



STATE OF TENNESSEE  
FINANCE & ADMINISTRATION, BENEFITS ADMINISTRATION

**REQUEST FOR QUALIFICATIONS # 31786-00171  
AMENDMENT #ONE  
FOR EMPLOYER INSURANCE BENEFITS  
CONSULTING AND ACTUARIAL SERVICES**

**DATE: December 16, 2022**

RFQ #31786-00171 IS AMENDED AS FOLLOWS:

1. This RFQ Schedule of Events updates and confirms scheduled RFQ dates. Any event, time, or date containing revised or new text is highlighted.

EVENT	TIME (central time zone)	DATE (all dates are State business days)
1. RFQ Issued		November 9, 2022
2. Disability Accommodation Request Deadline	2:00 p.m.	November 16, 2022
3. Pre-Response Conference	10:00 a.m.	November 17, 2022
4. Notice of Intent to Respond Deadline	2:00 p.m.	November 18, 2022
5. Written "Questions & Comments" Deadline	2:00 p.m.	December 1, 2022
6. State Response to Written "Questions & Comments"		December 16, 2022
7. Written "Questions & Comments" Deadline ROUND 2  <b>*NOTE: Vendors may submit no more than five (5) questions to the State in the 2nd round of Written Questions and Comments.</b>	2:00 p.m.	January 5, 2023
8. State Response to Written "Questions & Comments" ROUND 2		January 13, 2023
9. RFQ Technical Response Deadline	2:00 p.m.	January 23, 2023
10. State Schedules respondent Oral Presentations (ONLY Respondents who pass Mandatory Requirements)		February 8, 2023

11. Respondent Oral Presentations	9:00 a.m. - 4:00 p.m.	February 21-24, 2023
12. State Notice of Qualified Respondent(s) Released		February 28, 2023
13. RFQ Cost Proposal (ONLY for Qualified Respondents)	2:00 p.m.	March 7, 2023
14. RFQ Negotiations		March 8-13, 2023
15. State Notice of Intent to Award and Files Opened for Public Inspection	3:00 p.m.	March 23, 2023
16. End of Open File Period		March 31, 2023
17. State sends contract to Contractor for signature		April 3, 2023
18. Contractor Signature Deadline	2:00 p.m.	April 10, 2023

**2. State responses to questions and comments in the table below amend and clarify this RFQ.**

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
C.1 Response Format, Technical, Page #7	1	<p>Technical Response One (1) original Technical Response in the form of one (1) digital document in "PDF" format properly recorded on its own otherwise blank, USB flash drive clearly labeled: "RFQ #31786-00171 TECHNICAL RESPONSE ORIGINAL" 06-16-22 FA RFQ #31786-00171</p> <p>and one (1) copies of the Technical Response each in the form of one (1) digital document in "PDF" format properly recorded on its own otherwise blank, USB flash drive labeled: "RFQ #31786-00171 TECHNICAL RESPONSE COPY"</p> <p>If not emailed, then the sealed customer references will be the only paper documents.</p> <p>To clarify, you are looking for the original and one copy to placed on a USB flash drive and mailed to your office. Are you also looking for paper copies and/or emailed copies?</p>	<p>Per RFQ Section 3.3 Response Delivery, the State is requesting one hardcopy of the Technical Response and a USB drive with the Technical Response or email submission is an option.</p>
Appendix A	2	<p>Conduct targeted claim audits, as needed. These audits would focus on specific categories</p>	<p>The capability to audit all medical claims is not</p>

