



**Missouri Department of Mental Health  
Purchasing and General Services  
Invitation for Bid (IFB)**

Bid # IFB DMH16001	Issue Date: August 17, 2015
Title: Training for Mental Health Professionals Contract Period: Date of Award through June 30, 2016	Buyer: Robyn Siebeneck Phone: 575-751-9170 E-Mail: Robyn.Siebeneck@dmh.mo.gov

**Return Bid to:**

By mail: Department of Mental Health  
Attn: Contracting Unit  
1706 East Elm Street, PO Box 687  
Poplar Bluff, MO 63901

By fax: 573-522-8438  
By e-mail: Robyn.Siebeneck@dmh.mo.gov

**Services to be purchased by Missouri Department of Mental Health, Division of Behavioral Health**

**Bids must be received at the above address no later than September 4, 2015 3:00 pm CST.**

*Bids must be delivered in a sealed container. The bidder should print or type the IFB Number and Return Date on the lower left hand corner of the envelope or package to identify the package as a bid.*

*The undersigned hereby agrees to provide the services and/or items, at the prices stated, pursuant to the requirements of this document, and further agrees that when this document is countersigned by an authorized official of the Missouri Department of Mental Health, a binding contract shall exist between the contractor and the Department of Mental Health.*

*The authorized signer of this document certifies that the contractor (named below) and each of its principals (as defined by 45 CFR 76) are not suspended or debarred by the federal government.*

_____		_____
Authorized Signature for the Bidder		Printed Name and Title
_____		_____
Bidder name (Legal Name of Entity)		Date
_____		_____
IRS Form 1099 Mailing Address		City, State Zip Code
_____	_____	_____
Telephone Number	Fax Number	Taxpayer Number (TIN)
_____		_____
Contact Person Name and Title		Contact Person E-Mail Address

**Notice of Award (State Use Only)**

Accepted by the Department of Mental Health as follows:

\_\_\_\_\_  
Authorized Signature for the Department of Mental Health

\_\_\_\_\_  
Date

# IFB # DMH16001: Training for Mental Health Professionals

## 1 Introduction and General Information

- 1.1 This document constitutes a request for bids for the purchase of mental health training services, as set forth herein.
- 1.2 This is a non-exclusive contract for the purchase of training services for the Missouri Department of Mental Health. The Department reserves the right to purchase services awarded under this contract from alternative sources, if deemed to be in the best interest of the Department.
- 1.3 The maximum funding available for this contract award is \$19,495.
- 1.4 The contract period shall be from the date of award through June 30, 2016.
- 1.5 The contractor shall provide services on an as needed, if needed basis, as authorized by the Department. The Department makes no guarantee of the number of units purchased under this contract or the amount of dollars expended.

## 2 General Performance Requirements

- 2.1 The contractor shall provide training services for the Department of Mental Health, Division of Behavioral Health (Department), in accordance with the provisions and requirements stated herein, to the sole satisfaction of the Department.
- 2.2 The contractor shall coordinate all contract activities with designated representatives of the Department.
- 2.3 Within five (5) days of contract award, the contractor shall provide the Department with the name, address, e-mail address, and telephone number of the contractor's representative servicing the contract.
  - a. The contractor understands that electronic mail (e-mail) will be used to transmit contract documents and other correspondence from the Department to the contractor. It shall be the responsibility of the contractor to ensure the timely review and response to e-mailed documents.
- 2.4 The contractor shall monitor level of effort percentages for staff allocated to this contract to ensure that a 100% level of effort is not exceeded for all contracts/projects to which each staff person is assigned.
- 2.5 Contractor' Personnel: The contractor shall only utilize personnel authorized to work in the United States in accordance with applicable federal and state laws. This includes but is not limited to the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and INA Section 274A.
  - a. If the contractor is found to be in violation of this requirement or the applicable state, federal and local laws and regulations, and if the State of Missouri has reasonable cause to believe that the contractor has knowingly employed individuals who are not eligible to work in the United States, the state shall have the right to cancel the contract immediately without penalty or recourse and suspend or debar the contractor from doing business with the state. The state may also withhold up to twenty-five percent of the total amount due to the contractor.
  - b. The contractor shall agree to fully cooperate with any audit or investigation from federal, state or local law enforcement agencies.
  - c. If the contractor meets the definition of a business entity as defined in section 285.525, RSMo pertaining to section 285.530, RSMo the contractor shall maintain enrollment and participation in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the contracted services included herein. If the contractor's business status changes during the life of the contract to become a business entity as defined in section 285.525, RSMo pertaining to section 285.530, RSMo then the contractor shall, prior to the performance of any services as a business entity under the contract:
    1. Enroll and participate in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services required herein; and
    2. Provide to the Department the documentation required in the exhibit titled, Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization affirming said company's/individual's enrollment and participation in the E-Verify federal work authorization program; and
    3. Submit to the Department a completed, notarized Affidavit of Work Authorization provided in the exhibit titled, Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization.

- 2.6 **Subcontractors:** Pursuant to subsection 1 of section 285.530, RSMo no contractor or subcontractor shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri. In accordance with sections 285.525 to 285.550, RSMo a general contractor or subcontractor of any tier shall not be liable when such contractor or subcontractor contracts with its direct subcontractor who violates subsection 1 of section 285.530, RSMo if the contract binding the contractor and subcontractor affirmatively states that:
- a. the direct subcontractor is not knowingly in violation of subsection 1 of section 285.530, RSMo and
  - b. shall not henceforth be in such violation and
  - c. the contractor or subcontractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the direct subcontractor's employees are lawfully present in the United States.
- 2.7 **Affidavit of Work Authorization and Documentation:** Pursuant to section 285.530, RSMo, if the contractor meets the section 285.525, RSMo definition of a "business entity" (<http://www.moga.mo.gov/statutes/C200-299/2850000525.HTM>), the contractor must affirm the contractor's enrollment and participation in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services requested herein. The contractor shall complete applicable portions of Exhibit # 1, Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization. The applicable portions of Exhibit # 1 must be submitted prior to an award of a contract.

### 3 Specific Performance Requirements

- 3.1 The contractor shall provide training for professional providers of mental health services and their allied partners.
- 3.2 The contractor should be an organization with statewide experience in providing support, outreach and training relating to mental health services for professional service providers.
- 3.3 The contractor shall provide training which utilizes the experiences of consumers and family member caregivers as a primary knowledge base for developing provider skills and competencies.
- 3.4 The contractor's training shall emphasize the bio-psychosocial perspective of neurological brain disorders, principles and strategies for effective provider/consumer/family collaboration, and recovery/wellness focused interventions.
- 3.5 **Teaching Team**
- 3.5.1 The contractor shall use a "teaching team" approach for training.
- 3.5.2 The contractor's teaching team shall be comprised of a minimum of five (5) individuals, of which;
- a. at least two (2) must be family member caregivers;
  - b. one (1) must be a mental health professional; and
  - c. two (2) must be consumers of mental health services.
- 3.5.3 All teaching team members must be trained to direct an educational program for professional mental health service provider staff.
- 3.5.4 The contractor understands and agrees that the members of the teaching team must be mutually agreed upon between the Department and the contractor prior to scheduling a training session.
- 3.6 **Workshops**
- 3.6.1 The contractor shall provide a minimum of three (3) training workshops.
- 3.6.2 Each training workshop shall be one (1) day in length and include a minimum of six (6) hours of direct training.
- 3.6.3 Each training workshop curriculum shall include, at a minimum, the components listed below:
- Empathy and understanding of mental illness and its effects on consumers and families through direct contact and discussion with panels of family members and consumers
  - Discussion of recovery and wellness interventions that are helpful
  - Key principles of medical family therapy, family consultation, and the bio-psychosocial model of treatment
  - Stages of emotional response to the trauma of mental illness
  - Dealing with a psychiatric crisis
  - Helpful strategies with children's disorders
  - Medical treatment of psychiatric disorders
- 3.6.4 The contractor shall submit its proposed curriculum for Department approval. The Department shall have the right to modify, require changes, or require additional detail to the training curriculum, as deemed necessary, in order to ensure a comprehensive analysis and to ensure the training objectives fulfill the needs of the Department.

- 3.6.5 The contractor shall conduct each workshop at a location mutually agreed upon by the contractor and the Department.
- 3.6.6 The Department shall have the right to modify or cancel a scheduled training without incurring any liability, financial or otherwise, by providing the contractor with notice at least ten (10) calendar days prior to the date on which the workshop is scheduled to begin.
- 3.6.7 The contractor shall be responsible for finding, enrolling, and scheduling the trainees for the training session.
- 3.6.8 The contractor shall assist in coordinating travel, lodging, and other related arrangements for the trainees, as requested.
- 3.6.9 The contractor shall provide an attendance sheet and ensure that each trainee signs the attendance sheet for each workshop conducted. The contractor shall provide copies of all attendance sheets to the Department within ten (10) days of completion of workshop.
- 3.6.10 The contractor shall administer an evaluation form to each trainee for each workshop conducted. The contractor shall provide a copy of completed evaluation forms to the Department within ten (10) days of completion of workshop.
  - a. The contractor is advised that the evaluations will be used to determine if the needs and expectations of the trainees were met. If modifications to the training sessions are deemed necessary due to evaluation feedback, the contractor shall make such modifications in cooperation with, and with the approval of, the Department.
- 3.6.11 The Department may send a designee as an observer and will identify this person to the contractor prior to the training session.
- 3.6.12 Unless otherwise specified, the contractor shall be responsible for furnishing all material, labor, facilities, equipment and supplies necessary to perform the required services.

