State of Wisconsin

DOA-3261 (R08/2003)

s. 16.75, Wis. Statutes

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **BIDS MUST BE SEALED AND ADDRESSED TO:**  Department of Employee Trust Funds  P.O. Box 7931  Madison, WI 53707-7913 | | | Bid envelope must be sealed and plainly marked in lower left corner with due date and **Request for Bid ETE0011**. Late bids shall be rejected. The soliciting purchasing office on or before the date and time that the bid is due MUST date and time stamp bids. Bids dated and time stamped in another office shall be rejected. Receipt of a bid by the mail system does not constitute receipt of a bid by the purchasing office. Any bid that is inadvertently opened as a result of not being properly and clearly marked is subject to rejection. Bids must be submitted separately, i.e., not included with sample packages or other bids. Bid openings are public unless otherwise specified. Records will be available for public inspection after issuance of the notice of intent to award or the award of the contract. Vendor should contact person named below for an appointment to view the bid record. Bids shall be firm for acceptance for 180 days from date of bid opening, unless otherwise noted. The attached terms and conditions apply to any subsequent award. | | | | | |
| REQUEST FOR BID  ETE0011 – Financial Statements Audits for the Wisconsin Deferred Compensation Program | | |
| THIS IS NOT AN ORDER | | | Bids MUST be in this office no later than  September 15, 2014 at 2:00 PM, CDT | | | | | Public Opening |
| VENDOR (Name and Address) | | | No Public Opening |
| Name (Contact for further information) Kristen Schipper | | | | | |
| Phone (608) 261-0737 | | | | Date August 11, 2014 | |
| Quote Price and Delivery FOB Madison, WI | | | | | |
| Description: Request for Bid (RFB) ETE0011 seeks a provider for the Wisconsin Deferred Compensation Program Financial Statements Audits Contract issued by the State of Wisconsin Deferred Compensation Board and administered by the Department of Employee Trust Funds.  RFB ETE0011, amendments and questions and answers will be posted on the ETF website <http://etfextranet.it.state.wi.us> and will not be mailed. | | | | | | | | |
| Payment Terms: | | | Delivery Time: | | | | | | |
| In signing this bid, we certify that we have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit a bid; that this bid has been independently arrived at without collusion with any other vendor, competitor or potential competitor; that this bid has not been knowingly disclosed prior to the opening of bids to any other vendor or competitor; that the above statement is accurate under penalty of perjury. We will comply with all terms, conditions and specifications required by the State in this Request for Bid and all terms of our bid. | | | | | | | | |
| Name of Authorized Company Representative (Type or Print) | Title | | | | Phone (       ) | | | |
| Fax (       ) | | | |
| Signature of Above | | Date | | Federal Employer Identification No. | | Social Security No. if Sole Proprietor (Voluntary) | | |
|  | |  | |  | | |

Request for Bids (RFB) #ETE0011

**Financial Statements Audits**

**for the Wisconsin**

**Deferred Compensation Program**



##### State of Wisconsin

Deferred Compensation Board

Administered by the Department of Employee Trust Funds

Release Date: August 11, 2014

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# Bidding Procedures and Requirements

## RFB Information

Please note that this is a bid and not a proposal. The work to be performed by the vendor is described in great detail in this bid document. Although a complete work plan is provided in this document, the Department and the vendor have the flexibility to agree on changes that will enhance the process or offer greater efficiencies. The objective is for bidders to provide adequate documentation in a succinct format that demonstrates ability and willingness to provide the service and abide by the terms of this bid. The least cost responsible bidder will be awarded the contract pending contract signing.

The purpose of this document is to provide interested and qualified certified public accounting firms with information to enable them to prepare and submit competitive bids for financial statement audits of the Wisconsin Deferred Compensation Program (WDC), which will result in an opinion as to whether the financial statements are presented in accordance with auditing standards generally accepted in the United States of America. The Deferred Compensation Board (Board) and the Department of Employee Trust Funds (Department or ETF) intend to use the results of this process to award a contract to provide financial statement audits of the WDC beginning July 1, 2015 and ending July 1, 2019. An option to extend the contract for two additional two-year periods may be included, subject to the satisfactory negotiation of terms (including prices acceptable to both the Board and the selected firm).

The financial statement audits are to be performed in accordance with auditing standards generally accepted in the United States of America. The last financial statement audit of the WDC was for the calendar year ending December 31, 2013. The current vendor will complete calendar year 2014’s audit. This RFB’s awarded vendor will complete the first audit under this procurement on calendar year 2015. For more information on the WDC, please refer to the WDC and ETF websites: [www.wdc457.org](http://www.wdc457.org) and etf.wi.gov.

Table 1 Reference Materials

|  |  |
| --- | --- |
| Document | Web Address |
| Employee Trust Funds Internet Site | <http://etf.wi.gov/> |
| WI State Statutes Ch. 40, Subch. VII | http://www.legis.state.wi.us/statutes/Stat0040.pdf |
| Ch. ETF 70, WI Admin. Code | http://www.legis.state.wi.us/rsb/code/etf/etf070.pdf |
| WDC 2005 Program Fact Sheet | http://etf.wi.gov/publications/et8904.pdf |
| WDC Web site | http://[www.wdc457.org](http://www.wdc45.org) |

|  |
| --- |
| *Note*: The WDC Web site contains WDC information including the WDC Plan and Trust Document, list of investment options, brochures and participant forms. The WDC Plan and Trust Document is also located at the bottom of <http://etf.wi.gov/members/benefits_def_comp.htm>. |

### Program Background

The WDC is permitted under Section 457 of the Internal Revenue Code. It was created by the Wisconsin Laws of 1981, Ch. 187 and established in 1982 for state employees and has been available to local public employees since 1985. Wisconsin Statute Chapter 40, Subchapter VII, Chapter ETF 70 of Wisconsin Administrative Code and the Wisconsin Plan and Trust Document regulate the WDC and set forth the rules and responsibilities of all parties involved with the program.

The WDC is an unbundled deferred compensation program through which over 55,000 public sector employees in Wisconsin have invested over $3.5 billion, as of December 31, 2013. The WDC provides eligible employees with the opportunity to set aside a portion of their annual earnings on either a tax-deferred basis or post-tax (“Roth”) basis to supplement future retirement income. Federal tax law sets forth certain limitations and restrictions that must be followed including the amount of employee compensation that can be deferred as well as when and how account balances can be distributed. There is currently no minimum per pay period contribution required of a participant. The maximum annual contribution is generally the lesser of the regulatory indexed limitation (currently $17,500 excluding any catch-up amounts) or 100% of adjusted gross compensation.

The Board has statutory authority for the WDC and the Department is responsible for all aspects of program administration. The Board contracts with a third party administrator (Administrator) for a full range of functions including marketing, customer service, recordkeeping and overall program administration. The current Administrator is Great-West Financial. Advised Assets Group, part of the Great-West Financial family of firms, provides investment analysis services for the Board as well as advisory services for participants who opt to use the managed accounts service.

WDC participants have considerable flexibility with their deferred compensation accounts. Participants may defer into any number of investment products that are offered without restrictions as to the number of investment products selected or the number of times deferral amounts may be increased or decreased.

Participants also have unlimited opportunities to redirect future deferral amounts and exchange past deferral amounts to any of the investment products offered by the WDC. Participants can access their WDC account with a touch tone telephone seven days a week, twenty-four hours a day via the IVR telephone system as well as by logging in with a password to a protected section of the WDC website (www.wdc457.org). Both systems allow participants to obtain account balance information as well as current and past performance information for the WDC's various options. Participants can also complete transactions [e.g., reallocation of deferrals, exchange existing account balances] using these systems. The IVR telephone system was first implemented for the WDC in August 1995 and the password-protected website became operational in 1999.

The WDC accepts transfers of assets rolled-in from Section 401(a), 401(k), 403(b), and other 457 plans as well as individual retirement accounts (IRAs) and will roll-out assets to eligible retirement plans, including other Section 457 plans. A WDC participant may use all or a portion of the participant’s account balance as a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in IRC Section 414(d)), including the Wisconsin Retirement System (WRS) to purchase permissive service credit or for the repayment of service credits.

The current financial statement auditor is CliftonLarsonAllen LLP, who was awarded the contract in 2007. To view a draft copy of a recent financial statement audit, go to http://etf.wi.gov/boards/agenda-items-2014/dc0603/item3.pdf. The current contract will expire in May 2015, having exhausted all possible renewals, which is why ETF is now soliciting bids for a new contract. More information can be found on ETF’s extranet. Go to <http://etfextranet.it.state.wi.us>. Choose “Contract Administrators/Vendors.” Scroll down to ETG0008 and hyperlink to the procurement materials from the prior procurement process. Note: That was an RFP (Request for Proposals). This is an RFB. Current RFB materials are posted on the same site under RFB ETE0011, the current solicitation.

### Investment Products

By Wisconsin Statute and Administrative Code, the Board is responsible for selecting and monitoring the investment options offered by the WDC. The WDC is an unbundled plan, meaning that recordkeeping and investment options are separated. The firm holding the administrative recordkeeping contract does not provide any investment options for WDC participants.

WDC investment options range from conservative fixed and bond funds to more aggressive mid/small cap and international equity funds. The WDC also offers a self-directed brokerage account through the Charles Schwab Personal Retirement Account option and an asset allocation service. Participants who elect to enroll in the WDC's asset allocation service are able to design and maintain their own diversified investment portfolio for their WDC assets. Please refer to the WDC website for the list of investment options, which provides detailed information on WDC investment options. Any reimbursements, including 12(b)1 fees, that are made to the Administrator by investment companies, are monitored by the Department and counted as an offset against the Administrator's monthly compensation.

The Board and the Department take a very active role in the investment product decisions. The Department assists a separate advisory Investment Committee of the Board in reviewing investment options. The investment performance of current offerings is reviewed annually and decisions regarding retaining or removing options are based on this review. The Board has the final decision making authority over the removal of investment options from the WDC.

To assist the Board in its review, the Administrator is required to prepare an annual evaluation of all investment products offered by the WDC. This report includes:

* a detailed analysis of the performance of the investment products compared to appropriate indices;
* information on the credit worthiness of the company offering the product;
* evaluations of the products’ continued ability to meet predetermined criteria; and
* recommendations for retaining or replacing investment products offered.

The Board determines which investment options will be offered by the WDC. Fixed income or guaranteed principal options are typically selected through a competitive bid process. Mutual fund options are typically selected through a search process by utilizing specific criteria for each option type, as established by the Board. The Administrator is responsible for providing expertise to the Board and the Department in the area of monitoring and evaluating investment companies and products and is required to provide analysis and recommendations regarding retaining, removing and adding investment products.

### Plan Administration

A competitive bid process in 2005 resulted in the selection of Great-West Retirement Services (since mid-2013 known as Great-West Financial) as Administrator of the WDC. The Administrator is required to provide the following services to the WDC:

* marketing to both employers and employees;
* enrollment;
* customer service;
* investment education to participants;
* data processing;
* recordkeeping; and
* legal, actuarial, accounting and financial investment specialization assistance to the Board and Department.

In addition to the State of Wisconsin agencies, boards, commissions and councils that provide the WDC as a benefit to their employees, there are over 870 separate local public employer payroll reporting units that submit records of participant deferrals to the Administrator. The Administrator’s staff markets the WDC to all eligible local government and school district employers and provides training and assistance to participating local public employers' payroll staff on the processing of deferrals and changes to participant accounts.

In addition to customer service for participants and employers, the Administrator is also responsible for maintaining participant account records as well as all other recordkeeping functions of the WDC. All investment products are unallocated, which means the investment companies maintain one account only for WDC assets. The Administrator maintains all participant records and provides consolidated reporting of all account activity.

