

**PRE-AWARD DOCUMENT BETWEEN  
OKLAHOMA HEALTH CARE AUTHORITY  
AND  
ENTITY NAME**

Oklahoma Health Care Authority and Contractor agree to the following regarding QISMC services performed under Solicitation # 807000648.

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## **SECTION A: SCOPE OF WORK AND REQUIREMENTS**

### **A.1 Scope of Work**

The Contractor shall conduct activities to operationally complete the federal government's QISMC for the OHCA. These activities include:

1. Perform a review of QISMC Domains and Standards for the SoonerCare Choice program. OHCA and Contractor shall jointly determine the Domains and Standards to be reviewed based upon CMS guidelines, deemed elements and standards determined by OHCA, prior QISMC Reviews, and shall also establish the level of specificity of the review.
2. Perform this review based on the QISMC methodology review requirements.
3. Complete the review on the following timetable for each calendar year. Review format shall be developed by Contractor subject to OHCA approval.
  - a. Review complete – May 15
  - b. Narrative review draft submitted to OHCA - May 31
  - c. OHCA comments on draft returned to Contractor – June 15
  - d. Final document review completed by Contractor – June 30
4. Perform cost effectively by using best practices, such as building on previously completed work, minimizing travel, using Internet and telecommunications technology, and other best practices as applicable to the services provided in the Contract;
5. Minimize the workload on OHCA staff related to all of the above by streamlining input and approval processes; conducting efficient meetings with clear agendas and objectives at times and places convenient to required personnel; developing user-friendly and effective methods of reporting, and other necessary activities;
6. Provide a statistician who shall have day to day responsibility for supervising the quality analytics performance and obligations under this contract. The statistician must have previous experience in a variety of peer review and utilization review activities, preferably for a Medicaid program. In addition, the statistician must demonstrate an overall understanding of the technical requirements, professional clinical determinations, customer service, and quality analytics requirements requested. Contractor shall not change its statistician without prior written approval from OHCA, and such approval shall not be unreasonably delayed or withheld; and,
7. Use an individual adequately trained in technical writing to complete written reports.

### **A.2 OHCA Responsibilities**

1. Designate an OHCA employee to serve as Program Monitor (PM) who will be the primary contact for the Contractor;
2. Provide information on where to locate OHCA policy, eligibility, and other information requested by the Contractor;
3. Assist Contractor with contacting and getting participation from appropriate OHCA staff, stakeholders, and contractors;
4. Cooperate with the Contractor to deliver data and information necessary for the service on a timeline agreed to by OHCA and the Contractor; and,
5. As needed, establish a SharePoint site to coordinate information with the Contractor when working off-site.
6. Review the criteria and protocols proposed by the Contractor for any conflict with OHCA standards or policies; and,
7. Perform additional activities proposed by the Contractor and acceptable to OHCA.

### **A.3 REPORTING REQUIREMENTS**

The Contractor shall submit:

1. Monthly Risk Reports (See Bidder's Library for more Information) are due on the first day of each month or the first Monday after the first of each month;
2. By February 28 each year, Contractor shall submit an updated list of contact information—a template report is included in the Bidder's Library, and is called QISMC RFP Contact Information—for Key Personnel listed in Section C.2 below as well as the Contractor's contracting staff assigned to this contract, or notification that no changes have occurred;
3. Contractor shall submit all reports to OHCA electronically and securely following HIPAA guidelines. Contractor shall review all reports and written material to ensure delivery of a professional and technically sound product prior to submitting to OHCA.

### **A.4 PAYMENT STRUCTURE**

In consideration for the satisfactory performance of the services under this Contract, OHCA shall pay Contractor according to the following at the applicable amounts shown on the Contractor's Price Proposal (See Form-10).

#### **1. Budget**

The budget for this RFP is not to exceed \$50,000.00 for the period Date of Award through June 30, 2015. Bidders may assume that the budget for subsequent fiscal years will stay constant at about this same amount. Final approval of renewal amounts will be at the sole discretion of the OHCA. Increases or decreases at the time of renewal shall not require a modification in accordance with this RFP's amendment clause.

