

**Final Contract &  
Terms Addendum**

**Wisconsin WIC Program, ROSIE Services  
Contract  
RFP #1697-DPH-BC**

Between the

**State of Wisconsin  
Department of Health Services  
WIC Program**

AND

**CIBER, Inc.**

August 26, 2010

**This document outlines the final terms and conditions and agreed upon pricing schedule relating to the Wisconsin WIC Program, ROSIE Services Contract; RFP#1697-DPH-BC**

**As agreed upon in the case of this contract award, the contents of the original RFP (including all attachments), RFP addenda and revisions, and the proposal of the successful proposer (Ciber, Inc), and additional terms agreed to, in writing, by the agency and the contractor are part of this contract and are hereby incorporated by reference.**

**This contract is entered into on August 26, 2010, by and between the State of Wisconsin, represented by the Division of Public Health of the Department of Health Services and Ciber, Inc. This contract is for a five year period; beginning on October 1, 2010 and extending through September 30, 2015, and is hereby amended as follows:**

## PRICING SCHEDULE

### Operational Cost Template

	Monthly Year 1	Monthly Year 2	Monthly Year 3	Monthly Year 4	Monthly Year 5
Fixed Monthly operational costs for the first 5 year contract period	\$ 67,649	\$ 69,077	\$ 69,551	\$ 70,118	\$ 70,815
	X 12 mos				
<b>Total Annual Operational Costs</b>	<b>\$ 811,788</b>	<b>\$ 828,924</b>	<b>\$834,612</b>	<b>\$841,416</b>	<b>\$849,780</b>

### HelpDesk Cost Template

	Monthly Year 1	Monthly Year 2	Monthly Year 3	Monthly Year 4	Monthly Year 5
Fixed Monthly HelpDesk costs for the first 5 year contract period	\$ 11,219	\$ 11,455	\$ 11,534	\$ 11,628	\$ 11,744
	X 12 mos				
<b>Total Annual HelpDesk Costs</b>	<b>\$ 134,628</b>	<b>\$ 137,460</b>	<b>\$138,408</b>	<b>\$139,536</b>	<b>\$140,928</b>

## **General Deliverable Requirements**

Section 6.5 of the RFP stated that an external audit of the successful Proposer shall be performed in accordance with SAS70 (or another audit similar in scope) and a report based on that audit shall be issued to the DHS every two (2) years after the start of the contract

CIBER and the Wisconsin WIC Program have agreed to reduce the number of SAS 70 audits from two (2) over the five year contract to one (1). CIBER passed all previous SAS 70 audits and is confident that reducing the number of audits will not reduce service or add risk to WI WIC.

## **SPECIAL CONTRACT TERMS AND CONDITIONS (RFP Part 11)**

### 11.1 Payment requirements

The contractor will invoice the Wisconsin WIC Program a fixed monthly cost for all services outlined in this RFP. The contractor will e-mail a PDF copy of the invoices to the designated fiscal manager each month following the completion of the prior months' activities. Invoices are due by the 7<sup>th</sup> day of the month.

### 11.2 Liquidated damages

The contractor acknowledges that damages will be incurred by the agency, in the amount of \$500 per working day for every day past the scheduled delivery date. Liquidated damages in any month shall not to exceed one half of the total of the contract billing for the services in that month. The total of all damages of any kind in any contract year shall not exceed one half of the total of the contract billing for the services in that contract year. The contractor shall have sixty (60) days to correct nonperformance and/or amend the deliverable to meet the terms of the contract after receiving written notification from the State. If the Contractor corrects the nonperformance to the satisfaction of the State, then no liquidated damages will be applied to the Contractor. The contractor agrees that the agency shall have the right to liquidate such damages, through deduction from the contractor's invoices, in the amount equal to the damages incurred, or by direct billing to the contractor.

### 11.3 Prime contractor and minority business subcontractors

The prime contractor will be responsible for contract performance when subcontractors are used. However, when subcontractors are used, they must abide by all terms and conditions of the contract. If subcontractors are to be used, the proposer must clearly explain their participation.

The State of Wisconsin is committed to the promotion of minority business in the state's purchasing program and a goal of placing 5% of its total purchasing dollars with certified minority businesses. Authority for this program is found in ss. 15.107(2), 16.75(4), 16.75(5) and 560.036(2), Wisconsin Statutes. The contracting agency is committed to the promotion of minority business in the state's purchasing program.

The State of Wisconsin policy provides that minority-owned business enterprises certified by the Wisconsin Department of Commerce, Bureau of Minority Business Development should have the maximum opportunity to participate in the performance of its contracts. The supplier/contractor is strongly urged to use due diligence to further this policy by awarding subcontracts to minority-owned business enterprises or by using such enterprises to provide goods and services incidental to this agreement, with a goal of awarding at least 5% of the contract price to such enterprises.

The supplier/contractor shall furnish appropriate quarterly information about its effort to achieve this goal, including the identities of such enterprises certified by the Wisconsin Department of Commerce and their contract amount.

A listing of certified minority businesses, as well as the services and commodities they provide, is available from the Department of Administration, Office of the Minority Business Program, 608/267-7806. The listing is published on the Internet at: <http://www.doa.state.wi.us/dsas/mbc/index.asp>.

11.4 Executed contract to constitute entire agreement

In the event of contract award, the contents of this RFP (including all attachments), RFP addenda and revisions, and the proposal of the successful proposer, and additional terms agreed to, in writing, by the agency and the contractor shall become part of the contract. Failure of the successful proposer to accept these as a contractual agreement may result in a cancellation of award.

