful vendor shall adopt the new standard at no cost to the Department. Data files will be provided in a format directed by the Department.

Provider agrees to maintain the confidentiality of all records required by law or administrative rule to be protected from disclosure. Provider further agrees to hold the Department harmless from any claim or damage including reasonable attorney's fees and costs or from any fine or penalty imposed as a result of failure to comply with the public records law or an improper disclosure of confidential information and promises to defend the Department against the same at its expense.

6.12 Outcomes and Outputs (Performance Measures)

DEPARTMENT GOAL: The resulting contract services shall allow the Department to ensure laboratories are inspected by qualified assessors according to statutory and regulatory requirements.

OBJECTIVE: Provide applicant and certified environmental testing laboratories with an on-site assessment process that meets statutory and regulatory requirements.

MEASURES: *Provider is expected to meet a target of 100% completion for the below tasks (outlined in detail in Section 6.4):*

1. Reviewing applications within required timeframes.
2. Selecting qualified assessors and providing documentation as specified
3. Scheduling
4. Conducting the assessment
5. Preparing the on-site assessment report
6. Conducting post-assessment activities
7. Providing technical support to the Florida Department of Health
8. Submission of any and all materials gathered and used during a laboratory assessment to the Florida Department of Health within 20 calendar days of the written request

Provider is expected to meet a target of 95% completion for the below tasks(outlined in detail in Section 6.4) :

1. All reports will need to be delivered in the time specified.

OUTCOME: Timely TNI NELAP/ EPA-compliant laboratory assessments conducted in a cost-effective manner, with the regulatory oversight required by law.

6.13 Provider Unique Activities

The Provider is solely and uniquely responsible for the satisfactory performance of the tasks and the provision of the deliverables described in Sections 6.7 and 6.8. By execution of the resulting contract, the Provider recognizes its singular responsibility for the tasks, activities, and deliverables described therein and warrants that it has fully informed itself of all relevant factors affecting accomplishment of the tasks, activities and deliverables, and agrees to be fully accountable for the performance thereof.

6.14 Department Obligations

The Department may provide technical support and assistance to the Provider, within the resources of the Department, to assist in meeting the required tasks in Section 6.4. The support and assistance, or lack thereof, shall not relieve Provider(s) from full performance of contract requirements. Department will provide a list of contracted vendors to Laboratories seeking certification, etc.

6.15 Department Determinations

The Department reserves the exclusive right to make certain determinations in these specifications. The absence of the Department setting forth a specific reservation of rights does not mean that all other areas of the resulting contract are subject to mutual agreement.

6.16 Financial Specifications

Funding Source: The fees for services, including travel when appropriate, shall be paid by the laboratory being assessed. All travel costs must be in accordance with Section 112.061, *Florida Statutes and Florida Administrative Code Rule 69I-42*. No state funding is anticipated in this project.

Invoicing and Payment of Invoice: Provider's cost shall be paid by the laboratory seeking or maintaining primary certification from the Florida Department of Health. The laboratory shall make payments directly to the Provider. The Provider shall provide the laboratory with a cost estimate before the assessment begins. The Provider's costs may include travel expenses related to the on-site assessment.

ORDER OF ATTACHMENTS:

- Attachment I - Experience Form
- Attachment II - Evaluation Criteria
- Attachment III - Cost Application
- Attachment IV - Required Certifications
- Attachment V - Standard Contract
- Attachment VI – Subcontract Report
- Attachment VII – Direct Order Terms and Conditions
- Attachment VIII- HIPAA Business Associate Agreement

ATTACHMENT I
EXPERIENCE FORM
DOH RFA 14-008

Applicant's Name: _____

Applicants are required to submit with the application, contact information for three (3) entities it has provided with services similar to those requested in this RFA. The Department reserves the right to contact any and all entities to verify information provided. The Department's fitness determination is not subject to review or challenge.

1.) Name of Company/Agency: _____

Contact Person: _____

Phone Number: _____

Address: _____

Email Address: _____

2.) Name of Company/Agency: _____

Contact Person: _____

Phone Number: _____

Address: _____

Email Address: _____

3.) Name of Company/Agency: _____

Contact Person: _____

Phone Number: _____

Address: _____

Email Address: _____

Signature of Authorized Representative

ATTACHMENT II
Evaluation Criteria
DOH RFA 14-008

This evaluation sheet shall be used by the Evaluation Team to assign scores to applications that are designated as responsive. Scores of the Evaluation Team members shall be averaged and ranked, from highest averaged score to lowest averaged score. Both the presence and quality of the response shall be evaluated when determining point value.