#### **2. Financial Summary**

- a. Services within the cost:
- b. Services not included in the cost:

### **A.5 Change Management**

The Parties agrees that it is unlikely that there will be a need to renegotiate the all-inclusive price per completed QISMC Report. Some possible reasons for renegotiation include:

1. An unusually large amount of travel required; or,
2. A project requires the use of a subcontractor.

If requesting a change in the all-inclusive hourly rate, the Contractor shall provide dominant information supporting the need for the change and the amount of the change.

## **SECTION B – CONTRACT GENERAL TERMS AND CONDITIONS**

### **B.1 PARTIES**

1. Oklahoma Health Care Authority
  - a. OHCA is the single state agency designated by the Oklahoma Legislature through 63 O.S. §5009(B) to administer Oklahoma's Medicaid Program, known as SoonerCare.
  - b. OHCA has authority to enter into this Contract pursuant to 63 O.S. §5006(A) 2 and 74 O.S. §85.1. OHCA's Chief Executive Officer has authority to execute this Contract on OHCA's behalf pursuant to 63 O.S. §5008(B) 4 and 5.
2. Contractor
  - a. Contractor states that it has the experience and expertise to perform the services required under the Contract.

- b. Contractor has the authority to enter into the resulting Contract pursuant to its organizational documents, by laws, or property enacted resolution of its governing authority. The person executing the Contract for Contractor has authority to execute the Contract on Contractor's behalf pursuant to the Contractor's organizational documents, bylaws, or properly enacted resolution of Contractor's governing authority.

## **B.2 CONTRACT TERM**

This Contract shall begin on date of award and terminate on June 30, 2017. A purchase order will be issued for the first fiscal year and change orders to the original purchase order will be issued to the Contractor at the beginning of each following fiscal year. If OHCA does not intend to issue a change order for the new fiscal year, it will notify the Contractor under the provisions of D.14.

## **B.3 AMENDMENTS OR MODIFICATIONS**

1. This Contract contains all of the agreements of the parties and no verbal representations from either party that contradict the terms of this Contract are binding. Any modifications to this Contract must be in writing and signed by both parties.
2. Legislative, regulatory and programmatic changes may require changes in the terms and conditions of the Contract. Modifications of terms and conditions of this Contract shall be authorized in such cases upon approval by OHCA and the Contractor. At all times, all parties shall adhere to the overall intent of the Contract.

## **B.4 LEGAL CONTRACT**

1. Submitted bids are rendered as a legal offer and any bid, when accepted by the OHCA, shall constitute a contract.
2. The Contract resulting from this solicitation will consist of the following documents in order of preference:
  - a. Contract award documents, including but not limited to the purchase order, contract modifications, certifications and change orders;
  - b. This RFP including any amendments to the RFP;
  - c. The proposal submitted by the Contractor; and,
  - d. The Pre-Award Document to the extent that it does not conflict with the requirements of the Contract award documents, RFP, or applicable law.
3. In the event there is a conflict between any of the preceding documents, the Contract award documents prevail over the Pre-Award document, and both the Contract award documents and the Pre-Award document shall prevail over the successful proposal and RFP.

## **B.5 ASSIGNMENT/SUBCONTRACTORS**

1. Contractor shall not assign or transfer any rights or obligations under this Contract without prior written consent of OHCA. If the Contractor uses a major subcontractor, the Contractor shall obtain OHCA consent prior to the effective date of any subcontract. If the Contractor proposed a major subcontractor in its Pre Award Document which was accepted by OHCA, no separate OHCA consent is required.
2. The Contractor shall be responsible for all subcontractors' performance and shall be wholly responsible for meeting all the terms of the Contract. No subcontract or delegation shall relieve or discharge the Contractor for any obligation or liability under the Contract. Any major subcontractor shall be subject to the same conditions as the Contractor, including contract modifications subsequent to award, including confidentiality, audit, certifications, and other relevant contract terms.