The following priority for contract documents will be used if there are conflicts or disputes.

State Request for Proposal Dated 4/5/2010 (Issue date)  
Standard Terms and Conditions  
Vendor's Proposal Dated 5/18/2010(Due date)  
Official Purchase Orders

11.5 Termination of contract

The agency may terminate the contract at any time at its sole discretion by delivering 90 days written notice to the contractor. Upon termination, the agency's liability will be limited to the pro rata cost of the services performed as of the date of termination plus expenses incurred with the prior written approval of the agency. In the event that the contractor terminates the contract, for any reason whatsoever, it will refund to the agency within 15 days of said termination, all payments made hereunder by the agency to the contractor for work not completed or not accepted by the agency. Such termination will require written notice to that effect to be delivered by the contractor to the agency not less than 180 days prior to said termination.

### **STANDARD TERMS AND CONDITIONS (RFP Part 12)**

The State of Wisconsin reserves the right to incorporate standard State contract provisions into any contract negotiated with any proposal submitted responding to this RFP (Standard Terms and Conditions (DOA-3054) and Supplemental Standard Terms and Conditions for Procurements for Services (DOA-3681)). Failure of the successful proposer to accept these obligations in a contractual agreement may result in cancellation of the award.

- 1.0 SPECIFICATIONS:** The specifications in this request are the minimum acceptable. When specific manufacturer and model numbers are used, they are to establish a design, type of construction, quality, functional capability and/or performance level desired. When alternates are bid/proposed, they must be identified by manufacturer, stock number, and such other information necessary to establish equivalency. The State of Wisconsin shall be the sole judge of equivalency. Bidders/proposers are cautioned to avoid bidding alternates to the specifications which may result in rejection of their bid/proposal.
- 2.0 DEVIATIONS AND EXCEPTIONS:** Deviations and exceptions from original text, terms, conditions, or specifications shall be described fully, on the bidder's/proposer's letterhead, signed, and attached to the request. In the absence of such statement, the bid/proposal shall be accepted as in strict compliance with all terms, conditions, and specifications and the bidders/proposers shall be held liable.
- 3.0 QUALITY:** Unless otherwise indicated in the request, all material shall be first quality. Items which are used, demonstrators, obsolete, seconds, or which have been discontinued are unacceptable without prior written approval by the State of Wisconsin.
- 4.0 QUANTITIES:** The quantities shown on this request are based on estimated needs. The state reserves the right to increase or decrease quantities to meet actual needs.
- 5.0 DELIVERY:** Deliveries shall be F.O.B. destination freight prepaid and included unless otherwise specified.
- 6.0 PRICING AND DISCOUNT:** The State of Wisconsin qualifies for governmental discounts and its educational institutions also qualify for educational discounts. Unit prices shall reflect these discounts.
- 6.1** Unit prices shown on the bid/proposal or contract shall be the price per unit of sale (e.g., gal., cs., doz., ea.) as stated on the request or contract. For any given item, the quantity multiplied by the unit price shall establish the extended price, the unit price shall govern in the bid/proposal evaluation and contract administration.
- 6.2** Prices established in continuing agreements and term contracts may be lowered due to general market conditions, but prices shall not be subject to increase for ninety (90) calendar days from the date of award. Any increase proposed shall be submitted to the contracting agency thirty (30) calendar days before the proposed effective date of the price increase, and shall be limited to fully documented cost increases to the contractor which are demonstrated to be industrywide. The conditions under which price increases may be granted shall be expressed in bid/proposal documents and contracts or agreements.
- 6.3** In determination of award, discounts for early payment will only be considered when all other conditions are equal and when payment terms allow at least fifteen (15) days, providing the discount terms are deemed favorable. All payment terms must allow the option of net thirty (30).
- 7.0 UNFAIR SALES ACT:** Prices quoted to the State of Wisconsin are not governed by the Unfair Sales Act.
- 8.0 ACCEPTANCE-REJECTION:** The State of Wisconsin reserves the right to accept or reject any or all bids/proposals, to waive any technicality in any bid/proposal submitted, and to accept any part of a bid/proposal as deemed to be in the best interests of the State of Wisconsin.
- Bids/proposals MUST be date and time stamped by the soliciting purchasing office on or before the date and time that the bid/proposal is due. Bids/proposals date and time stamped in another office will be rejected. Receipt of a bid/proposal by the mail system does not constitute receipt of a bid/proposal by the purchasing office.
- 9.0 METHOD OF AWARD:** Award shall be made to the lowest responsible, responsive bidder unless otherwise specified.
- 10.0 ORDERING:** Purchase orders or releases via purchasing cards shall be placed directly to the contractor by an authorized agency. No other purchase orders are authorized.
- 11.0 PAYMENT TERMS AND INVOICING:** The State of Wisconsin normally will pay properly submitted vendor invoices within thirty (30) days of receipt providing goods and/or services have been delivered, installed (if required), and accepted as specified.
- Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order including reference to purchase order number and submittal to the correct address for processing.
- A good faith dispute creates an exception to prompt payment.
- 12.0 TAXES:** The State of Wisconsin and its agencies are exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise taxes as described below.

The State of Wisconsin, including all its agencies, is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of Wisconsin sales or use tax on its purchases. The State of Wisconsin may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Contractors performing construction activities are required to pay state use tax on the cost of materials.