Point Value: zero is the lowest possible score and the number indicated in this column is the highest possible. **A minimum score of 75 will be required to be an approved provider under this solicitation, but regardless of the minimum score, at least one of the Applicant’s assessors must meet the qualifications criteria in Question 8.**

Points Awarded: The total number of points given by the Evaluation Team member.

RFA Question Number	Question	Point Value <small>zero is lowest possible and the number indicated in this column is the highest possible</small>	Points Awarded <small>Total number of points given by the Evaluation Team member</small>
1.	To what extent does the Applicant’s Standard Operating Procedure (SOP) for conducting on-site laboratory assessments address compliance with the rules contained in Florida Administrative Code Chapter 64E-1, and the 2003 NELAC standards adopted by reference therein? (6.4.4)	0-10	
2.	To what extent does the Applicant’s application encompass the various Fields of Accreditation for which laboratories are Department-certified? (6.4.4)	0-10	
3.	To what degree does the application describe the Applicant’s experience in performing laboratory assessments in accordance with national or international standards for environmental laboratories? (3.4.1, 3.4.2, 3.5))	0-10	
4.	How well does the Applicant’s application address its capability to assemble an assessment team consisting of a Lead Assessor and additional assessors in sufficient numbers for the size and scope of the laboratory to be assessed comprehensively and within a reasonable number of contiguous workdays? (6.4.2)	0-10	
5.	How well do the sample on-site assessment reports provided by the Applicant demonstrate compliance with the required tasks given? (6.4.4, 6.4.5)	0-10	
6.	How well does the Applicant review, evaluate respond laboratory Corrective Action Plans as evidenced by the documentation provided? (3.4.4, 6.4.6)	0-10	
7.	How well does the application document the	0-10	

	Applicant's conformance to TNI Standard EL-V2M1-2009 and EL-V2M3-2009 and/or Chapter III, Sections 6.1 and 6.2 of the United States Environmental Protection Agency's (EPA) Manual for the Certification of Laboratories Analyzing Drinking Water, Fifth Edition? (3.4.1, 3.9.2, 6.4.5)		
8.	How well does the documentation provided by the Applicant demonstrate that the assessors' qualifications conform to TNI Standard EL-V2M1-2009 and EL-V2M3-2009 and/or Chapter III, Sections 4.1 and 4.2 of the United States Environmental Protection Agency's (EPA) Manual for the Certification of Laboratories Analyzing Drinking Water, Fifth Edition? (3.4.1, 3.9.1, 3.9.2)	0-10	
9.	How well does the documentation provided by the Applicant demonstrate that the assessors possess the attributes listed in 3.4.1.a-h?	0-10	
10.	How well do the assessors' training and experience credentials demonstrate the ability to technically evaluate test methods for the Fields of Accreditation for which laboratories are Department-certified? (3.9.1, 3.9.2)	0-10	

Sub Total: _____

Evaluator Name: _____ Applicant Name: _____

Total possible points = 100.

**Attachment III
Cost Application
DOH RFA 14-008**

Costs for services rendered under this RFA shall be paid by the laboratory seeking certification. Responders shall provide pricing information per laboratory assessment and corrective action review according to the following breakdown: Laboratories certified for or seeking certification for 1-10 (small), 11-50 (medium), and >50 (large) Matrix-Method combinations.

Initial Term 1-3 years

Laboratory Size (number of Matrix-Method combinations)	Assessment Cost per Laboratory	Corrective Action Review Cost per Laboratory	Total Cost per Laboratory
1-10			
11-50			
>50			

Sub total _____

Renewal period (may be years 4-6)

Laboratory Size (number of Matrix-Method combinations)	Assessment Cost per Laboratory	Corrective Action Review Cost per Laboratory	Total Cost per Laboratory
1-10			
11-50			
>50			