## **B.6 AUDIT AND INSPECTION**

1. As used in this clause “records” includes books, documents, accounting procedures and practices, and other data regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. In accepting any Contract with the State, the Contractor agrees that any pertinent State or Federal agency has the right to examine and audit all records relevant to execution and performance of the Contract.
2. The Contractor is required to retain records relative to the Contract for the duration of the Contract and for a period of seven (7) years following completion and/or termination of the Contract. If an audit, litigation, or other action involving such records is started before the end of the seven-year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven year retention period, whichever is later.
3. The Contractor shall keep records as are necessary to disclose fully the extent of service provided under this contract, and shall furnish records and information regarding any claim for providing such service to OHCA, the SA&I (State Auditor & Inspector), CPD (Office of State Finance – Central Purchasing Division), the GAO (General Accounting Office), MFCU (Oklahoma Attorney General’s Medicaid Fraud Unit), and the U.S. Secretary of the Department of Health and Human Services (hereinafter referred to as Secretary) for seven years from the date of service which includes all renewal options. The Contractor shall not destroy or dispose of records, which are under audit, review or investigation when the seven-year limitation is met. The Contractor shall maintain such records until informed in writing by the auditing, reviewing or investigation agency that the audit, review or investigation is complete.
4. Authorized representatives of OHCA, SA&I, CPD, GAO, MFCU, and the Secretary shall have the right to make physical inspection of the Contractor’s location or facility and to examine records relating to financial statements or claims submitted by the Contractor under this contract and to audit the Contractor’s financial records.
5. Pursuant to 74 O. S. § 85.41, OHCA, CPD, and the SA&I shall have the right to examine the Contractor’s books, records, documents, accounting procedures, practices, or any other items relevant to this contract. OHCA shall allow for the inspection of public records in accordance with the provisions of the Oklahoma Open Records Act 51 O.S. §§24A. 1-29.

## **B.7 CONFIDENTIALITY**

1. Contractor(s) agrees that SoonerCare member information is confidential and is not to be released to the general public under 42 U. S. C. §1396a(a)(7), 42 C. F. R. §431:300-306 and 63 O. S. §5018. Contractor(s) agrees not to release the information governed by these SoonerCare member requirements to any other state agency or public citizen without the approval of OHCA.
2. Contractor agrees that SoonerCare member and provider information cannot be re-marketed, summarized, distributed, or sold to any other organization without the express written approval of OHCA.
3. Contractor agrees to comply with the Federal Privacy Regulations and the Federal Security Regulations as contained in 45 C. F. R. §§160 - 164 that are applicable to such party as mandated by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and 42 U. S. C. §§1320d et. seq.
4. Contractor must report a known breach of confidentiality, privacy, or security, as defined under HIPAA, to OHCA Privacy and Confidentiality Officer within 48 hours of knowledge of an unauthorized act. Failure to perform may constitute immediate termination of contract.
5. Contractor agrees to report potential known violations of 21 O. S. §1953 to OHCA Legal Division within 48 hours of knowledge of an unauthorized act. In general, this criminal statute makes it a crime to willfully and without authorization gain access to, alter, modify, disrupt, or threaten a computer system.

6. Contractor shall, following the discovery of a breach of unsecured PHI (Protected Health Information) as defined in the HITECH (The Health Information Technology for Economic and Clinical Health Act) or accompanying regulations, notify OHCA of such breach pursuant to the terms of 45 C. F. R. §164.410 and cooperate in OHCA's breach analysis procedures, including risk assessment, if requested. A breach shall be treated as discovered by Contractor as of the first day on which such breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor.
7. Contractor shall report to OHCA any use or disclosure of PHI which is not in compliance with the terms of this Contract of which it becomes aware. Contractor shall report to OHCA any Security Incident of which it becomes aware. For purposes of this Contract, "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. In addition, Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of this Contract.
8. Contractor shall provide encrypted e-mail communication when PHI is transmitted to OHCA. No direct connection or Virtual Private Network (VPN) to OHCA will be used for this purpose nor will OHCA use individual e-mail certificates for its staff. Such encrypted e-mail will require a X.509 certificate that can be collected by the existing OHCA e-mail encryption system, so that e-mails can be decrypted automatically by OHCA. OHCA shall provide no additional hardware/software to the Contractor for this purpose nor accept any Contractor provided hardware/software.

## **B.8 CONFLICT OF INTEREST**

Contractor certifies and agrees that it presently has no interest and shall not acquire any interest, either direct or indirect, which would conflict in any manner or degree with the performance of a Contract resulting from this RFP.

## **B.9 DISPUTES**

The parties shall use their best good faith efforts to cooperatively resolve disputes and problems that arise in connection with the resulting Contract.

## **B.10 EMPLOYMENT RELATIONSHIP**

This Contract does not create an employment relationship. Individuals performing services required by this Contract are not employees of the State of Oklahoma or OHCA. The Bidder's employees shall not be considered employees of the State of Oklahoma nor of OHCA for any purpose, and accordingly shall not be eligible for rights or benefits accruing to State employees.