### Participant Fees

The Board determines the amount of fees or charges that will be assessed participants to generate sufficient revenues to cover all program administrative costs (both contract administrator and state). Fees are reviewed on an annual basis and adjusted based on projections of plan growth, contract administrative costs and estimated costs to the Department.

In 2000 a new participant fee structure was initiated by the Board in order to provide more equity for participants with larger account balances while not assessing too high of a fee to discourage those who are just beginning to save for retirement. The tiered asset fee schedule that was adopted addresses the equity issue and has been well received by Wisconsin participants. Current WDC participant fees are listed in Table 2: WDC Participant Fees.

Table 2 WDC Participant Fees

|  |  |
| --- | --- |
| If participant balance is between: | Fee per month/year is: |
| $0 to $5,000 | $0.50 month/ $6.00 year |
| $5,001 to $25,000 | $1.50 / $18.00 |
| $25,001 to $50,000 | $3.00 / $36.00 |
| $50,001 to $100,000 | $6.00 / $72.00 |
| $100,001 to $150,000 | $8.33/ $100.00 |
| $150,001 and up | $10.00/ $120.00 |

There are no additional costs assessed participants for administration of the WDC. Because the WDC uses publicly traded mutual funds, there are additional investment management fees as reflected in each fund's internal expense charges and disclosed to participants in the mutual funds’ prospectuses. Several companies contracted by the Board to provide an investment product reimburse the WDC for administrative costs that they would normally provide if they were handling recordkeeping at the participant level. These reimbursements are in the form of either an asset based reimbursement or a proportionate share of the marketing material costs. Any amounts paid to the Administrator from the investment providers are currently used to reduce participant fees and offset, dollar for dollar, the amount that is paid to the Administrator for the month that the reimbursements are received.

### Procuring and Contracting Agency

This RFB is issued for the State of Wisconsin Deferred Compensation Board by the Department of Employee Trust Funds. The Department is the sole point of contact for the State in the selection process. The terms State, ETF, Department and Board may be used interchangeably in this document and its attachments.

Prospective bidders are prohibited from contacting any person in the Department other than the individual listed here regarding this RFB. Violation of this requirement may result in the bidder being disqualified from further consideration.

Express (private) delivery: Mail (USPS) delivery:

Kristen Schipper, Purchasing Kristen Schipper, Purchasing

Dept. of Employee Trust Funds Dept. of Employee Trust Funds

801 West Badger Road P.O. Box 7931

Madison, WI 53713-2526 Madison, WI 53707-7931

Telephone: (608) 261-0737

E-mail: [ETFProcurement@etf.wi.gov](mailto:ETFProcurement@etf.wi.gov)

### Definitions

The following definitions are used throughout the RFB:

Administrator means the third party firm contracted to provide administrative services for the Wisconsin Deferred Compensation Program. Currently, Great-West Financial.

Auditor/contractor means the firm who audits the WDC’s financial statements.

Beneficiary means the person or estate entitled to receive WDC benefits after the death of a participant.

Bidder/firm/proposer/vendor means a firm submitting a bid in response.

Board means the Deferred Compensation Board.

Department means the Wisconsin Department of Employee Trust Funds.

ETF means the Wisconsin Department of Employee Trust Funds.

Financial Statement means a report of basic accounting data intended to assist the Board in understanding the WDC’s financial history and current operations.

Fixed price means the fee to be paid by ETF on behalf of the Board to the auditing firm as payment for the contract. The fee paid will be an exact amount as defined in the contract.

Participant means an individual who is currently deferring compensation, or who has previously deferred compensation under the WDC, or is a beneficiary of a participant, and who has not received a distribution of his or her entire WDC account.

RFB means Request for Bids.

State means State of Wisconsin.

WDC means the Wisconsin Deferred Compensation Program.

WRS means the Wisconsin Retirement System.

Please see the glossary on the ETF home page at: <http://etf.wi.gov/glossary.htm> for further definitions.

### Clarification of the Specifications and Requirements

Any questions concerning this RFB must be submitted via e-mail to [ETFProcurement@etf.wi.gov](mailto:ETFProcurement@etf.wi.gov) on or before the date identified in Section 1.1.9, to the individual identified in Section 1.1.5. Bidders are expected to raise any questions they have concerning the RFB at this point in the process. Questions are to be submitted as an MS Word document using the format specified below:

Table 3 Format for Submission of Vendor Questions

|  |  |  |  |
| --- | --- | --- | --- |
| No. | RFB Section | RFB Page | Question |
| Q1 |  |  |  |
| A1 |  |  |  |
| Q2 |  |  |  |
| A2 |  |  |  |

All questions must include the name of the firm and the person submitting the questions. A compilation of all questions and answers, along with any RFB addenda, will be posted to the ETF Extranet (see below) no later than the date indicated in Section 1.1.9.

If a bidder discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in this RFB, the bidder should immediately notify the individual identified in Section 1.1.5 of such error and request modification or clarification of this RFB document.

In the event that it becomes necessary to provide additional clarifying data or information, or to revise any part of this RFB, supplements or revisions will be published on the Department’s Extranet at <http://etfextranet.it.state.wi.us/> and will not be mailed. Electronic versions of the RFB and all appendices and exhibits are available on ETF’s Extranet. The Department will notify all potential bidders who have submitted a letter of intent to bid when updates to the Extranet are posted.

### Reasonable Accommodations

ETF will provide reasonable accommodations, including the provision of informational material in an alternative format, for qualified individuals with disabilities upon request.

### Calendar of Events

Listed below are the important dates by which actions related to this RFB must be completed. In the event that the Department finds it necessary to change any of the specific dates and times in the calendar of events listed below, it will do so by issuing a supplement to this RFB via the ETF Extranet listed in Section 1.1.7. No other formal notification will be issued.

Table 4 Calendar of Events

|  |  |
| --- | --- |
| Date | Event |
| August 11, 2014 | ETF Issues RFB |
| August 25, 2014 | Vendor Questions and Letter of Intent Due |
| August 29, 2014 | ETF Posts Answers to Questions on ETF Extranet |
| **September 15, 2014 2:00 P.M. CDT** | **Bids Due** |
| October 20, 2014 (estimated) | ETF provides Board with draft contract award recommendation (for November 4, 2014 board meeting) |
| Mid-November to December 2014 | ETF Notifies Vendors of Intent to Award Contract & begins contract negotiations |
| July 1, 2015 | Contract Starts |
| \*All dates are estimated except the RFB due date and time. |

### Letter of Intent

A letter of intent indicating that a bidder intends to submit a response to this RFB should be submitted to the Department by the date indicated in Section 1.1.9. In the letter, identify the bidder's organization and give the name, location, telephone number, fax number and e-mail address of one or more persons authorized to act on the bidder's behalf. Bidders should submit the letter of intent via email to the address in Section 1.1.5. The RFB number, ETE0011, and title, Financial Statements Audits for the Wisconsin Deferred Compensation Program, must be referenced in your e-mail’s subject line. The letter of intent does not obligate the bidder to submit a response.

### Contract Term

The contract is proposed to be effective July 1, 2015 through July 1, 2019. An option to extend the contract for two additional two-year periods may be included, subject to the satisfactory negotiation of terms after contract award, including prices during the renewal periods.

### Due Diligence and Errors/Omissions Coverage

The selected vendor shall exercise due diligence in providing services under any contract awarded. To protect ETF’s governing boards and any ETF employee against liability, cost, or expenses (including reasonable attorney fees) which may be insured or sustained as a result of vendor errors or other failure to comply with the terms of the awarded contract, the selected vendor shall maintain errors and omissions insurance in an amount acceptable to ETF in force during the contract period and shall furnish ETF with a certificate of insurance for such amount. Further, this certificate shall designate the State of Wisconsin Employee Trust Funds Board and its affiliated boards as additional insured parties.

**Any exceptions to this requirement must be stated in writing and included in the bid submitted.**

### Criminal Background Verification

The Department follows the provisions in the Wisconsin Human Resources Handbook Chapter 246, Securing Applicant Background Checks (see <http://oser.state.wi.us/docview.asp?docid=6658>). The vendor is expected to perform background checks that, at a minimum, adhere to those standards. This includes the criminal history record from the Wisconsin Department of Justice (DOJ), Wisconsin Circuit Court Automation Programs (CCAP), and other state justice departments for persons who have lived in a state(s) other than Wisconsin. More stringent background checks are permitted. Details regarding the vendor's background check procedures should be provided to ETF regarding the measures used by the vendor to protect the security and privacy of program data and participant information. A copy of the result of the criminal background check the vendor conducted must be made available to ETF upon request. ETF reserves the right to conduct its own criminal background checks on any or all employees or contractors of and referred by the vendor for the delivery or provision of services.

### VendorNet Registration

The State of Wisconsin’s purchasing information and vendor notification service is available to all businesses and organizations that want to sell to the state. Anyone may access VendorNet on the Internet at http://vendornet.state.wi.us to get information on state purchasing practices and policies, goods and services that the state buys, and tips on selling to the state. Vendors may use the same website address for inclusion on the bidders list for goods and services that the organization wants to sell to the state. A subscription with notification guarantees the organization will receive an e-mail message each time a state agency, including any campus of the University of Wisconsin System, posts a request for bid or a request for proposal in the vendor’s designated commodity/service area(s) with an estimated value over $50,000. Increasingly, state agencies also are using VendorNet to post simplified bids valued at $50,000 or less. Vendors also may receive e-mail notices of these simplified bid opportunities.

## Preparing and Submitting a Bid

### General Instructions

The evaluation and selection of a vendor will be based on the information submitted in the bid, references, oral presentations (if requested), and the vendors’ responses to requests for additional information or clarification.

**Failure to respond to each of the requirements of this RFB may be the basis for rejecting a bid.**

Elaborate (e.g. expensive artwork), unreasonably long or verbose bids beyond that sufficient to present a complete and effective bid, are not necessary or desired.

### Incurring Costs

The State of Wisconsin, the Department and the Board are not liable for any costs incurred by vendors in replying to this RFB.

### Submitting the Bid

**Vendors must submit one (1) original (marked “Original”) and three (3) complete paper copies of the bid to the address listed in 1.1.5 by the deadline listed in 1.1.9.**

**Two (2) complete un-locked and non-password protected electronic copies (i.e., MS Word) of the bid must also be provided on two (2) separate flash drives, one bid per flash drive.** The flash drives must be labeled on the outside with the vendor’s name.

**In addition, two electronic copies with all confidential material redacted must be provided on two (2) separate flash drives, one bid per flash drive, and marked as “Redacted for Confidentiality” per Appendix C.** The flash drives must be labeled on the outside with the vendor’s name.

Each paper copy of the vendor’s bid must follow the format indicated in Section 1.2.4.

Bids submitted via fax or email will not be accepted.

The electronic copies of the bid must be in MS-Word format and must be **one single document**.

Receipt of a bid by the State mail system does not constitute receipt of a bid for purposes of this RFB.

All paper copies of a vendor’s bid must be packaged, sealed and show the following information on the outside of the package:

* “[Bidder's Name and Address]”
* Title: ETE0011 Financial Statements Audits for the Wisconsin Deferred Compensation Program
* Bid Due Date: September 15, 2014, 2:00 P.M. CDT.

### Bid Organization and Format

Bids must be typed and submitted on 8.5 by 11-inch paper and bound securely.

Only provide promotional materials if they are relevant to a specific requirement of this request. If provided, all materials must be included with the response to the relevant requirement and clearly identified as “promotional materials.” Electronic access to such materials is preferred.

Bidders responding to this RFB must comply with the following format requirements.