## **4 General Contractual Requirements**

### **4.1 General**

- 4.1.1 The contract shall consist of any and all of the following documents, as applicable:
  - a. a Request for Proposal (RFP) or Invitation for Bid (IFB) and any amendments, attachments and exhibits thereto;
  - b. the proposal or bid submitted by the contractor in response to the RFP/IFB, as accepted by the Department;
  - c. an original contract document; and
  - d. any subsequent amendments to the contract.
- 4.1.2 This contract shall be construed according to the laws of the State of Missouri and shall govern the terms and conditions of the contracted services provided to clients of the Department by the contractor.
  - a. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the state.
  - b. The contract will be read and enforced as though every provision of law and clause required by law to be inserted herein were included. If any such provision is not inserted, then upon the notification of either party the contract will be amended to make such correction.
- 4.1.3 The contractor shall comply with all local, state and federal laws and regulations related to the performance of the contract to the extent that these may be applicable.
- 4.1.4 The exclusive venue for any legal proceeding relating to or arising out of the contract shall be in the Circuit Court of Cole County, Missouri.
- 4.1.5 This contract shall constitute an assignment by the contractor to the State of Missouri of all rights, title and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular supplies and/or services purchased or procured by the contractor in the fulfillment of the contract.
- 4.1.6 By signing this contract the contractor certifies that the contractor and each of its principals (owners, director and others as defined by 45 CFR 76) are not suspended or debarred from contracting with the federal government.
  - a. In the event the contractor or any of its principals become suspended or debarred during the contract period, the contractor shall immediately send written notification to the Department.
  - b. Suspension or debarment of the contractor, or failure by the contractor to provide written notification of suspension or debarment to the Department, may result in immediate termination of the contract.

- 4.1.7 The Department enters into this contract by the authority of its director. The contractor enters into this contract individually or, if incorporated, pursuant to and by authority of its board of directors.
- 4.1.8 The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the Department.
- 4.2 **Amendment, Termination and Renewal**
- 4.2.1 The contract shall not bind, nor purport to bind, the Department for any commitment in excess of the original contract period.
- 4.2.2 The contractor understands and agrees that authorization for the Department to contract for the services required herein is granted each fiscal year by the Office of Administration and that authorization for additional contract periods requires the annual renewal of the authorization.
- 4.2.3 The contractor understands and agrees that funding for the contract must be appropriated by the Missouri General Assembly for each fiscal year included within the contract period. Therefore, the contract shall not be binding upon the Department for any period in which funds have not been appropriated, and the Department shall not be liable for any costs associated with termination caused by lack of appropriations.
- a. The Department reserves the right to terminate the contract, without penalty or termination costs, if such funds are not appropriated or available.
  - b. In the event funds are not appropriated or available for the contract, the contractor shall not prohibit or limit the Department's right to pursue alternate contracts, as necessary, to conduct state governmental affairs.
  - c. The provisions of the above paragraphs shall apply to any amendment or the execution of any option to extend the contract.
- 4.2.4 Any change, whether by modification and/or supplementation, shall be accomplished by a formal contract amendment.
- 4.2.5 The Department shall have the right, at its sole option, to renew the contract. In the event the Department exercises its renewal option, all terms, conditions and provisions of the original contract and any subsequent amendments shall remain in effect and shall apply during the renewal period.
- 4.2.6 The Department shall have the right, at its sole option, to consolidate all or portions of related service contracts into a single contract.
- 4.2.7 The contract may be terminated by either party, by giving sixty (60) days advance written notice to the other party at its principal address. The termination shall be effective sixty (60) days from the date of notice or the date specified in the notice. The Department reserves the right to withdraw any or all of its clients before the end of the sixty (60) day period.
- 4.2.8 The Department may terminate the contract for breach of contract by providing the contractor with a written notice of termination. The termination shall become effective on the date specified in the notice. At its sole discretion, the Department may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. Payments for services shall not be made beyond the date of termination.
- 4.2.9 Any written notice to the contractor shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, electronic mail, or hand-carried and presented to an authorized employee of the contractor at the contractor's address as listed in the contract.
- 4.2.10 In the event of termination all client records, documentation, data, reports, supplies, equipment and accomplishments prepared, furnished, acquired or developed by the contractor as a direct requirement specified in the contract shall become the property of the Department.
- 4.2.11 Upon termination of the contract, the contractor shall maintain, store, transfer, and provide for the authorized release of all client records developed by the contractor as a direct requirement of this contract. The contractor agrees that upon termination of the contract the Department shall have access to all client records pertaining to the performance of the contract and, as requested by the Department, the contractor shall make available to the Department all client records and documents prepared or developed as a result of the contract.
- 4.2.12 **Transition of Services:** Upon expiration, termination, or cancellation of the contract, the contractor shall assist the Department to ensure an orderly transfer of responsibility and/or the continuity of those services required under the terms of the contract to an organization designated by the Department, if requested in writing. The contractor shall provide and/or perform any or all of the following responsibilities:

- a. The contractor shall deliver, FOB destination, all records, documentation, reports, data, recommendations, or printing elements, etc., which were required to be produced under the terms of the contract to the Department and/or to the Department's designee within seven (7) days after receipt of the written request.
- b. The contractor shall agree to continue providing any part or all of the services in accordance with the terms and conditions, requirements and specifications of the contract for a period not to exceed thirty (30) calendar days after the expiration, termination or cancellation date of the contract for a price not to exceed those prices set forth in the contract.
- c. The contractor shall discontinue providing service or accepting new assignments under the terms of the contract, on the date specified by the Department, in order to ensure the completion of such service prior to the expiration of the contract.

#### 4.3 **Subcontracting**

- 4.3.1 The contractor may subcontract for the services/products required herein with prior written approval from the Department.
- 4.3.2 The contractor understands and agrees that utilization of a sub-contractor shall in no way relieve the contractor of the responsibility for providing the services required herein.
- 4.3.3 Any subcontracts for the services/products described herein shall be in writing and shall include appropriate provisions and contractual obligations, including all requirements of the contract's General Contractual Requirements, to ensure the successful fulfillment of all contractual obligations.
- 4.3.4 Any subcontracts must ensure that the Department and the State of Missouri is indemnified, saved and, held harmless from and against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontract in those matters described in the contract between the Department and the contractor.
- 4.3.5 The contractor understands and agrees that the contractor shall be solely responsible for all legal and financial responsibilities related to the execution of a subcontract.

#### 4.4 **Conflict of Interest**

- 4.4.1 By signing this contract the contractor certifies that the contractor has no other contractual relationships which create any actual conflict of interest. The contractor further agrees that during the term of the contract neither the contractor nor any of its employees shall acquire any other contractual relationships which would create such a conflict.
- 4.4.2 In accordance with state and federal laws and regulations, state executive order or regulations, the contractor certifies that it presently has no interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with their performance of the contracted services. The contractor further agrees that no person having such interest shall be employed or conveyed an interest, directly or indirectly, in the contract.
- 4.4.3 In accordance with state law, no official or employee of the Department or public official of the State of Missouri who exercises any functions or responsibilities related to development, review, approval or oversight of the contract shall acquire any personal interest, directly or indirectly, in the contract or proposed contract. Therefore, the contractor certifies that:
  - a. no State of Missouri employee assisted the contractor in obtaining this contract or will participate in the performance of this contract if such involvement constitutes a conflict of interest;
  - b. no State of Missouri employee shall be compensated under this contract for duties performed in the course of his/her state employment; and
  - c. before any State of Missouri employee may be involved in the performance of this contract written approval shall be obtained from the director of the Department.
- 4.4.4 In the event the contractor is a not-for-profit agency, contractor board members must abstain from voting on any funding proposal in which they have administrative control or a monetary interest with the proposed grantee. Board members who have such an interest and participate in discussion prior to a vote must disclose such interest in a meeting of the board prior to such discussion.
- 4.4.5 The contractor shall represent itself as an independent contractor offering such services to the general public and shall not represent itself or its employees as employees of the Department or the State of Missouri.

#### 4.5 **Business Compliance**

- 4.5.1 The contractor must be in compliance with applicable laws regarding conducting business in the State of Missouri and certifies by signing this contract that it and any subcontractors are presently, and will remain, in compliance with such laws.

- 4.5.2 The contractor shall have all licenses and/or certifications current which are required by law, rule or regulation.
- 4.5.3 If required by state law, the contractor shall be registered and in good standing with the State's Secretary of State and shall submit their State Certificate of Good Standing to the Department upon request.
- 4.5.4 The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.
- 4.6 **Personnel and Staffing**
- 4.6.1 The contractor shall comply with the Fair Labor Standard Act, Equal Opportunity Employment Act, any other federal and state laws, rules, regulations and executive orders to the extent that these may be applicable and further agrees to insert the foregoing provision in all subcontracts awarded.
- 4.6.2 The contractor understands and agrees that by signing this document, they certify the following:
- a. The contractor shall only utilize personnel authorized to work in the United States in accordance with applicable federal and state laws. This includes but is not limited to the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and INA Section 274A.
  - b. If the contractor is found to be in violation of this requirement or the applicable laws of the state, federal and local laws and regulations, and if the State of Missouri has reasonable cause to believe that the contractor has knowingly employed individuals who are not eligible to work in the United States, the state shall have the right to cancel the contract immediately without penalty or recourse and suspend or debar the contractor from doing business with the state.
  - c. The contractor agrees to fully cooperate with any audit or investigation from federal, state or local law enforcement agencies.
- 4.6.3 The contractor shall assume all legal and financial responsibility for taxes, FICA, employee benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save and hold the State of Missouri, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney fees); and damage of any kind related to such matters. The contractor shall authorize and direct all custodians of records of their taxes, FICA and other employee benefits to release information to the Department upon request.
- 4.6.4 The contractor agrees that this contract is predicated, in part, on the utilization of the specific resources, individuals and/or personnel qualifications as identified and/or described in the contractor's proposal/bid, when applicable, or in Department required applications and/or financial reporting tools.
- a. The contractor agrees that no personnel and/or individuals will be utilized in the performance of this contract who fail to meet specific qualifications required for services to be provided, as specified in the Department's service catalog for such service(s).
  - b. No substitution of provider qualifications shall be made by the contractor without written approval of the Department.
  - c. The contractor agrees that substitutions made pursuant to this paragraph shall be equal to or better than originally proposed, offered or identified.
- 4.6.5 The contractor understands and acknowledges that Department-approved staffing ratios and/or patterns are essential for providing certain services. Therefore, as applicable, the contractor shall maintain all Department-approved staff ratios, hours of services and/or patterns. The contractor shall maintain time, salary or hourly pay rate data and personnel records, as specified by the Department, to document compliance with this requirement.
- a. The contractor may request a written waiver from the Department to vary from required staff ratios, hours of services and/or patterns.
  - b. The contractor understands and agrees that the Department may require a reduction of unit price(s) due to a contractor requested reduction of staff/resources upon which the unit price is based.
  - c. The contractor understands and agrees that the Department reserves the right to recover excess payments made to the contractor when the contractor has failed to maintain required staff ratios, hours of services and/or patterns. Such recovery of payments shall be retroactive to the date of occurrence.
- 4.6.6 The contractor shall be responsible for assuring that all personnel including those of any subcontractor(s), are appropriately qualified and licensed or certified, as required by state, federal or local law, statute or regulation, respective to the services to be provided through this contract, and shall provide documentation of such licensure or certification upon request.