- 13.0 GUARANTEED DELIVERY:** Failure of the contractor to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the contractor liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs shall include the administrative costs.
- 14.0 ENTIRE AGREEMENT:** These Standard Terms and Conditions shall apply to any contract or order awarded as a result of this request except where special requirements are stated elsewhere in the request; in such cases, the special requirements shall apply. Further, the written contract and/or order with referenced parts and attachments shall constitute the entire agreement and no other terms and conditions in any document, acceptance, or acknowledgment shall be effective or binding unless expressly agreed to in writing by the contracting authority.
- 15.0 APPLICABLE LAW AND COMPLIANCE:** This contract shall be governed under the laws of the State of Wisconsin. The contractor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct. The State of Wisconsin reserves the right to cancel this contract if the contractor fails to follow the requirements of s. 77.66, Wis. Stats., and related statutes regarding certification for collection of sales and use tax. The State of Wisconsin also reserves the right to cancel this contract with any federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.
- 16.0 ANTITRUST ASSIGNMENT:** The contractor and the State of Wisconsin recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Wisconsin (purchaser). Therefore, the contractor hereby assigns to the State of Wisconsin any and all claims for such overcharges as to goods, materials or services purchased in connection with this contract.
- 17.0 ASSIGNMENT:** No right or duty in whole or in part of the contractor under this contract may be assigned or delegated without the prior written consent of the State of Wisconsin.
- 18.0 WORK CENTER CRITERIA:** A work center must be certified under s. 16.752, Wis. Stats., and must ensure that when engaged in the production of materials, supplies or equipment or the performance of contractual services, not less than seventy-five percent (75%) of the total hours of direct labor are performed by severely handicapped individuals.
- 19.0 NONDISCRIMINATION / AFFIRMATIVE ACTION:** In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), Wis. Stats., sexual orientation as defined in s. 111.32(13m), Wis. Stats., or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities.
- 19.1** Contracts estimated to be over twenty-five thousand dollars (\$25,000) require the submission of a written affirmative action plan by the contractor. An exemption occurs from this requirement if the contractor has a workforce of less than twenty-five (25) employees. Within fifteen (15) working days after the contract is awarded, the contractor must submit the plan to the contracting state agency for approval. Instructions on preparing the plan and technical assistance regarding this clause are available from the contracting state agency.
- 19.2** The contractor agrees to post in conspicuous places, available for employees and applicants for employment, a notice to be provided by the contracting state agency that sets forth the provisions of the State of Wisconsin's nondiscrimination law.
- 19.3** Failure to comply with the conditions of this clause may result in the contractor's becoming declared an "ineligible" contractor, termination of the contract, or withholding of payment.
- 20.0 PATENT INFRINGEMENT:** The contractor selling to the State of Wisconsin the articles described herein guarantees the articles were manufactured or produced in accordance with applicable federal labor laws. Further, that the sale or use of the articles described herein will not infringe any United States patent. The contractor covenants that it will at its own expense defend every suit which shall be brought against the State of Wisconsin (provided that such contractor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent by reason of the sale or use of such articles, and agrees that it will pay all costs, damages, and profits recoverable in any such suit.
- 21.0 SAFETY REQUIREMENTS:** All materials, equipment, and supplies provided to the State of Wisconsin must comply fully with all safety requirements as set forth by the Wisconsin Administrative Code and all applicable OSHA Standards.
- 22.0 WARRANTY:** Unless otherwise specifically stated by the bidder/proposer, equipment purchased as a result of this request shall be warranted against defects by the bidder/proposer for one (1) year from date of receipt. The equipment manufacturer's standard warranty shall apply as a minimum and must be honored by the contractor.
- 23.0 INSURANCE RESPONSIBILITY:** The contractor performing services for the State of Wisconsin shall:
- 23.1** Maintain worker's compensation insurance as required by Wisconsin Statutes, for all employees engaged in the work.
- 23.2** Maintain commercial liability, bodily injury and property damage insurance against any claim(s) which might occur in carrying out this agreement/contract. Minimum coverage shall be one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations. Provide motor vehicle insurance for

all owned, non-owned and hired vehicles that are used in carrying out this contract. Minimum coverage shall be one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.

**23.3** The state reserves the right to require higher or lower limits where warranted.

**24.0 CANCELLATION:** The State of Wisconsin reserves the right to cancel any contract in whole or in part without penalty due to nonappropriation of funds or for failure of the contractor to comply with terms, conditions, and specifications of this contract.

**25.0 VENDOR TAX DELINQUENCY:** Vendors who have a delinquent Wisconsin tax liability may have their payments offset by the State of Wisconsin.

**26.0 PUBLIC RECORDS ACCESS:** It is the intention of the state to maintain an open and public process in the solicitation, submission, review, and approval of procurement activities.

Bid/proposal openings are public unless otherwise specified. Records may not be available for public inspection prior to issuance of the notice of intent to award or the award of the contract.

**27.0 PROPRIETARY INFORMATION:** Any restrictions on the use of data contained within a request, must be clearly stated in the bid/proposal itself. Proprietary information submitted in response to a request will be handled in accordance with applicable State of Wisconsin procurement regulations and the Wisconsin public records law. Proprietary restrictions normally are not accepted. However, when accepted, it is the vendor's responsibility to defend the determination in the event of an appeal or litigation.