1. BIDDER CHECKLIST: Complete the bidder checklist provided as Appendix A to this RFB and include it with your bid as the first sheet of paper in the bid response.
2. SIGNED COVER SHEET (DOA 3261): Complete DOA 3261, the first page in this bid document, and include it with your bid as the second sheet of paper in the bid response.
3. Tab 1 - TRANSMITTAL LETTER: A signed transmittal letter must accompany the bid. The transmittal letter must be written on the vendor’s official business stationery and signed by an official that is authorized to legally bind the vendor. Include in the letter:

* Name, signature and title of bidder’s authorized representative
* Name and address of company
* Telephone number, fax number, and e-mail address of representative
* Title and RFB number: ETE0011 Financial Statements Audits for the Wisconsin Deferred Compensation Program
* Executive Summary
* A statement that the proposal is a firm and irrevocable offer for six (6) months after the proposal due date.

1. Tab 2 – REQUIRED FORMS: The vendor must complete and/or include the following required State of Wisconsin forms:

* Mandatory Requirements – Appendix B
* Designation of Confidential and Proprietary Information – Appendix C
* Standard Terms and Conditions (DOA-3054) and Supplemental Standard Terms and Conditions (DOA-3681) – Appendix D
* Vendor Information (DOA-3477) and Reference Sheets (DOA-3478) – Appendix E. The vendor must provide three (3) references. The Board will determine which, if any, references to contact to assess the quality of work performed and personnel assigned to the project. The results of any references will be used to verify the vendor’s ability to meet this RFB’s requirements. Note: Although these clients shall serve as the primary references for purposes of this RFB, the Department specifically reserves the right to contact **any** clients or past clients for information about the firm's performance under past and present contracts. Provide at least three references. Each reference must identify the state or plan for which you have provided similar services.

1. Tab 3 - RESPONSE TO SECTION 2: Provide a point-by-point response to each and every statement in Section 2. Tab 3 must exactly follow the same numbering system, use the same headings, and address each point in Section 2. Bidders should display each requirement immediately preceding the response to that requirement in such a way where it is easy to distinguish the requirement from the bidder’s response. For example, highlight the requirement or box the requirement off from the response. Provide a succinct explanation of how each requirement is addressed. Merely indicating that you will complete a task without demonstrating how you will do so may result in your bid being rejected.
2. Tab 4 – ASSUMPTIONS AND EXCEPTIONS: All assumptions and exceptions must be included in this tab. Provide a succinct explanation for each item as well as a reference to the section of the bid it relates to. **Any assumption or exception made but not included in this Tab 4 will be invalid.** Exceptions to the Department’s contract terms and conditions may be considered during contract negotiations if it is beneficial to the Department. **If exceptions to the standard terms are not presented in this section, they may not be discussed or considered during contract negotiations.** When documenting assumptions and exceptions, clearly label each exception with one of the following labels:

* RFB Assumption(s)
* RFB Exception(s)
* Standard Term Exception(s)

1. **Tab 5 – COST WORKSHEET: Cost Worksheet located in Appendix F. Failure to provide a cost using the exact form provided in Appendix F will result in your bid being disqualified and rejected.**

### Multiple Bids

Multiple bids from a vendor are not permissible.

### Contacting Vendor References and Conducting Site Visits

By submitting a bid in response to this RFB, the vendor grants rights to the Department to contact or arrange a visit with any or all of the vendor’s clients and/or references.

## Bid Review and Award Process

### Preliminary Evaluation

Bids will initially be reviewed to determine if mandatory requirements are met. Failure to meet mandatory requirements as stated in Appendix B, or failure to follow the required instructions for completing the bid as specifically outlined in this document may result in rejection of the bid.

### Award Methodology

The least cost responsible bidder that meets all the mandatory requirements will be awarded the bid based on the information contained on the submitted Cost Worksheet in Appendix F under TOTAL & COST BASIS FOR AWARD. Bids that do not comply with instructions or are unable to comply with specifications contained in this RFB may be rejected by the Department.

State personnel will verify that bidders meet all requirements in this RFB. The Department may request reports on a vendor's financial stability, and if financial stability is not substantiated, may reject a vendor's bid. The Department may request demonstrations of the vendor's proposed products(s) and/or service(s), and review results of past awards to the vendor by the State of Wisconsin.

This RFB does not commit the Department to awarding a contract. The Department retains the right to accept or reject any or all bids, or accept or reject any part of a bid deemed to be in the best interest of the State. The State shall be the sole judge as to compliance with the instructions contained in this RFB.

Award will be made to the least cost responsible bidder(s).

“Responsibility” is determined at the time bids are evaluated, using criteria which may include an assessment of whether the bidder will be able to meet the specifications of the RFB.

### Notice of Award

All vendors who respond to this RFB will be notified of ETF’s intent to award the contract as a result of this RFB.

### Right to Negotiate

The Department may negotiate the terms of the contract, including the award amount, with the least cost responsible bidder prior to entering into a contract. If contract negotiations cannot be concluded successfully with the least cost responsible bidder, the Department may negotiate a contract with the next least cost responsible bidder and so on.

### Appeals Process

Notices of intent to protest and protests must be made in writing. The appeal must state the contract number, detailed factual grounds for the objection to the contract award, and must identify any Wisconsin statutes and Wisconsin Administrative Codes that are alleged to have been violated. Protestors should make their protests as specific as possible and must identify statutes and Wisconsin Administrative Code provisions that are alleged to have been violated. Protestors can only submit an appeal once per award.

Any written notice of intent to protest the Notice of Intent to Award a contract must be filed with:

Wisconsin Deferred Compensation Board c/o

Robert J. Conlin, Secretary

Department of Employee Trust Funds

P.O. Box 7931

Madison, WI 53703-7931

This notice must be received in that office no later than five (5) working days after the Notice of Intent to Award is issued. The written protest must be received within ten (10) working days after the Notice of Intent to Award is issued. Faxed documents will not be accepted.

The decision of the Wisconsin Deferred Compensation Board is final, and subjective judgment of evaluators is not appealable.

# MANDATORY BIDDER qualifications & TERMS

The bidder’s services must be able to be performed according to the following requirements. All bidders must respond to the following by restating each question or statement and providing a detailed written response in Tab 3. (Instructions for formatting the written response to this section are found in Section 1.2 Preparing and Submitting a Bid). In Tab 3, the bidder must provide sufficient detail for the Department to understand how the vendor will comply. Distinguish the requirement from the response by highlighting or boxing off the requirement.

The bidder must also specify in Appendix B whether it agrees to meet/has met each of the following requirements. If not, the bidder must state an exception in writing in Tab 4.

All resources necessary to meet these requirements must be provided by the bidder and included on the Cost Worksheet in Appendix F.

## Vendor Staffing & Experience

### Contact Info

Provide the name of the firm, address, telephone number and name of the authorized official responsible for all activities relating to this bid.

### Firm Experience

Bidders must be a CPA firm with at least 5 years of experience doing financial statement audits or 5 years of experience working on s.457 plans with at least $100,000,000 in assets.

### Firm Profile

Describe –

* the size of the firm;
* the size of the firm’s governmental audit staff;
* the location of the office from which the work on this engagement is to be performed;
* the number and nature of the professional staff to be employed in this engagement on a full-time basis;
* the number and nature of the professional staff to be employed in this engagement on a part-time basis;
* any pending agreements to merge or sell the firm; and

Include evidence of the firm’s financial and organizational stability, including license and bonding to do business in the State of Wisconsin. Bidders who do not currently meet this requirement must meet this requirement before entering into a contract.

### Management Profile

Identify the principal supervisory and management staff, including engagement partners, managers, other supervisors and specialists who would be assigned to this engagement. Indicate whether such person is registered or licensed to practice in Wisconsin. Include:

* Information on the qualifications, experience, training and government auditing experience of each person who will be involved with this engagement, including relevant continuing professional education for the past three (3) years and membership in professional organizations relevant to the performance of the audit, and whether or not that person, in the past five (5) years, has been the subject of any disciplinary action or inquiry in any jurisdiction. Senior managers who may be assigned to this contract must be specifically identified.
* An affirmative statement that the vendor’s firm, the engagement partner, and the manager/supervisor in charge are currently licensed to practice in Wisconsin.
* An affirmative statement describing the efforts the firm will take to insure that a partner-level member of the vendor’s firm will be available and readily accessible to the Department throughout the contract period.

### Ownership and Client Profile

Describe the bid’s principal business and client base. The response must address the following:

* Your firm’s volume of business and market share in relation to the solicited service in this RFB.
* Is your firm a subsidiary or affiliate of another company? Describe in detail.
* Provide full disclosure of all direct or indirect ownership, including information regarding all situations where any insurance or investment company has any ownership or monetary interest in the proposing company.

### Government Clients

Describe the firm’s government auditing engagements for similar size/type plans over the past five (5) years. The response must address the following:

* List separately all government auditing engagements, ranked on the basis of total staff hours per engagement.
* Indicate the scope of work, date, engagement partners, total hours, and the location of the firm’s office from which the engagement was performed.
* Provide the name and telephone number of the principal client contact.
* Include statistics on the number of clients where similar work has been performed and the number of similar clients gained and lost during this time period.

### Independence

Provide an affirmative statement that the bidder’s firm is independent, as defined by auditing standards generally accepted in the United States of America. Implicit in the auditor’s expressions of an unqualified opinion on financial statements is the auditor’s representation of independence with respect to those statements.

### Government Clients in Wisconsin

Provide a description of any and all contracts currently held with State of Wisconsin agencies, local units of government (in Wisconsin) and related public authorities or entities. The response must identify the entity, describe the services provided, and include a statement why each such relationship does not constitute a conflict of interest relative to performing the proposed audits.

### Debarment

Certify that the firm has not been suspended or debarred from performing government audits or from other governmental activity.

### Discipline and Litigation

The firm must not have been the subject of any disciplinary action or inquiry during the past five years. Provide detailed and specific information regarding any and all situations where the bidder has been investigated, cited, or threatened with a citation or disciplinary action, by any state or federal regulatory agency within the last five (5) years or prior. Provide a detailed description of any litigation involving other contracts in which the bidder has been or is involved. The response must include all such situations including the date such action was initiated and how the matter was resolved.

### ETF Policies

The Bidder agrees to adhere to all Department standards, terms, policies and procedures. Any exceptions to this statement must be cleared, in writing, by ETF.

### Conflicts of Interest

The Bidder has no conflict of interest with regard to any other work performed for the State of Wisconsin.

## Contract Terms and Conditions

### Ownership of Materials

* Except for medical records as defined by Wis. Admin. Code § ETF 10.01 (3m), all information, data, reports and other materials as are existing and available from the Department and which the Department determines to be necessary to carry out the scope of services under this contract shall be furnished to the vendor and shall be returned to the Department upon completion of the contract. The vendor shall not use it for any purpose other than carrying out the work described in the contract. The Department shall not disclose medical records.
* It is agreed that the Department will be furnished without additional charge all data, models, information, reports and other materials associated with and generated under this contract by the vendor.
* All materials, records, documents, accounting records, software programs, computer tapes, or discs which are specifically purchased or developed for purposes relative to accounts of the WDC shall at all times remain the property of the State and the State shall, at all times, have access to the records.
* The Department shall solely own all customized software, documents, and other materials developed under this RFB. Use of software, documents, and materials by the vendor shall only be with the prior written approval of the Department.
* If used in conjunction with program revenue generating activities with third parties, the Department, vendor, and such third party shall negotiate fee arrangements, which shall include recovery by the Department of development costs associated with the software, documents, or other materials.
* Additional costs to modify software, documents, or other materials developed under this RFB to meet specific requirements of third parties shall be the responsibility of such third parties.

### Vendor Access to State Buildings

Unless otherwise agreed upon by the parties, any and all access by the Bidder’s employees to facilities of the State shall be during normal State office hours, and all employees of the Bidder shall be subject to the State’s site security procedures.