#### 4.7 **Federal Funds Requirements**

- 4.7.1 The contractor understands and agrees that the contract may involve the expenditure of federal funds. Therefore, the contractor shall comply with the requirements listed in the following subparagraphs, as applicable.
- 4.7.2 If during the contractor's fiscal year the contractor expends \$500,000 or more in federal grant funds received from the Department, the contractor shall have an annual audit conducted in accordance with United States Office of Management and Budget (OMB) Circular A-133.
- a. The audit shall be conducted by an individual or firm licensed by the Missouri State Board of Accountancy.
  - b. The contractor shall submit a copy of the audit to the Department by the due date for filing the audit with the federal clearinghouse specified in OMB Circular A-133. The items to be submitted to the Department shall consist of the reporting package specified in OMB A-133.
  - c. Failure to comply with the audit requirements may result in reduction of available allocation of funds, reduction or suspension of payments to the contractor or cancellation of this contract between the Department and the contractor.

#### 4.8 **Financial Requirements**

- 4.8.1 The availability of funding for this contract shall be determined solely by the Department and such determination shall be final and without recourse by the contractor.
- 4.8.2 Moneys received from the Department under this contract shall not be used to supplant local funds or subsidize services provided to other agencies, organizations, or individuals.
- 4.8.3 Payments due under the terms of the contract shall be made by the Department upon receipt of a properly itemized invoice.
- a. The contractor shall submit their invoices in a timely fashion and no later than the time period specified in 33.120 RSMo, unless more restrictive requirements are established by state or federal law or regulation.
  - b. The contractor shall invoice for services provided at the contracted unit price(s). Unit prices charged the Department shall be no greater than those charged to the general public for the same service.
  - c. The contractor shall not invoice federal or state tax.
- 4.8.4 The Department reserves the right to: 1) audit all invoices, 2) reject any invoice for good cause, 3) make invoice corrections and/or changes with appropriate notification to the contractor, and 4) deduct from an invoice any overpayment made by the Department.
- a. All overpayments shall be collected in accordance with 630.460 RSMo. Overpayment is defined by 630.460 RSMo as any payment by the Department to a vendor providing care, treatment, habilitation or rehabilitation services to clients under contract with the Department which is:
    1. in excess of the contracted rate less payments by the client, or on his behalf, as required to be made by the Standard Means Test, contained in 9 CSR 10-31.011;
    2. in payment of services not provided;
    3. in payment for any service not authorized in the contract with the Department; or
    4. in payment for services provided contrary to the provisions of the contract with the Department.
- 4.8.5 In accordance with 9 CSR 10-31.011, the contractor shall apply to the costs incurred for providing services to the client the benefits received or available on behalf of or to the client from private and public health insurance, health services corporation and health maintenance organization plans, policies and contracts including individual, company, fraternal, group, Medicare, Medicaid and similar plans to the extent and limits of the coverage for the recipient.
- a. The Department reserves the right to deduct from the contractor's invoice, if not deducted by the contractor, all amounts to be collected by the contractor from the client or other payment sources.
- 4.8.6 The contractor shall not make any collection for Title XIX Medicaid-covered services from the recipient, his or her spouse, parent, guardian, relative or anyone else receiving public assistance, and if any payment is received or assured from any other source on the recipient's account, the contractor shall deduct that amount from the claim filed with Title XIX Medicaid.
- #### 4.9 **Standard Means Test**
- 4.9.1 For all clients whose services are paid by the Department, the contractor shall apply the Department's Standard Means Test in accordance with 9 CSR 10-31.011, when not applied by the Department. Nothing in this contract shall deny the right of a client or his responsible person to appeal to the Department for re-determination of the amounts payable by them to the contractor under 9 CSR 10-31.011.

- 4.9.2 The contractor shall charge and become responsible for the collection of client payments as determined by the Standard Means Test, in accordance with 9 CSR 10-31.011. Amounts charged to clients, whether or not collected, shall be shown as a credit on the invoice.
- 4.9.3 The contractor shall not impose or increase fees for service for Department clients without the written consent of the Department except as permitted by the Standard Means Test.
- 4.9.4 Nothing in this contract shall impair the statutory rights of the Department to charge a Department client, a client's estate or the person(s) obligated to pay for services rendered to the client for expenditures made by the Department for the client.

#### 4.10 **Insurance**

- 4.10.1 The contractor understands and agrees that the Department and the State of Missouri cannot save and hold harmless and/or indemnify the contractor or employees against any liability incurred or arising as a result of any activity of the contractor or any activity of the contractor's employees related to the contractor's performance under the contract. Therefore, the contractor shall acquire and maintain adequate liability insurance in the form(s) and amount(s) sufficient to protect the State of Missouri, its agencies, its clients, its employees and the general public against any loss, damage and/or expense related to his/her performance under the contract.
- 4.10.2 The contractor shall be responsible for all injury or damage as a result of the contractor's negligence, or any future negligent act, involving any equipment or service provided under the terms and conditions, requirements and specifications of the contract. In addition to the liability imposed upon the contractor on account of personal injury, bodily injury (including death), or property damage suffered as a result of the contractor's negligence, the contractor assumes the obligation to save the State of Missouri, including its agencies, employees, and assigns, from every expense, liability, or payment arising out of such negligent act. The contractor also agrees to hold the State of Missouri, including its agencies, employees, and assigns, harmless for any negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the contractor under the terms of the contract.
- 4.10.3 The contractor shall maintain adequate automobile liability insurance for the operation of any motor vehicle used to provide any form of transportation service related to the services of this contract.
- 4.10.4 If the contract involves the performance of medical services of any type, the contractor shall maintain adequate liability insurance to cover all medical services rendered.
- 4.10.5 Proof of the insurance coverage shall include, but not be limited to, effective dates of coverage, limits of liability, insurers' names, policy numbers, company, etc. Proof of self-insurance coverage or another alternative risk financing mechanism may be utilized provided that such coverage is verifiable and irrevocably reliable. Proof of insurance coverage shall be submitted to the Department as requested.

#### 4.11 **Human Rights**

- 4.11.1 The contractor shall establish a system satisfactory to the Department through which recipients of services under this contract may present grievances. The contractor shall maintain at the facility a file of all Department client grievances of an alleged violation of rights and how the grievance has been or is proposed to be resolved. The person in charge shall cooperate fully with any subsequent Department investigation of the grievance.
- 4.11.2 If this contract is federally funded, the contractor shall abide by the provisions of the Pro-Children Act of 1994 (PL 103-227) regarding environmental tobacco smoke, which is incorporated herein as if fully set out.
- 4.11.3 The contractor shall comply with all applicable provisions of the Civil Rights Act (45 CFR 80) and the Age Discrimination in Employment Act of 1967 (45 CFR 90).
- 4.11.4 In compliance with Governor's Executive Order #87-6 (Art. XIII); Federal Executive Order 11246 as amended; Section 503 of the Rehabilitation Act (45 CFR 84) as amended; Vietnam-Era Veterans Readjustment Assistance Act as amended, 38 U.S.C. 4212 (formerly 2012); and the Americans with Disabilities Act of 1990; contractors that employ fifty (50) or more persons shall comply with the above state and federal regulations which require non-discrimination in employment and delivery of services.
- a. In addition to the above, the contractor shall make the following human rights assurances:
1. Not to discriminate against recipients of services on the basis of race, color, religion, national origin, sex, physical ability, veteran status or age.
  2. Not to discriminate against any employee or applicant for employment on the basis of race, color, religion, national origin, sex or otherwise qualified status of physical ability.

3. Not to discriminate against any applicant for employment or employee on the basis of age, where such applicant or employee is between the ages of forty (40) and seventy (70) and where such contractor employs at least twenty (20) persons.
4. Not to discriminate against any applicant for employment or employee on the basis of that person's status as a disabled or Vietnam-era veteran, if the compensation payable to the contractor or subcontractor is at least \$10,000 within a fiscal year.
5. To develop, implement and maintain an affirmative action program if at least fifty (50) persons in the aggregate are employed. For the purpose of this contract, an "affirmative action program" means positive action to influence all employment practices (including, but not limited to, recruiting, hiring, promoting and training) in providing equal employment opportunity regardless of race, color, sex, origin, religion, age, physical ability and Vietnam-era veteran status. Such an Affirmative Action Program shall include:
  - aa. A written policy statement committing the total organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
  - bb. The identification of a person designated to handle affirmative action;
  - cc. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure and standards applicable to layoff, recall, discharge, demotion and discipline;
  - dd. The exclusion of discrimination from all collective bargaining agreements; and
  - ee. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

- b. If the contractor uses any funds of this contract in a subcontract, then the contractor shall require such a subcontractor to comply with the applicable human rights clauses above.
- c. The Department shall have the right to enforce all applicable clauses by appropriate procedures, including but not limited to, requests, reports, site visits and inspection of relevant documentation of the contractor.

4.11.5 The contractor shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (Public Law 101-336) (28 CFR 35), which prohibits discrimination against people with disabilities in employment, services, transportation, public accommodations, communications and activities of state and local government. The contractor's failure to comply with this act may result in termination of the contract. The contractor shall notify the Department immediately of any allegations, claims, disputes, or challenges made against the contractor concerning this act.

4.11.6 Disclosure of information, by either party to the contract, concerning a client for any purpose not directly related to the performance of this contract is prohibited except as specified by applicable state and federal laws and regulations.

#### 4.12 **Recordkeeping and Reporting Requirements**

4.12.1 The contractor shall maintain auditable records for all activities performed under this contract. Financial records shall conform to Generally Accepted Accounting Principles (GAAP). Such records shall reflect, at a minimum, the specific number and type of service units provided, the number and type of clients served, client progress and other relevant records. The contractor shall submit itemized reports, records and information at the request of the Department.