**27.1** Data contained in a bid/proposal, all documentation provided therein, and innovations developed as a result of the contracted commodities or services cannot be copyrighted or patented. All data, documentation, and innovations become the property of the State of Wisconsin.

**27.2** Any material submitted by the vendor in response to this request that the vendor considers confidential and proprietary information and which qualifies as a trade secret, as provided in s. 19.36(5), Wis. Stats., or material which can be kept confidential under the Wisconsin public records law, must be identified on a Designation of Confidential and Proprietary Information form (DOA-3027). Bidders/proposers may request the form if it is not part of the Request for Bid/Request for Proposal package. Bid/proposal prices cannot be held confidential.

**28.0 DISCLOSURE:** If a state public official (s. 19.42, Wis. Stats.), a member of a state public official's immediate family, or any organization in which a state public official or a member of the official's immediate family owns or controls a ten percent (10%) interest, is a party to this agreement, and if this agreement involves payment of more than three thousand dollars (\$3,000) within a twelve (12) month period, this contract is voidable by the state unless appropriate disclosure is made according to s. 19.45(6), Wis. Stats., before signing the contract. Disclosure must be made to the State of Wisconsin Ethics Board, 44 East Mifflin Street, Suite 601, Madison, Wisconsin 53703 (Telephone 608-266-8123).

State classified and former employees and certain University of Wisconsin faculty/staff are subject to separate disclosure requirements, s. 16.417, Wis. Stats.

**29.0 RECYCLED MATERIALS:** The State of Wisconsin is required to purchase products incorporating recycled materials whenever technically and economically feasible. Bidders are encouraged to bid products with recycled content which meet specifications.

**30.0 MATERIAL SAFETY DATA SHEET:** If any item(s) on an order(s) resulting from this award(s) is a hazardous chemical, as defined under 29CFR 1910.1200, provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).

**31.0 PROMOTIONAL ADVERTISING / NEWS RELEASES:** Reference to or use of the State of Wisconsin, any of its departments, agencies or other subunits, or any state official or employee for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the State of Wisconsin. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the contracting agency.

**32.0 HOLD HARMLESS:** The contractor will indemnify and save harmless the State of Wisconsin and all of its officers, agents and employees from all suits, actions, or claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from the operations of the contractor, or of any of its contractors, in prosecuting work under this agreement.

**33.0 FOREIGN CORPORATION:** A foreign corporation (any corporation other than a Wisconsin corporation) which becomes a party to this Agreement is required to conform to all the requirements of Chapter 180, Wis. Stats., relating to a foreign corporation and must possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a certificate of authority. Any foreign corporation which desires to apply for a certificate of authority should contact the Department of Financial Institutions, Division of Corporation, P. O. Box 7846, Madison, WI 53707-7846; telephone (608) 261-7577.

**34.0 WORK CENTER PROGRAM:** The successful bidder/proposer shall agree to implement processes that allow the State agencies, including the University of Wisconsin System, to satisfy the State's obligation to purchase goods and services produced by work centers certified under the State Use Law, s.16.752, Wis. Stat. This shall result in requiring the successful

bidder/proposer to include products provided by work centers in its catalog for State agencies and campuses or to block the sale of comparable items to State agencies and campuses.

**35.0 FORCE MAJEURE:** Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.

**SUPPLEMENT TO  
STANDARD TERMS AND CONDITIONS  
(REQUESTS FOR BIDS/PROPOSALS)**

- 1.0 ACCEPTANCE OF BID/PROPOSAL CONTENT:** The contents of the bid/proposal of the successful contractor will become contractual obligations if procurement action ensues.
- 2.0 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION:** By signing this bid/proposal, the bidder/proposer certifies, and in the case of a joint bid/proposal, each party thereto certifies as to its own organization, that in connection with this procurement:
- 2.1** The prices in this bid/proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder/proposer or with any competitor;
- 2.2** Unless otherwise required by law, the prices which have been quoted in this bid/proposal have not been knowingly disclosed by the bidder/proposer and will not knowingly be disclosed by the bidder/proposer prior to opening in the case of an advertised procurement or prior to award in the case of a negotiated procurement, directly or indirectly to any other bidder/proposer or to any competitor; and
- 2.3** No attempt has been made or will be made by the bidder/proposer to induce any other person or firm to submit or not to submit a bid/proposal for the purpose of restricting competition.
- 2.4** Each person signing this bid/proposal certifies that: He/she is the person in the bidder's/proposer's organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to 2.1 through 2.3 above; (or)
- He/she is not the person in the bidder's/proposer's organization responsible within that organization for the decision as to the prices being offered herein, but that he/she has been authorized in writing to act as agent for the persons responsible for such decisions in certifying that such persons have not participated, and will not participate in any action contrary to 2.1 through 2.3 above, and as their agent does hereby so certify; and he/she has not participated, and will not participate, in any action contrary to 2.1 through 2.3 above.
- 3.0 DISCLOSURE OF INDEPENDENCE AND RELATIONSHIP:**
- 3.1** Prior to award of any contract, a potential contractor shall certify in writing to the procuring agency that no relationship exists between the potential contractor and the procuring or contracting agency that interferes with fair competition or is a conflict of interest, and no relationship exists between the contractor and another person or organization that constitutes a conflict of interest with respect to a state contract. The Department of Administration may waive this provision, in writing, if those activities of the potential contractor will not be adverse to the interests of the state.
- 3.2** Contractors shall agree as part of the contract for services that during performance of the contract, the contractor will neither provide contractual services nor enter into any agreement to provide services to a person or organization that is regulated or funded by the contracting agency or has interests that are adverse to the contracting agency. The Department of Administration may waive this provision, in writing, if those activities of the contractor will not be adverse to the interests of the state.
- 4.0 DUAL EMPLOYMENT:** Section 16.417, Wis. Stats., prohibits an individual who is a State of Wisconsin employee or who is retained as a contractor full-time by a State of Wisconsin agency from being retained as a contractor by the same or another State of Wisconsin agency where the individual receives more than \$12,000 as compensation for the individual's services during the same year. This prohibition does not apply to individuals who have full-time appointments for less than twelve (12) months during any period of time that is not included in the appointment. It does not include corporations or partnerships.
- 5.0 EMPLOYMENT:** The contractor will not engage the services of any person or persons now employed by the State of Wisconsin, including any department, commission or board thereof, to provide services relating to this agreement without the written consent of the employing agency of such person or persons and of the contracting agency.
- 6.0 CONFLICT OF INTEREST:** Private and non-profit corporations are bound by ss. 180.0831, 180.1911(1), and 181.0831 Wis. Stats., regarding conflicts of interests by directors in the conduct of state contracts.
- 7.0 RECORDKEEPING AND RECORD RETENTION:** The contractor shall establish and maintain adequate records of all expenditures incurred under the contract. All records must be kept in accordance with generally accepted accounting procedures. All procedures must be in accordance with federal, state and local ordinances.