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		<p>of claims that have come to BA's attention as requiring additional investigation through member inquiry or complaint, industry best practice, prior audit results, or other research.</p> <p>Would the contemplated scope include reviewing all medical claims for proper payment? Specifically identifying errors in both the provider submission and third party administrator's adjudication practices.</p>	<p>required under this contract. However, if the Contractor has the capability to do so, the State would consider including this in the audit rotation.</p>
Appendix A	3	<p>Conduct targeted claim audits, as needed. These audits would focus on specific categories of claims that have come to BA's attention as requiring additional investigation through member inquiry or complaint, industry best practice, prior audit results, or other research.</p> <p>Will all pertinent contracts be made available upon request to ensure proper payment occurred on medical and pharmacy claims?</p>	<p>The Contractor will work directly with the third-party administrators and the pharmacy benefit manager to obtain access to the pertinent contracts.</p>
Appendix A	4	<p>Conduct targeted claim audits, as needed. These audits would focus on specific categories of claims that have come to BA's attention as requiring additional investigation through member inquiry or complaint, industry best practice, prior audit results, or other research.</p> <p>What level of support can the selected vendor receive from TN's third party administrators investigating potential overpayments?</p>	<p>The third-party administrators' and the pharmacy benefit manager's contracts have requirements concerning access to documents and records for audit purposes. These requirements include providing access to any data, data extracts, documents, access to systems, and other information necessary to ensure compliance with all the requirements of their respective contracts.</p>
Appendix A	5	<p>Conduct targeted claim audits, as needed. These audits would focus on specific categories of claims that have come to BA's attention as requiring additional investigation through member inquiry or complaint, industry best practice, prior audit results, or other research.</p> <p>Is the reconciliation of payments made by the plan to the administrator in scope for this review? Specifically, reconciling to communicated claims spend and associated fees billed by the administrator?</p>	<p>Please refer to Appendix B, item C.5.</p>

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General – Pre-Response Conference	6	<p>Multiple Award Opportunity</p> <p>Is The State open to considering multiple awards for the services noted in the RFP? Especially if one of the services will greatly benefit The State and help to recoup funds back to the plan.</p> <p>With data access and legislation changes with the Consolidated Appropriations Act, audits are no longer limited to 250-500 claims per year. The new standard of care for audits is to review 100% of claims with access to 100% of the data. The State cannot be limited in requesting data and you can have your Third Party Administrators address ALL claims, not just the ones they have noted in your audit provision. The laws and legislation override any outdated contract provision preventing you from achieving your fiduciary oversight. Many States have already changed their audit approach and have been requesting the full spectrum of data with robust analytics reviews. These reviews identify 6%-12% (+) in errors and overbilling annually. Those funds are then recouped back to the plan(s). This allows the states to achieve fiduciary oversight of their plans.</p>	No. This will be a single award.
	7	If the reference questionnaire is emailed, should it come directly from the reference or responding firm?	The reference must come directly from the person /company submitting the reference.
	8	How many qualified respondents will the State select for #12 on February 28, 2023?	One - the highest evaluated in the technical response. See RFQ Section 5.2.
	9	For Section c. Response Requirements c.ii.1. the Response Format and 3.2.3.4, can the responding firm email 3 files (Technical Response Original, Technical Response Copy, and Cost Proposal) as opposed to sending 3 USB flash drives?	The State will only accept response by mail, see RFQ Release 2.
	10	Is there any ability to redact any portion of our proposal?	No, the State will not accept any proposal that has redacted information.
	11	If the responding firm prepares a microsite to illustrate our value to the State of TN, will the State be allowed to access it? There will be a password and website associated with it.	No, all information must be included in the technical response.
	12	What are the top strategic priorities for the State with regards to your benefits program?	Managing overall costs and trend without the need to push increased costs to members is one of our top

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			strategic priorities. This would be accomplished preferably through an increase in the utilization of high-quality providers and an increase in value-based payment arrangements with providers. Developing strong contracts that get us best price is also important.
	13	Which consulting firm provides these services today and how long have they been in place?	Aon Consulting is the current Contractor. BA has had a contract with Aon for over 10 years. All current contracts are listed on our website : <a href="https://www.tn.gov/partnersforhealth/contracts.html">https://www.tn.gov/partnersforhealth/contracts.html</a>
	14	In total, how many firms have provided an intent to bid?	This is not public record at this time.
	15	How is the incumbent consulting firm compensated (e.g., fixed annual fee, time & expense, commissions, fees offset by commissions, etc.)?	See response to Question #13.
	16	What was the incumbent consulting firm's total compensation received from the State via fees and/or commissions during the past 12 months?	From November 2021 to October 2022, the incumbent consulting firm's total compensation was \$1,950,526.40.
	17	Does the State have a preferred approach to present our proposed pricing structure (e.g., fixed annual fee, time & expense, commissions, fees offset by commissions, etc.)?	Once a proposer has been deemed as qualified as outlined in RFQ Section 5.2, the cost proposal will be provided for completion. The pricing structure is based on an hourly rate per employee category and consolidated rates for all employee categories.
	18	Is the scope of work requested in this request different from the scope of work provided by the current consultant for these services? If so, how is the scope different?	The scope of work requested in this RFQ is similar to the scope of work provided by the current consultant. Please refer to question 13 for more information on the current contract.
	19	What are some key areas you would like to see enhanced in your consulting	Key areas for a successful consulting relationship are

