



Illinois State Board of Education

100 North First Street • Springfield, Illinois 62777-0001
www.isbe.net

Jesse H. Ruiz
Chairman

Christopher A. Koch, Ed.D.
State Superintendent of Education

April 2009

TO: Potential Bidders

FROM: Christopher A. Koch, Ed.D.
State Superintendent of Education

SUBJECT: REQUEST FOR SEALED PROPOSALS (RFSP): Child and Adult Care Food Program
Administrative Review Official

General Information

Eligible Bidders: Individual private contractors, not-for-profit firms, and institutions with experience administering federal and/or state regulatory programs and/or serving as a hearing official (and/or employing a staff with such experience) are eligible to apply. Individuals and/or staff with legal training and experience and/or accredited by a national arbitration association are preferred.

Fiscal Information: Applicants are expected to propose an hourly rate for the initial contract period and each succeeding two-year period. Please note that the maximum amount to be charged for a full-day hearing shall not exceed a total of \$400, regardless of the proposed hourly rate.

The Illinois State Board of Education (ISBE) also will reimburse any reasonable travel to and from the hearing and for lodging limited to the maximum allowable state rate. ISBE will not reimburse meals, car rental, or airfare.

No subcontracting for any services under this contract is allowed.

For purposes of compliance with Section 511 of P.L. 101-166 (the "Stevens Amendment"), bidders are advised that 100 percent of the funds for this program are derived from federal sources. The total amount of federal funding involved for fiscal year (FY) 2010 is \$125,000, and each subsequent year of the initial contract period and renewal periods.

Contract Period: The contract period will begin no sooner than July 1, 2009, and will extend from the date of execution or July 1, 2009, whichever is later, through June 30, 2011. Thereafter, the contract may automatically renew for two additional two-year periods (July 1, 2011, through June 30, 2013; July 1, 2013, through June 30, 2015), unless notice is given at least 30 days prior to the expiration of the then current term by either party that the contract will not renew, and subject to earlier termination as provided in the contract.

Funding in any subsequent year will be contingent upon a sufficient appropriation for the program and satisfactory progress of the contractor in the preceding contract year.

Receipt of Proposals: ISBE will accept proposals by mail or in person, in the Fiscal and Procurement Division of the Illinois State Board of Education until 4 p.m., May 5, 2009.

No late proposals or faxed proposals will be accepted. Send proposals to the following address: Illinois State Board of Education, Fiscal and Procurement Division, 100 North First Street, Springfield, Illinois 62777-0001.

Address proposals to Sherri Sullivan, Illinois State Board of Education State Purchasing Officer.

Submission Requirements: Proposals must be submitted in five parts: a narrative description of the proposed work; cost proposal; CDs; Standard Certifications and acknowledgement of addendums (if any are posted to the website); and one redacted version which includes the narrative and cost. You must submit at least seven (7) hard copies each of the narrative and cost proposals; one copy of the Standard Certification and Assurances forms required under Part III of the Proposal Format; one copy of the redacted version of the proposal; and four (4) copies of the CDs of the narrative and cost proposal, two (2) copies in Word format and two (2) copies in PDF format. *Only one copy is needed of the redacted version.* Each part must be sealed in individual packages and clearly labeled as "NARRATIVE" on one package, "COST" on one package, "CERTIFICATIONS" on one package, "CDs" on one package, and "REDACTED VERSION" on the fifth package.

Clearly label each package of the proposal with the RFSP title, the bidder's name, and the wording "SEALED PROPOSAL—DO NOT OPEN."

Bidders shall clearly identify any information on the redacted version that is exempt from the disclosure requirement of the Illinois Freedom of Information Act (5 ILCS 140). You must clearly mark "REDACTED VERSION" on top of the proposal. ISBE may release this redacted version. If ISBE receives a challenge for the release or disclosure of the redacted information, then ISBE will notify the bidder of such challenge and it will be the bidder's obligation to defend the non-disclosure of the redacted information at its sole cost and expense. Failure of the bidder's defense for such non-disclosure will result in the release of such information. ISBE hereby disclaims all liability for the release of any information contained in the redacted version of a proposal.

Out-of-State Companies: Non-Illinois bidders must contact the Illinois Secretary of State (217/782-1834) regarding a Certificate of Authority to Transact Business in Illinois (805 ILCS 5/13). You can download the BCA 13.15 application form from the Illinois Secretary of State's website at http://www.cyberdriveillinois.com/departments/business_services/publications_and_forms/bca.html.

Changes to the RFSP: ISBE will post changes to the RFSP on the Illinois Procurement Bulletin (www.purchase.state.il.us). If ISBE issues any changes (including amendments or addenda) to this RFSP, acknowledgement of receipt of such changes must be made to the Illinois State Board of Education in writing, signed by an individual authorized to legally bind the bidder and included in the package labeled "CERTIFICATIONS." If changes to the RFSP are not acknowledged, ISBE retains the right to reject the bid as non-responsive. Therefore, bidders are advised to check the Illinois Procurement Bulletin before submitting their proposals.

Opening of Proposals: Proposals will be publicly opened at 10 a.m. on May 6, 2009 at the Illinois State Board of Education, 100 North First Street, Springfield, Illinois 62777-0001. The content of all proposals will remain confidential and the contents will not be shared with competing offerors.

Contact Person: For more information on this RFSP, contact Tricia Leezer, Fiscal and Procurement Division, at 217-785-8777 (voice) or 217-782-5727 (fax) or tleezer@isbe.net (email). Put all questions regarding the background and scope in writing. ISBE will accept questions up to five (5) business days prior to the due date of the proposal.

Protest Review Office: All protests should be clearly labeled on the delivery envelope and addressed to Division Administrator, Fiscal and Procurement Division, 100 North First Street, Springfield, Illinois 62777-0001.

Disclaimer: This RFSP does not commit ISBE to award a contract or to pay any costs incurred in the preparation of a proposal. ISBE reserves the right to accept or reject any or all proposals received as a result of this RFSP. ISBE will be the sole judge as to whether a proposal has satisfactorily met the requirements of the RFSP.

Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably suitable of being selected for award for the purpose of clarifying and assuring full understanding of and responsiveness to the solicitation requirements. Revisions may be permitted after submission and before award for the purpose of obtaining best and final offers. Any further information disclosed about the RFSP during this process will be provided to all offerors.

A signed two-party agreement based on the contractor's proposal will constitute the contract with ISBE. No agreement exists and no work shall begin until the contract has been finalized and signed by both parties. Payment will be made according to a negotiated payment schedule set forth in the contract. Upon a written inquiry and after a contract award, ISBE will release the winning contract and redacted version of the winner's proposal. If also requested, ISBE will release the score of the winning contractor and the bidder's score.

The subject matter of this RFSP is subject to legislative changes either by the federal or state government. If any such changes occur prior to contract award, then all bidders will have the opportunity to modify their proposals to reflect such changes. If any such changes occur after a contract award has been made, then (i) ISBE reserves the right to negotiate modifications to the successful bidder's proposal reflecting such legislative changes; and (ii) ISBE shall have no obligation to provide unsuccessful bidders with the opportunity to modify their proposals to reflect such legislative changes.

Background

The Child and Adult Care Food Program (CACFP) is a federal program administered by the Illinois State Board of Education. The CACFP provides funding to day care centers and day care homes to encourage these entities to provide meals that are more nutritious to children 12 years of age and under who are in nonresidential day care settings. The CACFP also provides funding to family day care home (FDCH) sponsoring organizations to administer the CACFP to day care homes. As program administrator, ISBE monitors institutions (day care centers and FDCH sponsoring organizations) for compliance with federal laws and regulations (7 CFR 226.6; see Appendix A). FDCH sponsoring organizations have the responsibility to monitor day care home providers for compliance with federal laws and regulations (7 CFR 226.16(d)(4)).

In certain instances where deficiencies are found, ISBE is required to have a process in place by which institutions and responsible principals and responsible individuals may request a review of ISBE's actions (see Appendix A, items I and II). ISBE is also required to have a process in place by which day care homes may request a review of the FDCH sponsoring organization's actions (see Appendix A, items III and IV). This Administrative Review (also called an appeal) is a process used when institutions and/or responsible principals and responsible individuals challenge ISBE's action or a family day care home challenges the FDCH sponsoring organization's action. The institution and/or responsible principals and responsible individuals may request a review in person (known as a hearing) and/or by submitting written documentation (known as a record review). Day care homes may only request a review by submitting written documentation (known as a record review). The day care home appeal is limited to a record review unless there are extenuating circumstances that warrant an in-person hearing. Administrative Reviews are to be conducted by impartial and independent officer(s) designated by the State Superintendent of Education.

The purpose of the RFSP is to hire an individual or a firm employing qualified individuals to conduct Administrative Reviews on an as-needed basis. Only one individual is needed to conduct the hearing or record review. The number of requests for Administrative Reviews within a given year varies, and there is no way to estimate the number of requests that will be received within a given year. During FY2008, there were approximately 25 hearings and two record reviews for institutions and 100 record reviews for day care homes.

Scope of Work

The Administrative Review Official (ARO) must be independent and impartial and will fulfill those duties and responsibilities of the ARO as set forth in 7 CFR 226.6. The ARO will be required to attend training provided by ISBE staff and/or the U.S. Department of Agriculture's Child Nutrition Division, regarding the statutory and regulatory requirements of the CACFP. Training must be completed within 20 days of executing the contract and prior to the ARO entering into his or her duties and responsibilities as an ARO. Such ARO duties and responsibilities shall include, without limitation:

1. Conducting initial communication from the ARO to the institution, responsible principals and responsible individuals, or the day care home with the ARO's personal contact information (as the regulations require such entities must be permitted to contact the ARO directly);
2. Timely reviewing any written documentation submitted by the institution, responsible principals and responsible individuals, or day care home;
3. If a hearing is requested by an institution or responsible principals and responsible individuals, notifying the institution, responsible principals and responsible individuals, and ISBE at least ten (10) days before the hearing of the time and place for such hearing;
4. If a hearing is warranted (as determined by the ARO) for a day care home, notifying the day care home, FDCH sponsoring organization, and ISBE of the time and place for the review of the day care home records and FDCH sponsoring organization records;
5. Conducting a requested hearing in accordance with 7 CFR 226.6(k)(5)(vi) in a timely manner; and
6. Issuing a decision in a timely manner based solely on the information provided by ISBE or the FDCH sponsoring organization, the institution, the responsible principals and responsible individuals, and based on federal and state laws, regulations, policies, and procedures governing the CACFP.

The written decision issued by the ARO shall include, at minimum, the background facts; any procedural history; a summary of the hearing, if any (e.g., the witnesses presented and evidence entered); the legal statutory and/or regulatory provisions at issue; and the ARO's findings and conclusions based on the facts and the law. Since the ARO's decision must be issued within regulatory deadlines, it is imperative that the ARO diligently execute his or her duties and responsibilities.

The ARO is expected to work closely with staff in ISBE's Nutrition Programs Division and staff from each FDCH sponsoring organization; send institution requests for an Administrative Review (either for a hearing or review of documentation, or both) to the Nutrition Programs Division; send day care home requests for an Administrative Review to each FDCH sponsoring organization. ISBE's Nutrition Programs staff and/or FDCH sponsoring organization staff will provide any records and other documentation to the ARO as necessary. The ARO must maintain all documentation and records associated with each Administrative Review; the complete file of the proceedings/review must be certified and provided to ISBE at the conclusion of the review.