### On-site Security & Replacement Personnel

The Bidder shall furnish the Board and Department with a means of identifying all key personnel assigned to perform work under the contract and furnish the Department with security credentials on these personnel, if requested. Engagement partners, managers, other supervisory staff and specialists may be changed if those personnel leave the firm, are promoted or are assigned to another office. These personnel may also be changed for other reasons with the express prior written permission of the Department. However, in either case, the Department reserves the right to approve or reject replacements, and the replacements must have substantially the same or better qualifications or experience. Other audit personnel may be changed at the discretion of the bidder provided that the replacements have substantially the same or better qualifications or experience.

### Records Inspection

All books, records, ledgers, working papers, and journals relating to the WDC will be opened for inspection and audit by the Department internal audit staff or their designees, State of Wisconsin Legislative Audit Bureau, or designated agents, attorneys and accountants, at any time during normal working hours. Records requested shall be provided on electronic media in a format acceptable to the Department.

### Billing & Invoices

* Contract costs shall be paid on acceptance of a fixed deliverable. Invoices must be itemized by cost worksheet categories of expenses actually incurred.
* On behalf of the Board, the Department shall pay all properly submitted invoices within thirty (30) days of receipt, providing goods and/or services have been delivered and accepted.
* A properly completed invoice must include the related Department purchase order number and be submitted to the correct address for processing.
* Invoices must be submitted to the following address, with a copy to the ETF contract administrator:

Accounts Payable

Department of Employee Trust Funds

P.O. Box 7931

Madison, WI 53707-7931

or

Email: [ETFAccountsPayable@etf.wi.gov](mailto:ETFAccountsPayable@etf.wi.gov)

### Cancellation for Cause

The Board may cancel the contractor’s right to proceed under the contract if the contractor materially fails to perform the services in accordance with the terms of the contract, or fails to make progress regarding any materially endangered performance of the contract, by providing thirty (30) days prior written notice to the contractor. Cancellation under this option shall be effective thirty (30) calendar days after receipt of such notice unless the contractor has corrected any alleged failure or failures within thirty (30) calendar days after receipt by the contractor of such written notice, which notice shall specify fully and in detail each material failure that must be corrected by the contractor. If this clause is invoked by the Board, there shall be no partial payment for work already completed. The Board shall waive its right to cancel for cause any such failure or failures to perform that, in the exercise of due diligence, cannot be cured in such 30-day period provided that:

* The contractor produces a written plan of correction acceptable to the Board;
* The contractor shall within such 30-day period commence and thereafter continue diligently to cure such failure or failures to perform; and
* No such extension has been granted previously.

### Cover

In the event of such cancellation, in addition to any other legal rights or remedies it may have, the Board may procure or furnish services similar to those so cancelled, in which case the contractor shall be liable for compensation to ETF for any costs up to the amount of the contract.

### Continuity of Operations

Upon termination or cancellation of the contract by the Board, the contractor shall provide reasonable training for Department staff and/or continued performance of the services specified in the contract for up to six months, commencing with the date of termination. For providing such training or continued service, after the term of the contract, the Board shall pay the contractor at an hourly rate determined by ETF. The Board shall also have the right, immediately upon demand, to obtain access to and possession of all its properties held by the contractor.

### Change Orders

It is hereby stipulated and agreed that the total cost to the Board for the performance of the work under the contract shall not exceed the limitation set forth in the contract and the Bidder shall perform the work specified and all obligations under the contract. Unless and until a change order or amendment to the contract is approved by the Board, the Board shall not be obligated to reimburse the Bidder for billing in excess of the limits set forth in the contract, and the contractor shall not be obligated to continue performance of work under the contract or to incur costs if such costs are due to additional requirements identified by the Board after the initiation of effort on the work specified in the contract.

### Bidder Change in Ownership or Bankruptcy

If the Bidder experiences a change in ownership or enters bankruptcy proceedings during the period prior to the award of a contract, or if the Bidder experiences a change in ownership or enters bankruptcy proceedings during the term of the contract or any extension thereof, the Board must be notified of the event in writing at the time the event occurs or is identified. Failure to notify the Board upon receipt of an SEC Form 13g shall constitute cause for canceling the contract. Failure to notify the Board of bankruptcy proceedings shall constitute cause for canceling the contract. For the purpose of this section, “change of ownership” does not include a sale or transfer of contractor’s publicly held securities unless an individual partnership, corporation, associate group of investors or legal entity obtains an ownership interest of the contractor in the amount of five percent (5%) or more.

### Waiver of Breach

The waiver by the Board of any breach of any provision contained in the contract shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision contained in the contract. Likewise, such a waiver shall not establish a course of performance between the parties contradictory to the terms of the contract.

### Contract Administrator from Bidder and Board

The Bidder and the Board agree to have specific staff assigned to act as contract administrators at all times. The Board and Department shall jointly identify a staff person, the Department’s Deferred Compensation Director, to act as the Board’s contract administrator. The contract administrators shall handle the day-to-day delivery of services, be the first contact regarding questions and change orders, and ensure that problems and conflicts are resolved fairly and promptly. The Department’s contract administrator shall approve payments to the Bidder for fixed cost deliverables. The Bidder’s contract administrator shall have authority for all contract-related functions, and shall be the vendor’s first contact with the Department in all matters stated above. In no instance shall the Bidder refer any matter to any other official other than the Department contract administrator, unless authorized by the Department contract administrator.

### Prime Contractor

The Bidder shall be considered a prime contractor, i.e., the sole point of contact with regard to all contractual matters, including the performance of services. There shall be no subcontracting of the audits.

### Cooperation with Other ETF Contractors

The Bidder shall fully cooperate with any other contractor the Board or Department may engage to perform additional work. The Bidder shall not commit any act that interferes with the performance of work by any other contractor or by the Board or the Department. The vendor shall cooperate with the Board, the Department and any other State agency working with the Department, hardware manufacture representatives, system software suppliers, and communications systems suppliers in designing, programming, and testing any software being developed.

### Security & Confidentiality of Data & Participant Records

Describe how your organization will protect respondent confidentiality and comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) data security and privacy requirements. Note that the Department takes the security and privacy of member data very seriously. Should a vendor fail to properly protect private information, any cost ETF pays to mitigate the data breach will be subtracted from the total contract price. The vendor is responsible for taking timely action and must absorb the cost of mitigating the damages to affected members. The selected vendor must have a secure electronic method for exchanging files with the Department or agree to use the Department’s secured FTP site. In addition to the requirements of this section, the selected vendor will be required to sign the Department’s Business Associate Agreement (Appendix H) regarding the privacy and security of data and agree to the terms in the Department’s Information Confidentiality and Security Requirements (Appendix G). The agreements comply with ETF data policies and federal regulations implementing HIPAA concerning the privacy, security and transaction standards on the confidentiality of personal information.

The Bidder acknowledges that some of the data it may become privy to in the performance of the contract is of a confidential nature and the contractor shall ensure that no such confidential information is disseminated by it or its employees.

* The Bidder shall observe complete confidentiality with respect to all aspects of any confidential information, proprietary data and/or trade secrets and any parts thereof, whether such contents are the State’s or other manufacturers, vendor’s or distributor’s whereby contractor or any contractor’s personnel may gain access while engaged by the Board or while on State premises. The restrictions herein shall survive the termination of the contract for any reason and shall continue in full force and effect and shall be binding upon the contractor or its agents, employees, successors, assigns, or any party claiming an interest in the contract on behalf of or under the rights of the contractor following any termination. The Bidder shall advise all the Bidder’s agents, employees, successors, and assigns that are engaged by the Board of the restrictions, present and continuing, set forth herein. The Bidder shall defend and incur all costs, if any, for actions which arise as a result of noncompliance by the contractor, his agents, employees, successors, and assigns regarding the restrictions herein.
* As provided by Wis. Stat. § 40.07 and Wis. Admin. Code § 10.70 (1) and by HIPAA, individual personal information in the Department’s records (including but not limited to address, social security number, birth date, marital status, earnings, Wisconsin Retirement System (WRS) contributions, WRS interest crediting, beneficiary designations, WRS creditable service and medical information, is not a public record and must be kept confidential. Confidential information may be disclosed to the vendor under this contract as the Department determines is necessary for the proper administration of this contract, as provided by Wis. Stat. § 40.07 (1m) (d) and (3).
* The vendor agrees to maintain the strict confidentiality of individual records supplied to the vendor or its employees under this RFB. In addition, the vendor will only share confidential information with its employees on a need to know basis.
* The vendor agrees not to disclose any information furnished to the vendor or its employees, by the Department including any information derived directly or indirectly from information furnished by the Department to any person or entity of any description who is not a party to this RFB without express, written approval of the Secretary of the Department in advance.
* Under no circumstances are participant names, addresses, or other data to be used or made available for any purpose other than specifically provided for in this contract.
* All media in the possession of the vendor including, but not limited to diskettes, CDs, and written documents containing confidential participant information shall be destroyed or turned over to the Department within 60 calendar days of the completion of this contract. The vendor shall furnish to the Department a written certification that all such media have been destroyed or returned to the Department, unless the Department makes any exceptions to this requirement in writing.

### Force Majeure

If the Bidder is prevented from performing any of its obligations in whole or in part under the contract as a result of an act of God, war, civil disturbance or any other cause beyond its control, then such nonperformance shall not be grounds for the assessment of liquidated damages or any other remedy. Immediately upon the occurrence of any such event, the Bidder shall commence to use reasonable efforts to provide to the fullest extent practicable, comparable performance. Comparability will be determined by the Board and the Department, and such determination shall be reasonable under the circumstances. During any such period, the Bidder shall continue to be responsible for all the costs and expenses related to such alternative performance. This section shall not be construed as relieving the Bidder of its responsibility for any obligation or for any obligation being performed by a subcontractor or supplier of services, unless the subcontractor or supplier was prevented from performing such obligation by one of the events set forth above.

### Cancellation without Cause

The Board may terminate the contract at will by delivering thirty (30) days written notice to the Bidder. Upon such termination, the Board’s liability shall be limited to the actual cost incurred in carrying out the project as of the date of the termination, including any termination expenses having the prior approval of the Board. The Bidder shall be entitled to compensation for partially completed deliverables equal to the percentage of completion of each such deliverable as determined by the Board and Department, multiplied by the corresponding payment set forth in the contract. All outstanding liquidated damages or late performance fees shall be deducted from any such compensation.

The Bidder may terminate the contract at will upon ninety (90) days written notice to the Board. Upon such termination, the Bidder shall refund to the Board any payment made to the Bidder that exceeds the actual costs incurred in carrying out the project as of the date of termination, plus any termination expenses incurred by the Board. Bidder shall also pay to the Board any outstanding liquidated damages or late performance fees.

The party terminating the contract shall be reimbursed by the other party for all reasonable costs and liabilities as determined by the Board which are applicable to any period after such termination and for all reasonable excess costs as determined by the Board that such party incurs as a direct result of such termination, provided, however, that:

* In the event of termination by the Board, the Bidder shall not receive reimbursement for any loss of anticipated profits;
* In the event of termination by the Bidder, the Board shall not receive reimbursement for any loss of increased productivity expected to result from the maintenance or modification of the system;
* Both parties hereto shall use reasonable efforts to minimize the costs of termination.

In any event, the period during which such costs shall be computed shall not extend beyond the expiration date of the contract and such costs shall not duplicate any payments made for completed deliverables, nor exceed the amounts that would otherwise have been due had they been completed.

Upon a cancellation without cause, each party shall return to the other within thirty (30) days all papers, materials and other properties of the other party held by each for purposes of executing work under the contract. In addition, each party shall assist the other in the orderly termination of the contract and the transfer of all aspects thereof, tangible or intangible, as may be necessary for the orderly, non-disruptive business continuation of each party.