4.12.2 The contractor shall allow the Department or its authorized representative to inspect and examine the contractor's premises and/or records which relate to the performance of the contract at any time during the period of the contract and within the period specified herein for the contractor's retention of records.

4.12.3 The contractor shall provide the Department with access to its clients and client records without limitation. If access is denied or limited, the Department reserves the right to terminate payment from the day access is denied or limited.

4.12.4 The contractor shall retain all records pertaining to the contract for six (6) years after the close of the contract year unless audit questions have arisen within the six year limitation and have not been resolved. All records shall be retained until all audit questions have been resolved.

4.12.5 The contractor shall provide written notification to the Department when there is any change in the contractor's licensure or certification/accreditation status, official name, address, Executive Director, or change in ownership and/or control of the contractor's organization.

4.12.6 Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor shall notify the Department immediately. Upon learning of any such actions the Department reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

#### **4.13 Notification Requirements**

- 4.13.1 The contractor shall immediately notify the Department, in accordance with guidelines established by the Department, when there is a death of a client.
- 4.13.2 The contractor shall notify the Department in accordance with 9 CSR 10-5.200 when there are allegations of physical abuse, sexual abuse, verbal abuse or neglect of a client or misuse of client funds/property.
- 4.13.3 Under circumstances, as referenced in 632.300 RSMo, in which a client's conduct is jeopardizing the safety of the client or others in the community, the contractor shall immediately notify the authorizing Department facility. If an immediate response is needed to ensure the health and/or safety of the client or others, the contractor shall also notify local law enforcement officials.
- 4.13.4 In the event the contractor receives notice of a Class I license violation from the Department of Health and Human Services or the Department of Health and Senior Services or a notice under certification that a condition of jeopardy exists, the contractor shall immediately notify the Department.
  - a. Notification to the Department may be verbal and shall be followed by written notification mailed within forty-eight (48) hours.
  - b. If applicable, the contractor shall submit to the Department a copy of any plan of correction for Class I deficiencies which has been approved by the Department of Health and Senior Services, the Department, Health Care Financing Administration or other license certification or accreditation authority.

#### **4.14 Miscellaneous**

- 4.14.1 Unless otherwise specified, the contractor shall be responsible for furnishing all material, labor, facilities, equipment and supplies necessary to perform the services required.
- 4.14.2 The Department may require the attendance of the contractor's personnel at training activities and may require the cooperation of the contractor's personnel where the Department provides technical assistance.
- 4.14.3 The Department reserves the right to place a monitor with the contractor, given any situation described in Section 630.763 RSMo, or when the Department determines that the health, safety or welfare of the clients cannot be adequately assured.
- 4.14.4 The contractor shall fully cooperate with all investigations conducted by the Department, or its agents, which relate, directly or indirectly, with the performance of this contract.
- 4.14.5 The Department endorses a drug free environment and the absence of substance abuse. The contractor shall support and enforce these philosophies in their performance of the contract.
- 4.14.6 The contractor agrees to maintain appropriate documentation that it has appropriate systems and controls in place to ensure that any and all information software systems used in relationship to the contractual responsibilities with the Department have been acquired, operated and maintained consistently with U.S. copyright law or applicable licensing restrictions. The contractor agrees to make documentation of such compliance and any such license immediately available upon request by the Department.
- 4.14.7 The contractor shall agree and understand that all discussions with the contractor and all information gained by the contractor as a result of the contractor's performance under the contract shall be confidential and that no reports, documentation or material prepared as required by the contract shall be released to the public without the prior written consent of the Department.

#### **5 Payments to the contractor**

- 5.1 The contractor shall be paid in accordance with the firm, fixed price stated on the pricing page of this document.
  - a. The total payment to the contractor shall not exceed the maximum contract amount stated on the Pricing Page.
- 5.2 No payments or reimbursements shall be made to the contractor other than those specified above.
- 5.3 The contractor shall submit its invoices within 30 days upon completion of each training workshop to the Department of Mental Health, Division of Behavioral Health, 1706 East Elm, Post Office Box 687, Jefferson City, Missouri 65102.
  - a. Along with the invoice, the contractor shall submit a copy of all attendance and evaluation sheets from training session(s) held.

## 6 Bid Submission and Award Information

6.1 Bids shall be evaluated in accordance with the following categories and respective weighted criteria:

Cost	50 points
Experience, Reliability and Expertise	<u>50 points</u>
Total Points	100 Points

6.2 Cost shall be evaluated based upon the sum of unit prices quoted on the pricing page, including all potential renewal periods.

6.3 The experience, reliability and expertise of the contractor and its personnel shall be considered subjectively.

- a. Bidders are advised to include any information which documents successful experience in providing similar services.
- b. Bidders are advised to include any information which documents the qualifications and expertise of the contractor and its personnel in providing similar services.

6.4 Bidders and their agents (including subcontractors, employees, consultants, or anyone else acting on their behalf) must direct all questions or comments regarding the IFB to the buyer of record indicated on the cover page of this document.

6.5 Bidders are advised that the only official position of the Department is that position which is stated in writing in the IFB and any amendments thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.

6.6 If any services offered under this IFB are being manufactured or performed at sites outside the United States, the bidder must disclose such fact and provide details with the bid.

### 6.7 Statutory Preferences:

6.7.1 Pursuant to 34.060 RSMo, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri.

6.7.2 Pursuant to 34.074 RSMo, a preference will be given to service-disabled veteran businesses. Any bidder eligible to receive the Missouri service-disabled veteran business preference pursuant to 34.074 RSMo must review and complete Exhibit #2, Missouri Service-Disabled Veteran Business Preference and provide the specified documentation in accordance with the instructions provided therein.

6.7.3 Pursuant to 34.165 RSMo, a ten (10) bonus point preference shall be granted to bidders including products and/or services manufactured, produced or assembled by a qualified nonprofit organization for the blind established pursuant to 41 U.S.C. sections 46 to 48c or a sheltered workshop holding a certificate of approval from the Department of Elementary and Secondary Education pursuant to section 178.920 RSMo. A list of Missouri sheltered workshops can be found at the following internet address: <http://www.dese.mo.gov/divspeced/shelteredworkshops/index.html>. The websites for the Missouri Lighthouse for the Blind and the Alphapointe Association for the Blind can be found at the following internet addresses: <http://www.lhbindustries.com> and <http://www.alphapointe.org>.

- a. In order to qualify for the ten bonus points, the bidder must meet the following conditions and provide the following evidence:
  1. The bidder must either be an organization for the blind or sheltered workshop or must be proposing to utilize an organization for the blind/sheltered workshop as a subcontractor and/or supplier in an amount that must equal the greater of \$5,000 or 2% of the total dollar value of the contract for purchases not exceeding \$10 million.
  2. The bidder must use the organization for the blind or sheltered workshop in a manner that will constitute an added value or provide a service required as part of the performance of the contract.
  3. Participation Commitment - The bidder must complete Exhibit #3, Participation Commitment, by identifying the organization for the blind or sheltered workshop, the amount of participation committed, and the commercially useful products/services to be provided by the listed organization for the blind or sheltered workshop. If the bidder submitting the proposal is an organization for the blind or sheltered workshop, the bidder must be listed in the appropriate table on the Participation Commitment Form.

4. Documentation of Intent to Participate – The bidder must either provide a properly completed Exhibit #4, Documentation of Intent to Participate Form, signed by the organization for the blind or sheltered workshop proposed or must provide a recently dated letter of intent signed by the organization for the blind or sheltered workshop which: (1) must describe the products/services the organization for the blind/sheltered workshop will provide; (2) must indicate the organization for the blind/sheltered workshop's commitment to aid the bidder in the performance of the required services and/or provision of the required products (identified by the Request for Proposal (IFB) number or other identifier) in an amount that must equal the amount specified on the bidder's Participation Commitment Form, Exhibit #3; and (3) should include evidence of the organization for the blind/sheltered workshop qualifications (e.g. copy of certificate or Certificate Number for Missouri Sheltered Workshop).
5. Commitment – If the bidder's proposal is awarded, the participation committed to by the bidder on Exhibit #3, Participation Commitment, as verified by the organization for the blind/sheltered workshop's documentation of intent to participate, shall be interpreted as a contractual requirement.

## 7. PRICING PAGE

7.1 The bidder shall provide a firm, fixed price for each of the following for the original contract period and a maximum price for each potential renewal period for providing the services in accordance with the provisions and requirements of this IFB. All costs associated with providing the required services shall be included in the stated price.

(c/s code: 95261 Psychiatric, Comprehensive Services)

<b><i>Pricing: The bidder shall quote a firm, fixed price for providing the services required herein.</i></b>				
	<b>Original Contract Period</b>	<b>1<sup>st</sup> Renewal Period</b>	<b>2<sup>nd</sup> Renewal Period</b>	<b>3<sup>rd</sup> Renewal Period</b>
	Date of Award through 6/30/16	7/1/16 - 6/30/17	7/1/17 - 6/30/18	7/1/18 - 6/30/19
	Firm, Fixed Price	Maximum Renewal Price	Maximum Renewal Price	Maximum Renewal Price
<b>One Day Workshop (Each)</b>	\$ _____	\$ _____	\$ _____	\$ _____

## Attachment A (Business Associate Agreement)

(rev 06.07.13)