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		relationship and what will make this an optimal partnership for the State?	<p>having subject matter experts assigned to the contract, responsiveness, clear communication, brainstorming capability, and accurate analysis, projections and recommendations. Specifically, sharing of innovative ideas with an understanding of what our goals are and what is and is not possible within our structure. Knowledge of best-in-class benefit plans is important as well as the ability to provide long-term thinking related to procurements.</p> <p>Enhancements could include sharing more of the consultant company's analysis or insights into major policy changes impacting the market, such as the CAA and Transparency rules, and its potential impact to our plan.</p>
	20	Do you have an existing schedule or timeline established for when each line of benefits coverage is expected to be marketed? If so, what is that anticipated schedule as it relates to the next 36 months?	<p>The schedule of events for the procurement is listed in the document. Including contract award and signatures. The State will then start the implementation period and potential transition to a new contractor until the go-live on January 1, 2024.</p> <p>In terms of other benefits and the procurement schedule, typically the State staggers our contracts, so they are out for procurement at different times. You can see a list of our current contract including the contract end dates at <a href="https://www.tn.gov/partnersforhealth/contracts.html">https://www.tn.gov/partnersforhealth/contracts.html</a></p>
	21	Looking forward, what specific challenges and objectives are you prioritizing in your long-term	Pharmacy, and specifically specialty pharmacy, is a cost

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		benefits strategy (e.g.) network strategy, wellness, risk management, etc.	driver for our plans. With an upcoming RFP, we are focused on strengthening our already strong PBM contract to get best pricing. We are open to innovative plan designs, with low member costs and high-quality providers, which could result in a regional program. We will continue to voice our desire for the TPAs to develop more value-based provider contracts and high-quality networks. Growing virtual care opportunities remains a goal. Addressing high-cost claimants, potentially through audits, has been a discussion point.
	22	To ensure all bidders are proposing on the same scope of services, please provide a copy of the current Statement of Work from the incumbent consultant/broker detailing the scope of services they provide. Fees do not need to be included.	<p>The current scope of services the State is seeking for this contract is listed in the RFQ. Each procurement and contract can be updated from the previous one so the State encourages potential respondents to focus on what is listed in this procurement.</p> <p>If you are looking for the current contract information, see response to Question #13.</p>
	23	<p>The submission of this proposal in response to the State of Tennessee (the "State") Request for Qualifications for Employer Insurance Benefits Consulting and Actuarial Services RFQ # 31786-00171 may constitute REDACT acceptance of the State's terms should the changes to the provisions below, or the addition of the new provisions below, be accepted.</p> <p>REDACT shall not be bound by any contract terms or obligated to perform the services described in this proposal until a mutually</p>	<p>The State will only entertain redlines to the <i>Pro Forma</i> Contract during the Questions &amp; Comments. The State only negotiates</p>

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		acceptable written agreement is signed by the parties.	cost after the Questions and Comments period and at the appropriate time based on the Schedule of Events.
A.9 Ownership of Data, Page 52	24	<p>REDACTED requests the following addition as a new sub-clause c. to this section:</p> <p>c. Contractor shall retain all rights, title and interest (including, without limitation, all copyrights, patents, service marks, trademarks, trade secret and other intellectual property rights) in and to all technical or internal designs, data, databases, methods, ideas, concepts, know-how, techniques, generic documents and templates (“Tools”) that have been previously developed by Contractor or such Tools developed during the course of the provision of the services provided such Tools do not contain and/or are not based upon or derived from any State Confidential Information or proprietary data. Rights and ownership by Contractor of its Tools shall not extend to or include all or any part of the State’s proprietary data or State Confidential Information. To the extent that Contractor may include in the materials any Tools, Contractor agrees that the State shall be deemed to have a fully paid up perpetual license to make copies of the Tools as part of this engagement for its internal business purposes and provided that such Tools cannot be modified or distributed outside of the State without the written permission of Contractor or except as otherwise permitted herein.</p>	The State does not agree. The State has added additional language. See amendment item #2 below.
C. Payment Terms and Conditions, C.1. Maximum Liability, Page 56	25	<p>REDACTED requests the following addition to this section:</p> <p>C.1. <u>Maximum Liability</u>. In no event shall the maximum <b>payment</b> liability of the State under this Contract exceed Written Dollar Amount (\$Number) (“Maximum Liability”). This Contract does not grant the Contractor any exclusive rights...</p>	The State will not agree to this this revision.