The ARO will conduct any hearing that is requested at ISBE's Springfield office or Chicago office. Record reviews may be conducted at the contractor's facility. All decisions of the ARO are final.

If at the time of receipt of an appeal or any point thereafter, the contractor knows or should reasonably know of an actual or potential conflict, he or she shall immediately disclose such conflict in writing to the parties, and unless the parties are legally permitted to and do agree in writing to waive such conflict,

recuse himself or herself from the matter. The contractor shall transmit a copy of any such waiver to ISBE's Nutrition Programs Division by email (either signed in a PDF file or unsigned) and regular U.S. Postal Service mail within 72 hours of receipt.

The contractor shall timely document and maintain a record of all appeals until such time as a final disposition (i.e., hearing decision; notice of an institution's, responsible principal's and/or responsible individual's determination not to proceed) has occurred. If a matter is withdrawn, the contractor shall maintain such record of appeal for a period of no less than one calendar year from such withdrawal. Upon final disposition of a matter, the contractor shall, in a form prescribed by ISBE, prepare an index of the record, including without limitation, a listing of all documents presented, written arguments received, and other written correspondence. The contractor shall send the record and index to ISBE's Nutrition Programs Division by first class mail no later than 30 calendar days following final disposition. The record shall be organized in chronological order and include a certification signed by the contractor representing that the record is complete and accurate. Any documents that are not part of the record shall be returned to the party submitting such document(s) with notice of such return included as part of the record.

Proposal Format

Each proposal must be submitted in three parts in the formats outlined below. Each part must be submitted in a sealed package separate from the other part, with appropriate labels. Please use the following as a checklist when assembling your completed proposal. Bidders must provide all information requested in the narrative description and must address all points.

Part I: Narrative Description (Cost information must not be included in the narrative description.)

___ 1. Cover Page: Must be signed by the official authorized to submit the proposal.

Each cover page must contain the name, address, telephone and fax numbers, and email address of bidder; the name and telephone number of contact person; and the Federal Employer Tax Identification Number (FEIN) for the entity.

In addition, a business or organization that is a division or subsidiary of another organization must provide the following:

- a. Name and address of the parent company;
- b. Name of chief executive officer;
- c. Parent company's website address;
- d. Length of time the parent company has been in business;
- e. Annual sales for most recently completed fiscal year (July 1 through June 30), if applicable;
- f. Number of full-time employees;
- g. Type and description of business; and
- h. Parent company's FEIN.

___ 2. Proposal Abstract: Briefly describe the overall objectives and activities of the project.

___ 3. Work Plan: Describe in a narrative format the plan for accomplishing the work and meeting the requirements for conducting Administrative Reviews as listed under "Scope of Work" on page 4. The work plan should describe in detail all major phases of activities and the methods and procedures to complete each. The work plan shall address the contractor's capacity and methodology to manage future requests as described under "Background" beginning on page 3. The proposal should include all dates within 30 days of the anticipated contract award that the contractor and/or staff would be available to receive the required CACFP training.

___ 4. Exceptions to the RFSP: Each bidder must carefully review and understand the contractual terms and provisions set forth in Appendix B. The proposal must clearly identify suggested

exceptions, if any, to the contractual terms and provisions. Suggested exceptions to requirements and contract modifications, while allowed, are discouraged. ISBE is under no obligation to accept exceptions or modifications suggested by the bidder, and any exceptions or modifications will affect ISBE's evaluation of the proposal and may result in rejection. The bidder must submit all suggested exceptions or modifications with the proposal. Failure to resolve exceptions to the contractual terms within three (3) business days from ISBE's first contact with the bidder regarding the exceptions may preclude ISBE's further consideration of the bidder's proposal.

- ___ **5. Contractor's Qualifications:** The proposal must include:
- a. Description of the contractor's organization;
 - b. Qualifications and experience of the contractor and any staff assigned to the contract in performing work of a similar nature;
 - c. List of all contracts (including contract numbers) that the contractor has had with the State Board of Education during the past five years (do not include contracts with public entities such as ROEs, schools, etc.); and
 - d. Names, addresses, and telephone numbers of four business references from companies where similar services have been provided. (These references should not be from Illinois State Board of Education employees or members of the Board.) List the type of services performed and dates of service.

Part II: Cost Proposal

- ___ **1. Cover Page:** Each cover page must contain the name, address, telephone and fax numbers, and email address of the bidder; the name and telephone number of the contact person; and the Federal Employer Tax Identification Number (FEIN) for the entity.
- ___ **2. Cost Proposal Form:** Provide the hourly rate for the initial contract period (July 1, 2009, through June 30, 2011), which shall include all costs and expenses other than travel, as well as for each additional two-year term included in the contract (July 1, 2011, through June 30, 2013; July 1, 2013, through June 30, 2015). See "Fiscal Information" on page 1 regarding allowable uses of the funds.

Part III: Certification and Assurances (Attachments 1–9): Each bidder is required to submit the following forms. These must be signed by the official authorized to submit the proposal and to bind the bidder to its contents, as applicable.

1. Standard Certifications (Attachment 1)
2. Disclosure of Conflict of Interest (Attachment 2)
3. Department of Human Rights Public Contract Number (Attachment 3)
4. Drug-Free Workplace (Attachment 4)
5. Business Enterprise Program (Attachment 5)
6. Disclosure of Business Operations With Government of Iran (Attachment 6)
7. Vendor's Federal Taxpayer Identification Number, Legal Status Disclosure Certification, and Contract Addendum (Attachment 7)
8. Certification Regarding Debarment (Attachment 8)
9. Certification Regarding Lobbying (Attachment 9)

Criteria for Review and Approval of Proposals

Each narrative description of all proposals received will be evaluated and ranked independently of the cost proposal. The criteria for review for each part are listed below. The total possible points is 1,000.

Part I: Criteria for Narrative Description

1. Appropriateness of Work Plan—500 points

The extent to which the proposal provides sufficient evidence that:

- a. The contractor's general responsiveness, approach, and plans are likely to meet the requirements of the RFSP;
- b. The contractor's detailed plans meet the requirements of the RFSP and provide realistic contingency plans to address anticipated problems;
- c. The contractor has a solid understanding of the technical issues of the work to be completed and has proposed a high-quality strategy to accomplish the work; and
- d. The sequence of activities is appropriate for the tasks to be performed and will enable the contractor to complete the required work in an efficient and effective manner that meets the timelines set forth in federal regulations.

2. Qualifications of Organization and Staff—500 points

The extent to which the proposal provides sufficient evidence that:

- a. The contractor has prior relevant experience appropriate for the tasks to be performed that will enable the contractor to meet the terms and conditions of the RFSP, including legal experience, certification from national arbitration association, other hearing experience, federal regulatory experience, and/or work in nutrition programs. Preference will be given to individuals and/or staff with legal experience and/or certification from a national arbitration association;
- b. Staff regularly and routinely assigned to the activities required by this RFSP have appropriate qualifications and experience to accomplish the work;
- c. Staff resources and support services required to conduct the proposed activities are adequate; and
- d. Time allocation of key personnel to the activities described in the proposal during the contract period is sufficient.

Part II: Criteria for Cost Proposal

Cost will be the deciding factor among otherwise similar proposals.

Administrative Reviews: Federal Regulations

I. Administrative Review Process for CACFP institutions, responsible principals and responsible individuals (7 CFR § 226.6(k))

(k) Administrative Reviews for institutions and responsible principals and responsible individuals.

(1) General. The State agency must develop procedures for offering Administrative Reviews to institutions and responsible principals and responsible individuals. The procedures must be consistent with paragraph (k) of this section.

(2) Actions subject to Administrative Review. Except as provided in § 226.8(g), the State agency must offer an administrative review for the following actions:

(i) Application denial. Denial of a new or renewing institution's application for participation (see paragraph (b) of this section, on State agency review of an institution's application; and paragraphs (c)(1) and (c)(2) of this section, on State agency denial of a new or renewing institution's application);

(ii) Denial of sponsored facility application. Denial of an application submitted by a sponsoring organization on behalf of a facility;

(iii) Notice of proposed termination. Proposed termination of an institution's agreement (see paragraphs (c)(2)(iii)(C), (c)(3)(iii)(C), and (c)(5)(i)(B) of this section, dealing with proposed termination of agreements with renewing institutions, participating institutions, and participating institutions suspended for health or safety violations);

(iv) Notice of proposed disqualification of a responsible principal or responsible individual. Proposed disqualification of a responsible principal or responsible individual (see paragraphs (c)(1)(iii)(C), (c)(2)(iii)(C), (c)(3)(iii)(C), and (c)(5)(i)(B) of this section, dealing with proposed disqualification of responsible principals or responsible individuals in new, renewing, and participating institutions, and participating institutions suspended for health or safety violations);

(v) Suspension of participation. Suspension of an institution's participation (see paragraphs (c)(5)(i)(B) and (c)(5)(ii)(D) of this section, dealing with suspension for health or safety reasons or submission of a false or fraudulent claim);

(vi) Start-up or expansion funds denial. Denial of an institution's application for start-up or expansion payments (see § 226.7(h));

(vii) Advance denial. Denial of a request for an advance payment (see § 226.10(b));

(viii) Recovery of advances. Recovery of all or part of an advance in excess of the claim for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments (see § 226.10(b)(3));

(ix) Claim denial. Denial of all or a part of an institution's Claim for Reimbursement (except for a denial based on a late submission under § 226.10(e)) (see §§ 226.10(f) and 226.14(a));

(x) Claim deadline exceptions and requests for upward adjustments to a Claim for Reimbursement. Decision by the State agency not to forward to the Food Nutrition Service (FNS) an exception request by an institution for payment of a late claim, or a request for an upward adjustment to a claim (see § 226.10(e));

(xi) Overpayment demand. Demand for the remittance of an overpayment (see § 226.14(a)); and

(xii) Other actions. Any other action of the State agency affecting an institution's participation or its Claim for Reimbursement.

(3) Actions not subject to Administrative Review. The State agency is prohibited from offering Administrative Reviews of the following actions:

(i) FNS decisions on claim deadline exceptions and requests for upward adjustments to a Claim for Reimbursement. A decision by FNS to deny an exception request by an institution for payment of a late claim, or for an upward adjustment to a claim (see § 226.10(e));

(ii) Determination of serious deficiency. A determination that an institution is seriously deficient (see paragraphs (c)(1)(iii)(A), (c)(2)(iii)(A), (c)(3)(iii)(A), and (c)(5)(i)(B) of this section, dealing with proposed disqualification of responsible principals or responsible individuals in new, renewing, and participating institutions, and participating institutions suspended for health or safety violations);

(iii) Disqualification and placement on State agency list and the National Disqualified List. Disqualification of an institution or a responsible principal or responsible individual, and the subsequent placement on the State agency list and the National Disqualified List (see paragraphs (c)(1)(iii)(E), (c)(2)(iii)(E), (c)(3)(iii)(E), and (c)(5)(i)(C) of this section, dealing with proposals to disqualify related to new, renewing, and participating institutions, and in institutions suspended for health or safety violations); or

(iv) Termination. Termination of a participating institution's agreement, including termination of a participating institution's agreement based on the disqualification of the institution by another State agency or FNS (see paragraphs (c)(3)(i) and (c)(7)(ii) of this section).