Sub total _____

Initial Term + Renewal Total Cost _____

ATTACHMENT IV
REQUIRED CERTIFICATIONS

ACCEPTANCE OF TERMS, CONDITIONS, PROVISIONS AND SPECIFICATIONS

BY AFFIXING MY SIGNATURE ON THIS APPLICATION, I HEREBY STATE THAT I HAVE READ THE ENTIRE *RFA* TERMS, CONDITIONS, PROVISIONS AND SPECIFICATIONS INCLUDING PUR 1000 AND PUR 1001. I hereby certify that my company, its employees, and its principals agree to abide to all of the terms, conditions, provisions and specifications during the competitive solicitation and contracting process(if applicable) including those contained in the attached Standard Contract/Direct order. (Attachment III and Attachment IV). **

Signature of Authorized Official

Date

STATEMENT OF NO INVOLVEMENT
CONFLICT OF INTEREST STATEMENT (NON-COLLUSION)

I hereby certify that my company, its employees, and its principals, had no involvement in performing a feasibility study of the implementation of the subject contract, in the drafting of this solicitation document, or in developing the subject program. Further, my company, its employees, and principals, engaged in no collusion in the development of the instant application or offer. This application or offer is made in good faith and there has been no violation of the provisions of Chapter 287, Florida Statutes, the Administrative Code Rules promulgated pursuant thereto, or any procurement policy of the Department of Health. I certify I have full authority to legally bind the Applicant or Offeror to the provisions of this application or offer.

Signature of Authorized Official

Date

Date

*An authorized official is an officer of the vendor's organization who has legal authority to bind the organization to the provisions of the applications. This usually is the President, Chairman of the Board, or owner of the entity. A document establishing delegated authority must be included with the application if signed by other than the President, Chairman or owner.

** The terms and conditions contained in the Standard Contract or Direct order are non-negotiable. If a vendor fails to certify their agreement with these terms and conditions and or abide by, their response shall be deemed non-responsive

ATTACHMENTV

**STANDARD CONTRACT
STATE OF FLORIDA
DEPARTMENT OF HEALTH**

Contract may be obtained from the Contracts Administration web site

Document not inserted here due to formatting, allow for 5 or 6 pages

http://dohiws/Divisions/Administration/Gen_Services/ContractAdmin/Forms/Standard_Contract_Word.doc

I. DESIGNATIONS:

MINORITY PERSON as defined by [Section 288.703](#) FS; means a lawful, permanent resident of Florida who is, one of the following:

- (A) **AN AFRICAN AMERICAN**, a person having origins in any of the racial groups of the African Diaspora.
- (B) **A HISPANIC AMERICAN**, a person of Spanish or Portuguese cultures with origins in Spain, Portugal, Mexico, South America, Central America or the Caribbean regardless of race.
- (C) **AN ASIAN AMERICAN**, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands prior to 1778.
- (D) **A NATIVE AMERICAN**, a person who has origins in any of the Indian Tribes of North America prior to 1835, upon presentation of proper documentation thereof as established by rule of the Department of Management Services
- (E) **AN AMERICAN WOMAN**.

CERTIFIED MINORITY BUSINESS ENTERPRISE as defined by [Section 288.703](#) FS, means a small business which is at least 51 percent owned and operated by a minority person(s), which has been certified by the certifying organization or jurisdiction in accordance with Section 287.0943(1).

SERVICE-DISABLED VETERAN BUSINESS ENTERPRISE: As defined by [Section 295.187](#), FS, means an Independently owned and operated business that employees 200 or fewer permanent full-time employees; Is organized to engage in commercial transactions; Is domiciled in Florida; Is at least 51% owned by one or more service-disabled veterans; and, who's management and daily business operations of which are controlled by one or more service-disabled veterans or, for a service-disabled veteran with a permanent and total disability, by the spouse or permanent caregiver of the veteran.

CERTIFIED SERVICE-DISABLED VETERAN BUSINESS ENTERPRISE as defined by [Section 295.187](#), FS means a business that has been certified by the Department of Management Services to be a service-disabled veteran business enterprise

SMALL BUSINESS means an independently owned and operated business concern that employs 100 or fewer permanent full-time employees and has a net worth of not more than \$3,000,000 and an average net income, after federal income taxes, of not more than \$2,000,000.

NON-CERTIFIED MINORITY BUSINESS means a small business which is at least 51 percent owned and operated by a minority person(s).

MINORITY NON-PROFIT ORGANIZATION means a not-for-profit organization that has at least 51 percent minority board of directors, at least 51 percent minority officers, or at least 51 percent minority community served.