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D. Mandatory Terms and Conditions, D.6 Termination for Cause, Page 59	26	<p>REDACTED requests the following amendments to this section:</p> <p>D.6. <u>Termination for Cause.</u> . If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract (“Breach Condition”), the State shall <b>give the Contractor at least thirty (30) days written notice and opportunity to cure any such defects before have the right to immediately terminate terminating</b> the Contract and withholding payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.</p>	<p>The State will not agree to this revision, but has revised as follows:</p> <p>If the Contractor fails to properly perform its obligations under this Contract, or if the Contractor materially violates any terms of this Contract (“Breach Condition”), the State shall provide written notice to Contractor specifying the Breach Condition. If within thirty (30) days of notice, the Contractor has not cured the Breach Condition, the State may terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor and the State may seek other remedies allowed at law or in equity for breach of this Contract.</p>
D. Mandatory Terms and Conditions, D.8 Conflicts of Interest, Page 59	27	<p>REDACTED requests the following additions to this section:</p> <p>D.8. ...The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if <b>any of the personnel of Contractor who are actively engaged in the provision of services to the State</b> is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.</p>	<p>The State will not agree to this revision.</p>
D. Mandatory Terms and Conditions, D.18 Limitation of Contractor’s Liability, Page 61	28	<p>REDACTED requests the following additions to this section:</p> <p>D.18. <u>Limitation of Contractor’s Liability.</u> In accordance with Tenn. Code Ann. § 12-3-701, the Contractor’s liability for all claims arising under this Contract shall be limited to <del>an amount equal to two (2) times the Maximum</del></p>	<p>The State will not agree to this revision.</p>

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		<p><del>Liability amount detailed in Section C.1. and as may be amended</del> five million dollars (\$5,000,000.00) and in no event shall the Contractor be liable for the lost profits of the State or any other type of incidental or consequential damages, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for...</p>	
<p>D. Mandatory Terms and Conditions, D.19 Hold Harmless, Page 61</p>	<p>29</p>	<p>REDACTED requests the following amendments to this section:</p> <p>D.19. <u>Hold Harmless</u>. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all <del>third party</del> claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of <del>any willful misconduct or the grossly negligent, or intentionally fraudulent acts, or omissions, or negligence</del> on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.</p>	<p>The State will not agree to this revision.</p>
<p>D. Mandatory Terms and Conditions, D.26 Governing Law, Page 63</p>	<p>30</p>	<p>REDACTED requests the following amendments to this section:</p> <p>D.26. <u>Governing Law and Disputes</u>. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. <del>In the event of any dispute arising out of or relating to this Contract, the parties agree that the dispute will be resolved by final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall take place before a panel of three arbitrators. Within 30 days of the commencement of the arbitration, each party shall designate in writing a single neutral and independent arbitrator. The two arbitrators designated by the parties shall then select a third arbitrator. The arbitrators shall have a background in either insurance, actuarial science or law. The arbitrators shall have the authority to permit limited discovery, including depositions, prior to the arbitration hearing, and such discovery shall be conducted consistent with the Federal</del></p>	<p>The State will not agree to this revision.</p>

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		<p>Rules of Civil Procedure. The arbitrators shall have no power or authority to award punitive or exemplary damages. The arbitrators may, in their discretion, award the cost of the arbitration, including reasonable attorney fees, to the prevailing party. Any award made may be confirmed in any court having jurisdiction. Any arbitration shall be confidential, and except as required by law, neither party may disclose the content or results of any arbitration hereunder without the prior written consent of the other party, except that disclosure is permitted to a party's auditors and legal advisors. <del>The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 – 408.</del></p>	
	31	<p>REDACTED requests the following amendments to this section:</p> <p>D.32. <u>Insurance</u>. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: <del>(a) acceptable to the State;</del> <del>(b-a)</del> authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and <del>(e-b)</del> rated A- / VII or better by A.M. Best. All Contractor's commercial general liability coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State <del>relative to the State's own insurance for liability or damage caused by Contractor</del>. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain</p>	<p>The State will agree to this revision.</p> <p>The State will not agree to this revision.</p> <p>The State will not agree to this revision.</p>