### Survival

If any provision of the contract is declared or found to be illegal, unenforceable, or void, then all parties shall be relieved of all obligations under that provision. Performance under the remaining terms of the contract shall continue.

### Standard Terms

Unless otherwise stated elsewhere in this or subsequent documents, the Bidder will comply with the State’s Standard Terms and Conditions, DOA – 3054 (10/05), and the Supplemental Standard Terms and Conditions for Procurements for Services, DOA – 3681 (01/01), both of which are found in Appendix D.

### Quality Control

The firm must have an internal quality control system in place and external quality control review performed at least once in the last three (3) years, or is currently under contract to have one performed. Furnish a copy of the report on the bidder’s most recent external quality control review, with a statement whether that quality control review included a review of specific government engagements. The firm must also include a copy of the letter of comments, if applicable.

Describe your organization’s quality control procedures for keeping good records, documenting business processes, checking for errors, and reviewing processes for effectiveness and opportunities to improve. Describe how your quality control processes would be applied to each stage of this project.

## Services and Deliverables Required

### Project Timeline

The Department and vendor tasks and responsibilities shall be completed according to the following schedule, which vendors must affirm.

Table 5 Project Timeline

|  |  |
| --- | --- |
| Date | Event |
| January 1, 2015 | 1st Auditable Calendar Year Begins |
| July 1, 2015 | Contract Starts |
| July – December 2015 | Vendor Preliminary Work on Calendar Year 2015 Audit |
| December 31, 2015 | 1st Auditable Calendar Year Ends |
| April 15, 2016 | Vendor’s Draft Audit Report for Calendar Year 2015 is Due after Consultation with ETF - See 2.3.6.1. |
| April 30, 2016 | Vendor’s Final (Draft) Audit Report for Calendar Year 2015 is Due. (“Draft” because Requires Board to Accept and Finalize the Report. See 2.3.6.2). |
| Spring 2016 | WDC Board Accepts & Finalizes Vendor’s Audit Report |
| Calendar Years 2016, 2017, and 2018 | Schedule Repeats |
| Summer 2019 | WDC Board Decides Whether to Renew for 1st Renewal Term, July 1, 2019 – June 30, 2021. |
| July 1, 2019 | Beginning of 1st Potential Renewal Period |
| Summer 2021 | WDC Board Decides Whether to Renew for 2nd Renewal Term, July 1, 2021 – June 30, 2023 |
| July 1, 2021 | Beginning of 2nd Potential Renewal Period |
| July 1, 2023 | Renewals Exhausted |

### Financial Statements Audit Scope

On behalf of the Deferred Compensation Board, the Department will be furnished with an annual report, audited by an independent certified public accountant (auditor), of the financial status of the WDC, disclosing value of WDC assets, liabilities, analysis of cash receipts and disbursements, and other relevant information as may be reasonably requested by the Department. Information must be supplied to the Department and all local employers to satisfy all Generally Accepted Auditing Standards reporting requirements.

The auditor shall conduct an examination of the deferred compensation program financial statements for the following periods:

* as of December 31, 2014 and for the 12 month period ended December 31, 2015;
* as of December 31, 2015 and for the 12 month period ended December 31, 2016;
* as of December 31, 2016 and for the 12 month period ended December 31, 2017;
* as of December 31, 2017 and for the 12 month period ended December 31, 2018.

### Specific Audit Approach

The bid should set forth a work plan to perform the services requested in this RFB, including an explanation of the audit methodology to be followed. In developing the work plan, please include a breakdown of major segments of the audit and hours for each team member.

At a minimum, bidders are required to provide the following information on their audit approach:

* Proposed segmentation
* Level of staff and number of hours to be assigned to each proposed segment
* Sample sizes and the extent to which statistical sampling is to be used
* Describe planned use of audit software programs
* Type and extent of analytical procedures to be used
* Approach to be taken to gain and document an understanding of the WDC and the vendor’s internal control structure as it relates to the WDC
* Approach to be taken in determining laws and regulations that will be subject to audit test work
* Approach to be taken in drawing audit samples for purposes of test compliance
* Approach to be taken to resolve any audit difficulties (please identify and describe any anticipated audit difficulties)
* Any special assistance needed to complete an audit sample that may be requested from the Department or the contractor.

### Timing, Location and Conduct of Audit Work

The Deferred Compensation Board recognizes that its appropriate officers have the responsibility for the proper recording of transactions in the books of account, for the safeguarding of assets and for the substantial accuracy of the financial statements. These Deferred Compensation Board officers have the responsibility to close and balance all accounts and to have prepared the financial statements for all funds to be examined by the auditor.

The audit may be conducted on plan administrator premises as deemed necessary, at a time mutually agreeable to the administrator, auditor, and the Department. The plan administrator shall provide space deemed adequate by the auditor to officially conduct the examination.

The auditor shall observe the adequacy of the systems of internal control for all funds of the plan administrator, including those concerned with maintaining compliance with finance-related legal provisions. If material weaknesses are noted, appropriate recommendations shall be reviewed with the appropriate administrator and then included in a separate letter to the Deferred Compensation Board.

### Reports and Documents

Following the completion of the audit of a calendar year’s financial statements, the auditor shall submit to the Department and Board the following:

A report on the fair presentation of the Wisconsin Deferred Compensation Program financial statements, which are prepared according to Generally Accepted Auditing Standards, and any supplemental information as required by the Board.

The auditor shall produce a management letter for each year of the contract commenting (if necessary) on material weaknesses in internal control and identifying possible noncompliance with finance-related legal provisions with appropriate recommendations. The auditor shall express an opinion in the management letter on the financial statements of all funds covered in the scope of this engagement. The letter shall present observations and recommendations of the auditor for improvement of the internal control structure, policies and procedures of the WDC or state that the auditor has noted no circumstances necessitating recommendations for improvement. If the auditor is unable to express an unqualified opinion, the auditor shall state fully the reasons for qualification or disclaimer of opinion. Draft management letters must be provided to ETF for review and comment. The contractor recognizes it has the responsibility to correct any deficiency, which results in a qualification or disclaimer of opinion.

The auditor shall ensure that the Department and the Board are informed of:

1. The auditor’s responsibility under generally accepted auditing standards
2. Significant accounting policies
3. Management judgments and accounting estimates
4. Significant audit adjustments
5. Other information in documents containing audited financial statements
6. Disagreements with management
7. Management consultation with other independent accountants
8. Major issues discussed with management prior to retention
9. Difficulties encountered in performing the audit

### Reports and Due Dates

### Draft Reports.

The draft report of the financial statements audit must have supervisory and technical review before it is submitted to the Department. The auditing firm shall provide an electronic version of the draft report and management letter (if applicable) to the Department for review and approval. The Department should complete the review of the draft report as expeditiously as possible. During the Board’s review, the auditing firm must be available to discuss the financial statements report. After all issues are resolved and management has approved the draft financial statements audit report and management letter (if applicable), both a paper and an electronic version of the report and management letter (if applicable) will be due to the Department for review no later than the following dates:

* Calendar Year 2015 April 15, 2016
* Calendar Year 2016 April 15, 2017
* Calendar Year 2017 April 15, 2018
* Calendar Year 2018 April 15, 2019

### Final (Draft) Reports.

After all issues are resolved and the Department has approved the draft reports and management letter (if applicable), at least twenty-five (25) paper copies and one (1) electronic version of the final (draft) financial statements audit report and management letter (if applicable) shall be forwarded to the Department, and will be delivered to the Board for finalization and acceptance. The final (draft) report and management letter (if applicable) will be due to the Department no later than the following dates:

* Calendar Year 2015 April 30, 2016
* Calendar Year 2016 April 30, 2017
* Calendar Year 2017 April 30, 2018
* Calendar Year 2018 April 30, 2019

### Irregularities and Illegal Acts

All situations or transactions that come to the auditor’s attention that could be indicative of fraud, abuse, illegal acts, material errors or other irregularities shall be promptly reported to the Board, which shall determine the appropriate course of action.

### Calendar Year Audit Schedule

Each year, the auditor shall provide the Department and the WDC plan administrator with an audit schedule that will include dates, interim work, field work and a list of all information needed to complete the financial statements audit and report by the due date.

### Entrance Conferences, Progress Reporting and Exit Conferences

At a minimum, the following conferences should be held:

* Entrance conference with the Department and key vendor staff
* Progress conferences (if needed) with the Department
* Exit conference with the Board, Department and key vendor staff, if needed. The purpose of this meeting will be to summarize the results of the fieldwork and to review significant findings.

### Audit Retention

Audit work papers, documents and reports remain the property of the Board and shall be retained for a minimum of seven (7) years from the date of the audit report, unless the auditor is notified in writing by the Department to extend the retention period. The Deferred Compensation Board and the Department shall have access to review audit work papers upon request.

The auditor will be required to make audit documentation available upon request to the following parties or their designees:

* The State of Wisconsin
* The Wisconsin Legislative Audit Bureau
* U.S. Government Accountability Office (GAO)
* Parties designated by the federal or state government or by the Department as part of an audit quality review process

In addition, the auditing firm shall respond to all reasonable inquiries of successor auditors and allow successor auditors to review audit documentation.

## Special Terms and Conditions

The vendor will comply with the following terms and conditions outlined in this section.

### Legal Relations

* The vendor 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.
* In carrying out any provisions of this RFB or in exercising any power or authority granted to the vendor thereby, there shall be no liability upon the Department, it being understood that in such matters that the Department acts as an agent of the state.
* The vendor accepts full liability and agrees to hold harmless the Department, its employees, agents and vendors for any act or omission of the vendor, or any of its employees, in connection with this contract.
* No employee of the vendor may represent himself or herself as an employee of the Department.

### Continuance of RFB

Continuation of this RFB beyond the limits of funds available shall be contingent upon appropriation of the necessary funds, and the termination of this RFB by lack of appropriations shall be without penalty to the Department. Termination under this clause is effective immediately, without advance notice and without further payment.

### RFB Instructions

The Bidder adhered to the instructions in this RFB on preparing and submitting a bid.

### References

The firm provided at least three references using the Reference Sheet in Appendix E and identified the state or plan for which the firm provided similar services.

### Appendices

APPENDIX A Bidder’s Checklist

APPENDIX B Mandatory Requirements

APPENDIX C Designation of Confidential and Proprietary Information (DOA-3027)

APPENDIX D Standard Terms and Conditions (DOA-3054) and Supplemental Standard Terms and Conditions (DOA-3681)

APPENDIX E Vendor Information (DOA-3477) and References (DOA-3478)

APPENDIX F Cost Worksheet

APPENDIX G Information Confidentiality and Security Requirements

APPENDIX H Business Associate Agreement

APPENDIX I Sample DOA-3049

Appendix A  
Bidder’s Checklist

**RFB ETE0011**

**Mandatory**

**This appendix must be completed with bid.**

( ) BIDDER CHECKLIST: Complete the bidder checklist provided as Appendix A to this RFB and include it with your bid as the first sheet of paper in the bid response.

( ) SIGNED COVER SHEET (DOA 3261): Complete DOA 3261, the first page in this bid document, and include it with your bid as the second sheet of paper in the bid response.

( ) Tab 1 – TRANSMITTAL LETTER: A signed transmittal letter must accompany the bid. The transmittal letter must be written on the vendor’s official business stationery and signed by an official that is authorized to legally bind the vendor. Include in the letter:

1. Name, signature and title of bidder’s authorized representative
2. Name and address of company
3. Telephone number, fax number, and e-mail address of representative
4. Title and RFB number: ETE0011 Financial Statements Audits for the Wisconsin Deferred Compensation Program
5. Executive Summary
6. A statement that the proposal is a firm and irrevocable offer for six (6) months after the proposal due date.