1. Health Insurance Portability and Accountability Act of 1996, as amended - The Department of Mental Health and the contractor are both subject to and must comply with provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) (PL-111-5) (collectively, and hereinafter, HIPAA) and all regulations promulgated pursuant to authority granted therein. The contractor constitutes a "Business Associate" of the Department. Therefore, the term, "contractor" as used in this section shall mean "Business Associate."
2. The contractor agrees that for purposes of the Business Associate Provisions contained herein, terms used but not otherwise defined shall have the same meaning as those terms defined in 45 CFR Parts 160 and 164 and 42 U.S.C. §§ 17921 *et. seq.* including, but not limited to the following:
  - a. "Access", "administrative safeguards", "confidentiality", "covered entity", "data aggregation", "designated record set", "disclosure", "hybrid entity", "information system", "physical safeguards", "required by law", "technical safeguards", "use" and "workforce" shall have the same meanings as defined in 45 CFR 160.103, 164.103, 164.304, and 164.501 and HIPAA.
  - b. "Breach" shall mean the unauthorized acquisition, access, use, or disclosure of Protected Health Information which compromises the security or privacy of such information, except as provided in 42 U.S.C. § 17921. This definition shall not apply to the term "breach of contract" as used within the contract.
  - c. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the contractor.
  - d. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the Department.
  - e. "Electronic Protected Health Information" shall mean information that comes within paragraphs (1)(i) or (1)(ii) of the definition of Protected Health Information as specified below.
  - f. "Enforcement Rule" shall mean the HIPAA Administrative Simplification: Enforcement; Final Rule at 45 CFR Parts 160 and 164.
  - g. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
  - h. "Individual" shall have the same meaning as the term "individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502 (g).
  - i. "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.
  - j. "Protected Health Information" as defined in 45 CFR 160.103, shall mean individually identifiable health information:
    - 1) Except as provided in paragraph (2) of this definition, that is: (i) Transmitted by electronic media; or (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium.
    - 2) Protected Health Information excludes individually identifiable health information in (i) Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; (ii) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and (iii) Employment records held by a covered entity (Department) in its role as employer.
  - k. "Security Incident" shall be defined as set forth in the "Obligations of the Contractor" section of the Business Associate Provisions.
  - l. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C.
  - m. "Unsecured Protected Health Information" shall mean Protected Health Information that is not secured through the use of a technology or methodology determined in accordance with 42 U.S.C. § 17932 or as otherwise specified by the secretary of Health and Human Services.
3. The contractor agrees and understands that wherever in this document the term Protected Health Information is used, it shall also be deemed to include Electronic Protected Health Information.

4. The contractor must appropriately safeguard Protected Health Information which the contractor receives from or creates or receives on behalf of the Department. To provide reasonable assurance of appropriate safeguards, the contractor shall comply with the business associate provisions stated herein, as well as the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) (PL-111-5) and all regulations promulgated pursuant to authority granted therein.
5. The Department and the contractor agree to amend the contract as is necessary for the parties to comply with the requirements of HIPAA and the Privacy Rule, Security Rule, Enforcement Rule, and other rules as later promulgated (hereinafter referenced as the regulations promulgated thereunder). Any ambiguity in the contract shall be interpreted to permit compliance with the HIPAA Rules.
6. **Permitted Uses and Disclosures of Protected Health Information by the Contractor:**
  - 6.1 The contractor may not use or disclose Protected Health Information in any manner that would violate Subpart E of 45 CFR Part 164 if done by the Department, except for the specific uses and disclosures in the contract.
  - 6.2 The contractor may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the Department as specified in the contract, provided that such use or disclosure would not violate HIPAA and the regulations promulgated thereunder.
  - 6.3 The contractor may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1) and shall notify the Department by no later than ten (10) calendar days after the contractor becomes aware of the disclosure of the Protected Health Information.
  - 6.4 If required to properly perform the contract and subject to the terms of the contract, the contractor may use or disclose Protected Health Information if necessary for the proper management and administration of the contractor's business.
  - 6.5 If the disclosure is required by law, the contractor may disclose Protected Health Information to carry out the legal responsibilities of the contractor.
  - 6.6 If applicable, the contractor may use Protected Health Information to provide Data Aggregation services to the Department as permitted by 45 CFR 164.504(e)(2)(i)(B).
  - 6.7 The contractor may not use Protected Health Information to de-identify or re-identify the information in accordance with 45 CFR 164.514(a)-(c) without specific written permission from the Department to do so.
  - 6.8 The contractor agrees to make uses and disclosures and requests for Protected Health Information consistent with the Department's minimum necessary policies and procedures.
7. **Obligations and Activities of the Contractor:**
  - 7.1 The contractor shall not use or disclose Protected Health Information other than as permitted or required by the contract or as otherwise required by law, and shall comply with the minimum necessary disclosure requirements set forth in 45 CFR § 164.502(b).
  - 7.2 The contractor shall use appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by the contract. Such safeguards shall include, but not be limited to:
    - a. Workforce training on the appropriate uses and disclosures of Protected Health Information pursuant to the terms of the contract;
    - b. Policies and procedures implemented by the contractor to prevent inappropriate uses and disclosures of Protected Health Information by its workforce and subcontractors, if applicable;
    - c. Encryption of any portable device used to access or maintain Protected Health Information or use of equivalent safeguard;
    - d. Encryption of any transmission of electronic communication containing Protected Health Information or use of equivalent safeguard; and
    - e. Any other safeguards necessary to prevent the inappropriate use or disclosure of Protected Health Information.

- 7.3 With respect to Electronic Protected Health Information, the contractor shall use appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic Protected Health Information that contractor creates, receives, maintains or transmits on behalf of the Department and comply with Subpart C of 45 CFR Part 164, to prevent use or disclosure of Protected Health Information other than as provided for by the contract.
- 7.4 In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), the contractor shall require that any agent or subcontractor that creates, receives, maintains, or transmits Protected Health Information on behalf of the contractor agrees to the same restrictions, conditions, and requirements that apply to the contractor with respect to such information.
- 7.5 By no later than ten (10) calendar days after receipt of a written request from the Department, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the Department, the contractor shall make the contractor's 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, created by, or received by the contractor on behalf of the Department available to the Department and/or to the Secretary of the Department of Health and Human Services or designee for purposes of determining compliance with the HIPAA Rules and the contract.
- 7.6 The contractor shall document any disclosures and information related to such disclosures of Protected Health Information as would be required for the Department to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 42 USCA §17932 and 45 CFR 164.528. By no later than five (5) calendar days of receipt of a written request from the Department, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the Department, the contractor shall provide an accounting of disclosures of Protected Health Information regarding an individual to the Department. If requested by the Department or the individual, the contractor shall provide an accounting of disclosures directly to the individual. The contractor shall maintain a record of any accounting made directly to an individual at the individual's request and shall provide such record to the Department upon request.
- 7.7 In order to meet the requirements under 45 CFR 164.524, regarding an individual's right of access, the contractor shall, within five (5) calendar days following a Department request, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the Department, provide the Department access to the Protected Health Information in an individual's designated record set. However, if requested by the Department, the contractor shall provide access to the Protected Health Information in a designated record set directly to the individual for whom such information relates.
- 7.8 At the direction of the Department, the contractor shall promptly make any amendment(s) to Protected Health Information in a Designated Record Set pursuant to 45 CFR 164.526.
- 7.9 The contractor shall report to the Department's Security Officer any security incident immediately upon becoming aware of such incident and shall take immediate action to stop the continuation of any such incident. For purposes of this paragraph, security incident shall mean the attempted or successful unauthorized access, use, modification or destruction of information or interference with systems operations in an information system. This does not include trivial incidents that occur on a daily basis, such as scans, "pings," or unsuccessful attempts that do not penetrate computer networks or servers or result in interference with system operations. By no later than five (5) days after the contractor becomes aware of such incident, the contractor shall provide the Department's Security Officer with a description of any remedial action taken to mitigate any harmful effect of such incident and a proposed written plan of action for approval that describes plans for preventing any such future security incidents.

- 7.10 The contractor shall report to the Department's Privacy Officer any unauthorized use or disclosure of Protected Health Information not permitted or required as stated herein immediately upon becoming aware of such use or disclosure and shall take immediate action to stop the unauthorized use or disclosure. By no later than five (5) calendar days after the contractor becomes aware of any such use or disclosure, the contractor shall provide the Department's Privacy Officer with a written description of any remedial action taken to mitigate any harmful effect of such disclosure and a proposed written plan of action for approval that describes plans for preventing any such future unauthorized uses or disclosures.
- 7.11 The contractor shall report to the Department's Security Officer any breach immediately upon becoming aware of such incident and shall take immediate action to stop the continuation of any such incident. By no later than five (5) days after the contractor becomes aware of such incident, the contractor shall provide the Department's Security Officer with a description of the breach, the information compromised by the breach, and any remedial action taken to mitigate any harmful effect of such incident and a proposed written plan for approval that describes plans for preventing any such future incidents.
- 7.12 The contractor's reports required in the preceding paragraphs shall include the following information regarding the security incident, improper disclosure/use, or breach, (hereinafter "incident"):
- a. The name, address, and telephone number of each individual whose information was involved if such information is maintained by the contractor;
  - b. The electronic address of any individual who has specified a preference of contact by electronic mail;
  - c. A brief description of what happened, including the date(s) of the incident and the date(s) of the discovery of the incident;
  - d. A description of the types of Protected Health Information involved in the incident (such as full name, Social Security Number, date of birth, home address, account number, or disability code) and whether the incident involved Unsecured Protected Health Information; and  
The recommended steps individuals should take to protect themselves from potential harm resulting from the incident.
- 7.13 Notwithstanding any provisions of the Terms and Conditions attached hereto, in order to meet the requirements under HIPAA and the regulations promulgated thereunder, the contractor shall keep and retain adequate, accurate, and complete records of the documentation required under these provisions for a minimum of six (6) years as specified in 45 CFR Part 164.
- 7.14 Contractor shall not directly or indirectly receive remuneration in exchange for any Protected Health Information without a valid authorization.
- 7.15 If the contractor becomes aware of a pattern of activity or practice of the Department that constitutes a material breach of contract regarding the Department's obligations under the Business Associate Provisions of the contract, the contractor shall notify the Department's Security Officer of the activity or practice and work with the Department to correct the breach of contract.
- 7.16 The contractor shall indemnify the Department from any liability resulting from any violation of the Privacy Rule or Security Rule or Breach arising from the conduct or omission of the contractor or its employee(s), agent(s) or subcontractor(s). The contractor shall reimburse the Department for any and all actual and direct costs and/or losses, including those incurred under the civil penalties implemented by legal requirements, including but not limited to HIPAA as amended by the Health Information Technology for Economic and Clinical Health Act, and including reasonable attorney's fees, which may be imposed upon the Department under legal requirements, including but not limited to HIPAA's Administrative Simplification Rules, arising from or in connection with the contractor's negligent or wrongful actions or inactions or violations of this Agreement.