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	<p>an endorsement for a waiver of subrogation in favor of the State. Any <del>deductible or self-insured retention (“SIR”) over fifty thousand dollars (\$50,000) must be approved by the State.</del> The deductible or SIR and any premiums are the Contractor’s sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.</p> <p>To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers’ Liability Accident), Contractor shall provide <del>a copy</del> evidence of the umbrella insurance policy <del>documents</del> coverage to ensure that no aggregate limit applies to the umbrella policy for that coverage area...</p> <p>Contractor shall provide the State a certificate of insurance (“COI”) evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer’s National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) Business Days prior to the Effective Date and again <del>within</del> thirty (30) calendar days <del>before of the</del> renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor’s policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a</p>	<p>The State will not agree to this revision.</p> <p>The State will not agree to the “evidence” revision.</p> <p>The State will agree to the revision “coverage”.</p> <p>The State will agree to the “within” and “of the” revision.</p>

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	<p>material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. <del>The State reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time...</del></p> <p><b>The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State...</b></p> <p>e. Technology Professional Liability (Errors &amp; Omissions)/Cyber Liability Insurance</p> <p>1) The Contractor shall maintain <del>technology professional liability (errors &amp; omissions)</del>cyber liability (which includes technology and professional liability coverage)/ <del>privacy</del> insurance appropriate to the Contractor's profession in an amount not less than ten million dollars (\$10,000,000) per occurrence or claim and ten million dollars (\$10,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the</p>	<p>The State will not agree to this revision, but will revise as follows: "In the event of a claim or litigation naming the State, the State reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time."</p> <p>The State will agree to this revision.</p> <p>The State will agree with this revision.</p>

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		<p>handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties...</p> <p>f. Crime Insurance 1) The Contractor shall maintain crime insurance, which shall be written on a “loss sustained form” or “loss discovered form” providing coverage for third party fidelity, including computer fraud <del>cyber theft and extortion</del>. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than <del>two one (21)</del> years with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.</p> <p>Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per <del>claim</del> occurrence and one million dollars (\$1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than two hundred and fifty thousand dollars (\$250,000). This insurance may be written on a claims- made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or “tail coverage” of at least two (2) years after the Term.</p>	<p>The State will agree with this revision, with the addition of “theft, forgery and intentionally committed wrongful acts”.</p> <p>The State will agree to this revision.</p> <p>The State will agree to this revision.</p>
D. Mandatory Terms and Conditions, D.34 Confidentiality of Records, Page 67	32	<p>REDACTED requests the following addition to this section:</p> <p>D.34. <u>Confidentiality of Records</u>. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as “Confidential Information.” <del>The Contractor’s obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this</del></p>	<p>The State will not agree to this revision.</p>

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		<p><del>Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; disclosed by the State to others without restrictions against disclosure; or is required by law or regulation to be disclosed, but only to the extent and for the purpose of such required disclosure after providing the State with advance written notice if reasonably possible such that the State is afforded an opportunity to contest the disclosure or seek an appropriate protective order. Except as expressly permitted herein, Nothing</del> in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.</p> <p>The obligations set forth in this Section shall survive the termination of this Contract.</p>	
D.35 Third Party Distribution	33	<p>REDACTED requests the following new clause be added to the final contract executed by the parties:</p> <p><u>D.35. Third Party Distribution.</u> Contractor's work is prepared solely for the use and benefit of the State in accordance with its statutory and regulatory requirements. Contractor recognizes that materials it delivers to the State may be public records subject to disclosure to third parties, however, Contractor does not intend to benefit and assumes no duty or liability to any third parties who receive Contractor's work and may include disclaimer language on its work product so stating. The State agrees not to remove any such disclaimer language from Contractor's work. To the extent that Contractor's work is not subject to disclosure under applicable public records laws, the State agrees that it shall not disclose Contractor's work product to third parties without Contractor's prior written consent; provided, however, that the</p>	The State will not agree to this revision.