II. INSTRUCTIONS TO PRIME CONTRACTORS:

- A) ENTER THE COMPANY NAME AS IT APPEARS ON YOUR DOH CONTRACT.
- B) ENTER THE DOH CONTRACT NUMBER.
- C) ENTER THE TIME PERIOD THAT YOUR CURRENT INVOICE COVERS.
- D) ENTER THE CMBE SUBCONTRACTOR'S NAME and ADDRESS.
- E) ENTER THE SUBCONTRACTOR'S FEDERAL EMPLOYMENT IDENTIFICATION NUMBER. THE SUBCONTRACTOR CAN PROVIDE YOU WITH THIS NUMBER
- F) ENTER THE AMOUNT EXPENDED WITH THE SUBCONTRACTOR FOR THE TIME PERIOD COVERED BY THE INVOICE.
- G) ENCLOSE THIS FORM AND SEND TO YOUR DOH CONTRACT MANAGER

ATTACHMENT VII

DIRECT ORDER TERMS AND CONDITIONS STATE OF FLORIDA, DEPARTMENT OF HEALTH (the “Department”)

For good and valuable consideration, received and acknowledged sufficient, the parties agree to the following in addition to terms and conditions expressed in the MyFloridaMarketPlace (MFMP) direct order:

1. The Provider is an independent contractor for all purposes hereof.
2. The laws of the State of Florida shall govern this direct order and the venue for any legal actions arising herefrom is Leon County, Florida, unless issuer is a county health department, in which case, venue for any legal actions shall be the issuing county.
3. The Provider agrees to maintain appropriate insurance as required by law and the terms hereof.
4. The Provider shall comply, as required, with the Health Insurance Portability and Accountability Act (42 USC & 210, et seq.) and regulations promulgated thereunder (45 CFR Parts 160, 162 and 164).
5. The Provider shall maintain confidentiality of all data, files, and records related to the services/commodities provided pursuant to this direct order and shall comply with all state and federal laws, including, but not limited to Sections 381.004, 384.29, 392.65 and 456.057, F.S. Provider’s confidentiality procedures shall be consistent with the most recent edition of the Department of Health Information Security Policies, Protocols, and Procedures. A copy of this policy shall be made available upon request. Provider shall also comply with any applicable professional standards of practice with respect to confidentiality of information.
6. Excluding Universities, Provider agrees to indemnify, defend, and hold the State of Florida, its officers, employees and agents harmless, to the full extent allowed by law, from all fines, claims, assessments, suits, judgments, or damages, consequential or otherwise, including court costs and attorneys’ fees, arising out of any acts, actions, breaches, neglect or omissions of Provider, its employees and agents, related to this direct order, as well as for any determination arising out of or related to this direct order, that Provider or Provider’s employees, agents, subcontractors, assignees or delegates are not independent contractors in relation to the Department. This direct order does not constitute a waiver of sovereign immunity or consent by the Department or the State of Florida or its subdivisions to suit by third parties in any matter arising herefrom.
7. Excluding Universities, all patents, copyrights, and trademarks arising, developed or created in the course or as a result hereof are Department property and nothing resulting from Provider’s services or provided by the Department to Provider may be reproduced, distributed, licensed, sold or otherwise transferred without prior written permission of the Department. This paragraph does not apply to Department purchase of a license for Provider’s intellectual property.

8. If this direct order is for personal services by Provider, at the discretion of the Department, Provider and its employees, or agents, as applicable, agree to provide fingerprints and be subject to a background screen conducted by the Florida Department of Law Enforcement and / or the Federal Bureau of Investigation. The cost of the background screen(s) shall be borne by the Provider. The Department, solely at its discretion, reserves the right to terminate this agreement if the background screen(s) reveal arrests or criminal convictions. Provider, its employees, or agents shall have no right to challenge the department's determination pursuant to this paragraph.
9. Unless otherwise prohibited by law, the Department, at its sole discretion, may require the Provider to furnish, without additional cost to the Department, a performance bond or negotiable irrevocable letter of credit or other form of security for the satisfactory performance of work hereunder. The type of security and amount is solely within the discretion of the Department. Should the Department determine that a performance bond is needed to secure the agreement, it shall notify potential Providers at the time of solicitation.
10. Section 287.57(17)(c), F.S., provides, "A person who receives a contract that has not been procured pursuant to subsections (1)-(3) to perform a feasibility study of the potential implementation of a subsequent contract, who participates in the drafting of a solicitation or who develops a program for future implementation, is not eligible to contract with the agency for any other contracts dealing with that specific subject matter, and any firm in which such person has any interest is not eligible to receive such contract. However, this prohibition does not prevent a Provider who responds to a request for information from being eligible to contract with an agency."