(4) Provision of Administrative Review procedures to institutions and responsible principals and responsible individuals. The State agency's Administrative Review procedures must be provided:

(i) Annually to all institutions;

(ii) To an institution and to each responsible principal and responsible individual when the State agency takes any action subject to an Administrative Review as described in paragraph (k)(2) of this section; and

(iii) Any other time upon request.

(5) Procedures. Except as described in paragraph (k)(9) of this section, which sets forth the circumstances under which an abbreviated Administrative Review is held, the State agency must follow the procedures in this paragraph (k)(5) when an institution or a responsible principal or responsible individual appeals any action subject to an Administrative Review as described in paragraph (k)(2) of this section.

(i) Notice of Action. The institution's executive director and chairperson of the board of directors, and the responsible principals and responsible individuals, must be given Notice of the Action being taken or proposed, the basis for the action, and the procedures under which the institution and the responsible principals or responsible individuals may request an Administrative Review of the action.

(ii) Time to request an Administrative Review. The request for an Administrative Review must be submitted in writing not later than 15 days after the date the Notice of Action is received, and the State agency must acknowledge the receipt of the request for an Administrative Review within ten (10) days of its receipt of the request.

(iii) Representation. The institution and the responsible principals and responsible individuals may retain legal counsel, or may be represented by another person.

(iv) Review of record. Any information on which the State agency's action was based must be available to the institution and the responsible principals and responsible individuals for inspection from the date of receipt of the request for an Administrative Review.

(v) Opposition. The institution and the responsible principals and responsible individuals may refute the findings contained in the Notice of Action in person or by submitting written documentation to the Administrative Review Official. To be considered, written documentation must be submitted to the Administrative Review official not later than 30 days after receipt of the Notice of Action.

(vi) Hearing. A hearing must be held by the Administrative Review Official in addition to, or in lieu of, a review of written information only if the institution or the responsible principals and responsible individuals request a hearing in the written request for an Administrative Review. If the institution's representative, or the responsible principals or responsible individuals or their representative, fail to appear at a scheduled hearing, they waive the right to a personal appearance before the Administrative Review Official, unless the Administrative Review Official agrees to reschedule the hearing. A representative of the State agency must be allowed to attend the hearing to respond to the testimony of the institution and the responsible principals and responsible individuals and to answer questions posed by the Administrative Review Official. If a hearing is requested, the institution, the responsible principals and responsible individuals, and the State agency must be provided with at least ten (10) days advance notice of the time and place of the hearing.

(vii) Administrative Review Official. The Administrative Review Official must be independent and impartial. This means that, although the Administrative Review Official may be an employee of the State agency, he/she must not have been involved in the action that is the subject of the Administrative Review, or have a direct personal or financial interest in the outcome of the Administrative Review. The institution and the responsible principals and responsible individuals must be permitted to contact the Administrative Review Official directly if they so desire.

(viii) Basis for decision. The Administrative Review Official must make a determination based solely on the information provided by the State agency, the institution, and the responsible principals and responsible individuals, and based on Federal and State laws, regulations, policies, and procedures governing the Program.

(ix) Time for issuing a decision. Within 60 days of the State agency's receipt of the request for an Administrative Review, the Administrative Review Official must inform the State agency, the institution's executive director, and the institution's chairperson of the board of directors, and the responsible principals and responsible individuals, of the Administrative Review's outcome. This time frame is an administrative requirement for the State agency and may not be used as a basis for overturning the State agency's action if a decision is not made within the specified timeframe.

(x) Final decision. The determination made by the Administrative Review Official is the final administrative determination to be afforded the institution and the responsible principals and responsible individuals.

(6) Federal audit findings. FNS may assert a claim against the State agency, in accordance with the procedures set forth in § 226.14(c), when an Administrative Review results in the dismissal of a claim against an institution asserted by the State agency based upon Federal audit findings.

(7) Record of result of Administrative Reviews. The State agency must maintain searchable records of all Administrative Reviews and their disposition.

(8) Combined Administrative Reviews for responsible principals and responsible individuals. The State agency must conduct the Administrative Review of the proposed disqualification of the responsible

principals and responsible individuals as part of the Administrative Review of the application denial, proposed termination, and/or proposed disqualification of the institution with which the responsible principals or responsible individuals are associated. However, at the Administrative Review Official's discretion, separate Administrative Reviews may be held if the institution does not request an Administrative Review or if either the institution or the responsible principal or responsible individual demonstrates that their interests conflict.

(9) Abbreviated Administrative Review. The State agency must limit the Administrative Review to a review of written submissions concerning the accuracy of the State agency's determination if the application was denied or the State agency proposes to terminate the institution's agreement because:

(i) The information submitted on the application was false (see paragraphs (c)(1)(ii)(A), (c)(2)(ii)(A), and (c)(3)(ii)(A) of this section);

(ii) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the National Disqualified List (see paragraph (b)(12) of this section);

(iii) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program (see paragraph (b)(13) and (c)(3)(ii)(S) of this section); or

(iv) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities has been convicted for any activity that indicates a lack of business integrity (see paragraphs (b)(14) and (c)(3)(ii)(T) of this section).

(10) Effect of State agency action. The State agency's action must remain in effect during the Administrative Review. The effect of this requirement on particular State agency actions is as follows.

(i) Overpayment demand. During the period of the Administrative Review, the State agency is prohibited from taking action to collect or offset the overpayment. However, the State agency must assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of Administrative Review unless the Administrative Review Official overturns the State agency's action.

(ii) Recovery of advances. During the Administrative Review, the State agency must continue its efforts to recover advances in excess of the Claim for Reimbursement for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments.

(iii) Program payments. The availability of Program payments during an Administrative Review of the denial of a new institution's application, denial of a renewing institution's application, proposed termination of a participating institution's agreement, and suspension of an institution are addressed in paragraphs (c)(1)(iii)(D), (c)(2)(iii)(D), (c)(3)(iii)(D), (c)(5)(i)(D), and (c)(5)(ii)(E), respectively, of this section.

II. Suspension Review Process for CACFP Institutions (7 CFR § 226.6(c)(5)(ii)(C))

C) Suspension review. If the institution requests a review of the State agency's proposed suspension of participation, the suspension review must be heard by a suspension review official who must:

(1) Be an independent and impartial person other than, and not accountable to, any person involved in the decision to initiate suspension proceedings;

(2) Immediately notify the State agency that the institution has contested the proposed suspension and must obtain from the State agency its notice of proposed suspension of participation, along with all supporting documentation; and

(3) Render a decision on suspension of participation within ten (10) days of the deadline for receiving the institution's documentation opposing the proposed suspension.

(D) Suspension review decision. If the suspension review official determines that the State agency's proposed suspension is not appropriate, the State agency is prohibited from suspending participation. If the suspension review official determines, based on a preponderance of the evidence, that the State agency's action was appropriate, the State agency must suspend the institution's participation (including all Program payments), effective on the date of the suspension review decision. The State agency must notify the institution's executive director, the institution's chairperson of the board of directors, and the responsible principals and responsible individuals that the institution's participation has been suspended. At the same time the notice is issued, the State agency must also update the State agency list and provide a copy of the notice to the appropriate Food and Nutrition Service Regional Office (FNSRO). The notice must also specify:

(1) That the State agency is suspending the institution's participation (including Program payments);

(2) The effective date of the suspension (the date of the suspension review decision);

(3) The procedures for seeking an Administrative Review (in accordance with paragraph (k) of this section) of the suspension; and

(4) That if the Administrative Review Official overturns the suspension, the institution may claim reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

III. Administrative Review Process for CACFP Day Care Homes (7 CFR § 226.6(l))

(l) Administrative reviews for day care homes.

(1) General. The State agency must ensure that, when a sponsoring organization proposes to terminate its Program agreement with a day care home for cause, the day care home is provided an opportunity for an Administrative Review of the proposed termination. The State agency may do this either by electing to offer a State-level Administrative Review, or by electing to require the sponsoring organization to offer an Administrative Review. The State agency must notify the appropriate FNSRO of its election under this option, or any change it later makes under this option, within 30 days of any subsequent change under this option. The State agency must make the same election with regard to who offers the Administrative Review to any day care home in the Program in that State. The State agency or the sponsoring organization must develop procedures for offering and providing these Administrative Reviews, and these procedures must be consistent with this paragraph (l).

(2) Actions subject to Administrative Review. The State agency or sponsoring organization must offer an Administrative Review to a day care home that appeals a notice of intent to terminate their agreement for cause or a suspension of their participation (see §§ 226.16(l)(3)(iii) and (l)(4)(ii)).

(3) Actions not subject to Administrative Review. Neither the State agency nor the sponsoring organization is required to offer an Administrative Review for reasons other than those listed in paragraph (l)(2) of this section.

(4) Provision of Administrative Review procedures to day care homes. The Administrative Review procedures must be provided:

(i) Annually to all day care homes;

(ii) To a day care home when the sponsoring organization takes any action subject to an Administrative Review as described in paragraph (l)(2) of this section; and

(iii) Any other time upon request.

(5) Procedures. The State agency or sponsoring organization, as applicable (depending on the State agency's election pursuant to paragraph (I)(1) of this section) must follow the procedures in this paragraph (I)(5) when a day care home requests an Administrative Review of any action described in paragraph (I)(2) of this section.

(i) Uniformity. The same procedures must apply to all day care homes.

(ii) Representation. The day care home may retain legal counsel, or may be represented by another person.

(iii) Review of record and opposition. The day care home may review the record on which the decision was based and refute the action in writing. The Administrative Review Official is not required to hold a hearing.

(iv) Administrative Review Official. The Administrative Review Official must be independent and impartial. This means that, although the Administrative Review Official may be an employee of the State agency or an employee or board member of the sponsoring organization, he/she must not have been involved in the action that is the subject of the Administrative Review or have a direct personal or financial interest in the outcome of the Administrative Review;

(v) Basis for decision. The Administrative Review official must make a determination based on the information provided by the sponsoring organization and the day care home and on Federal and State laws, regulations, policies, and procedures governing the Program.

(vi) Time for issuing a decision. The Administrative Review Official must inform the sponsoring organization and the day care home of the Administrative Review's outcome within the period of time specified in the State agency's or sponsoring organization's Administrative Review procedures. This time frame is an administrative requirement for the State agency or sponsoring organization and may not be used as a basis for overturning the termination if a decision is not made within the specified time frame.

(vii) Final decision. The determination made by the Administrative Review Official is the final administrative determination to be afforded the day care home.

IV. ISBE Administrative Review (Appeal) Procedures for Family Day Care Homes

All family day care home providers given a Notice of Intent to Terminate for Cause have the right to appeal (request an Administrative Review). An appeal is a process by which an impartial Administrative Review (Appeal) Official reviews information provided by the sponsoring organization and the family day care home provider to determine if procedures were followed and within the federal and state laws, regulations, and policies and procedures governing the Child and Adult Care Food Program. The procedure for an appeal follows.