The contracting agency shall have the right to audit, review, examine, copy, and transcribe any pertinent records or documents relating to any contract resulting from this bid/proposal held by the contractor. The contractor will retain all documents applicable to the contract for a period of not less than three (3) years after final payment is made.

**8.0 INDEPENDENT CAPACITY OF CONTRACTOR:** The parties hereto agree that the contractor, its officers, agents, and employees, in the performance of this agreement shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the state. The contractor agrees to take such steps as may be necessary to ensure that each subcontractor of the contractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the state.

## Supplemental Standard Terms and Conditions for Procurements for Services

- 1.0 ACCEPTANCE OF BID/PROPOSAL CONTENT:** The contents of the bid/proposal of the successful contractor will become contractual obligations if procurement action ensues.
- 2.0 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION:** By signing this bid/proposal, the bidder/proposer certifies, and in the case of a joint bid/proposal, each party thereto certifies as to its own organization, that in connection with this procurement:
- 2.1** The prices in this bid/proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder/proposer or with any competitor;
- 2.2** Unless otherwise required by law, the prices which have been quoted in this bid/proposal have not been knowingly disclosed by the bidder/proposer and will not knowingly be disclosed by the bidder/proposer prior to opening in the case of an advertised procurement or prior to award in the case of a negotiated procurement, directly or indirectly to any other bidder/proposer or to any competitor; and
- 2.3** No attempt has been made or will be made by the bidder/proposer to induce any other person or firm to submit or not to submit a bid/proposal for the purpose of restricting competition.
- 2.4** Each person signing this bid/proposal certifies that: He/she is the person in the bidder's/proposer's organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to 2.1 through 2.3 above; (or)
- He/she is not the person in the bidder's/proposer's organization responsible within that organization for the decision as to the prices being offered herein, but that he/she has been authorized in writing to act as agent for the persons responsible for such decisions in certifying that such persons have not participated, and will not participate in any action contrary to 2.1 through 2.3 above, and as their agent does hereby so certify; and he/she has not participated, and will not participate, in any action contrary to 2.1 through 2.3 above.
- 3.0 DISCLOSURE OF INDEPENDENCE AND RELATIONSHIP:**
- 3.1** Prior to award of any contract, a potential contractor shall certify in writing to the procuring agency that no relationship exists between the potential contractor and the procuring or contracting agency that interferes with fair competition or is a conflict of interest, and no relationship exists between the contractor and another person or organization that constitutes a conflict of interest with respect to a state contract. The Department of Administration may waive this provision, in writing, if those activities of the potential contractor will not be adverse to the interests of the state.
- 3.2** Contractors shall agree as part of the contract for services that during performance of the contract, the contractor will neither provide contractual services nor enter into any agreement to provide services to a person or organization that is regulated or funded by the contracting agency or has interests that are adverse to the contracting agency. The Department of Administration may waive this provision, in writing, if those activities of the contractor will not be adverse to the interests of the state.
- 4.0 DUAL EMPLOYMENT:** Section 16.417, Wis. Stats., prohibits an individual who is a State of Wisconsin employee or who is retained as a contractor full-time by a State of Wisconsin agency from being retained as a contractor by the same or another State of Wisconsin agency where the individual receives more than \$12,000 as compensation for the individual's services during the same year. This prohibition does not apply to individuals who have full-time appointments for less than twelve (12) months during any period of time that is not included in the appointment. It does not include corporations or partnerships.
- 5.0 EMPLOYMENT:** The contractor will not engage the services of any person or persons now employed by the State of Wisconsin, including any department, commission or board thereof, to provide services relating to this agreement without the written consent of the employing agency of such person or persons and of the contracting agency.
- 6.0 CONFLICT OF INTEREST:** Private and non-profit corporations are bound by ss. 180.0831, 180.1911(1), and 181.0831 Wis. Stats., regarding conflicts of interests by directors in the conduct of state contracts.
- 7.0 RECORDKEEPING AND RECORD RETENTION:** The contractor shall establish and maintain adequate records of all expenditures incurred under the contract. All records must be kept in accordance with generally accepted accounting procedures. All procedures must be in accordance with federal, state and local ordinances.
- The contracting agency shall have the right to audit, review, examine, copy, and transcribe any pertinent records or documents relating to any contract resulting from this bid/proposal held by the contractor. The contractor will retain all documents applicable to the contract for a period of not less than three (3) years after final payment is made.
- 8.0 INDEPENDENT CAPACITY OF CONTRACTOR:** The parties hereto agree that the contractor, its officers, agents, and employees, in the performance of this agreement shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the state. The contractor agrees to take such steps as may be necessary to ensure that each subcontractor of the contractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the state.