7.17 Notwithstanding the language in this Agreement set forth above in the Section 7.16, the parties recognize that certain Business Associates and/or contractors may be entities that are sovereign political subdivisions of the State of Missouri – including but not limited to a department, board or other governmental unit of a city, county, township, etc. In that instance, the Business Associate or contractor, by entering into this agreement, is not thereby waiving or limiting the rights or defenses it may have with respect to sovereign or governmental immunity, official immunity or any other legal protections applicable under federal or state law, which are afforded to that Business Associate or contractor and its employees by virtue of the entity’s status as a political subdivision of the State of Missouri.

**8. Obligations of the Department:**

8.1 The Department shall notify the contractor of limitation(s) that may affect the contractor’s use or disclosure of Protected Health Information, by providing the contractor with the Department’s notice of privacy practices in accordance with 45 CFR 164.520.

8.2 The Department shall notify the contractor of any changes in, or revocation of, authorization by an Individual to use or disclose Protected Health Information.

8.3 The Department shall notify the contractor of any restriction to the use or disclosure of Protected Health Information that the Department has agreed to in accordance with 45 CFR 164.522.

8.4 The Department shall not request the contractor to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA and the regulations promulgated thereunder.

**9. Expiration/Termination/Cancellation**

Except as provided in the subparagraph below, upon the expiration, termination, or cancellation of the contract for any reason, the contractor shall, at the discretion of the Department, either return to the Department or destroy all Protected Health Information received by the contractor from the Department, or created or received by the contractor on behalf of the Department, and shall not retain any copies of such Protected Health Information. This provision shall also apply to Protected Health Information that is in the possession of subcontractor or agents of the contractor.

In the event the Department determines that returning or destroying the Protected Health Information is not feasible, the contractor shall extend the protections of the contract to the Protected Health Information for as long as the contractor maintains the Protected Health Information and shall limit the use and disclosure of the Protected Health Information to those purposes that made return or destruction of the information infeasible. If at any time it becomes feasible to return or destroy any such Protected Health Information maintained pursuant to this paragraph, the contractor must notify the Department and obtain instructions from the Department for either the return or destruction of the Protected Health Information.

**10. Breach of Contract**

In the event the contractor is in breach of contract with regard to the business associate provisions included herein, the contractor agrees that in addition to the requirements of the contract related to cancellation of contract, if the Department determines that cancellation of the contract is not feasible, the State of Missouri may elect not to cancel the contract, but the Department shall report the breach of contract to the Secretary of the Department of Health and Human Services.

**EXHIBIT #1**  
**BUSINESS ENTITY CERTIFICATION, ENROLLMENT DOCUMENTATION,**  
**AND AFFIDAVIT OF WORK AUTHORIZATION**

**BUSINESS ENTITY CERTIFICATION:**

**The contractor must certify their current business status by completing either Box A or Box B or Box C on this Exhibit.**

**BOX A:** To be completed by a non-business entity as defined below.

**BOX B:** To be completed by a business entity who has not yet completed and submitted documentation pertaining to the federal work authorization program as described at [http://www.dhs.gov/files/programs/gc\\_1185221678150.shtm](http://www.dhs.gov/files/programs/gc_1185221678150.shtm).

**BOX C:** To be completed by a business entity who has current work authorization documentation on file with a Missouri state agency including Division of Purchasing and Materials Management.

**Business entity**, as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, is any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term "**business entity**" shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors. The term "**business entity**" shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit. The term "**business entity**" shall not include a self-employed individual with no employees or entities utilizing the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

Note: Regarding governmental entities, business entity includes Missouri schools, Missouri universities (other than stated in Box C), out of state agencies, out of state schools, out of state universities, and political subdivisions. A business entity does not include Missouri state agencies and federal government entities.

**BOX A – Currently Not a Business Entity**

I certify that \_\_\_\_\_ (Company/Individual Name) **DOES NOT CURRENTLY MEET** the definition of a business entity, as defined in section 285.525, RSMo pertaining to section 285.530, RSMo as stated above, because: (check the applicable business status that applies below)

- I am a self-employed individual with no employees; **OR**
- The company that I represent utilizes the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

I certify that I am not an alien unlawfully present in the United States and if \_\_\_\_\_ (Company/Individual Name) is awarded a contract for the services requested herein under **IFB # DMH12001** and if the business status changes during the life of the contract to become a business entity as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, then, prior to the performance of any services as a business entity, \_\_\_\_\_ (Company/Individual Name) agrees to complete Box B, comply with the requirements stated in Box B and provide the Department of Mental Health with all documentation required in Box B of this exhibit.

\_\_\_\_\_  
Authorized Representative's Name  
(Please Print)

\_\_\_\_\_  
Authorized Representative's Signature

\_\_\_\_\_  
Company Name (if applicable)

\_\_\_\_\_  
Date

## Exhibit # 1 (continued)

***(Complete the following if you DO NOT have the E-Verify documentation and a current Affidavit of Work Authorization already on file with the State of Missouri. If completing Box B, do not complete Box C.)***

### **Box B – Current Business Entity Status**

I certify that \_\_\_\_\_ (Business Entity Name) **MEETS** the definition of a business entity as defined in section 285.525, RSMo, pertaining to section 285.530.

\_\_\_\_\_  
Authorized Business Entity Representative's  
Name (Please Print)

\_\_\_\_\_  
Authorized Business Entity  
Representative's Signature

\_\_\_\_\_  
Business Entity Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
E-Mail Address

As a business entity, the bidder must perform/provide the following. The bidder should check each to verify completion/submission:

- Enroll and participate in the E-Verify federal work authorization program (Website: [http://www.dhs.gov/files/programs/gc\\_1185221678150.shtm](http://www.dhs.gov/files/programs/gc_1185221678150.shtm); Phone: 888-464-4218; Email: [e-verify@dhs.gov](mailto:e-verify@dhs.gov)) with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services required herein; AND
- Provide documentation affirming said company's/individual's enrollment and participation in the E-Verify federal work authorization program. Documentation shall include EITHER the E-Verify Employment Eligibility Verification page listing the bidder's name and company ID OR a page from the E-Verify Memorandum of Understanding (MOU) listing the bidder's name and the MOU signature page completed and signed, at minimum, by the bidder and the Department of Homeland Security – Verification Division. If the signature page of the MOU lists the bidder's name and company ID, then no additional pages of the MOU must be submitted; AND
- Submit a completed, notarized Affidavit of Work Authorization provided on the next page of this Exhibit.

**Exhibit # 1 (continued)**  
**Affidavit of Work Authorization**

The bidder who meets the section 285.525, RSMo, definition of a business entity must complete and return the following Affidavit of Work Authorization.

Comes now \_\_\_\_\_ (Name of Business Entity Authorized Representative)  
as \_\_\_\_\_ (Position/Title) first being duly sworn on my oath, affirm  
\_\_\_\_\_ (Business Entity Name) is enrolled and will continue to participate  
in the E-Verify federal work authorization program with respect to employees hired after enrollment in  
the program who are proposed to work in connection with the services related to contract(s) with the  
State of Missouri for the duration of the contract(s), if awarded in accordance with subsection 2 of section  
285.530, RSMo. I also affirm that \_\_\_\_\_ (Business Entity Name) does not  
and will not knowingly employ a person who is an unauthorized alien in connection with the contracted  
services provided under the contract(s) for the duration of the contract(s), if awarded.

***In Affirmation thereof, the facts stated above are true and correct. (The undersigned understands that false statements made in this filing are subject to the penalties provided under section 575.040, RSMo.)***

\_\_\_\_\_  
Authorized Representative's Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
E-Mail Address

\_\_\_\_\_  
E-Verify Company ID Number

Subscribed and sworn to before me this \_\_\_\_\_ of \_\_\_\_\_. I am commissioned as a notary  
(DAY) (MONTH, YEAR)  
public commissioned as a notary public within the County of \_\_\_\_\_, State of \_\_\_\_\_,  
(NAME OF COUNTY) (NAME OF STATE)  
and my commission expires on \_\_\_\_\_.  
(DATE)

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Date

**Exhibit # 1 (continued)**

***(Complete the following if you have the E-Verify documentation and a current Affidavit of Work Authorization already on file with the State of Missouri. If completing Box C, do not complete Box B.)***

**BOX C – Affidavit on File - Current Business Entity Status**

I certify that \_\_\_\_\_ (Business Entity Name) **MEETS** the definition of a business entity as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, and have enrolled and currently participates in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services related to contract(s) with the State of Missouri. We have previously provided documentation to a Missouri state agency or public university that affirms enrollment and participation in the E-Verify federal work authorization program. The documentation that was previously provided included the following.

- ✓ The E-Verify Employment Eligibility Verification page OR a page from the E-Verify Memorandum of Understanding (MOU) listing the bidder’s name and the MOU signature page completed and signed by the bidder and the Department of Homeland Security – Verification Division
- ✓ A current, notarized Affidavit of Work Authorization (must be completed, signed, and notarized within the past twelve months).

Name of **Missouri State Agency** or **Public University\*** to Which Previous E-Verify Documentation Submitted:

\_\_\_\_\_

\*Public University includes the following five schools under chapter 34, RSMo: Harris-Stowe State University – St. Louis; Missouri Southern State University – Joplin; Missouri Western State University – St. Joseph; Northwest Missouri State University – Maryville; Southeast Missouri State University – Cape Girardeau.

**Date** of Previous E-Verify Documentation Submission: \_\_\_\_\_

Previous **Bid/Contract Number** for Which Previous E-Verify Documentation Submitted: \_\_\_\_\_  
(if known)

\_\_\_\_\_  
Authorized Business Entity Representative’s Name  
(Please Print)

\_\_\_\_\_  
Authorized Business Entity  
Representative’s Signature

\_\_\_\_\_  
E-Verify MOU Company ID Number

\_\_\_\_\_  
E-Mail Address

\_\_\_\_\_  
Business Entity Name

\_\_\_\_\_  
Date

**FOR STATE USE ONLY**

Documentation Verification Completed By:

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Date

## Exhibit # 2 Missouri Service-Disabled Veteran Business Preference

(rev 8-28-10)

Pursuant to section 34.074, RSMo, the Department of Mental Health has a goal of awarding three (3) percent of all contracts for the performance of any job or service to service-disabled veteran businesses (see below for definitions included in section 34.074, RSMo) either doing business as Missouri firms, corporations, or individuals; or which maintain Missouri offices or places of business.