The Department considers participation through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, or auditing or any other advisory capacity to constitute participation in drafting of the solicitation.

11. **TERMINATION:** This direct order agreement may be terminated by either party upon no less than thirty (30) calendar days notice, without cause, unless a lesser time is mutually agreed upon by both parties. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery.

In the event funds to finance this direct order agreement become unavailable, the department may terminate the agreement upon no less than twenty-four (24) hours notice in writing to the provider. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. The Department shall be the final authority as to the availability of funds. Unless the provider's breach is waived by the Department in writing, the Department may, by written notice to the provider, terminate this direct order agreement upon no less than twenty-four (24) hours notice. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. If applicable, the Department may employ the default provisions in Chapter 60A-1.006(4), F.A.C. Waiver of breach of any provisions of this contract shall not be deemed to be a waiver of any other

breach and shall not be constructed to be a modification of the terms of this agreement. The provisions herein do not limit the Department's right to remedies at law or to damages.

12. The terms of this direct order will supersede the terms of any and all prior or subsequent agreements you may have with the Department with respect to this purchase. Accordingly, in the event of any conflict, the terms of this direct order shall govern.
13. In accordance with Executive Order 11-116, "The Provider agrees to utilize the U.S. Department of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all new employees hired during the contract term by the Provider. The Provider shall also include a requirement in subcontracts that the subcontractor shall utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term. Contractors meeting the terms and conditions of the E-Verify System are deemed to be in compliance with this provision."

ATTACHMENT VIII

HIPAA Business Associate Agreement

Combined HIPAA Privacy Business Associate Agreement and Confidentiality Agreement and HIPAA Security Rule Addendum and HI-TECH Act Compliance Agreement

This Agreement is entered into between the _____ (“Covered Entity”), and _____ (“Business Associate”). The parties have entered into this Agreement for the purpose of satisfying the Business Associate contract requirements in the regulations at 45 CFR 164.502(e) and 164.504(e), issued under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Security Rule, codified at 45 Code of Federal Regulations (“C.F.R.”) Part 164, Subparts A and C; Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17, 2009) and related regulations.

1.0 Definitions

Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in 45 CFR 160.103 and 164.501. Notwithstanding the above, "Covered Entity" shall mean the State of Florida Department of Health. "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g); "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his designee; and "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

Part I: Privacy Provisions

2.0 Obligations and Activities of Business Associate

- (a) Business Associate agrees to not use or further disclose Protected Health Information (“PHI”) other than as permitted or required by Sections 3.0 and 5.0 of this Agreement, or as required by Law.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- (d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- (e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions

and conditions that apply through this Agreement to Business Associate with respect to such information.

- (f) Business Associate agrees to provide access, at the request of Covered Entity or an Individual, and in a prompt and reasonable manner consistent with the HIPAA regulations, to Protected Health Information in a designated record set, to the Covered Entity or directly to an Individual in order to meet the requirements under 45 CFR 164.524.
- (g) Business Associate agrees to make any Amendment(s) to Protected Health Information in a designated record set that the Covered Entity or an Individual directs or agrees to pursuant to 45 CFR 164.526, in a prompt and reasonable manner consistent with the HIPAA regulations.
- (h) Business Associate agrees to make its internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity available to the Covered Entity, or at the request of the Covered Entity, to the Secretary in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (i) Business Associate agrees to document disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- (j) Business Associate agrees to provide to Covered Entity or an Individual an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528, in a prompt and reasonable manner consistent with the HIPAA regulations.
- (k) Business Associate agrees to satisfy all applicable provisions of HIPAA standards for electronic transactions and code sets, also known as the Electronic Data Interchange (EDI) Standards, at 45 CFR Part 162 no later than October 16, 2003. Business Associate further agrees to ensure that any agent, including a subcontractor, that conducts standard transactions on its behalf, will comply with the EDI Standards.
- (l) Business Associate agrees to determine the Minimum Necessary type and amount of PHI required to perform its services and will comply with 45 CFR 164.502(b) and 514(d).