## **B.11 LAWS APPLICABLE**

1. The parties to this Contract acknowledge and expect that changes may occur over the term of this Contract regarding (i) federal Medicaid statutes and regulations, (ii) state Medicaid statutes and rules, and (iii) state statutes and rules governing practice of health-care professions. The parties shall be mutually bound by such changes.
2. The Contractor shall comply and certifies compliance with:
  - a. the Age Discrimination in Employment Act, 29 U. S. C. §621 et seq.;
  - b. the Rehabilitation Act, 29 U. S. C. §701 et seq.;
  - c. the Federal Drug-Free Workplace Act, 41 U. S. C. §701 et seq.;
  - d. Subchapters XIX and XXI of the Social Security Act, 42 U. S. C. §1396 et seq.;
  - e. Titles VI and VII of the Civil Rights Act, 42 U. S. C. §§2000(d) et seq. and §§2000(e) et seq.;
  - f. the Age Discrimination in Federally Assisted Programs, 42 U. S. C. §6101 et seq.;

- g. Equal Opportunity for Individuals with Disabilities 42 U. S. C. §12101 et seq.;
  - h. the Oklahoma Worker's Compensation Act, 85 O. S. §1 et seq.;
  - i. the Fair Labor Standards Act, 29 U. S. C. §201 et seq.;
  - j. the Equal Pay Act, 29 U. S. C. §206(b)
  - k. the Vietnam Era Veterans Re-adjustment Act, 38 U. S. C. §4212;
  - l. 31 U. S. C. §1352 and 45 C. F. R. §93.100 et seq., which (1) prohibit use of federal funds paid under this Contract to lobby Congress or any federal official to enhance or protect the monies paid under this Contract and (2) require disclosures to be made if other monies are used for such lobbying;
  - m. Presidential Executive Orders 11141, 11246 and 11375, which together require certain federal contractors and subcontractors to institute affirmative action plans to ensure absence of discrimination for employment because of age, race, color, religion, sex, or national origin;
  - n. 45 C. F. R. §§76.105 and 76.110 concerning debarment, suspension and other responsibility matters;
  - o. 74 O. S. §85.44(B) and (C) and 45 C. F. R. §74.34 with regard to equipment (as defined by 2 C.F.R. §220, §225, or §230 as applicable to the Bidder's entity) purchased with monies received from OHCA pursuant to this Contract; and
  - p. the Anti-Kickback Act; 41 U. S. C. §8701 - 8707, which prohibits any person from providing or attempting to provide or offering to provide any kickback;
  - q. Federal False Claims Act, 31 U. S. C. §3729-3733 and the Administrative Remedies for False Claims Statements 31 U. S. C. §3801.
  - r. Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O. S. §1313 and participates in the Status Verification System. The Status Verification system is defined at 25 O. S. §1312 and includes but is not limited to, the free Employment Verification Program (E-Verify) available at [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify).
3. The explicit inclusion of some statutory and regulatory duties in this Contract shall not exclude other statutory or regulatory duties.
  4. All questions pertaining to validity, interpretation and administration of this Contract shall be determined in accordance with the laws of the State of Oklahoma, regardless of where any service is performed.
  5. The venue for civil actions arising from this Contract shall be Oklahoma County, Oklahoma. For the purpose of Federal jurisdiction, in any action in which the State of Oklahoma is a party, venue shall be United States District Court for the Western District of Oklahoma.
  6. If any portion of this Contract is found to be in violation of State or Federal Statutes, that portion shall be stricken from this Contract and the remainder of the Contract shall remain in full force and effect.

## **B.12 NON-APPROPRIATION**

The terms of any Contract resulting from the solicitation and any Purchase Order issued for multiple years under the Contract are contingent upon sufficient appropriations being made by the Legislature or other appropriate government entity. Notwithstanding any language to the contrary in the solicitation, purchase order, or any other Contract document, the OHCA may terminate its obligations under the Contract if sufficient appropriations are not made by the Legislature or other appropriate governing entity to pay amount due for multiple year agreements. OHCA's decision as to whether sufficient appropriations are available shall be accepted by the Bidder and shall be final and binding.