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		State may distribute Contractor's work to: (i) its professional service providers who are subject to a duty of confidentiality and who agree to not use Contractor 's work product for any purpose other than to provide services to the State, or (ii) any applicable regulatory or governmental agency, as required.	
E. Special Terms and Conditions, E.6. Personally Identifiable Information, Page 69	34	<p>REDACTED requests the following amendment to this section:</p> <p>E.6, <u>Personally Identifiable Information</u>. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII")... Contractor shall -promptly notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and...</p>	The State will not agree to this revision.
Definitions – Clause 1.5, Page 78	35	<p>REDACTED requests the following addition to this clause:</p> <p>1.5 "Electronic Protected Health Information" shall have the meaning set out in its definition at 45 C.F.R. § 160.103 limited to the information created or received by Business Associate from or on behalf of the Covered Entity.</p>	The State will not agree to this revision.
2. Obligations and Activities of Business Associate (Privacy Rule) – Clause 2.1, Page 78	36	<p>REDACTED requests the following addition to this clause:</p> <p>2.1 Business Associate is authorized to use PHI for the purposes of carrying out its duties under the Services Contract. In the course of carrying out these duties, including but not limited to carrying out the Covered Entity's duties under HIPAA, Business Associate shall fully comply with the requirements under the Privacy Rule applicable to "business associates," as that term is defined in the Privacy Rule and not use or further disclose PHI other than as permitted or <b>as requested by Covered Entity, or</b> required by this Agreement, the Service Contracts, or as Required By Law...</p>	The State will not agree to this revision.
2. Obligations and Activities of Business Associate (Privacy Rule)	37	<p>REDACTED requests the following addition to this clause:</p> <p>Business Associate shall require any agent, including a subcontractor, to whom it provides PHI received from, maintained, created or</p>	The State will not agree to this revision.



RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
– Clause 2.4, Page 79		received by Business Associate on behalf of Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI or other confidential information, to agree, by written contract with Business Associate, in accordance with 164.502(e)(1)(ii), ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of business associate agree to <b>substantially</b> the same restrictions and conditions that apply to the business associate with respect to such information.	
2. Obligations and Activities of Business Associate (Privacy Rule) – Clause 2.7.3, Page 79	38	<p>REDACTED requests the following amendments to this clause:</p> <p><b>2.7.3</b> Covered Entity shall make the final determination whether the Breach requires notification <del>and whether the notification shall be made by Covered Entity or Business Associate.</del> Business Associate will reimburse Covered Entity for any out of pocket costs incurred in making any notifications required by law.</p>	The State will not approve this revision.
2. Obligations and Activities of Business Associate (Privacy Rule) – Clause 2.12, Page 80	39	<p>REDACTED requests the following amendments to this clause:</p> <p>Business Associate shall provide Covered Entity <del>or an Individual</del>, in time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual...to respond to a request by an Individual...</p>	The State will not approve of this revision.
2. Obligations and Activities of Business Associate (Privacy Rule) – Clause 2.15, Page 80	40	<p>REDACTED requests the following amendments to this clause:</p> <p>2.15 If Business Associate receives a request from an Individual for a copy of the individual's PHI, and the PHI is in the sole possession of the Business Associate, Business Associate will provide the requested copies to the <del>individual and notify the</del> Covered Entity <del>of such action</del>. If Business Associate receives a request for PHI in the possession of the Covered Entity, or receives a request to exercise other individual rights as set forth in the Privacy Rule, Business Associate shall notify Covered Entity of such request and forward the request to Covered Entity. Business Associate shall then assist Covered Entity in responding to the request.</p>	The State will not approve of this revision.