3.0 Permitted or Required Uses and Disclosures by Business Associate General Use and Disclosure.

- (a) Except as expressly permitted in writing by Department of Health, Business Associate may use Protected Health Information only to carry out the legal responsibilities of the Business Associate, but shall not disclose information to any third party without the expressed written consent of the Covered Entity.
- (b) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
- (c) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j) (1).

4.0 Obligations of Covered Entity to Inform Business Associate of Covered Entity's Privacy Practices, and any Authorization or Restrictions.

- (a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.
- (b) Covered Entity shall provide Business Associate with any changes in, or revocation of, Authorization by Individual or his or her personal representative to use or disclose Protected Health Information, if such changes affect Business Associate's uses or disclosures of Protected Health Information.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, if such changes affect Business Associate's uses or disclosures of Protected Health Information.

5.0 Confidentiality under State Law.

- (a) In addition to the HIPAA privacy requirements, Business Associate agrees to observe the confidentiality requirements of _____, Florida Statutes. (Program to supply applicable laws related to confidentiality)
- (b) Receipt of a Subpoena. If Business Associate is served with subpoena requiring the production of Department of Health records or information, Business Associate shall immediately contact the Department of Health, Office of the General Counsel, (850) 245-4005. A subpoena is an official summons issued by a court or an administrative tribunal, which requires the recipient to do one or more of the following:
 - 1. Appear at a deposition to give sworn testimony, and may also require that certain records be brought to be examined as evidence.
 - 2. Appear at a hearing or trial to give evidence as a witness, and may also require that certain records be brought to be examined as evidence.
 - 3. Furnish certain records for examination, by mail or by hand-delivery.
- (c) Employees and Agents. Business Associate acknowledges that the confidentiality requirements herein apply to all its employees, agents and representatives. Business Associate assumes responsibility and liability for any damages or claims, including state and federal administrative proceedings and sanctions, against Department of Health, including costs and attorneys' fees, resulting from the breach of the confidentiality requirements of this Agreement.

6.0 Permissible Requests by Covered Entity.

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

7.0 Term and Termination.

- (a) Term.

The Term of this Agreement shall be effective as of _____, and shall terminate on _____. Prior to the termination of this Agreement, the Business Associate shall destroy or return to the Covered Entity all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity. If it is infeasible or impossible to return or destroy Protected Health Information, the Business Associate

shall immediately inform the Covered Entity of that and the parties shall cooperate in securing the destruction of Protected Health Information, or its return to the Covered Entity. Pending the destruction or return of the Protected Health Information to the Covered Entity, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) Termination for Cause.

Without limiting any other termination rights the parties may have, upon Covered Entity's knowledge of a material breach by Business Associate of a provision under this Agreement, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation. If the Agreement of Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, the Covered Entity shall have the right to immediately terminate the Agreement. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(c) Effect of Termination.

1. Within sixty (60) days after termination of the Agreement for any reason, or within such other time period as mutually agreed upon in writing by the parties, Business Associate shall return to Covered Entity or destroy all Protected Health Information maintained by Business Associate in any form and shall retain no copies thereof. Business Associate also shall recover, and shall return or destroy with such time period, any Protected Health Information in the possession of its subcontractors or agents.
2. Within fifteen (15) days after termination of the Agreement for any reason, Business Associate shall notify Covered Entity in writing as to whether Business Associate elects to return or destroy such Protected Health Information, or otherwise as set forth in this Section 4.4. If Business Associate elects to destroy such Protected Health Information, it shall certify to Covered Entity in writing when and that such Protected Health Information has been destroyed. If any subcontractors or agents of the Business Associate elect to destroy the Protected Health Information, Business Associate will require such subcontractors or agents to certify to Business Associate and to Covered Entity in writing when such Protected Health Information has been destroyed. If it is not feasible for Business Associate to return or destroy any of said Protected Health Information, Business Associate shall notify Covered Entity in writing that Business Associate has determined that it is not feasible to return or destroy the Protected Health Information and the specific reasons for such determination.
Business
3. Associate further agrees to extend any and all protections, limitations, and restrictions set forth in this Agreement to Business Associate's use or disclosure of any Protected Health Information retained after the termination of this Agreement, and to limit any further uses or disclosures to the purposes that make the return or destruction of the Protected Health Information not feasible.
4. If it is not feasible for Business Associate to obtain, from a subcontractor or agent, any Protected Health Information in the possession of the subcontractor or agent, Business Associate shall provide a written explanation to Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations, and restrictions set forth in this Agreement to the subcontractors' or agents' uses or disclosures of any Protected Health Information retained after the termination of this Agreement, and to limit any further uses or disclosures to the purposes that make the return or destruction of the Protected Health Information not feasible.