Purpose

The appeal procedure allows day care home providers participating in the CACFP an avenue of appeal. A provider may appeal (request an Administrative Review) when the family day care home sponsoring organization (SO):

- Proposes termination of the provider's program participation; or
- Suspends the provider's agreement for program participation.

Procedure

Notification, request, and procedure for hearing:

When an SO takes action that will affect the participation of a provider in the CACFP, the SO will inform the provider in writing of the action and the grounds upon which its decision is based. The SO will advise the provider of their right to appeal.

Upon receipt of the letter of proposed termination, the provider must submit to the SO a written request for appeal postmarked no later than seven (7) calendar days from the date the Notice of Proposed Termination was received by the provider. The original appeal request must be sent to the SO via certified mail. The address is as follows:

Sponsoring Organization
Attention: (Name of responsible individual who is tracking appeals)
Street Address
PO Box
City, State Zip Code

The SO will make a copy and forward the original copy of the appeal request to the Administrative Review Official (ARO) via certified mail. The ARO will acknowledge receipt of the request for appeal to both the provider and the SO within ten (10) calendar days. This notice must be in writing.

The provider may refute the charges by showing that the information the sponsor has is incorrect. The provider will supply written documentation to the ARO to review. In order for the provider's request for an appeal to be considered, written documentation must be filed with the ARO within ten (10) calendar days of the request for appeal. The SO will forward the information to the ARO not later than five (5) calendar days after the additional written documentation is filed with the SO. The ARO will review only the written documentation/record unless there are extenuating circumstances, as defined by the ARO. If the ARO determines an in-person hearing is warranted, he/she will notify both parties. The ARO will set the time and place for the review of the provider records and the SO records, if there is an in-person hearing. In most cases there is no in person hearing. The ARO reviews all the documents and makes a decision.

In the case of an in-person hearing, failure of the provider to appear at a scheduled hearing will forfeit the provider's right to appeal.

The provider may represent himself/herself, may be represented by another person, or may retain legal counsel.

Any information on which the sponsor's action was based will be available to the provider for review. The ARO will make copies of this information available to the provider, if necessary.

The ARO will make a decision based solely on information provided by the SO, the provider, and on program regulations, federal and state laws, and procedures governing CACFP.

The provider, the SO's executive director, and the Illinois State Board of Education must be notified in writing of the ARO's final decision within thirty (30) days from the date of receipt of the request for appeal.

The provider may continue to operate during an appeal of proposed termination unless there is evidence of eminent threat or danger to the health or welfare of the children.

Providers continuing to operate while appealing the proposed termination will be reimbursed for any eligible meals served during the period of the appeal.

During the period of the review by the ARO, the SO will not take action to collect or offset any overpayment noted in the termination letter.

The decision by the ARO is the final administrative decision. There is no further opportunity to appeal to the Illinois State Board of Education.

If the provider loses the appeal, the termination date of the agreement is the date of the hearing official's decision.

The provider will be placed on the National Disqualified List for a period of seven (7) years, unless the provider owes money. In this case, the provider will remain on the list indefinitely.

Appeal Procedure—Notice of Suspension

When a family day care home sponsoring organization suspends the participation of a provider for imminent threat to the safety or health of children, the provider must be notified both verbally and in writing that its participation has been suspended, that the day care home is seriously deficient, and that the sponsoring organization proposes to terminate the provider's agreement for cause. The notification in writing must be sent by certified mail.

The notice must specify the serious deficiency(ies) found and of the provider's opportunity for an appeal of the proposed termination.

The written notice must inform the provider that participation, including all payments, will remain suspended until the appeal is conducted.

The written notice must inform the provider that if the ARO overturns the suspension, the provider may claim reimbursement for eligible meals served during the suspension.

The written notice must inform the provider that termination of the agreement will result in being listed on the National Disqualified List. The provider will remain on this list for a period of seven (7) years unless the provider owes money, in which case the provider will remain on the list indefinitely.

Contractual Terms and Provisions

The performance of the services and requirements described in the RFSP shall be subject to the following contractual terms and provisions. Suggested exceptions to the contractual terms and provisions set forth below are allowed, as long as they do not affect the bidder's ability to perform the required services. However, such exceptions and modifications are discouraged. The Illinois State Board of Education is under no obligation to accept exceptions or modifications suggested by the bidder, and any exceptions or modifications will affect the Illinois State Board of Education's evaluation and may result in rejection. All terms to which the bidder does not suggest an exception or modification will be deemed by the Illinois State Board of Education as having been accepted by the bidder, and shall become a part of the contract between the Illinois State Board of Education and the selected bidder. The Illinois State Board of Education reserves the right to amend and supplement these terms and conditions in the contract between the Illinois State Board of Education and the selected bidder.

1. Definitions. The following definitions shall apply to the contractual terms and provisions set forth below:

"Agreement" shall mean and refer to the contract entered into between ISBE and the Contractor for the performance of the Services. The Agreement shall include, without limitation, the terms set forth in this Appendix to the RFSP.

"Confidential Information" is defined in Section 7 below.

"Contractor" shall mean and refer to the contractor selected through this RFSP.

"Cost Proposal" shall mean and refer to the cost proposal approved by ISBE for inclusion in the Agreement, based upon the cost proposal submitted by the Contractor in accordance with the RFSP.

"Custom Work Product" is defined in Section 6 below.

"Embedded Software" is defined in Section 6 below.

"Generic Components" is defined in Section 6 below.

"ISBE" shall mean and refer to the Illinois State Board of Education.

"Laws" is defined in Section 15 below.

"Parties" shall mean and refer to the Contractor and ISBE. "Party" shall mean and refer to either the Contractor or ISBE.

"Proposal" shall mean and refer to the proposal approved by ISBE for inclusion in the Agreement, based upon the proposal submitted by the Contractor in accordance with the RFSP.

"Services" shall mean and refer to the services and requirements to be performed by the Contractor in accordance with the Proposal.

"Term" shall mean and refer to the period from the date of execution of the Agreement (but no earlier than **July 1, 2009**) through **June 30, 2011**. Thereafter, the contract may automatically renew for two additional two-year periods (July 1, 2011, through June 30, 2013; July 1, 2013, through June 30, 2015), unless notice is given at least 30 days prior to the expiration of the then current term by either party that the contract will not renew, and subject to earlier termination as provided in the Agreement.

Funding in any subsequent year will be contingent upon a sufficient appropriation for the program and satisfactory progress of the contractor in the preceding contract year.

2. **Performance of the Services.** The Contractor shall perform the Services (i) with a high degree of skill, care, and diligence, (ii) in accordance with the highest professional standards, and (iii) in accordance with any schedule of deliverables set forth in the Proposal. The Contractor shall provide all personnel, materials, and equipment necessary to undertake the Services and to fulfill the purposes of this Agreement. The Contractor will use personnel suitably qualified and experienced to perform the Services in accordance with the requirements of this Agreement. The Contractor shall be an independent contractor. The Contractor, the contractor's personnel, or subcontractors will not be considered agents or employees of ISBE or the State.
3. **Post Performance Review.** Pursuant to 30 ILCS 500/35-20(c)(5), a post-performance contract review will be undertaken by the ISBE procurement officer, or designee, which shall include, but not be limited to, a review of billings and Contractor's performance in accordance with the Agreement. Funds may be expended only for activities occurring during the term.
4. **Subcontractor. No subcontracting is allowed under this Agreement.**
5. **Reporting.** During the Term, the Contractor will provide quarterly progress reports due to ISBE on the 1st of September, December, March, and June. The Contractor will also provide a listing of the Services completed as an accompaniment to all invoices sent to ISBE for payment, together with such other supporting documentation as ISBE may reasonably request. ISBE will prepare a payment schedule for inclusion with the Agreement.
6. **Rights to Work Product.**
 - a) Definitions.
 1. "Custom Work Product" means the resulting software (including all functional and technical designs, programs, modules, code, algorithms, flowcharts, data diagrams, documentation, and the like) and other data, materials, and products created by the Contractor on behalf of ISBE and in furtherance of the Services.
 2. "Embedded Software" means any pre-existing software owned by the Contractor or by any third party and incorporated or embedded into the Custom Work Product.
 3. "Generic Components" means the software/programming tools developed generally by the Contractor to support the Custom Work Product and which (a) can be used in websites and systems other than the Custom Work Product developed hereunder, and (b) can be used completely free of the Custom Work Product content and (c) do not embody or convey the look and feel of the Custom Work Product developed hereunder.
 - b) Ownership of Custom Work Product. ISBE shall own all rights, title, and interest to any Custom Work Product. The Contractor expressly acknowledges and agrees that all such Custom Work Product constitutes "work made for hire" under the Federal copyright laws (17 U.S.C. Sec. 101) owned exclusively by ISBE, and, alternatively, hereby irrevocably assigns all ownership or other rights it might have in Custom Work Product to ISBE. The Contractor shall sign such documentation as may be reasonably requested by ISBE to insure title to the Custom Work Product is vested in ISBE. If by operation of law, any of the Custom Work Product, including all related intellectual property rights, is not owned in its entirety by ISBE automatically upon creation thereof, the Contractor agrees to assign, and hereby assigns to ISBE and its designees the ownership of such Custom Work Product, including all related intellectual property rights.
 - c) License to Embedded Software. Except as otherwise specifically set forth in the Proposal, (i) the Agreement conveys no ownership rights to ISBE with respect to Embedded Software, and (ii) ISBE is granted a paid-up, world-wide, perpetual, nonexclusive license to use the Embedded Software strictly as an integral part of, and in conjunction with, ISBE's use of the Custom Work Product and for no other purpose. Any use of embedded software must have the prior written approval of ISBE.
 - d) Ownership of Generic Components. ISBE shall own all rights, title, and interest to any Generic Components to the Custom Work Product. The Contractor expressly acknowledges and agrees that all such Generic Components constitutes "work made for hire" under the Federal copyright laws (17 U.S.C. Sec. 101) owned exclusively by ISBE, and, alternatively,

hereby irrevocably assigns all ownership or other rights it might have in the Generic Components to ISBE. The Contractor shall sign such documentation as may be reasonably requested by ISBE to insure that title to the Generic Components is vested in the ISBE. If by operation of law any of the Generic Components, including all related intellectual property rights, is not owned in its entirety by ISBE automatically upon creation thereof, the Contractor agrees to assign, and hereby assigns to ISBE and its designees the ownership of such Generic Components, including all related intellectual property rights.