( ) Tab 2 – REQUIRED FORMS: The vendor must complete and/or include the following required State of Wisconsin forms:

1. Mandatory Requirements – Appendix B
2. Designation of Confidential and Proprietary Information – Appendix C
3. Standard Terms and Conditions (DOA-3054) and Supplemental Standard Terms and Conditions (DOA-3681) – Appendix D
4. Vendor Information (DOA-3477) and Reference Sheets (DOA-3478) – Appendix E. Each reference must identify the vendor and any subcontractor(s) who assist(ed) the vendor with that reference. Note: Although these clients shall serve as the primary references for purposes of this RFB, the Department specifically reserves the right to contact any clients or past clients for information about the firm’s performance under past and present contracts. Provide at least three references. Each reference must identify the state or plan for which you have provided similar services.

( ) Tab 3 – RESPONSE TO SECTION 2: Provide a point-by-point response to each and every statement in Section 2. Tab 3 must exactly follow the same numbering system, use the same headings, and address each point in Section 2. Bidders should display each requirement immediately preceding the response to that requirement in such a way where it is easy to distinguish the requirement from the bidder’s response. For example, highlight the requirement or box the requirement off from the response. Provide a succinct explanation of how each requirement is addressed. Merely indicating that you will complete a task without demonstrating how you will do so may result in your bid being rejected.

( ) Tab 4 – ASSUMPTIONS AND EXCEPTIONS: All assumptions and exceptions must be included in this tab. Provide a succinct explanation for each item as well as a reference to the section of the bid it relates to. **Any assumption or exception made but not included in this Tab 4 will be invalid.** Exceptions to the Department’s contract terms and conditions may be considered during contract negotiations if it is beneficial to the Department. **If exceptions to the standard terms are not presented in this section, they may not be discussed or considered during contract negotiations.** When documenting assumptions and exceptions, clearly label each exception with one of the following labels:

* + RFB Assumption(s)
  + RFB Exception(s)
  + Standard Term Exception(s)

( ) **Tab 5 – COST WORKSHEET: Cost WorkSheet located in Appendix F. Failure to provide a cost using the exact form provided in Appendix F will result in your bid being disqualified and rejected.**

PROPOSING VENDOR NAME: DATE:

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

AUTHORIZED REPRESENTATIVE (PLEASE PRINT):

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

SIGNATURE:

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Appendix B  
Mandatory Requirements

**RFB ETE0011**

**Mandatory**

**This appendix must be completed with bid.**

The following requirements are mandatory, and must be met by all vendors submitting bids. **Failure to comply with one or more of the mandatory requirements may disqualify your bid. Your response to each item in Appendix B is a mandatory requirement, and failure to respond with either “agree” or “disagree” may result in your bid being rejected.** If you cannot agree to each item listed, you must so specify along with the reason in Bid Tab 4 – Assumptions and Exceptions – of your bid response. A “disagree” to a mandatory requirement that you explain in Bid Tab 4 may still result in your bid being rejected.

|  |  |  |
| --- | --- | --- |
| **MANDATORY REQUIREMENTS** | **Check One** | |
| Vendor Staffing & Experience | Agree - Met | Disagree – Stated Exception in Tab 4 |
| Contact Info |  |  |
| Firm Experience |  |  |
| Firm Profile |  |  |
| Management Profile |  |  |
| Ownership and Client Profile |  |  |
| Government Clients |  |  |
| Independence |  |  |
| Government Clients in Wisconsin |  |  |
| Debarment |  |  |
| Discipline and Litigation |  |  |
| ETF Policies |  |  |
| Conflicts of Interest |  |  |
| Contract Terms and Conditions | Agree - Met | Disagree – Stated Exception in Tab 4 |
| Ownership of Materials |  |  |
| Vendor Access to State Buildings |  |  |
| On-site Security & Replacement Personnel |  |  |
| Records Inspection |  |  |
| Billing & Invoices |  |  |
| Cancellation for Cause |  |  |
| Cover |  |  |
| Continuity of Operations |  |  |
| Change Orders |  |  |
| Bidder Change in Ownership or Bankruptcy |  |  |
| Waiver of Breach |  |  |
| Contract Administrator from Bidder and Board |  |  |
| Prime Contractor |  |  |
| Cooperation with Other ETF Contractors |  |  |
| Security & Confidentiality of Data & Participant Records |  |  |
| Force Majeure |  |  |
| Cancellation without Cause |  |  |
| Survival |  |  |
| Standard Terms |  |  |
| Quality Control |  |  |
| Services and Deliverables Required | Agree - Met | Disagree – Stated Exception in Tab 4 |
| Project Timeline |  |  |
| Financial Statements Audit Scope |  |  |
| Specific Audit Approach |  |  |
| Timing, Location and Conduct of Audit Work |  |  |
| Reports and Documents |  |  |
| Reports and Due Dates |  |  |
| Irregularities and Illegal Acts |  |  |
| Calendar Year Audit Schedule |  |  |
| Entrance Conferences, Progress Reporting and Exit Conferences |  |  |
| Audit Retention |  |  |
| Special Terms and Conditions | Agree - Met | Disagree – Stated Exception in Tab 4 |
| Legal Relations |  |  |
| Continuance of RFB |  |  |
| RFB Instructions |  |  |
| References |  |  |

Appendix C  
Designation of Confidential and Proprietary Information

**RFB ETE0011**

**Mandatory**

**This appendix must be completed with bid.**

**Two (2) electronic copies with all confidential material redacted must be provided on two (2) separate flash drives, one bid per flash drive, and marked as “Redacted for Confidentiality” per Appendix C.** The flash drives must be labeled on the outside with the vendor’s name.

**STATE OF WISCONSIN**

DOA-3027 N(R01/98)

**DESIGNATION OF CONFIDENTIAL AND PROPRIETARY INFORMATION**

The attached material submitted in response to Bid/Proposal # includes proprietary and confidential information which qualifies as a trade secret, as provided in s. 19.36(5), Wis. Stats., or is otherwise material that can be kept confidential under the Wisconsin Open Records Law. As such, we ask that certain pages, as indicated below, of this bid/proposal response be treated as confidential material and not be released without our written approval.

**Prices always become public information when bids/proposals are opened, and therefore cannot be kept confidential.**

Other information cannot be kept confidential unless it is a trade secret. Trade secret is defined in s. 134.90(1)(c), Wis. Stats. as follows: "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique or process to which all of the following apply:

1. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

2. The information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

We request that the following pages not be released:

Section Page # Topic

IN THE EVENT THE DESIGNATION OF CONFIDENTIALITY OF THIS INFORMATION IS CHALLENGED, THE UNDERSIGNED HEREBY AGREES TO PROVIDE LEGAL COUNSEL OR OTHER NECESSARY ASSISTANCE TO DEFEND THE DESIGNATION OF CONFIDENTIALITY AND AGREES TO HOLD THE STATE HARMLESS FOR ANY COSTS OR DAMAGES ARISING OUT OF THE STATE'S AGREEING TO WITHHOLD THE MATERIALS.

Failure to include this form in the bid/proposal response may mean that all information provided as part of the bid/proposal response will be open to examination and copying. The state considers other markings of confidential in the bid/proposal document to be insufficient. The undersigned agrees to hold the state harmless for any damages arising out of the release of any materials unless they are specifically identified above.

Company Name

Authorized Representative

Signature

Authorized Representative

Type or Print

Date

This document can be made available in accessible formats to qualified individuals with disabilities.

Appendix D  
Standard Terms and Conditions

**RFB ETE0011**

**Standard Terms and Conditions and Supplemental Standard Terms and Conditions for Procurements for Services**

**Vendor agrees to the Terms and Conditions as stated in this Appendix D.**

**Exceptions must be addressed in Bid   
Tab 4 - Assumptions and Exceptions**

Standard Terms and Conditions (Request for Bids / Proposals)

Wisconsin Department of Administration

Chs. 16, 19, 51

DOA-3054 (R10/2005)

**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 industry wide. 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.

***Standard Terms and Conditions (Request for Bids / Proposals)***

**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 fifty thousand dollars ($50,000) 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 fifty (50) 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.

***Standard Terms and Conditions (Request for Bids / Proposals)***

**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, equipment purchased as a result of this request shall be warranted against defects by the Bidder 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 non-appropriation 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.

***Standard Terms and Conditions (Request for Bids / Proposals)***

**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 Wisconsin Government Accountability Board, P.O. Box 7984, Madison, WI 53707-7984; by fax, to 608-267-0500; or by email to gab@wi.gov.

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.

1. **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.
2. **WORK CENTER PROGRAM**: The successful Bidder 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 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.

State of Wisconsin Division of Agency Services

Department of Administration Bureau of Procurement

DOA-3681 (01/2001)

ss. 16, 19 and 51, Wis. Stats.

**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 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 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 and will not knowingly be disclosed by the Bidder 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 or to any competitor; and

**2.3** No attempt has been made or will be made by the Bidder 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.

***Supplemental Standard Terms And Conditions For Procurements For Services***

**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.

Appendix E  
Vendor Information  
and Reference Sheets

**RFB ETE0011**

**Mandatory**

**This appendix must be completed with bid.**

**STATE OF WISCONSIN**

**DOA-3477 (R05/98) Vendor INFORMATION**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 1. | BIDDING / PROPOSING COMPANY NAME | | | | | | |  | | | | | | | | | | | | |
|  | FEIN | |  | | | | | |  | |  | | | | | | | | | |
|  | Phone | | | ( ) | | | | | Toll Free Phone | | | | | | | | ( ) | | | |
|  | FAX | | | ( ) | | | | | Email Address | | | | | | |  | | | | |
|  | Address | | | |  | | | | | | | | | | | | | | | |
|  | City | |  | | | | | | State | | |  | | | Zip + 4 | | | | |  |
|  |  | | | | | | | | | | | | | | | | | | | |
| 2. | Name the person to contact for questions concerning this bid / proposal. | | | | | | | | | | | | | | | | | | | |
|  | Name | | |  | | | | | | Title | | |  | | | | | | | |
|  | Phone | | | ( ) | | | | | | Toll Free Phone | | | | | | | | | ( ) | |
|  | FAX | | | ( ) | | | | | | Email Address | | | | | | | | |  | |
|  | Address | | | |  | | | | | | | | | | | | | | | |
|  | City |  | | | | | | | State | | |  | | | Zip + 4 | | | | |  |
|  |  | | | | | | | | | | | | | | | | | | | |
| 3. | Any vendor awarded over $50,000 on this contract must submit affirmative action information to the department. Please name the Personnel / Human Resource and Development or other person responsible for affirmative action in the company to contact about this plan. | | | | | | | | | | | | | | | | | | | |
|  | Name | | |  | | | | | | Title | | | |  | | | | | | |
|  | Phone | | | ( ) | | | | | | Toll Free Phone | | | | | | | | ( ) | | |
|  | FAX | | | ( ) | | | | | | Email Address | | | | | | |  | | | |
|  | Address | | | | |  | | | | | | | | | | | | | | |
|  | City | |  | | | | | | State | | | | |  | Zip + 4 | | | | |  |
|  |  | | | | | | | | | | | | | | | | | | | |
| 4. | Mailing address to which state purchase orders are mailed and person the department may contact concerning orders and billings. | | | | | | | | | | | | | | | | | | | |
|  | Name | | | |  | | | | | Title | | | |  | | | | | | |
|  | Phone | | | | ( ) | | | | | Toll Free Phone | | | | | | | | ( ) | | |
|  | FAX | | | | ( ) | | | | | Email Address | | | | | | |  | | | |
|  | Address | | | |  | | | | | | | | | | | | | | | |
|  | City |  | | | | | | | State | | |  | | | Zip + 4 | | | | |  |
|  |  | | | | | | | | | | | | | | | | | | | |
| 5. | CEO / President Name | | | | | |  | | | | | | | | | | | | | |