## PERSONAL SERVICES RIDER

- 1.0 ACCEPTANCE/INSPECTION
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STATEMENT OF PURPOSE: The Personal Services Rider provides terms and conditions relating to acquisition of personal services related primarily to information systems development wherein the State expects Contractor to furnish personnel to work at the State's general direction in return for payment of a fee based on the amount of time expended by Contractor's personnel. The Personal Services Rider is applicable to all Data Processing Agreements which involve a significant amount of consultative or other personal services for which the State will compensate the Contractor on a time-and-materials basis. The specifics of the work efforts and target dates for Contractor's personnel will be a part of the State's purchase order(s) under this Agreement.

- 1.0 ACCEPTANCE/INSPECTION: All work performed under State purchase order(s) shall be subject to inspection by the State, to the extent practicable at all times and places, including the period of design or programming, but in any event, prior to acceptance. All inspections by the State shall be performed in such a manner as not to unduly delay the work. Unsatisfactory work shall be corrected prior to acceptance. Suitable acceptance criteria shall be included in the State's order(s).

The State shall promptly notify Contractor of the results of any inspection or acceptance test it performs. If an acceptance test produces unsatisfactory results, the State shall specifically identify what acceptance criteria could not be satisfied and the particular methodology that was used to reach this conclusion.

- 2.0 ACCESS TO FACILITIES: Unless otherwise agreed upon by the parties, any and all access by Contractor's employees to the facilities of the State shall be during normal State office hours and all Contractor employees shall be subject to the State site's security procedures.
- 3.0 COOPERATION WITH OTHER VENDORS OR CONTRACTORS: In the event that the State enters into agreements with other vendors or contractors for additional work related to the development of any software,

Contractor agrees that its personnel will fully cooperate with such other vendors or contractors. Contractor's personnel shall not commit any act which will interfere with the performance of work by any other contractor or by the State. Contractor's personnel will cooperate with State personnel, hardware manufacture representatives, system software suppliers, and communications systems suppliers in designing, programming, and testing any software being developed.

- 4.0 FINANCIAL STATEMENTS: Upon request by the State, Contractor shall supply copies of its quarterly financial statements not later than forty-five (45) days after the close of Contractor's fiscal quarters. Upon request, Contractor shall also supply the State with a copy of its year-end statement not later than ninety (90) days after its fiscal year-end.
- 5.0 KEY PERSONNEL: Contractor agrees that it will furnish the State with a means of identifying all personnel assigned to perform work under this Agreement and furnish the State with security credentials on these personnel, if requested.
- 6.0 LIABILITY FOR LOSS OF DATA: When computer services are requested, the State will maintain adequate supporting material or copies to enable Contractor to regenerate card files, tape files, printer outputs and other data furnished to Contractor by the State. In the event of loss of such State supplied data due to machine failure or negligence of Contractor or its employees, Contractor's liability for such loss shall be limited to the replacement or regeneration of the lost data from the State's supporting material by the methods or means deemed most suitable by Contractor for such regeneration or replacement.
- 7.0 LIMITATION OF COST: It is hereby stipulated and agreed that the total cost to the State for the performance of the work under this Agreement will not exceed the funding limitation set forth in the State's purchase order and the Contractor agrees to perform the work specified and all obligations under this Agreement within such funding limitation. Contractor agrees to notify the State in writing no later than when the billable amounts reach eighty percent (80%) of the funding limitation in an order and will include in such notification an estimate to complete the requirements of the order. The State shall not be obligated to reimburse Contractor for billing in excess of the funding limitation set forth in the order, and Contractor shall not be obligated to continue performance of work under the order or to incur costs in excess of the funding limitations if such increased costs are due to additional requirements identified by the State after the initiation of effort on the work specified in the order, unless and until a change order or amendment to the order increasing the funding limitation is approved by the State.
- 8.0 LIQUIDATED DAMAGES: The State declares, and Contractor acknowledges, that the State may suffer damages due to lack of performance of the terms and conditions of this Agreement by Contractor. Since it is impractical and extremely difficult to fix the actual damage sustained in the event of any such nonperformance, the State and Contractor, therefore, presume that in the event of any such nonperformance the amount of damage which will be sustained from the nonperformance will be the amount set forth in this section and they agree that, in the event of any such nonperformance, Contractor shall pay that amount as liquidated damages and not as a penalty. Amounts due the State as liquidated damages may be deducted by the State from any money payable to Contractor and any amount outstanding over and above the amounts deducted from invoices will be promptly tendered by check by Contractor to the State.