7. Confidential Information.

- a) Acknowledgment of Confidentiality. Each Party hereby acknowledges that it may be exposed to confidential and proprietary information of the other Party including, without limitation, other technical information (including functional and technical specifications, designs, drawings, analysis, research, processes, computer programs, methods, ideas, "know how," and the like), business information (sales and marketing research, materials, plans, accounting and financial information, personnel records, etc.), and other information designated as confidential expressly or by the circumstances in which it is provided ("Confidential Information"). Confidential Information does not include (i) information already known or independently developed by the recipient, (ii) information in the public domain through no wrongful act of the recipient, or (iii) information received by the recipient from a third party who was free to disclose it.
- b) Covenant Not to Disclose. With respect to the other Party's Confidential Information, the recipient hereby agrees that during the term of this Agreement and at all times thereafter it shall not use, commercialize, or disclose such confidential information to any third party without the other Party's prior written approval; provided, that all such recipients shall have first executed a confidentiality agreement in a form acceptable to the owner of such information. Neither Party nor any recipient may alter or remove from any software or associated documentation owned or provided by the other Party any proprietary, copyright, trademark, or trade secret legend. Each Party shall use at least the same degree of care in safeguarding the other Party's confidential information as it uses in safeguarding its own confidential information.
- c) Student Records. The Contractor will comply with the relevant requirements of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g) and the Illinois School Student Records Act (ISSRA) (105 ILCS 10/1 et seq.), regarding the confidentiality of student "education records" as defined in Family Educational Rights and Privacy Act (FERPA) and "school student records" as defined in Illinois School Student Records Act (ISSRA). Any use of information contained in student education records to be released must be approved by ISBE. To protect the confidentiality of student education records, the Contractor will limit access to student education records to those employees who reasonably need access to them in order to perform their responsibilities under this Agreement.

8. Correction of Deficient Services. Prior to the expiration of the Term, the Contractor shall, at its earliest opportunity and its sole cost and expense, correct any Services that are defective or deficient or otherwise contain or reflect errors or omissions.

For one calendar year following the Term of this Agreement, a Custom Work Product created by the Contractor will function substantially in accordance with the representations and requirements set forth in this Request for Sealed Proposal. However, no warranty of the fitness of the product created shall apply if ISBE or any third party makes any addition or modification to the Custom Work Product not contemplated by the Parties in connection with such Custom Work Product.

9. Default and Termination.

- a) Termination for Convenience: ISBE may terminate this Agreement upon **30** days written notice to the Contractor. Such notice shall be sent to the address set forth for notice by overnight delivery or certified mail with a return receipt requested. In the event of such notice of termination from ISBE to the Contractor, the Contractor shall have the right to perform all

Services scheduled to be performed during the period covered by such notice and to be fully and fairly compensated therefore. ISBE shall have the right to receive so much of the work product as has been created by the Contractor through the effective date of the notice of termination, and may, at its election, procure such work as may be necessary to complete the Services from other contractors.

- b) Contractor Default: The occurrence of any one or more of the following matters constitutes a default by the Contractor under this Agreement (a "Contractor Default"):
1. The Contractor becomes insolvent or generally fails to pay, or admits in writing its inability or unwillingness to pay, its debts as they become due;
 2. Contractor makes a general assignment for the benefits of its creditors;
 3. The Contractor shall commence or consent to any case, proceeding or other action (a) seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of the Contractor or of the Contractor's debts under any law relating to bankruptcy, insolvency, reorganization, or relief of debts, or (b) seeking appointment of a receiver, trustee, or similar official for the Contractor or for all or any part of the Contractor's property;
 4. Any case, proceeding or other action against the Contractor shall be commenced (a) seeking to have an order for relief entered against the Contractor as debtor, (b) seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of the Contractor or the Contractor's debts under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, or (c) seeking appointment of a receiver, trustee, or similar official for the Contractor or for all or any part of the Contractor's property;
 5. The breach of any representation, certification, or warranty made by the Contractor herein or Contractor's failure to comply with any other provision of this Agreement; or,
 6. The Contractor attempts to assign, convey, or transfer this Agreement or any interest herein without ISBE's prior written consent.
- c) Upon the occurrence of a Contractor Default, without prejudice to any other right or remedy ISBE may have under this Agreement or law and/or in equity, terminate the Agreement and/or the Contractor's right to perform Services under this Agreement. In either such case, ISBE may finish the Services by whatever method ISBE may deem expedient. Any damages incurred by ISBE because of any such Contractor Default shall be borne by the Contractor at its sole cost and expense, shall not be payable as part of the contract amount, and shall be reimbursed to ISBE by the Contractor upon demand.
- d) Liquidated Damages. The late delivery or untimely performance of the Services required under this Agreement by the Contractor will cause irreparable harm to ISBE in light of its obligations under state and federal law. As a result, ISBE shall have the right to assess liquidated damages.

If the Contractor fails to meet any of the required timelines for notice, issuance of a decision, or issuance of certified record, the Contractor shall pay to ISBE liquidated damages of **\$400.00** per calendar day of delay for the shorter of either thirty (30) calendar days or until the deliverables are made in accordance with this Agreement provided no liquidated damages will be assessed during the time after delivery by the Contractor and while still under review by ISBE. Said amount is a good faith estimate of damages based on average salary, staff commitment, and time allocation, to address the harm that the State will sustain because of said failure, repercussions of which will be suffered throughout ISBE. The Parties mutually agree that this is a reasonable anticipated calculation of damages and is not intended as a penalty. ISBE may not collect liquidated damages and claim damages for the same failure to meet the schedule. However, collecting liquidated damages or exercising the right to withhold payments does not prevent ISBE from claiming damages for subsequent failures to meet the time schedule.

- 10. Indemnification.** To the fullest extent permitted by law, the Contractor agrees to indemnify, defend, and hold harmless ISBE, the State of Illinois, and their respective agents, officers, and employees from and against any and all claims, demands, suits, liabilities, injuries (personal or bodily), property damage, causes of action, losses, costs, expenses, damages or penalties,

including, without limitation, reasonable defense costs, reasonable legal fees, and the reasonable value of time spent by the Attorney General's Office, arising or resulting from, or occasioned by or in connection with (i) any bodily injury or property damage resulting or arising from any act or omission to act (whether negligent, willful, wrongful, or otherwise) by the Contractor, its subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable; (ii) failure by the Contractor or its subcontractors to comply with any Laws applicable to the performance of the Services; (iii) any breach of this Agreement, including, without limitation, any representation or warranty provided by the Contractor herein; or (iv) any infringement of any copyright, trademark, patent, or other intellectual property right.

11. Insurance. The Contractor shall maintain insurance policies in sufficient amounts to protect ISBE from liability for acts of the Contractor and risks and indemnities assumed by the Contractor. Such policies shall include, without limitation, the following:

- a) A broad form commercial general liability insurance policy, including a waiver of subrogation endorsement in favor of ISBE, and endorsements adding, at a minimum, the following coverages:
 - i. Premises and operations liability
 - ii. Personal injury liability (with employee and contractual exclusions deleted)
 - iii. Broad form property damage liability
 - iv. Broad form contractual liability supporting the Contractor's indemnification agreements in favor of ISBE
 - v. Completed operations and products liability for a period of not less than three (3) years following the date of final payment hereunder
 - vi. Independent contractor's protective liability

The commercial general liability policy must be written with a combined single limit of liability of not less than \$1 million for each occurrence of bodily injury and/or property damage, an annual aggregate of liability of not less than \$1 million for bodily injury and/or property damage, and an annual aggregate of liability of not less than \$1 million for completed operations and products liability.

- b) A comprehensive automobile insurance policy providing coverage for all owned, hired, rented, leased, and non-owned automobiles, written with a combined single limit of liability of not less than \$500,000 for each occurrence of bodily injury and/or property damage.
- c) A workers' compensation insurance policy in an amount not less than the statutory limits (as may be amended from time to time), including employer's liability insurance with limits of liability of not less than (i) \$500,000 for bodily injury by accident, each accident, (ii) \$500,000 for bodily injury by disease, each employee, and (iii) \$500,000 aggregate liability for disease.
- d) A professional liability insurance policy including, without limitation, a waiver of subrogation endorsement in favor of ISBE. The professional liability insurance policy must be written with a limit of liability of not less than \$1 million for each claim, and not less than \$1 million in the aggregate on an annual basis, for errors, omissions or negligent acts arising out of the performance of (or the failure to perform) professional services hereunder such as, but not limited to, systems analysis, system design, programming, data processing, consulting, system integration, and information services. The professional liability coverage shall include contractual liability coverage in support of the Contractor's indemnification agreements in favor of ISBE, shall be written on a "claims made" basis, and must be maintained for a period of not less than three (3) years following the date of final payment to the Contractor for all Services.

Upon execution of this Agreement, the Contractor shall provide copies of certificates of insurance evidencing the coverage described in this Section. The policies specified above shall be placed with insurance companies reasonably acceptable to ISBE, shall name ISBE and its board members, officers, and employees as additional insureds (excluding the Worker's Compensation Policy and Automobile Insurance Policy), and shall incorporate a provision requiring the giving of notice to ISBE at least thirty (30) days prior to the cancellation, non-renewal, or material modification of any such policies. Unless otherwise

agreed to in writing by ISBE, the Contractor shall cause all of its subcontractors to purchase and maintain insurance coverage identical to those required of the Contractor hereunder.

12. **Key Persons.** The Parties agree that availability of and performance of Services by, when assigned to perform such Services, the program management team identified in the Proposal is key to the satisfactory performance of this Agreement by the Contractor. The Contractor shall not substitute for key personnel assigned to the performance of this Agreement without prior written approval from ISBE's project manager except as follows:
 - a) ISBE may request at any time the removal of (and the Contractor will remove) any individual performing Services if ISBE: (1) reasonably believes that individual is not qualified to perform the Services or tasks required of that individual; and (2) previously provided the Contractor with prior written notice of the problem and a reasonable opportunity to remedy the situation.
 - b) Should any of the said key individuals cease employment with the Contractor during the Term or become unavailable to perform the work assigned to them, the Contractor shall immediately notify ISBE in writing of such occurrence. The parties shall promptly confer and determine and provide for the basis upon which the Contractor shall assure satisfactory performance of the required work. They shall verify their understandings in writing and retain a record of such verification as part of the record of the Contractor's performance of this Agreement.
13. **Non-Availability of Funding.** Obligations of ISBE will cease immediately without penalty of further payment being required if in any fiscal year sufficient funds for this Agreement are not appropriated by the Illinois General Assembly or a federal funding source, or such funds are otherwise not made available to ISBE for payments in accordance with this Agreement.
14. **Record Keeping.** The Contractor and its subcontractors shall maintain books and records relating to performance of the Agreement or subcontract and necessary to support amounts charged to the State under the Agreement or subcontract. Books and records, including information stored in databases or other computer systems, shall be maintained by the Contractor for a period of three (3) years from the later of the date of final payment under the Agreement or completion of the Services, and by the subcontractor for a period of three (3) years from the later of the date of the final payment under the subcontract or completion of the subcontract. The three-year period shall be extended for the duration of any audit in progress during the term. Books and records required to be maintained under this section shall be available for review or audit by representatives of ISBE, the Auditor General, and other governmental entities with monitoring authority, upon reasonable notice and during normal business hours. The Contractor and its subcontractors shall cooperate fully with any such audit. Failure to maintain books and records required by this paragraph shall establish a presumption in favor of the State for the recovery of any funds paid by the State under the Agreement for which adequate books and records are not available to support the purported disbursement. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records.
15. **Compliance With Laws.** The Contractor shall comply, and shall cause its subcontractors to comply, with all existing and future laws, regulations, rules, ordinances, orders, and decrees (collectively, "Laws") which are applicable to the Services. The Contractor shall secure and pay for all registrations, licenses, certifications, or approvals which relate to the provision of the Services. If the Contractor should discover any discrepancy or inconsistency between the requirements of any Laws and the scope or nature of the Services, the Contractor shall immediately notify ISBE in writing of such discrepancy or inconsistency and shall conform its Services to any subsequent orders or instructions of ISBE.
16. **Cumulative Rights.** Except as otherwise provided in this Agreement, rights and remedies available to ISBE and/or the Contractor as set forth in this Agreement shall be cumulative with and in addition to, and not in limitation of, any other rights or remedies available to such Parties at law and/or in equity, and any specific right or remedy conferred upon or reserved to ISBE and/or the Contractor in any provision of this Agreement shall not preclude the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof.