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
3. Obligations and Activities of Business Associate (Security Rule) – Clause 3.3, Page 81	41	<p>REDACTED requests the following addition to this clause:</p> <p>3.3 Business Associate shall ensure that any agent, including a subcontractor, to whom it provides electronic PHI received from or created for Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI supplied by Covered Entity, to agree, by written contract (or the appropriate equivalent if the agent is a government entity) with Business Associate, in accordance with 164.502(e)(1)(ii), ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of business associate agree to the <b>substantially the</b> same restrictions and conditions that apply to the business associate with respect to such information.</p>	The State will not approve of this revision.
4. Permitted uses and disclosures by Business Associate – Clause 4.1, Page 82	42	<p>REDACTED requests the following addition to this clause:</p> <p>4.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Service Contract(s), provided that such use or disclosure would not violate the Privacy and Security Rule, if done by Covered Entity. Business Associate's disclosure of PHI shall be subject to the limited data set and minimum necessary requirements of Section 13405(b) of Public Law 111-5, [designated as 42 U.S.C. 13735(b)]. ). <b>For the avoidance of doubt, Business Associate may create a Limited Data Set for the purpose of providing the services in accordance with the Services Contract, provided that Business Associate complies with its obligations under this Agreement.</b></p>	The State will not approve of this revision.
4. Permitted uses and disclosures by Business	43	<p>REDACTED requests the following new clause be added to the final contract executed by the parties:</p>	The State does not approve of this revision.

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
Associate – New Clause		Business Associate may de-identify PHI in accordance with the requirements of the Privacy Rule; provided that all identifiers are destroyed in accordance with this Agreement (or in accordance with 45 CFR 164.514(a)-(c)).	
7. Term and Termination – Clause 7.2.2.3, Page 83	44	<p>REDACTED requests the following amendment to this clause:</p> <p>7.2.2.3 If neither cure nor termination is feasible, Covered Entity <del>shall</del>may report the violation to the Secretary of the United States Department of Health in Human Services or the Secretary’s designee.</p>	The State does not approve of this revision.
7. Term and Termination – Clause 7.3.2, Page 84	45	<p>REDACTED requests the following addition to this clause:</p> <p>7.3.2. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible. Upon mutual agreement of the Parties that return or destruction of PHI is unfeasible, Business Associate shall extend the protections of this Memorandum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI. Covered Entity hereby acknowledges and agrees that infeasibility includes Business Associate’s need to retain PHI for purposes of complying with its internal work product documentation policy in accordance with generally accepted actuarial principles and practices, such as those found in the Actuarial Standards of Practice, and that for such retention no further notice to, or agreement by, Covered Entity is required.</p>	The State does not approve of this revision.
8. Miscellaneous – Clause 8.2, Page 84	46	<p>REDACTED requests the following addition to this clause:</p> <p>8.2 Amendment. The Parties agree to take such action as is necessary to amend this</p>	The State does not approve of this revision.

RFP SECTION		QUESTION / COMMENT	STATE RESPONSE
		Agreement from time to time as is necessary for Covered Entity, or Business Associate to comply with the requirements of the Privacy and Security Rules and...	
8. Miscellaneous – Clause 8.5, Page 84	47	<p>REDACTED requests the following addition to this clause:</p> <p>8.5 Notices and Communications. All instructions, notices, consents, demands, requests or other communications required or contemplated by this Agreement shall be in writing...</p>	The State does not approve of this revision.

**2. Add the following as RFP section A.9.c. and renumber any subsequent sections as necessary:**

c. Contractor shall retain all rights, title and interest (including, without limitation, all copyrights, patents, service marks, trademarks, trade secret and other intellectual property rights) in and to all technical or internal designs, data, databases, methods, ideas, concepts, know-how, techniques, generic documents and templates (“Tools”) that have been previously developed by Contractor or for the Contractor’s general book of business provided such Tools do not contain and/or are not based upon or derived from any State Confidential Information or proprietary data. Rights and ownership by Contractor of its Tools shall not extend to or include all or any part of the State’s proprietary data or State Confidential Information. To the extent that Contractor may include in the materials any Tools, Contractor agrees that the State shall be deemed to have a fully paid up perpetual license to make copies of the Tools as part of this engagement for its internal business purposes and provided that such Tools cannot be modified or distributed outside of the State without the written permission of Contractor or except as otherwise permitted herein. The State retains the rights to Tools specifically developed at the request of the State.