Part II: Security Addendum

8.0 Security

WHEREAS, Business Associate and Department of Health agree to also address herein the applicable requirements of the Security Rule, codified at 45 Code of Federal Regulations (“C.F.R.”) Part 164, Subparts A and C, issued pursuant to the Administrative Simplification provisions of Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA-AS”), so that the Covered Entity may meet compliance obligations under HIPAA-AS, the parties agree:

(a) **Security of Electronic Protected Health Information.**

Business Associate will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information (as defined in 45 C.F.R. § 160.103) that Business Associate creates, receives, maintains, or transmits on behalf of the Plans consistent with the Security Rule.

(b) **Reporting Security Incidents.**

1. Business Associate will report to Covered Entity within 24 hours of the discovery of any incident of which Business Associate becomes aware that is:

(a) a successful unauthorized access, use or disclosure of the Electronic Protected Health Information; or

(b) a successful major

(1) modification or destruction of the Electronic Protected Health Information or

(2) interference with system operations in an information system containing the Electronic Protected Health Information.

2. Upon the Department of Health’s request, Business Associate will report any incident of

which Business Associate becomes aware that is a successful minor

(a) modification or destruction of the Electronic Protected Health Information or

(b) interference with system operations in an information system containing the Electronic Protected Health Information.

(c) **Compliance Date.**

The parties to this Amendment will comply with Sections (a) through (c) of this Section 9 by the later of the (1) the last date set forth in the signature blocks below.

(d) **Conflicts.**

The provisions of this Section 9 will override and control any conflicting provision of this agreement.

(e) **Corrective Action:**

Business Associate agrees to take prompt corrective action and follow all provisions required in state and federal law to notify all individuals reasonably believed to be potentially affected by the breach.

(f) **Cure:**

Business Associate agrees to take prompt corrective action to cure any security deficiencies.

Part III

9.0 Miscellaneous

- (a) Regulatory References. A reference in this Agreement to a section in the Privacy Rule or the Security Rule means the section as in effect or as amended, and for which compliance is required.
- (b) Amendment. Upon the enactment of any law or regulation affecting the use or disclosure of Protected Health Information, Standard Transactions, the security of Health Information, or other aspects of HIPAA-AS applicable or the publication of any decision of a court of the United States or any state relating to any such law or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, either party may, by written notice to the other party, amend this Agreement in such manner as such party determines necessary to comply with such law or regulation. If the other party disagrees with such Amendment, it shall so notify the first party in writing within thirty (30) days of the notice. If the parties are unable to agree on an Amendment within thirty (30) days thereafter, then either of the parties may terminate the Agreement on thirty (30) days written notice to the other party.
- (c) Survival. The respective rights and obligations of Business Associate under Section 7.0 of this Agreement shall survive the termination of this Agreement.
- (d) Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule and the confidentiality requirements of the State of Florida.
- (e) No third party beneficiary. Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assignees of the parties, any rights, remedies, obligations, or liabilities whatsoever.
- (f) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Florida to the extent not preempted by the Privacy Rules or other applicable federal law.
- (g) The laws of the State of Florida shall apply to the interpretation of this Agreement or in case of any disagreement between the parties; the venue of any proceedings shall be the appropriate federal or state court in Leon County, Florida.
- (h) Indemnification and performance guarantees. Business Associate shall indemnify, defend, and save harmless the State of Florida and Individuals covered for any financial loss as a result of claims brought by third parties and which are caused by the failure of Business Associate, its officers, directors or agents to comply with the terms of this Agreement.
- (i) Assignment: Business Associate shall not assign either its obligations or benefits under this Agreement without the expressed written consent of the Covered Entity, which shall be at the sole discretion of the Covered Entity. Given the nature of this Agreement, neither subcontracting nor assignment by the Business Associate is anticipated and the use of those terms herein does not indicate that permission to assign or subcontract has been granted.

For: **DEPARTMENT OF HEALTH**

By: _____

Title: _____

Date: _____

For: (Name of Business Associate)

By: _____

Title: _____

Date: _____

Approved as to form and legality:

_____ Office of the General Counsel

Date: _____