The State shall notify Contractor in writing of any claim for liquidated damages pursuant to this section on or before the date when the State deducts such sums from money payable to Contractor and, in any case, within 2 business days after Contractor's failure to perform in accordance with the terms and conditions of this Agreement. Delay in reporting such claim to Contractor will void any claim for liquidated damages for the period prior to the date the notification is received by the Contractor.

After receiving notification from the State, the Contractor shall have sixty (60) days to correct the nonperformance and/or amend the deliverable to meet the terms of the contract. If the Contractor corrects the nonperformance to the satisfaction of the State, then no liquidated damages will be applied to the Contractor.

Notwithstanding any other provision herein, liquidated damages shall be the exclusive damages available to the State for delay in completion of the work specified in the State's order(s) and shall be in lieu of all other damages. The agreed service level credits shall be the exclusive remedy available to the State for missed service levels and liquidated damages shall not apply.

Contractor shall not be liable for liquidated damages when delays arise out of cause beyond the reasonable control and without the fault or negligence of Contractor. Delays due to causes of Force Majeure (all causes which are

outside of the reasonable control of the Contractor and could not be avoided by Contractor's exercise of reasonable care) or due to the responsibility of the State or other contractors of the State shall extend the date for completion of work under the State's order on a day for day basis.

Delays caused by the default of a subcontractor, when such default arises out of causes beyond the control of both Contractor and the subcontractor and without the fault or negligence of either of them, shall extend the date for completion of work under the State's order on a day for day basis, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to complete the work specified in the state's order by the date specified therein.

If Contractor or Contractor's employee does not complete the specified work by the date specified in the State's order, Contractor shall pay the State, as fixed and agreed liquidated damages, \$500 per working day, not to exceed one half of the total of the contract, until the specified work is completed.

Contractor has the right to reject and return any order issued by the State within ten (10) days of the date of the order if it cannot accept the State's schedule for completion.

9.0 Limitation of Liability. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY LOST REVENUE OR PROFITS, LOST OPPORTUNITIES OR EFFICIENCIES, OR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, OR INDIRECT DAMAGES OF ANY KIND FOR ANY REASON WHATSOEVER INCLUDING, BUT NOT LIMITED TO, DAMAGES BASED UPON CONTRACT, WARRANTY, TORT, STRICT LIABILITY, OR ANY OTHER THEORY EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Each party agrees that, except for payments due the contractor, the other party's liability hereunder for damages, regardless of the form of action, will not exceed \$500,000. The parties agree that amounts stated herein are fair under the circumstances and that the charges reflect this limitation of liability.

10.0 ORIGINALITY: Contractor warrants that any software and documentation specifically developed for the fulfillment of this Agreement by Contractor will not knowingly infringe upon or violate any patent, copyright, trade secret or other property right of any third party, and Contractor shall indemnify and hold the State harmless from and against any loss, cost, liability or expense arising out of any breach or claimed breach of this warranty.

In the event Contractor shall elect to use or incorporate any existing system component(s) in developing any products and performing the services required to be delivered hereunder, Contractor shall first notify the State, in writing. The State may elect to direct Contractor not to use or incorporate any such components. If the State shall not object within a period of thirty (30) days from the date said notice is received, Contractor shall be authorized to use or incorporate such component(s) at Contractor's expense. Contractor must first obtain the written consent of the party owning same, if not the Contractor, and furnish a copy thereof to the State. Contractor shall also transfer title or perpetual license to use such components to the State upon delivery of any products and performance of any services affected hereby, and shall indemnify the State, as specified in Section 23.0 of the General Terms and Conditions of this State of Wisconsin Data Processing Agreement, with respect thereto.

11.0 PERFORMANCE DOCUMENTATION: All documentation delivered hereunder shall conform to the documentation standards of the State's site. Contractor will furnish the State with the following documentation which will be in form and substance at least equal to comparable material generally in use in the industry.

DOCUMENTATION	QUANTITY
User's Manual	TBD

12.0 PROGRESS REPORTS: Contractor shall submit a progress report to the State signed by an authorized officer of Contractor on a Monthly basis. Such progress report shall describe the status of Contractor's performance since the preceding report, including the products delivered, the progress expected to be made in the next period, the amounts billed for the current period as well as cumulative amounts billed relative to the State's order. Each report shall describe Contractor's activities by reference to the work schedule included in the State's order. Reports shall be sent to the Contract Administrator designated by the State.