17. **No Waiver.** No course of dealing or failure of ISBE and/or the Contractor to enforce strictly any term, right, or condition of this Agreement shall be construed as a waiver of such term, right, or condition. No express waiver of any term, right, or condition of this Agreement shall operate as a waiver of any other term, right, or condition.
18. **Assignment.** The Contractor may not assign this Agreement in whole or in part without the prior written approval of ISBE.
19. **Stevens Amendment.** Successful bidders will be subject to the provisions of Section 511 of P.L. 101-166 (the Stevens Amendment) due to the use of federal funds for this program. All announcements and other materials publicizing this program must include statements as to the amount and proportion of federal funding involved.
20. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Any claim against the State or ISBE arising out of this Agreement must be filed exclusively with the Illinois Court of Claims (705 ILCS 505/1). The State shall not enter into binding arbitration to resolve any Contract dispute. The State of Illinois does not waive sovereign immunity by entering into this Contract. In compliance with the Illinois and federal Constitutions, the Illinois Human Rights Act, the US Civil Rights Act, and Section 504 of the federal Rehabilitation Act and other applicable laws and rules the State does not unlawfully discriminate in employment, contracts, or any other activity.
21. **Website Incorporation.** ISBE expressly states that it will not be bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless ISBE has actual knowledge of such content and has expressly agreed to be bound by it in a written agreement that has been manually signed by an authorized representative of ISBE.
22. **Solicitation and Employment.** Contractor shall not employ any person employed by the Illinois State Board of Education during the term of this contract to perform any work under this Contract. Contractor shall give notice immediately to the Agency's applicable Division Administrator and General Counsel if Contractor solicits or intends to solicit Illinois State Board of Education employees to perform any work under this contract.
23. **Background Check:** The State may conduct or may require Contractor to conduct criminal and driver history background checks of Contractor's officers, employees, or agents. ISBE retains the right to have personnel reassigned from ISBE contractual work. ISBE retains the right to cancel this contract in the event background checks reveal irregularities.
24. **Anti-Trust Assignment:** If Contractor does not pursue any claim and cause of action it has arising under federal or state antitrust laws relating to the subject matter of the Contract, then upon request Contractor shall assign to the State all right, title, and interest in and to the claim or cause of action.
25. **Training.**
The Contractor agrees to attend all mandatory training sessions, and agrees to attend any supplemental or remedial training which ISBE may prescribe from time to time. The Contractor shall be paid the appropriate hourly rate amount, set forth above, for any such training. Contractor agrees to utilize the legal research and other resources provided by ISBE through the training entity.

Standard Certification

Contractor hereby understands and agrees to the following terms, which shall form part of Contractor's agreement with the Illinois State Board of Education ("ISBE"):

1. Legal Ability to Contract

Contractor certifies it is under no legal prohibition on contracting with the State of Illinois, has no known conflicts of interest and further specifically certifies that:

- a) Contractor is not barred from entering into this contract by Section 33E-3 or 33E-4 of the Criminal Code of 1961 (720 ILCS 5/33E-3, 33E-4). Sections 33E-3 and 33E-4 prohibit the receipt of a state contract by a contractor who has been convicted of bid-rigging or bid-rotating.
- b) Contractor is not barred from entering into this contract by Section 50-5 of the Illinois Procurement Code (30 ILCS 500/50-5). Section 50-5 prohibits the receipt of a state contract by anyone who has been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois or any other state, or who has made an admission of guilt of such conduct which is a matter of record.
- c) No person receiving any financial benefit from this contract is in default on an educational loan as provided in the Educational Loan Default Act (5 ILCS 385/0.01 et seq.).
- d) Contractor, in compliance with 30 ILCS 582/2, certifies that neither it nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated under that Act.
- e) Contractor, if an individual, will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of this contract (30 ILCS 580/4).
- f) Contractor is in compliance with the requirements of the Corporate Accountability for Tax Expenditure Act (20 ILCS 715).
- g) Contractor, its employees and subcontractors will comply with applicable provisions of the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and applicable rules in performance under this contract.
- h) Contractor has informed the Chief Financial Officer in writing if he/she was formerly employed by the Illinois State Board of Education and has received an early retirement incentive prior to 1993 under section 14-108.3 or 16-133.3 of the Illinois Pension Code, and acknowledges that contracts made without the appropriate filing with the Auditor General are not payable from the "contractual services" or other appropriation line items. Contractor has not received an early retirement incentive in or after 2002 under section 14-108.3 or 16-133.3 of the Illinois Pension Code, and acknowledges that contracts in violation of Section 15a of the State Finance Act are not payable from the "contractual services" or other appropriation line items. (30 ILCS 105/15a).
- i) Contractor has not been convicted of a felony, at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by

a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business (30 ILCS 500/50-10).

- j) If contractor, or any officer, director, partner, or other managerial agent of Contractor, has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, at least 5 years have passed since the date of the conviction. Contractor further certifies that it is not barred from being awarded a contract under 30 ILCS 500/50-10.5, and acknowledges that the contracting State agency shall declare the contract void if this certification is false. (30 ILCS 500/50-10.5).
- k) Contractor, its affiliates, and all relevant subcontractors are not delinquent in the payment of any debt to the State (or if delinquent has entered into a deferred payment plan to pay the debt), and Contractor its affiliates, and all relevant subcontractors acknowledge the Illinois State Board of Education may declare the contract void if this certification is false (30 ILCS 500/50-11) or if Contractor, its affiliates, and all relevant subcontractors later becomes delinquent and have not entered into a deferred payment plan to pay off the debt (30 ILCS 500/50-60).
- l) Contractor and all affiliates shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with provisions of the Illinois Use Tax Act (30 ILCS 500/50-12) and acknowledge that failure to comply can result in the contract being declared void.
- m) Contractor certifies in accordance with Public Act 93-0575 (30 ILCS 500/50-14) that it is not barred from being awarded a contract under this Section. The contractor acknowledges that the contracting agency may declare the contract void if this certification is false. This public act prohibits the bidding on or entering into contracts with a State Agency by a person or business found by a court or the Pollution Control Board to have committed a willful or knowing violation of Section 42 of the Environmental Protection Act for a period of five years.
- n) Contractor has not paid any money or valuable thing to induce any person to refrain from bidding on a State Contract, nor has Contractor accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a state Contract (30 ILCS 500/50-25).
- o) Contractor is not in violation of the "Revolving Door" section of the Illinois Procurement Code (30 ILCS 500/50-30).
- p) Contractor will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anticompetitive practice among any bidders, offerors, vendors, proposers or employees of the State (30 ILCS 500/50-40, /50-45, /50-50).
- q) Contractor complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, including equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies (775 ILCS 5/2-105).
- r) Contractor does not pay dues to, or reimburse or subsidize payments by its employees for, any dues or fees to any "discriminatory club" (775 ILCS 25/2).
- s) Contractor complies with the State Prohibition of Goods from Forced Labor Act, and certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been or will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction (30 ILCS 583).

- t) The contractor certifies in accordance with (30 ILCS 584) that no foreign-made equipment, materials or supplies furnished to the State under the contract have been produced in whole or in part by the labor of any child under the age of twelve (12).
- u) Contractor certifies that it is not in violation of Section 50-14.5 of the Illinois Procurement Code (30-ILCS 500/50-14.5) that states: "Owners of residential buildings who have committed a willful or knowing violation of the Lead Poisoning Prevention Act (410 ILCS 45) are prohibited from doing business with the State of Illinois or any State agency until the violation is mitigated."
- v) Contractor, if applicable, hereby certifies that any steel products used or supplied in accordance with this contract for a public works project shall be manufactured or produced in the United States per the requirements of the Steel Products Procurement Act (30 ILCS 565 et al).
- w) Contractor warrants and certifies that it and, to the best of its knowledge, its subcontractors have and will comply with Executive Order No. 1 (2007). The Order generally prohibits contractors and subcontractors from hiring the then-serving Governor's family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments, if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity (EO No. 1 (2007)).
- x) Contractor certifies (i) that it will offer to assume the collective bargaining obligations of the prior employer, including any existing collective bargaining agreement with the bargaining representative of any existing collective bargaining unit or units performing substantially similar work to the services covered by the contract subject to its bid or offer, and (ii) that it shall offer employment to all employees currently employed in any existing bargaining unit performing substantially similar work that will be performed under this contract (30 ILCS 500/25-80).
- y) All information technology, including electronic information, software, systems and equipment, developed or provided under this contract must comply with the applicable requirements of the Information Technology Accessibility Act (30 ILCS 587) and the standards required under Section 15 of the Act.

2. Equal Employment Opportunity (required by 44 Ill. Adm. Code 750.10)

In the event of Contractor's noncompliance with the provisions of this Equal Employment Opportunity clause, the Illinois Human Rights Act or the rules of the Illinois Department of Human Rights ("Department"), Contractor may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be cancelled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or rule. During the performance of this contract, Contractor agrees as follows:

- a) That it will not discriminate against any employee or bidder for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.

- b) That, if it hires additional employees in order to perform this contract or any portion thereof, it will determine the availability (in accordance with the Department's rules) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- c) That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all Bidders will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.
- d) That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of Contractor's obligations under the Illinois Human Rights Act and the Department's rules. If any such labor organization or representative fails or refuses to cooperate with Contractor in its efforts to comply with such Act and rules, Contractor will promptly so notify the Department and ISBE and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
- e) That it will submit reports as required by the Department's rules, furnish all relevant information as may from time to time be requested by the Department or ISBE, and in all respects comply with the Illinois Human Rights Act and the Department's rules.
- f) That it will permit access to all relevant books, records, accounts and work sites by personnel of ISBE and the Department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's rules.
- g) That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this contract, Contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify ISBE and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

3. State Board of Elections

Section 20-160 (b) of the Illinois Procurement Bulletin (30 ILCS 500) states "Every bid submitted to and every contract executed by the State on or after the effective date of this amendatory Act of the 95th General Assembly shall contain (1) a certification by the bidder or contractor that either (i) the bidder or contractor is not required to register as a business entity with the State Board of Elections pursuant to this Section or (ii) the bidder or contractor has registered as a business entity with the State Board of Elections and acknowledges a continuing duty to update the registration and (2) a statement that the contract is voidable under Section 50-60 for the bidder's or contractor's failure to comply with this Section." This Act was effective 01-01-2009.