## **B.13 PAYMENTS/REIMBURSEMENT**

1. Pursuant to 74 Okla. Stat. §85.44(B), invoices will be paid in arrears after services have been provided.

2. The not-to-exceed amount for this Contract is established by the Purchase Order and associated Change Orders issued to the Contractor for each fiscal year.
3. Contractor shall submit a proper invoice for services rendered in order to receive payment. A proper invoice is one which contains, at a minimum, the following information: 1) Contractor name; 2) telephone number; 3) FEI or vendor number; 4) invoice number; 5) purchase order number (where applicable); 6) description of service(s); 7) date(s) of service; and, 8) amount(s) billed. Contractor shall maintain documentation of all billed charges and shall make such documentation available to OHCA upon request or as otherwise stated in this Contract.
4. OHCA shall have forty-five (45) days from the date that a proper invoice is received by OHCA to pay claims pursuant to the terms of this RFP. If OHCA fails to pay and invoice within that time, Contractor shall have right to interest upon the invoice amount consistent with 62 O.S. §34.71 and 62 O.S. §34.72.
5. Contractor(s) shall have the later of: (a) ninety (90) days from the final date of service(s) rendered under the terms of this Contract; or (b) ninety (90) days from the expiration of this Contract to submit invoice(s) for payment. OHCA will not be held responsible for payment of invoices submitted in excess of these time limitations.

#### **B.14 CONTRACT TERMINATION**

1. Either party may terminate for cause with a thirty (30) day written notice to the other party. Either party may terminate without cause with a sixty (60) day written notice to the other party.
2. In the event funding is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to the anticipated Contract expiration date, this Contract may be terminated immediately by OHCA.

#### **B. 15 OWNERSHIP OF MATERIALS**

1. Materials developed and/or produced by the Contractor for which OHCA pays the Contractor are owned by OHCA. This includes any proprietary rights or interests in the products, materials, intellectual properties developed, data, documentation, approaches, systems, programs, methodologies, or concepts developed, produced or provided in connection with the services provided under the Agreement. All such items, rights and/or interests shall belong exclusively to OHCA, unless specifically approved in writing by OHCA. All materials produced as a result of this Agreement become the sole property of the OHCA. This includes all digital design files and layouts, as well as all final artwork and files. This excludes any stock photography or commercial photography or artwork that may be subject to pre-determined usage fees or ownership/copyright matters. The Contractor agrees not to use the OHCA's names, trademarks, service marks, logos, images, or any data resulting from the Agreement as a part of any commercial advertising or proposal without the express prior written consent of the OHCA in each instance.
2. Materials developed, produced, or purchased by the Contractor for its own use with multiple clients that are not reimbursed by OHCA shall not become property of OHCA just by virtue of being employed to provided services under this RFP.

#### **B. 16 FORCE MAJEURE**

1. Neither the Contractor(s) nor OHCA shall be liable for any damages or excess costs for failure to perform their contract responsibilities if such failure arises from causes beyond the reasonable control and without fault or negligence by the Contractor(s) or OHCA. Such causes may include, but are not limited to, catastrophic events or acts of God. In all cases, the failure to perform must be beyond the reasonable control of, and without fault or negligence of, either party.
2. Within 24 hours of the occurrence of such an event, the Contractor(s) shall initiate disaster recovery and/or back up procedures to provide alternate services. The Contractor(s) shall notify

OHCA prior to initiation of alternate services as to the extent of the disaster and/or emergency and the expected duration of alternate services within 24 hours of onset of the problem.

#### **D. 17 CONTRACT COMPLIANCE AND PENALTIES**

1. Substantial elements of this contract are performance-based and require the Contractor to meet specific standards or metrics. The Contractor's performance may be assessed by such means as written reports, oral communication, onsite visits, audit, and data analysis.
2. OHCA and Contractor shall establish performance standards for this contract based on Contractor's proposal and OHCA needs. If Contractor fails to meet these standards or fails to meet any other contract requirements, OHCA will contact Contractor to discuss the issues. OHCA may request the Contractor to prepare and submit for approval a Corrective Action Plan (CAP) for identified issues.
3. The CAP shall clearly specify which paragraphs in the contract describe the affected work, the performance deficiencies, and identify specific actions to be performed by the Contractor to correct the performance. Contractor shall implement the CAP within the time frame specified by OHCA.
4. Failure to resolve the issue may result in additional action by the OHCA, including withholding or reduction of Contractor reimbursement or contract action, up to and including termination.