*This document can be made available in accessible formats to qualified individuals with disabilities.*

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| State of Wisconsin  DOA-3478 (R12/96) | | | | **vendor Reference** | | | | |  | |
| FOR VENDOR: | |  | | | | | | | | |
|  | | | | | | | | | | |
|  | | | | | | | | | | |
| Company Name | |  | | | | | | | | |
|  | | | | | | | | | | |
| Address (include Zip + 4) | | |  | | | | | | | |
|  | | | | | | | | | | |
| Contact Person | |  | | | | | Phone No. | |  | |
|  | | | | | | | | | | |
| Product(s) and/or Service(s) Used | | | | |  | | | | | |
|  |  | | | | | | | | | |
|  | | | | | | | | | | |
| Company Name | |  | | | | | | | | |
|  | | | | | | | | | | |
| Address (include Zip + 4) | | |  | | | | | | | |
|  | | | | | | | | | | |
| Contact Person | |  | | | | | Phone No. | |  | |
|  | | | | | | | | | | |
| Product(s) and/or Service(s) Used | | | | |  | | | | | |
|  |  | | | | | | | | | |
|  | | | | | | | | | | |
| Company Name | |  | | | |  | |  | | |
|  | | | | | | | | | | |
| Address (include Zip + 4) | | |  | | | | | | | |
|  | | | | | | | | | | |
| Contact Person | |  | | | | | Phone No | |  | |
|  | | | | | | | | | | |
| Product(s) and/or Service(s) Used | | | | |  | | | | | |
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|  | | | | | | | | | | |
| Company Name | |  | | | | | | | | |
|  | | | | | | | | | | |
| Address (include Zip + 4) | | |  | | | | | | | |
|  | | | | | | | | | | |
| Contact Person | |  | | | | | Phone No. | | |  |
|  | | | | | | | | | | |
| Product(s) and/or Service(s) Used | | | | |  | | | | | |
|  |  | | | | | | | | | |
|  |  | | | | | | | | | |

*This document can be made available in accessible formats to qualified individuals with disabilities.*

Appendix F  
Cost Worksheet

The bidder must adhere to the format set forth below; failure to do so may result in disqualification. The bidder must provide a fixed price for all required auditing services, an all-inclusive maximum price for a financial statements audit for each of the calendar years requested (2015-2018). The bidder is responsible for any inaccuracies or math errors. If assumptions are necessary, please explain the assumptions and quote the related fees on a unit cost basis. Costs must be presented in sufficient detail to enable the Department to validate them. If the bidder seeks to extend the contract for two, two-year periods, the bidder must include prices for audits of calendar years 2019-2022. Any cost increases for the entire contract term plus renewals must appear on the Cost Worksheet. **Note: If audit costs are anticipated to vary over the contract term, complete the 2nd table for each year's cost. Be sure to indicate years covered. Use additional pages as needed.**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Initial Contract Term** | 2015 | 2016 | 2017 | 2018 |
| Proposed Annual Cost |  |  |  |  |
|  | | | **Subtotal (2015 -2018)** |  |
| **Potential Contract Renewals** | 2019 | 2020 | 2021 | 2022 |
| Proposed Annual Cost |  |  |  |  |
|  | 1st Potential Renewal | | 2nd Potential Renewal | |
|  | | **Subtotal (2019-2022)** |  |
| **TOTAL & COST BASIS FOR AWARD (Combine Subtotals)** | | |  |

|  |  |
| --- | --- |
| **Company Name:** | **Date:** |
| **Authorized Person:** | **Phone:** |
| **Title:** | Signature: |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| AUDIT COST PROPOSAL DETAILS: Years \_\_\_\_\_ | Hours | Standard Hourly Rates | Quoted Hourly Rates | **Total** |
| Partners |  |  |  |  |
| Managers |  |  |  |  |
| Supervisory Staff |  |  |  |  |
| Staff |  |  |  |  |
| Other (specify) |  |  |  |  |
| **Subtotal Staff Costs** |  |  |  |  |
| Out-of-pocket Expenses |  |  |  |  |
| Meals and Lodging |  |  |  |  |
| Transportation |  |  |  |  |
| Other (specify) |  |  |  |  |
| **Subtotal Misc. Costs** |  |  |  |  |
| **Total Cost** |  |  |  |  |

Appendix g – Information Confidentiality and Security Requirements

1. **Definitions***.* For purposes of this document, the following definitions shall apply:
2. Public Information: Information that is not protected or private. Information classified as public has no state, federal, or international legal restrictions on access. Additionally, risk of unintended disclosure would be of low to no risk to ETF. There may occasionally be a policy reason to restrict certain access.

**Examples: effective interest rates, insurance premiums, mortality rates, unfunded liability balances, benefit estimate wait times**

1. Protected Information: Information that can be viewed and used by ETF employees and authorized third parties for official business purposes. Disclosure of this information to unauthorized parties carries some risk to participants and ETF, both financial and reputational.

**Examples:  member address, annual earnings, creditable service, benefit rights codes, employment information, controlled correspondence**

1. Private Information: Information restricted to a specific subset of ETF employees and authorized third parties based on policies, statutes or state or federal regulations. This includes information that may be provided to the subject of the information or an authorized third party. Information for which an Information Owner has determined access will be classified as private. Unintended disclosure could require mitigation, reporting, possible fines, harm to the agency, participants and other third-parties. Information that is classified as private if unintentionally disclosed would carry significant risk to ETF.

Examples: medical record documents, social security number, financial account numbers, any information or data that is unique to, assigned to, or belongs to an individual and that is intended to be used to access services, funds, or benefits of any kind to which the individual is entitled. Any information that can be associated with a particular individual through one or more identifiers.

*Note: The definitions provided for the classifications listed above do not supersede the Wisconsin Public Records law, ss. 19.21 through 19.39, Wis. Stats., or any other state or federal authority regarding open or closed records such as s. 230.13, Wis. Stats., however the definitions may include information protected by Wis. Stats. s. 40.07.*

1. **Nondisclosure**. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure any Protected or Private Information (hereinafter identified as **PPI**).
2. The Contractor and its employees, agents, or subcontractors shall not use any PPI for any purpose other than carrying out the Contractor's obligations under this Agreement.
3. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the ETF Program Contract Manager all requests for disclosure of any PPI not emanating from the person who is the subject of PPI.
4. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the person who is the subject of PPI, any PPI to anyone other than ETF without prior written authorization from the ETF Program Contract Manager, except if disclosure is required by State or Federal law.
5. The Contractor shall observe the following requirements:
6. **Safeguards**. The Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PPI, including electronic PPI that it creates, receives, maintains, uses, or transmits on behalf of ETF. Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor’s operations and the nature and scope of its activities, Including at a minimum the following safeguards:
7. **General Security Controls**
8. ***Confidentiality Statement.*** All persons that will be working with ETF PPI must sign a confidentiality statement. The statement must include at a minimum, General Use, Security and Privacy safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to ETF PPI. The statement must be renewed annually. The Contractor shall retain each person’s written confidentiality statement for ETF inspection for a period of three (3) years following contract termination.

In addition, when access is required to the Department of Revenue (DOR) building, another site housing ETF resources, a building confidentiality agreement must be signed, following similar requirements as the confidentiality statement.

1. ***Background check.*** Before a member of the Contractor’s workforce may access ETF PPI, Contractor must conduct a thorough background check of that worker and evaluate the results to assure that there is no indication that the worker may present a risk for theft of confidential data. The Contractor shall retain each workforce member’s background check documentation for a period of three (3) years following contract termination.

ETF follows the provisions found in the *Wisconsin Human Resources Handbook* *Chapter 246, Securing Applicant Background Checks* (see <http://oser.state.wi.us/docview.asp?docid=6658>).  The vendor is expected to perform background checks that, at a minimum, adhere to those standards.  This includes the criminal history record from the Wisconsin Department of Justice (DOJ), Wisconsin Circuit Court Automation Programs (CCAP), and other state justice departments for persons who have lived in a state(s) other than Wisconsin.  More stringent background checks are permitted.  Details regarding the vendor's background check procedures should be provided to ETF regarding the measures used by the vendor to protect the security and privacy of program data and participant information.  A copy of the result of the criminal background check the vendor conducted must be made available to ETF upon its request.  ETF reserves the right to conduct its own criminal background checks on any or all employees or contractors of and referred by the vendor for the delivery or provision of services.

1. ***Workstation/Laptop encryption.*** All workstations and laptops that process and/or store ETF PPI must be encrypted with an ETF approved solution. The encryption solution must be full disk.
2. Only the minimum necessary amount of ETF PPI may be downloaded to a laptop or hard drive when absolutely necessary for current business purposes.
3. ***Removable media devices.*** All electronic files that contain PPI data must be encrypted when stored on any removable media type device (i.e. USB thumb drives, floppies, CD/DVD, etc.) with an ETF approved solution.
4. ***Email security.*** All emails that include ETF PPI must be sent in an encrypted method using an ETF approved solution.
5. ***Antivirus software.*** All workstations, laptops and other systems that process and/or store ETF PPI must have a commercial third-party anti-virus software solution with a minimum daily automatic update.
6. ***Patch Management.*** All workstations, laptops and other systems that process and/or store ETF PPI must have security patches applied and up-to-date.
7. ***User IDs and Password Controls.*** All users must be issued a unique user name for accessing ETF PPI. Passwords are not to be shared. Must be at least eight characters. Must be a non-dictionary word. Must not be stored in readable format on the computer. Must be changed every 60 days. Must be changed if revealed or compromised. Must be composed of characters from at least three of the following four groups from the standard keyboard:

* Upper case letters (A-Z)
* Lower case letters (a-z)
* Arabic numerals (0-9)
* Non-alphanumeric characters (punctuation symbols)