Please check the appropriate box below:

☐

The contractor certifies that they are not required to register as a business entity with the State Board of Elections pursuant to the Procurement Code (30 ILCS 500/20-160). Further, the contractor acknowledges that all contracts between State

_____ **agencies and a business entity that do not comply with this Section shall be voidable under Section 50-60 of the Procurement Code (30 ILCS 500/50-60).**

(or)

☐ **The contractor certifies that they have registered as a business entity with the State Board of Elections and acknowledges a continuing duty to update the registration pursuant to the Procurement Code (30 ILCS 500/20-160). Further, the contractor acknowledges that all contracts between State agencies and a business entity that do not comply with this Section shall be voidable under Section 50-60 of the Procurement Code (30 ILCS 500/50-60).**

Signature of Contractor

Name of Contractor

Title

Date

Disclosure of Conflict and Financial Interest

Part I - Conflicts of Interest

Section 50-13 of the Illinois Procurement Code (30 ILCS 500/50-13) necessitates identification of any person who may be subject to the conflict of interest prohibition shown below. If any such person is identified, we will determine whether we can grant an exception to the prohibition and allow any award to stand. Show this conflict of interest information immediately following the statutory language.

If the Vendor is a wholly owned subsidiary of a parent organization, separate disclosures must be made by the Vendor and the parent. For purposes of this form, a parent organization is any entity that owns 100% of the vendor.

Section 50-13. Conflicts of Interest.

- (a) **Prohibition.** It is unlawful for any person holding an elective office in this State, holding a seat in the General Assembly, or appointed to or employed in any of the offices or agencies of State government and who receives compensation for such employment in excess of 60% of the salary of the Governor of the State of Illinois (\$106,447.20), or who is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority, or who is the spouse or minor child of any such person to have or acquire any contract, or any direct pecuniary interest in any contract therein, whether for stationery, printing, paper, or any services, materials, or supplies, that will be wholly or partially satisfied by the payment of funds appropriated by the General Assembly of the State of Illinois or in any contract of the Capital Development Board or the Illinois Toll Highway Authority.
- (b) **Interests.** It is unlawful for any firm, partnership, association, or corporation, in which any person listed in subsection (a) is entitled to receive (i) more than 7 ½% of the total distributable income or (ii) an amount in excess of the salary of the Governor (\$177,412.00), to have or acquire any such contract or direct pecuniary interest therein.
- (c) **Combined interests.** It is unlawful for any firm, partnership, association, or corporation, in which any person listed in subsection (a) together with his or her spouse or minor children is entitled to receive (i) more than 15%, in the aggregate, of the total distributable income or (ii) an amount in excess of 2 times the salary of the Governor (\$354,824, to have or acquire any such contract or direct pecuniary interest therein.
- (d) **Securities.** Nothing in this Section invalidates the provisions of any bond or other security previously offered or to be offered for sale or sold by or for the State of Illinois.
- (e) **Prior interests.** This Section does not affect the validity of any contract made between the State and an officer or employee of the State or member of the General Assembly, his or her spouse, minor child or any combination of those persons if that contract was in existence before his or her election or employment as an officer, member, or employee. The contract is voidable, however, if it cannot be completed within 365 days after the officer, member, or employee takes office or is employed.
- (f) **Exceptions.**
 - (1) **Public aid payments.** This Section does not apply to payments made for a public aid recipient.
 - (2) **Teaching.** This Section does not apply to a contract for personal services as a teacher or school administrator between a member of the General Assembly or his or her spouse, or a State officer or employee or his or her spouse, and any school district, public community college district, the University of Illinois, Southern Illinois University, Illinois State University, Eastern Illinois University, Northern Illinois University, Western Illinois University, Chicago State University, Governor State University, or Northeastern Illinois University.

- (3) Ministerial duties. This Section does not apply to a contract for personal services of a wholly ministerial character, including but not limited to services as a laborer, clerk, typist, stenographer, page, bookkeeper, receptionist, or telephone switchboard operator, made by a spouse or minor child of an elective or appointive State officer or employee or of a member of the General Assembly.
- (4) Child and family services. This Section does not apply to payments made to a member of the General Assembly, a State officer or employee, his or her spouse or minor child acting as a foster parent, homemaker, advocate, or volunteer for or in behalf of a child or family served by the Department of Children and Family Services.
- (5) Licensed professionals. Contracts with licensed professionals, provided they are competitively bid or part of a reimbursement program for specific, customary goods and services through the Department of Children and Family Services, the Department of Human Services, the Department of Healthcare and Family Services, the Department of Public Health, or the Department of Aging.
- (g) Penalty. A person convicted of a violation of this Section is guilty of a business offense and shall be fined not less than \$1,000 nor more than \$5,000.

CHECK ONE:

_____ No Conflict of Interest.

_____ Potential Conflict of Interest. If checked, name each conflicted individual, the nature of the conflict, and the name of the state agency that is associated directly or indirectly with the conflicted individual.

Part II – Disclosure of Financial Interest in the Vendor

Ownership Disclosure (30 ILCS 500/50-35)

List the name, address, dollar or proportionate share of ownership, and instrument of ownership or beneficial relationship of each person from your business having any ownership or distributive income share that is in excess of 5% or \$106,447.20, whichever is less. (If your business is a publicly traded entity subject to federal 10K reporting, you may submit a copy of your 10K disclosure instead of completing this part of the disclosure.)

Privately held Corporations with more than 400 Shareholders. These Vendors may submit the information identified in 17 CFR 229.401 and list the names of any person or entity holding any ownership share in excess of 5% in satisfaction of the financial and conflict of interest disclosure requirements set forth in subsections 50-35 a and b of the Illinois Procurement Code. Vendor may skip Part II of this form but must complete Part I Disclosure of Conflict of Interest Form.

| Name | Address | Ownership Instrument | Dollar or Share of Ownership |
|------|---------|----------------------|------------------------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

(Attach extra sheets if necessary)

Do any of the persons listed above fall into any of the following categories? Yes ___ No ___

- (1) State employment, currently or in the previous three (3) years, including contractual employment of services.
- (2) State employment of spouse, father, mother, son, or daughter, including contractual employment for services in the previous two (2) years.
- (3) Elective status; the holding of elective office of the State of Illinois, the government of the United States, any unit of local government authorized by the Constitution of the State of Illinois or the statutes of the State of Illinois currently or in the previous three (3) years.
- (4) Relationship to anyone (spouse, father, mother, son or daughter) holding elective office currently or in the previous two (2) years.
- (5) Appointive office; the holding of any appointive government office of the State of Illinois, the United States of America, or any unit of local government authorized by the Constitution of the State of Illinois or the statutes of the State of Illinois, which office entitles the holder to compensation in excess of expenses incurred in the discharge of that office currently or in the previous three (3) years.
- (6) Relationship to anyone (spouse, father, mother, son or daughter) holding appointive office currently or in the previous two (2) years.
- (7) Employment, currently or in the previous three (3) years, as or by any registered lobbyist of the State government.
- (8) Relationship to anyone (spouse, father, mother, son or daughter) who is or was a registered lobbyist in the previous two (2) years.
- (9) Compensated employment, currently or in the previous three (3) years, by any registered election or re-election committee registered with the Secretary of State or any county clerk in the State of Illinois, or any political action committee registered with either the Secretary of State or the Federal Board of Elections.
- (10) Relationship to anyone (spouse, father, mother, son or daughter) who is or was a compensated employee in the last two (2) years of any registered election or re-election committee registered with the Secretary of State or any county clerk in the State of Illinois, or any political action committee registered with either the Secretary of State or the Federal Board of Elections.

If the answer is yes, provide a complete explanation. (Attach extra sheets if necessary.)

(name of VENDOR)

Official authorized to sign on behalf of VENDOR:

Name (printed) _____ Title _____

Signature _____ Date _____

Department of Human Rights (DHR) Public Contract Number

(775 ILCS 5/2-106) If you employed fifteen (15) or more full-time employees at any time during the 365-day period immediately preceding the publication of this solicitation in the Illinois Procurement Bulletin (or issuance date if not published), you must have a current Public Contract Number or have proof of having submitted a completed proposal for one **prior** to the offer opening date. If we cannot confirm compliance, we will not be able to consider your bid or offer. Please complete the appropriate sections below and return with bid or proposal:

Name of Company (and DBA): _____

☐ (check if applicable): The number is not required as the company has employed fourteen (14) or less full-time employees during the 365 day period immediately preceding the publication of this solicitation in the Illinois Procurement Bulletin (or issuance date if not published).

DHR Public Contracts Number: _____
 or, if number has not yet been
 issued, date completed
 proposal for the number was
 submitted to DHR: _____

NOTICE: Numbers issued by the Department of Human Rights (or its predecessor agency, the Illinois Fair Employment Practices Commission) prior to July 1, 1998, are no longer valid. This affects numbers below 89999-00-0. Valid numbers begin with 90000-00-0. If your organization holds an expired number, you must re-register with DHR by completing the required form.

Proposal forms may be obtained by:

1. Telephone: 312-814-2431, DHR Public Contracts
2. Internet: Download form at www.sell2.illinois.gov.
3. Mail: Write to Department of Human Rights, Public Contracts Unit, 100 West Randolph Street, Suite 10-100, Chicago, IL 60601

Name of Company: _____

By: _____

Date: _____

ILLINOIS STATE BOARD OF EDUCATION

DRUG-FREE WORKPLACE CERTIFICATION

This certification is required by the Drug-Free Workplace Act (30 ILCS 580/1). The Drug-Free Workplace Act, effective January 1, 1992, requires that no grantee or contractor shall receive a grant or be considered for the purposes of being awarded a contract for the procurement of any property or services from the State unless that grantee or contractor has certified to the State that the grantee or contractor will provide a drug-free workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract or grant payments, termination of the contract or grant and debarment of contracting or grant opportunities with the State for at least one (1) year but not more than five (5) years.

For the purpose of this certification, "grantee" or "contractor" means a corporation, partnership, or other entity with twenty-five (25) or more employees at the time of issuing the grant, or a department, division, or other unit thereof, directly responsible for the specific performance under a contract or grant of \$5,000 or more from the State.

The contractor/grantee certifies and agrees that it will provide a drug-free workplace by:

- (a) Publishing a statement:
 - (1) Notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance, including cannabis, is prohibited in the grantee's or contractor's workplace.
 - (2) Specifying the actions that will be taken against employees for violations of such prohibition.
 - (3) Notifying the employee that, as a condition of employment on such contract or grant, the employee will:
 - (A) abide by the terms of the statement; and
 - (B) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.
- (b) Establishing a drug-free awareness program to inform employees about:
 - (1) the dangers of drug abuse in the workplace;
 - (2) the grantee's or contractor's policy of maintaining a drug-free workplace;
 - (3) any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) the penalties that may be imposed upon an employee for drug violations.
- (c) Providing a copy of the statement required by subsection (a) to each employee engaged in the performance of the contract or grant and posting the statement in a prominent place in the workplace.
- (d) Notifying the contracting or granting agency within ten (10) days after receiving notice under part (B) of paragraph (3) of subsection (a) above from an employee or otherwise receiving actual notice of such conviction.
- (e) Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 5 of the Drug-Free Workplace Act.
- (f) Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation are required and indicating that a trained referral team is in place.
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of the Drug-Free Workplace Act.

The undersigned affirms, under penalties of perjury, that he or she is authorized to execute this certification on behalf of the designated organization.