**3. Update Appendix B heading on the RFP title page and renumber any subsequent sections as necessary:**

Appendix B – Tenn. Code Ann. §§ 4-3-1021

**4. Delete RFP Section 3.2 in its entirety and replace with the following:**

Sharon Pope  
 Central Procurement Office  
 Department of General Services  
 William R. Snodgrass Tennessee Tower  
 312 Rosa L. Parks, 3rd Floor  
 Nashville, TN 37243  
 Phone: 615-741-9588

**5. Delete RFP Section 3.3.1 in its entirety and replace with the following:**

1.1.1.1.1. Technical Response  
 One (1) original Technical Response paper document clearly labeled:  
**“RFQ #31786-00171 TECHNICAL RESPONSE ORIGINAL”**

and one (1) copies of the Technical Response each in the form of one (1) digital document in "PDF" format properly recorded on its own otherwise blank, USB flash drive labeled:

**"RFQ #31786-00171 TECHNICAL RESPONSE COPY"**

1.1.1.1.2. **Cost Proposal: For Qualified Respondents only**  
One (1) Cost Proposal paper document clearly labeled:

**"RFQ #31786-00171 COST PROPOSAL"**

and one (1) copy in the form of a digital document in "XLS" format properly recorded on a separate, otherwise blank, USB flash drive clearly labeled.

6. Delete RFP Section D.6 Termination for Cause and replace with the following:

If the Contractor fails to properly perform its obligations under this Contract, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall provide written notice to Contractor specifying the Breach Condition. If within thirty (30) days of notice, the Contractor has not cured the Breach Condition, the State may terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor and the State may seek other remedies allowed at law or in equity for breach of this Contract.

7. Delete RFP Section D.32 Insurance in its entirety and replace with the following:

Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (b) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy coverage to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by

an endorsement at least as broad as the Insurance Services Office, Inc. (also known as “ISO”) “Noncontributory—Other Insurance Condition” endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance (“COI”) evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer’s National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3<sup>rd</sup> floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) Business Days prior to the Effective Date and again within thirty (30) calendar days of the renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor’s policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor’s letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. In the event of a claim or litigation naming the State, the State reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

**The insurance obligations under this Contract shall be: the minimum insurance coverage requirements and policy limits shown in this Contract. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.**

a. Commercial General Liability (“CGL”) Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
  - i. Workers' compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
  - i. The Contractor employs fewer than five (5) employees;
  - ii. The Contractor is a sole proprietor;
  - iii. The Contractor is in the construction business or trades with no employees;
  - iv. The Contractor is in the coal mining industry with no employees;
  - v. The Contractor is a state or local government; or
  - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Professional Liability Insurance

- 1) Professional liability insurance shall be written on an occurrence basis or on a claims-made basis. If this coverage is written on a claims-made basis, then:
  - i. The retroactive date must be shown, and must be on or before the earlier of the Effective Date of the Contract or the beginning of Contract work or provision of goods and services;
  - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) full years from the date of the final Contract payment; and
  - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date on or prior to the Contract Effective Date, the Contractor must purchase "extended reporting" or "tail coverage" for a minimum of five (5) full years from the date of the final Contract payment.
- 2) Any professional liability insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate; and



- 3) If the Contract involves the provision of services by medical professionals, a policy limit not less than three million (\$3,000,000) per claim and three million dollars (\$3,000,000) in the aggregate for medical malpractice insurance.

d. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance

- 1) The Contractor shall maintain cyber liability (which includes technology an professional liability coverage)/privacy insurance appropriate to the Contractor's profession in an amount not less than ten million dollars (\$10,000,000) per occurrence or claim and ten million dollars (\$10,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.
- 2) Such coverage shall include data breach response expenses, in an amount not less than ten million dollars (\$10,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

e. Crime Insurance

- 1) The Contractor shall maintain crime insurance, which shall be written on a "loss sustained form" or "loss discovered form" providing coverage for third party fidelity, including computer fraud , theft, forgery and intentionally committed wrongful acts. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than one (1) years with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.

Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than two hundred and fifty thousand dollars (\$250,000). This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or "tail coverage" of at least two (2) years after the Term.

8. **Delete RFQ # 31786-00171, in its entirety, and replace it with RFQ # 31786-00171, Release # 2, attached to this amendment.** Revisions of the original RFQ document are emphasized within the new release.
9. **RFQ Amendment Effective Date.** The revisions set forth herein shall be effective upon release. All other terms and conditions of this RFQ not expressly amended herein shall remain in full force and effect.