Definitions:

**Service-Disabled Veteran** is defined as any individual who is disabled as certified by the appropriate federal agency responsible for the administration of veterans' affairs.

**Service-Disabled Veteran Business** is defined as a business concern:

- a. not less than fifty-one (51) percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than fifty-one (51) percent of the stock of which is owned by one or more service-disabled veterans; and
- b. the management and daily business operations of which are controlled by one or more service-disabled veterans.

If a bidder meets the definitions of a service-disabled veteran and a service-disabled veteran business as defined in section 34.074, RSMo, and is either doing business as a Missouri firm, corporation, or individual; or maintains a Missouri office or place of business, the bidder **must** provide the following with the bid in order to receive the Missouri service-disabled veteran business preference of a three-point bonus over a non-Missouri service-disabled veteran business:

- a. a copy of an award letter from the Department of Veterans Affairs (VA), or a copy of the bidder's discharge paper (DD Form 214, Certificate of Release or Discharge from Active Duty) from the branch of service the bidder was in; and
- b. a completed copy of this exhibit.

**(NOTE: For ease of evaluation, please attach copy of the above-referenced letter from the VA or a copy of the bidder's discharge paper to this Exhibit. The above-referenced letter from the VA and a copy of the bidder's discharge paper shall be considered confidential pursuant to subsection 14 of section 610.021, RSMo.)**

By signing below, I certify that I meet the definitions of a service-disabled veteran and a service-disabled veteran business as defined in section 34.074, RSMo, and that I am either doing business as a Missouri firm, corporation, or individual; or maintain Missouri offices or places of business at the location(s) listed below.

---

Service-Disabled Veteran's Name  
(Please Print)

---

Service-Disabled Veteran Business Name

---

Service-Disabled Veteran's Signature

---

Missouri Address of Service-Disabled Veteran  
Business

**Exhibit #3**  
**Participation Commitment**

**Organization for the Blind/Sheltered Workshop Participation Commitment** – If the bidder is committing to participation by or if the bidder is a qualified organization for the blind/sheltered workshop, the bidder must provide the required information in the table below for the organization proposed and must submit the completed exhibit with the bidder's proposal.

<b>Organization for the Blind/Sheltered Workshop Commitment Table</b>		
<b>Name of Organization for the Blind or Sheltered Workshop Proposed</b>		<b>Description of Products/Services to be Provided by Listed Organization for the Blind/Sheltered Workshop</b>
	By completing this table, the bidder commits to use of the organization at the greater of either \$5,000 or 2% of the total dollar value of contract	





# Missouri Department of Mental Health Terms and Conditions for Department of Mental Health Solicitations

(rev 10.5.11)

## 1. Terminology/Definitions

Whenever the following words and expressions appear in an Invitation for Bid (IFB) or a Request for Quotation (RFQ) document or any amendment thereto, the definition or meaning described below shall apply.

- a. **Amendment** means a written, official modification to an IFB, RFQ or to a contract.
- b. **Attachment** applies to all forms which are included with an IFB or RFQ to incorporate any informational data or requirements related to the performance requirements and/or specifications.
- c. **Bid Opening Date and Time** and similar expressions mean the exact deadline required by the IFB for the receipt of sealed bids.
- d. **Bid Target Date and Time** and similar expressions mean the requested RFQ target date and time for the receipt of bids.
- e. **Bidder** means the person or organization that responds to an IFB or RFQ by submitting a bid with prices to provide the equipment, supplies, and/or services as required in the IFB or RFQ document.
- f. **Buyer** means the procurement staff member of the Department of Mental Health.
- g. **Contact Person** as referenced herein is usually the Buyer.
- h. **Contract** means a legal and binding agreement between two or more competent parties, for a consideration for the procurement of equipment, supplies, and/or services.
- i. **Contractor** means a person or organization who is a successful bidder as a result of an IFB or RFQ and who enters into a contract.
- j. **Department** means the Missouri Department of Mental Health.
- k. **Exhibit** applies to forms which are included with an IFB or RFQ for the bidder to complete and submit with the bid.
- l. **Invitation for Bid (IFB)** means the solicitation document issued by the Department to potential bidders for the purchase of equipment, supplies, and/or services as described in the document. The definition includes these Terms and Conditions as well as all Pricing Pages, Exhibits, Attachments, and Amendments thereto.
- m. **May** means that a certain feature, component, or action is permissible, but not required.
- n. **Must** means that a certain feature, component, or action is a mandatory condition. Failure to provide or comply will result in a bid being considered non-responsive.
- o. **Pricing Page(s)** applies to the form(s) on which the bidder must state the price(s) applicable for the equipment, supplies, and/or services required in the IFB or RFQ. The pricing pages must be completed and submitted by the bidder with the bid.
- p. **Request for Quotation (RFQ)** means the solicitation document issued by the Department to potential bidders for the purchase of equipment, supplies, and/or services as described in the document. The definition includes these Terms and Conditions as well as all Pricing Pages, Exhibits, Attachments, and Amendments thereto.
- q. **RSMo (Revised Statutes of Missouri)** refers to the body of laws enacted by the Legislature which govern the operations of all agencies of the State of Missouri. Chapter 34 of the statutes is the primary chapter governing the procurement operations of the Department.
- r. **Shall** has the same meaning as the word must.
- s. **Should** means that a certain feature, component and/or action is desirable but not mandatory.

## 2. Applicable Laws and Regulations

- 2.1 The contract shall be construed according to the laws of the State of Missouri. The contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
- 2.2 To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the Department.
- 2.3 The contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations.
- 2.4 The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.
- 2.5 The exclusive venue for any legal proceeding relating to or arising out of the IFB, RFQ or resulting contract shall be in the Circuit Court of Cole County, Missouri.
- 2.6 The contractor shall only employ personnel authorized to work in the United States in accordance with applicable federal and state laws and Executive Order 07-13 for work performed in the United States.

## 3. Open Competition

- 3.1 It shall be the bidder's responsibility to ask questions, request changes or clarification, or otherwise advise the Department if any language, specifications or requirements of an IFB or RFQ appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the IFB or RFQ to a single source. Any and all communication from bidders regarding specifications, requirements, competitive bid process, etc., must be directed to the buyer from the Department, unless the IFB or RFQ specifically refers the bidder to another contact. Such communication should be received at least ten calendar days prior to the official bid opening date.

- 3.2 Every attempt shall be made to ensure that the bidder receives an adequate and prompt response. However, in order to maintain a fair and equitable bid process, all bidders will be advised, via the issuance of an amendment to the IFB or RFQ, of any relevant or pertinent information related to the procurement. Therefore, bidders are advised that unless specified elsewhere in the IFB or RFQ, any questions received less than ten calendar days prior to the bid opening date may not be answered.
- 3.3 Bidders are cautioned that the only official position of the Department is that which is issued by the Department in the IFB or RFQ or an amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.
- 3.4 The Department monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among bidders, price-fixing by bidders, or any other anticompetitive conduct by bidders which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Missouri Attorney General's Office for appropriate action.
- 3.5 The Department reserves the right to officially amend or cancel an IFB or RFQ after issuance.

#### **4. Preparation of Bids**

- 4.1 Bidders must examine the entire IFB or RFQ carefully. Failure to do so shall be at bidder's risk.
- 4.2 Unless otherwise specifically stated in the IFB or RFQ, all specifications and requirements constitute minimum requirements. All bids must meet or exceed the stated specifications and requirements.
- 4.3 Unless otherwise specifically stated in the IFB or RFQ, any manufacturer names, trade names, brand names, information and/or catalog numbers listed in a specification and/or requirement are for informational purposes only and are not intended to limit competition. The bidder may offer any brand which meets or exceeds the specification for any item, but must state the manufacturer's name and model number for any such brands in the bid. In addition, the bidder shall explain, in detail, (1) the reasons why the proposed equivalent meets or exceeds the specifications and/or requirements and (2) why the proposed equivalent should not be considered an exception thereto. Bids which do not comply with the requirements and specifications are subject to rejection without clarification.
- 4.4 Bids lacking any indication of intent to bid an alternate brand or to take an exception shall be received and considered in complete compliance with the specifications and requirements as listed in the IFB or RFQ.
- 4.5 In the event that the bidder is an agency of state government or other such political subdivision which is prohibited by law or court decision from complying with certain provisions of an IFB or RFQ, such a bidder may submit a bid which contains a list of statutory limitations and identification of those prohibitive clauses. The bidder should include a complete list of statutory references and citations for each provision of the IFB or RFQ, which is affected by this paragraph. The statutory limitations and prohibitive clauses may (a) be requested to be clarified in writing by the Department or (2) be accepted without further clarification if the statutory limitations and prohibitive clauses are deemed acceptable by the Department. If the Department determines clarification of the statutory limitations and prohibitive clauses is necessary, the clarification will be conducted in order to agree to language that reflects the intent and compliance of such law and/or court order and the IFB or RFQ.
- 4.6 All equipment and supplies offered in a bid must be new, of current production, and available for marketing by the manufacturer unless the IFB or RFQ clearly specifies that used, reconditioned, or remanufactured equipment and supplies may be offered.
- 4.7 Prices shall include all packing, handling and shipping charges FOB destination, freight prepaid and allowed unless otherwise specified in the IFB or RFQ.
- 4.8 Bids, including all pricing therein, shall remain valid for 90 days from bid opening unless otherwise indicated. If the bid is accepted, the entire bid, including all prices, shall be firm for the specified contract period.
- 4.9 Any foreign bidder not having an Employer Identification Number assigned by the United States Internal Revenue Service (IRS) must submit a completed IRS Form W-8 prior to or with the submission of their bid in order to be considered for award.