Name of Contractor

Printed Name and Title of Contractor's Authorized Representative

Date

Signature of Authorized Representative

Typist: Press the "F11" key to jump to the next field

Attachment 5

Minority, Female, Person with Disability Status and Subcontracting

The Business Enterprise Act for Minorities, Females, and Persons with Disabilities (BEP) [30 ILCS 575] establishes a goal for contracting with businesses that have been certified as owned and controlled by persons who are minority, female or who have disabilities. While you must complete this form, your response will not be considered in the evaluation. A listing of certified businesses may be obtained from the Department of Central Management Services' Business Enterprise Program for Minorities, Females and Persons with Disabilities by calling 312/814-4190 (Voice & TDD), 800/356-9206 (Toll Free), or 800/526-0844 (Illinois Relay Center for Hearing Impaired).

Name of Company (and D/B/A):

Is your company at least 51% owned and controlled by individuals in one or more of the following categories? Yes _____ No _____

If "Yes," check each that applies:

Category:

| | |
|------------------------|-------|
| Minority | _____ |
| Female | _____ |
| Person with Disability | _____ |
| Disadvantaged | _____ |

If "Yes," please identify by checking the applicable blanks which agency certified the business and in what category:

Certifying Agency:

Department of Central Management Services
Women's Business Development Center
Chicago Minority Business Development Council
Illinois Department of Transportation
Other (please identify) _____

Category:

| | |
|------------------------|-------|
| Minority | _____ |
| Female | _____ |
| Person with Disability | _____ |
| Disadvantaged | _____ |

If you are not a certified BEP business, do you have a written policy or goal regarding contracting or subcontracting with BEP certified vendors? Yes _____ (attach copy) No _____

If "No," will you make a commitment to contact BEP certified vendors and consider them for subcontracting opportunities on this contract? Yes _____ No _____

Do you plan on ordering supplies or services in furtherance of this contract from BEP certified vendors? Yes _____ No _____

If "Yes," please identify what you plan to order, the estimated value as a percentage of your total Cost Proposal, and the names of the BEP certified vendors you plan to use.

Request for Sealed Proposal (RFSP).dot

Disclosure of Business Operations with Government of Iran
30 ILCS 500/50-36

Each bid, offer, or proposal submitted for a State contract, other than a small purchase defined in Section 20-20 [of the Illinois Procurement Code], shall include a disclosure of whether or not the bidder, offeror, or proposing entity, or any of its corporate parents or subsidiaries, within the 24 months before submission of the bid, offer, or proposal had business operations that involved contracts with or provision of supplies or services to the Government of Iran, companies in which the Government of Iran has any direct or indirect equity share, consortiums or projects commissioned by the Government of Iran and :

(1) more than 10% of the company's revenues produced in or assets located in Iran involve oil-related activities or mineral-extraction activities; less than 75% of the company's revenues produced in or assets located in Iran involve contracts with or provision of oil-related or mineral – extraction products or services to the Government of Iran or a project or consortium created exclusively by that Government; and the company has failed to take substantial action; or

(2) the company has, on or after August 5, 1996, made an investment of \$20 million or more, or any combination of investments of at least \$10 million each that in the aggregate equals or exceeds \$20 million in any 12- month period that directly or significantly contributes to the enhancement of Iran's ability to develop petroleum resources of Iran.

A bid, offer, or proposal that does not include this disclosure shall not be considered responsive. We may consider this disclosure when evaluating the bid, offer, or proposal or awarding the contract.

You must check one of the following items and if item 2 is checked you must also make the necessary disclosure.

1. ☐ There are no business operations that must be disclosed to comply with the above cited law.
2. ☐ The following business operations are disclosed to comply with the above cited law

ILLINOIS STATE BOARD OF EDUCATION

Fiscal & Procurement Services
100 North First Street, W-380
Springfield, Illinois 62777-0001

**VENDOR'S FEDERAL TAXPAYER IDENTIFICATION NUMBER
LEGAL STATUS DISCLOSURE CERTIFICATION AND CONTRACT ADDENDUM**

NAME (As shown on your income tax return)

BUSINESS NAME (If different from above)

Check appropriate box

| | | | |
|---|---------------------------------------|--|-------------------------------------|
| <input type="checkbox"/> Individual/Sole Proprietor | <input type="checkbox"/> Governmental | <input type="checkbox"/> Estate or Trust | <input type="checkbox"/> Tax Exempt |
| <input type="checkbox"/> Partnership/Legal Corporation | <input type="checkbox"/> Corporation | <input type="checkbox"/> Nonresident Alien | <input type="checkbox"/> Other |
| <input type="checkbox"/> Corporation Providing or Billing Medical and/or Health Care Services | | | |
| <input type="checkbox"/> Limited Liability (D=disregarded entity, C=corporation, P=partnership) | | | |

ADDRESS (Number, Street, and Apt. or Suite Number)

CITY

STATE

ZIP CODE

Part I – Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN).

Social Security Number/Employer ID No.

Part II – Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person.

VENDOR certifies it is under no legal prohibition on contracting with the State of Illinois, has no known conflicts of interest and further specifically certifies that:

- | | |
|---|--|
| <p>a) VENDOR, its employees and subcontractors will comply with applicable provisions of the U. S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the American with Disabilities Act (42 U.S.C. 12101 et seq.).</p> <p>b) VENDOR is not in default on an education loan (5 ILCS 385/3).</p> <p>c) VENDOR has informed the director of the agency in writing if he/she was formerly employed by that agency and has received an early retirement incentive prior to 1993 under section 14-108.3 or 16-133.3 of the Illinois Pension Code, and acknowledges that contracts made with out the appropriate filing with the Auditor General are not payable from the "contractual services" or other appropriation line items. Vendor has not received an early retirement incentive in or after 2002 under section 14-108.3 or 16-133.3 of the Illinois Pension Code, and acknowledges that contracts in violation of Section 15a of the State Finance Act are not payable from the "contractual services" or other appropriation line items (30 ILCS 105/15a).</p> <p>d) VENDOR has not been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other State, nor has made an admission on the record of having so bribed or attempted to bribe (30 ILCS 500/50-5).</p> <p>e) If VENDOR has been convicted of a felony, at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business (30 ILCS 500/50-10).</p> <p>f) If VENDOR, or any officer, director, partner, or other managerial agent of VENDOR, has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, at least 5 year have passed since the date of the conviction. VENDOR further certifies that it is not barred from being awarded a contract under 30 ILCS 500/50-10.5, and acknowledges that the contracting State agency shall declare the contract void if this certification is false. (30 ILCS 500-50-10.5).</p> <p>g) VENDOR and its affiliates are not delinquent in the payment of any debt to the State (or if delinquent has entered into a deferred payment plan to pay the debt), and VENDOR and its affiliates acknowledge the contracting State agency may declare the contract void if this certification is false (30 ILCS 500/50-11) or if VENDOR or an affiliate later becomes delinquent and has not entered into a deferred payment plan to pay off the debt (30ILCS 500/50-60).</p> <p>h) VENDOR and all affiliates shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with provisions of the Illinois Use Tax Act (30 ILCS 500-12) and acknowledges that failure to comply can result in the contract being declared void.</p> <p>i) VENDOR certifies, in accordance with Public Act 93-0575 (30 ILCS 500/50-12), that it is not barred from being awarded a contract under this Section. The contractor acknowledges that the contracting agency may declare the contract void if this certification is false.</p> | <p>This public act prohibits the bidding on or entering into contracts with a State Agency by a person or business found by a court or the Pollution Control Board to have committed a willful or knowing violation of Section 42 of the Environmental Protection Act for a period of five years.</p> <p>j) VENDOR has not paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor has VENDOR accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract (30 ILCS 500/50-25).</p> <p>k) VENDOR is not in violation of the "Revolving Door" section of the Illinois Procurement Code (30 ILCS 500/50-30).</p> <p>l) VENDOR will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anticompetitive practice among any bidders, offerors, contractors, proposers, or employees of the State (30 ILCS 500/50-40, /50-45,/50-50).</p> <p>m) VENDOR will, pursuant to the Drug Free Workplace Act, provide a drug free work place, and if an individual shall not engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance in the performance of the CONTRACT. This certification applies to CONTRACTS of \$5000 or more with: individuals; and to entities with twenty-five (25) or more employees (30 ILCS 580).</p> <p>n) Neither VENDOR nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the U.S. Department of Commerce. This certification applies to CONTRACTS that exceed \$10,000 (30-ILCS 582).</p> <p>o) VENDOR has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any Sate or of the United States ((720 ILCS 5/33E-3, 5/33E-4)).</p> <p>p) VENDOR complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, including equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies (775 ILCS 5/2-105).</p> <p>q) VENDOR does not pay dues to, or reimburse or subsidize payments by its employees for, any dues or fees to any "discriminatory club" (775 ILCS 25/2).</p> <p>r) VENDOR complies with the State Prohibition of Goods from Forced Labor Act, and certifies that no foreign-made equipment, materials, or supplies furnished to the State under the Contract have been or will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction (PA 93-0307).</p> <p>s) VENDOR certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been produced in whole or in part by the labor of any child under the age of 12 (PA 94-0264).</p> |
|---|--|

TELEPHONE NUMBER (Include Area Code)

NAME (Please Print: First, Middle, Last)

TITLE

Date

Signature

ILLINOIS STATE BOARD OF EDUCATION

**Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion
Lower Tier Covered Transactions**

This certification is required by the regulations implementing Executive Orders 12549 and 12689, Debarment and Suspension, 7 CFR 3017 Subpart C Responsibilities of Participants Regarding Transactions. The regulations were published as Part IV of the January 30, 1989 Federal Register (pages 4722-4733) and Part II of the November 26, 2003 Federal Register (pages 66533-66646). Copies of the regulations may be obtained by contacting the Illinois State Board of Education.

BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS BELOW.

CERTIFICATION

The prospective lower tier participant certifies, by submission of this Certification, that:

- (1) Neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency;
- (2) It will provide immediate written notice to whom this Certification is submitted if at any time the prospective lower tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances;
- (3) It shall not knowingly enter any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated;
- (4) It will include the clause titled *Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions*, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions;
- (5) The certifications herein are a material representation of fact upon which reliance was placed when this transaction was entered into; and
- (6) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this Certification.

Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

Instructions for Certification

1. By signing and submitting this Certification, the prospective lower tier participant is providing the certifications set out herein.
2. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue all available remedies, including suspension and/or debarment.
3. Except for transactions authorized under paragraph 3 above, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue all available remedies, including suspension and/or debarment.
4. The terms *covered transaction*, *debarred*, *suspended*, *ineligible*, *lower tier covered transaction*, *participant*, *person*, *primary covered transaction*, *principal*, *proposal*, and *voluntarily excluded*, as used herein, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549 and Executive Order 12689. You may contact the person to which this Certification is submitted for assistance in obtaining a copy of those regulations.
5. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the "GSA Excluded Parties List System" at <http://epls.arnet.gov/>.
6. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required herein. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

ILLINOIS STATE BOARD OF EDUCATION

Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit ISBE 85-37, "Disclosure of Lobbying Activities," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Organization Name

PR/Award (or Application) Number or Project Name

Name and Title of Authorized Representative

Signature

Date