13.0 RESPONSIBILITIES OF CONTRACTOR: Contractor agrees:

- 13.1 To perform those tasks and deliver the products identified in the State's order(s) identified under the heading "Scope of Work."
  - 13.2 To comply with all security regulations in effect at the State's premises, and externally for materials belonging to the State or to the project.
  - 13.3 To assign on a full-time basis Contractor's employees, agents or representatives to assist in fulfilling its performance under this Agreement.
  - 13.4 To appoint a Contract Administrator for liaison and consultation with the State. The Contract Administrator shall have authority to make managerial and technical decisions concerning the services deliverable under this Agreement.
  - 13.5 To correct any errors in the work found by the State or Contractor for a period of twelve (12) months after acceptance by the State. Such corrections shall commence within forty-eight (48) hours after the State's written notification to Contractor. Contractor will not be responsible for corrections after the end of the contract for any work performed during the contract.
- 14.0 RESPONSIBILITIES OF THE STATE: The State agrees:
- 14.1 To arrange for necessary cooperation by the State's officials and employees, including providing access to such records and other information needed by Contractor to carry out the work set forth in the State's order.
  - 14.2 To appoint a Contract Administrator for liaison and consultation with Contractor. The Contract Administrator shall have authority to make managerial and technical decisions concerning services deliverable under this Agreement and to accept or approve Contractor's work on behalf of the State. The State's Contract Administrator shall not have authority to amend or in any way modify the provisions of this Agreement.
  - 14.3 To deliver the following items prior to the Start Date for each phase of work if specified in the State's order(s): (1) source programs in machine readable form (i.e., cards, or card image magnetic tape or diskette); (2) a representative test data sample to exercise all items referenced in the State's order; (3) currently available detailed documentation and specifications; (4) program output reports produced by any delivered programs from (1) above, from any test data from (2) above; and (5) assignment of the file and program nomenclature. Delayed delivery of any of the above specified products for any phase of work shall result in a day-to-day extension of the completion date for the work in that phase.
  - 14.4 To abstain from effecting any change, modification, or enhancement of all items referenced in the State's order subsequent to Contractor's receipt of the deliverables provided under paragraph 13.3 of this Personal Services Rider.
- 15.0 RIGHT TO APPROVE CHANGES IN STAFF: The State shall have the absolute right to approve or disapprove a proposed change in the assigned staff. The State, in each instance, will be provided with a resume of the proposed substitute and an opportunity to interview that person prior to giving its approval or disapproval. The State shall not unreasonably withhold its approval.
- 16.0 SOFTWARE STANDARDS: Any software delivered hereunder will be developed by Contractor to operate on the State's equipment and software system as specified in the State's solicitation document and the State's order.
- Contractor agrees that all software and other products delivered hereunder will comply with the State's applicable standards as set forth in the State site's data processing standards manual, or as otherwise specified in the State's solicitation document or order(s). The State agrees that it will make every reasonable accommodation to its standards and procedures to enable Contractor's staff and any resulting software products to operate efficiently and effectively on the State site's computer system. In addition to, but in limitation of, the representations herein contained, Contractor agrees that all products or elements to be delivered hereunder shall comply with all applicable provisions of standards or draft standards issued by the American National Standards Institute.
- 17.0 TASKS, DELIVERABLES AND PAYMENT: The State's solicitation document and order(s) describe specifically the nature and goals of the work to be performed by Contractor hereunder, how it shall be performed,

and when it shall be completed. They also describe products required to be delivered by contractor upon completion of each task, the form any such product shall take, and the payment, if any, which shall be due upon acceptance by the State of the completed work.

- 18.0 **TERMINATION:** The State reserves the right to terminate this Agreement by giving written notice to Contractor of such termination and specifying the effective date thereof, at least ten (10) days before the effective date of such termination. Contractor shall, in the event of such termination, be entitled to receive compensation for any work accepted hereunder in accordance with the State's order(s). Contractor shall also be compensated for partially completed work in the event of such termination. The compensation for such partially completed work shall be no more than the percentage of completion of each work effort, as determined in the sole discretion of the State, times the corresponding payment for completion of such work as set forth in the State's order(s).

Upon termination or other expiration of this Agreement, each party shall forthwith return to the other all papers, materials, and other properties of the other held by each for purposes of execution of this Agreement. In addition, each party will assist the other party in the orderly termination of this Agreement and the transfer of all aspects hereof, tangible or intangible, as may be necessary for the orderly, non disruptive business continuation of each party.

- 19.0 **TIME PERIOD:** The term of this Agreement shall commence on the date specified on the State's order and shall continue until all work as specified on the State's order(s) has been accepted by the State, or until otherwise terminated under the provisions contained herein.

- 20.0 **TITLE:** All original written material, including programs, card decks, tapes, listings and other documentation both originated and prepared by Contractor pursuant to this Agreement shall belong exclusively to the State of Wisconsin.

The State shall have unlimited rights to specific computer software developed or generated under this Agreement. Unlimited rights means rights to use, duplicate or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever and to have or permit others to do so.

- 21.0 **TRAINING:** Contractor agrees to develop and conduct training programs for State personnel who will operate and maintain any developed software to achieve the level of proficiency necessary to support the State's use of the software. Contractor agrees to permit videotaping of the training programs and to furnish the State with copies of all materials used in the training programs.
- 22.0 **TRAVEL EXPENSE:** Contractor shall not charge the State for any travel expense without the State's prior written approval. Upon obtaining the State's written approval, Contractor shall be authorized to incur travel expense payable by the State only to the extent provided by Wisconsin Statutes and Administrative Rules.
- 23.0 **WARRANTY OF OPERATION:** Contractor will without charge to the State correct any such defects and make such additions, modifications, or adjustments to the work product as may be necessary to keep the work product in operating order in accordance with such specifications.

**All other terms of the contract not herein amended shall remain in full force and effect as originally executed.**

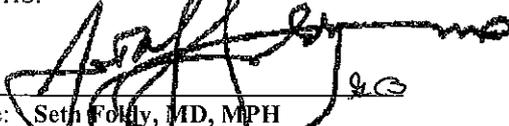
**We have read and agree to the terms and conditions of this contract.**

For CIBER Inc.:

By: 

Name: **Ann Griffiths**  
Title: **Regional Vice President  
CIBER, Inc.**  
**650 Wilson Lane, Suite 200  
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Phone: (717) 691-5500  
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For DHS:

By: 

Name: **Seth Foley, MD, MPH**  
Title: **State Health Officer and Administrator  
Division of Public Health  
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