#### **5. Submission of Bids**

- 5.1 Bids in response to a RFQ should be received in the Department office prior to the target time and date specified in the RFQ and may be submitted to the Department:
- in hard copy format delivered to the Department purchasing office;
  - by fax to the Department purchasing office; or
  - by e-mail to the Department buyer
- 5.2 Bids submitted in response to an IFB must be sealed in an envelope or container, and received in the Department purchasing office specified in the IFB no later than the exact opening time and date specified in the IFB.
- 5.3 All bids must be submitted and signed by a duly authorized representative of the bidder's organization, contain all information required by the IFB or RFQ, and must be priced as required.
- 5.4 Any envelope or container containing a bid should be clearly marked on the outside with the official RFQ or IFB number and the official target date and time (RFQ) or the official bid opening date and time (IFB). Different bids should not be placed in the same envelope, although copies of the same bid may be placed in the same envelope.
- 5.5 A bid which has been delivered to the Department office, may be modified by signed, written notice which has been received by the Department prior to the official target date and time (RFQ) or the official bid opening date and time (IFB) specified. A bid may also be modified in person by the bidder or its authorized representative, provided proper identification is presented before the official target date and time or the official bid opening date and time (IFB). Telephone or telegraphic requests to modify a bid shall not be honored.

- 5.6 A bid which has been delivered to the Department office, may only be withdrawn by a signed, written document on company letterhead transmitted via mail, e-mail, or facsimile which has been received by the Department prior to the official target date and time (RFQ) or the official bid opening date and time (IFB) specified. A bid may also be withdrawn in person by the bidder or its authorized representative, provided proper identification is presented before the official target date and time or the official bid opening date and time (IFB). Telephone or telegraphic requests to withdraw a bid shall not be honored.
- 5.7 A bid may also be withdrawn after the bid opening through submission of a written request by an authorized representative of the bidder. Justification of withdrawal decision may include a significant error or exposure of bid information that may cause irreparable harm to the bidder.
- 6. Bid Opening**
- 6.1 Bid openings are public on the opening date and at the opening time specified in the IFB document. The Department will not provide prices or other bid information via the telephone.
- 6.2 Bids submitted in response to an IFB which are not received in the Department office prior to the official opening date and time shall be considered late, regardless of the degree of lateness, and normally will not be opened. Late bids may only be opened under extraordinary circumstances in accordance with 1 CSR 40-1.050.
- 7. Preferences**
- 7.1 In the evaluation of bids, preferences shall be applied in accordance with chapter 34, RSMo. Contractors should apply the same preferences in selecting subcontractors.
- 7.2 In accordance with Executive Order 05-30, contractors are encouraged to employ certified minority and women-owned businesses in selecting subcontractors.
- 8. Evaluation/Award**
- 8.1 Any clerical error, apparent on its face, may be corrected by the buyer before contract award. Upon discovering an apparent clerical error, the buyer shall contact the bidder and request clarification of the intended bid. The correction shall be incorporated in the notice of award. Examples of apparent clerical errors are: 1) misplacement of a decimal point; and 2) obvious mistake in designation of unit.
- 8.2 Any pricing information submitted by a bidder shall be subject to evaluation if deemed by the Department to be in the best interest of the Department.
- 8.3 Bidders are encouraged to propose price discounts for prompt payment or propose other price discounts that would benefit the Department. However, unless otherwise specified in the IFB or RFQ, pricing shall be evaluated at the maximum potential financial liability to the Department.
- 8.4 Awards shall be made to the bidder whose bid (1) complies with all mandatory specifications and requirements of the IFB and (2) is the lowest and best bid, considering price, responsibility of the bidder, and all other evaluation criteria specified in the IFB and (3) complies with Sections 34.010 and 34.070 RSMo and Executive Order 04-09.
- 8.5 In the event all bidders fail to meet the same mandatory requirement in an IFB or RFQ, the Department reserves the right, at its sole discretion, to waive that requirement for all bidders and to proceed with the evaluation. In addition, the Department reserves the right to waive any minor irregularity or technicality found in any individual bid.
- 8.6 The Department reserves the right to reject any and all bids.
- 8.7 When evaluating a bid, the Department reserves the right to consider relevant information and fact, whether gained from a bid, from a bidder, from bidder's references, or from any other source.
- 8.8 Any information submitted with the bid, regardless of the format or placement of such information, may be considered in making decisions related to the responsiveness and merit of a bid and the award of a contract.
- 8.9 Any award of a contract shall be made by notification from the Department to the successful bidder. Bidders who include an e-mail address with their bid will be notified of the award results via e-mail.
- 8.10 The Department reserves the right to make awards by item, group of items, or an all or none basis. The grouping of items awarded shall be determined by the Department based upon factors such as item similarity, location, administrative efficiency, or other considerations in the best interest of the Department.
- 8.11 All bids and associated documentation which were submitted on or before the official opening date and time will be considered open records pursuant to Section 610.021 RSMo following the official opening of bids.
- 8.12 The Department reserves the right to request clarification of any portion of the bidder's response in order to verify the intent of the bidder. The bidder is cautioned, however, that its response may be subject to acceptance or rejection without further clarification.
- 8.13 The final determination of contract award(s) shall be made by the Department. Any bid award protest must be received within ten (10) calendar days after the date of award in accordance with the procedures contained in 9 CSR 25-2.505.
- 9. Contract/Purchase Order**
- 9.1 By submitting a bid, the bidder agrees to furnish any and all equipment, supplies and/or services specified in the IFB or RFQ, at the prices quoted, pursuant to all requirements and specifications contained therein.
- 9.2 A binding contract shall consist of: (1) the IFB or RFQ and any amendments thereto, (2) the contractor's response (bid) to the IFB or RFQ, (3) clarification of the bid, if any, and (4) the Department's acceptance of the response (bid) by "notice of award" or by "purchase order." All Exhibits and Attachments included in the IFB or RFQ shall be incorporated into the contract by reference.

- 9.3 A notice of award issued by the Department does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services the contractor must receive a properly authorized purchase order or other form of authorization given to the contractor at the discretion of the Department.
- 9.4 The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change to the contract, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the Department or by a modified purchase order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification to the contract.

## **10. Invoicing and Payment**

- 10.1 The Department does not pay state or federal taxes unless otherwise required under law or regulation.
- 10.2 The statewide financial management system has been designed to capture certain receipt and payment information. For each purchase order received, an invoice must be submitted that references the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- 10.3 The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the Department.
- 10.4 Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the IFB or RFQ.
- 10.5 The Department assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the state's rejection and shall be returned at the contractor's expense.
- 10.6 All invoices for equipment, supplies, and/or services purchased by the Department shall be subject to late payment charges as provided in Section 34.055 RSMo.
- 10.7 The Department reserves the right to purchase goods and services using the state purchasing card.
11. **Delivery:** Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time, if a specific time is not stated.

## **12. Inspection and Acceptance**

- 12.1 No equipment, supplies, and/or services received by the Department pursuant to a contract shall be deemed accepted until the Department has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- 12.2 All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- 12.3 The Department reserves the right to return any such rejected shipment at the contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- 12.4 The Department's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the Department may have.

## **13. Warranty**

- 13.1 The contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by the Department, (2) be fit and sufficient for the purpose expressed in the IFB, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- 13.2 Such warranty shall survive delivery and shall not be deemed waived either by reason of the Department's acceptance of or payment for said equipment, supplies, and/or services.

## **14. Conflict of Interest**

- 14.1 Officials and employees of the state agency, its governing body, or any other public officials of the State of Missouri must comply with Sections 105.452 and 105.454 RSMo regarding conflict of interest.
- 14.2 The contractor hereby covenants that at the time of the submission of the bid the contractor has no other contractual relationships which would create any actual or perceived conflict of interest. The contractor further agrees that during the term of the contract neither the contractor nor any of its employees shall acquire any other contractual relationships which create such a conflict.

## **15. Remedies and Rights**

- 15.1 No provision in the contract shall be construed, expressly or implied, as a waiver by the Department of any existing or future right and/or remedy available by law in the event of any claim by the Department of the contractor's default or breach of contract.
- 15.2 The contractor agrees and understands that the contract shall constitute an assignment by the contractor to the State of Missouri of all rights, title and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or procured by the contractor in the fulfillment of the contract with the Department.

**16. Cancellation of Contract**

- 16.1 In the event of material breach of the contractual obligations by the contractor, the Department may cancel the contract. At its sole discretion, the Department may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 working days from notification, or at a minimum the contractor must provide the Department within 10 working days from notification a written plan detailing how the contractor intends to cure the breach.
- 16.2 If the contractor fails to cure the breach or if circumstances demand immediate action, the Department will issue a notice of cancellation terminating the contract immediately.
- 16.3 If the Department cancels the contract for breach, the Department reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the Department deems appropriate and charge the contractor for any additional costs incurred thereby.
- 16.4 The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the state for any period in which funds have not been appropriated, and the state shall not be liable for any costs associated with termination caused by lack of appropriations.

**17. Communication and Notices:** Any notice to the bidder/contractor shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, transmitted by e-mail or hand-carried and presented to an authorized employee of the bidder/contractor.

**18. Bankruptcy or Insolvency**

- 18.1 Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor must notify the Department immediately.
- 18.2 Upon learning of any such actions, the Department reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

**19. Invention, Patents and Copyrights:** The contractor shall defend, protect, and hold harmless the State of Missouri, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the contractor's performance or products produced under the terms of the contract.

**20. Non-Discrimination and Affirmative Action**

- 20.1 In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status unless otherwise provided by law. If the contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program which shall include:
- a. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
  - b. The identification of a person designated to handle affirmative action;
  - c. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
  - d. The exclusion of discrimination from all collective bargaining agreements; and
  - e. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.
- 20.2 If discrimination by a contractor is found to exist, the Department shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by the Department until corrective action by the contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.
- 21. Americans with Disabilities Act:** In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).
- 22. Filing and Payment of Taxes:** The Department cannot contract for goods or services with a vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of storage, use, or consumption in this state but fails to collect and properly pay the tax as provided in chapter 144, RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any person or entity that is controlled by or is under common control with the vendor, whether through stock ownership or otherwise. Therefore bidder's failure to maintain compliance with chapter 144, RSMo may eliminate their bid from consideration for award.
- 23. Titles:** Titles of paragraphs used herein are for the purpose of facilitating reference only and shall not be construed to infer a contractual construction of language.