1. ***Data Destruction.*** All ETF PPI must be wiped from systems when the data is no longer necessary. The wipe method must conform to Department of Defense standards for data destruction. All ETF PPI on removable media must be returned to ETF when the data is no longer necessary. Once data has been destroyed, the ETF contract manager must be notified. ETF can review computers or other media storage at any time to ensure the data has been wiped.
2. ***Remote Access.*** Any remote access to ETF PPI must be executed over an encrypted method approved by ETF. All remote access must be limited to minimum necessary and least privilege principles.
3. **System Security Controls**
4. ***System Timeout.*** The system must provide an automatic timeout after no more than 20 minutes of inactivity.
5. ***Warning Banners.*** All systems containing ETF PPI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only. User must be directed to log off the system if they do not agree with these requirements.
6. ***System Logging.*** The system must log successes and failures of user authentication at all layers. The system must log all system administrator/developer access and changes if the system is processing and/or storing PPI. The system must log all user transactions at the database layer if processing and/or storing ETF PPI.
7. ***Access Controls.*** The system must use role based access controls for all user authentications, enforcing the principle of least privilege.
8. ***Transmission encryption.*** All data transmissions must be encrypted end-to-end using an ETF approved solution when transmitting ETF PPI.
9. ***Host Based Intrusion Detection.*** All systems that are accessible via the Internet or store ETF PPI must actively use a comprehensive third-party real-time host based intrusion detection and prevention solution
10. **Audit Controls**
11. ***System Security Review.*** All systems processing and/or storing ETF PPI must have at least an annual system security review. Reviews must include administrative and technical vulnerability scanning tools.
12. ***Log Reviews.*** All systems processing and/or storing ETF PPI must have a routine procedure in place to review system logs for unauthorized access.
13. ***Change Control.*** All systems processing and/or storing ETF PPI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.
14. **Business Continuity / Disaster Recovery Controls**
15. ***Emergency Mode Operation Plan.*** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic ETF PPI in the event of an emergency. An emergency is an interruption of business operations for more than 24 hours.
16. ***Data Backup Plan.*** Contractor must have established documented procedures to backup ETF PPI to maintain retrievable exact copies of ETF PPI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and the amount of time to restore ETF PPI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of ETF data.
17. **Paper Document Controls**
18. ***Supervision of Data.*** ETF PPI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. ETF PPI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
19. ***Escorting Visitors.*** Visitors to areas where ETF PPI is contained shall be escorted and ETF PPI shall be kept out of sight while visitors are in the area.
20. ***Confidential Destruction.*** ETF PPI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
21. ***Removal of Data.*** ETF PPI must not be removed from the premises of the Contractor except with express written permission of ETF.
22. ***Faxing.*** Faxes containing ETF PPI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending.
23. ***Mailing.*** ETF PPI shall only be mailed using secure methods. Large volume mailings of ETF PPI shall be by a secure, bonded courier with signature required on receipt. Disks and other transportable media sent through the mail must be encrypted with an ETF approved solution.
24. ***Security Officer***. The Contractor shall designate a Security Officer to oversee its data security program who will be responsible for carrying out its privacy and security programs and for communicating on security matters with ETF.
25. ***Training***. The Contractor shall provide training on its data privacy and security policies, at least annually, at its own expense, to all its employees and volunteers who assist in the performance of functions or activities on behalf of ETF under this Agreement and use or disclose PPI.
26. The Contractor shall require each employee and volunteer who receives data privacy and security training to sign a certification, indicating the employee’s/volunteer’s name and the date on which the training was completed.
27. The Contractor shall retain each employee’s/volunteer’s written certifications for ETF inspection for a period of three years following contract termination.
28. ***Discovery and Notification of Breach***. The Contractor shall notify ETF **immediately by telephone call plus email** upon the discovery of breach of security of PPI in computerized form if the PPI was, or is reasonably believed to have been, acquired by an unauthorized person, **or within twenty-four (24) hours by email** of the discovery of any suspected security incident, intrusion or unauthorized use or disclosure of PPI in violation of this Agreement, this provision, the law, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the ETF Program Contract Manager, the ETF Privacy Officer and the ETF Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PPI, notification shall be provided by calling the ETF Bureau of Information Technology Services (BITS) Help Desk. Contractor shall take:
29. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
30. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
31. ***Investigation of Breach***. The Contractor shall immediately investigate such security incident, breach, or unauthorized use or disclosure of PPI and within seventy-two (72) hours of the discovery, shall notify the ETF Program Contract Manager, the ETF Privacy Officer, and the ETF Information Security Officer of:
32. What data elements were involved and the extent of the data involved in the breach,
33. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PPI,
34. A description of where the PPI is believed to have been improperly transmitted, sent, or utilized, and
35. A description of the probable causes of the improper use or disclosure.
36. ***Written Report***. The Contractor shall provide a written report of the investigation to the ETF Program Contract Manager, the ETF Privacy Officer, and the ETF Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.
37. ***Notification of Individuals***. The Contractor shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The ETF Program Contract Manager, the ETF Privacy Officer, and the ETF Information Security Officer shall approve the time, manner and content of any such notifications.
38. ***Affect on lower tier transactions.*** The terms of this document shall apply to all contracts, subcontracts, and subawards, regardless of whether they are for the acquisition of services, goods, or commodities. The Contractor shall incorporate the contents of this Exhibit into each subcontract or subaward to its agents, subcontractors, or independent consultants.
39. **Contact Information***.* To direct communications to the above referenced ETF staff, the Contractor shall initiate contact as indicated herein. ETF reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this document to which it is incorporated.

|  |  |  |
| --- | --- | --- |
| **ETF Program Contract Manager** | **ETF Privacy Officer** | **ETF Information Security Officer** |
| ETF Deferred Compensation Director | Mary Alice McGreevy  Privacy Officer  Employee Trust Funds  P.O. Box 7931  Madison, WI 53707-7931  Email: [maryalice.mcgreevy@etf.wi.gov](mailto:maryalice.mcgreevy@etf.wi.gov)  Telephone: (608) 267-2354 | Jon Forde  Information Security Officer  Employee Trust Funds  P.O. Box 7931  Madison, WI 53707-7931  Email: [jon.forde@etf.wi.gov](mailto:jon.forde@etf.wi.gov)  Telephone: (608) 267-9033 |

1. **Audits and Inspections.** From time to time, ETF may inspect the facilities, systems, books and records of the Contractor to monitor compliance with the safeguards required in the Information Confidentiality and Security Requirements (ICSR) document. Contractor shall promptly remedy any violation of any provision of this ICSR document. The fact that ETF inspects, or fails to inspect, or has the right to inspect, Contractor’s facilities, systems and procedures does not relieve Contractor of its responsibility to comply with this ICSR document.

appendix h – business associate agreement

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is by and between BUSINESS ASSOCIATE (“XYZ”) and the Wisconsin Department of Employee Trust Funds (“ETF”), and acting on behalf of the State of Wisconsin.

RECITALS:

WHEREAS, ETF and BUSINESS ASSOCIATE have executed a contract, pursuant to which BUSINESS ASSOCIATE provides XYZ (“Underlying Contract”), and in connection with those services ETF discloses or allows the disclosure to BUSINESS ASSOCIATE of certain information that is subject to protection by the Health Insurance Portability and Accountability Act of 1996, (“HIPAA”) and the Health Information Technology for Economic and Clinical Health Act of 2009 as passed as part of ARRA (“HITECH”) and their implementing regulations, Title 45, Parts 160 through 164 of the Code of Federal Regulations, as well as by laws and administrative rules of the State of Wisconsin; and

WHEREAS, with respect to its activities pursuant to the Underlying Contract, BUSINESS ASSOCIATE is ETF’s Business Associate as that term is defined by HIPAA; and

WHEREAS, it is the intent of this Agreement to comply with state law and with the federal regulations implementing HIPAA and HITECH concerning the privacy, security and transaction standards in 45 C.F.R. Parts 160 to 164, inclusive,

WHEREAS, ETF and BUSINESS ASSOCIATE agree to incorporate the terms of this Agreement into the Underlying Contract and agree to incorporate this Agreement into any associated addenda and contract extensions, in order to comply with HIPAA, HITECH and state law.

NOW, THEREFORE, in consideration of these premises and the mutual promises and agreements hereinafter set forth, ETF and BUSINESS ASSOCIATE hereby agree as follows:

DEFINITIONS:

It is the intent of this Agreement to comply with the federal regulations implementing HIPAA and HITECH concerning the privacy, security and transaction standards, including the definitions in 45 C.F.R. Parts 160 to 164, inclusive, as applicable. This Agreement also addresses compliance with Wisconsin laws on confidentiality of personal information. In particular, the following words and phrases in this Agreement have the meanings set forth below, unless the context clearly requires otherwise:

“ARRA” means the American Recovery and Reinvestment Act of 2009.

“Individual Personal Information” has the meaning set forth in Wis. Admin. Code § ETF 10.70 (1).

“Medical Record” has the meaning set forth in Wis. Admin. Code § ETF 10.01 (3m).

“Personal Information” is information that can be used to identify a person and includes, without limitation, Individually Identifiable Health Information, Individual Personal Information, Medical Records and Protected Health Information.

“Third Party” means a party other than a subcontractor or agent that ETF has approved.

PART I – OBLIGATIONS OF BUSINESS ASSOCIATE

A. Uses and Disclosures. BUSINESS ASSOCIATE may use or disclose Personal Information it creates for or receives from ETF or any other Business Associate of ETF for only the following, limited purposes:

1. Permitted Uses and Disclosures of Personal Information. BUSINESS ASSOCIATE is permitted to use and disclose Personal Information:

(a) To conduct ABC and XYZ in accordance with the Underlying Contract.

(b) Subject to the limitations on Uses and Disclosures outlined in this Business Associate Agreement, specifically including the State Law Restrictions in Part I, Section B, BUSINESS ASSOCIATE is authorized to use and disclose Personal Information as necessary for BUSINESS ASSOCIATE’s proper management and administration, to carry out BUSINESS ASSOCIATE’s legal responsibilities, and as otherwise Required by Law.

2. Prohibition on Unauthorized Use or Disclosure. BUSINESS ASSOCIATE will not use or disclose Personal Information it creates for or receives from ETF or from another Business Associate of ETF, except as authorized or required by this Agreement or as Required by Law or as otherwise authorized in writing by ETF, including, without limitation, marketing and solicitation of business outside the Underlying Contract and disclosure of such information to third-parties.

3. Compliance with Regulations. BUSINESS ASSOCIATE will comply with:

(a) 45 C.F.R. Parts 160 to 164, inclusive, as applicable to a “Business Associate” of a “Covered Entity” and any other regulations adopted pursuant to HIPAA and HITECH; and

(b) Applicable State Law not preempted by 45 C.F.R §§ 160.201 to 160.203, inclusive, or any other federal law.

4. State Law Restrictions. BUSINESS ASSOCIATE shall comply with Wis. Stat. §§ 40.07 and 134.98 with respect to information BUSINESS ASSOCIATE creates for or receives from ETF or from any other Business Associate of ETF. In particular:

(a) Any Third Party request, including a subpoena, for disclosure of Personal Information, including, without limitation, Medical Records or Individually Identifiable Health Information, shall be referred to ETF in a timely manner; and

(b) BUSINESS ASSOCIATE shall not disclose to any Third Party Individual Personal Information which ETF itself may not disclose pursuant to Wis. Stat. § 40.07(1), or of Medical Records that ETF itself may not disclose pursuant to Wis. Stat § 40.07(2).

B. Compliance with Standard Transactions.

1. Standard Transactions Conducted By BUSINESS ASSOCIATE. If BUSINESS ASSOCIATE conducts, in whole or in part, transactions, for or on behalf of ETF that are covered by 45 C.F.R Part 162, BUSINESS ASSOCIATE will comply with the applicable HIPAA transactions standards, and will require any subcontractor or agent involved with the conduct of such transactions to provide reasonable assurances, evidenced by written contract, that it will comply with each applicable requirement of 45 CFR Part 162. Further, BUSINESS ASSOCIATE will require that each of its subcontractors or agents provide assurances, by written contract, that it will not enter into a Trading Partner Agreement, in connection with its conduct of Standard Transactions for and on behalf of ETF that:

(a) Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;

(b) Adds any data element or segment to the maximum data set;

(c) Uses any code or data element that either is not in the Standard Transaction’s implementation specification or is marked “not used” by the Standard Transaction’s implementation specifications;

(d) Changes the meaning or intent of the Standard Transaction’s implementation specifications; or

(e) Otherwise violates 45 CFR §162.915.

2. Communications Between the Parties. Communications between ETF and BUSINESS ASSOCIATE that are required to meet HIPAA transactions standards will meet the standards set by 45 CFR Part 162. For all other communications, the forms, tape formats or electronic formats used shall be those mutually agreed upon by ETF and BUSINESS ASSOCIATE.

C. Information Safeguards. BUSINESS ASSOCIATE will develop, implement, maintain and use reasonable and appropriate administrative, technical and physical safeguards to preserve the integrity and confidentiality of Personal Information under the control of BUSINESS ASSOCIATE, and to prevent intentional or unintentional non-permitted or violating use or disclosure of Protected Health Information. BUSINESS ASSOCIATE will document and keep these safeguards current and furnish documentation of the safeguards to ETF upon request. These safeguards will comply with HIPAA, HITECH and their implementing regulations.

D. Reporting of Breach, Improper Use or Disclosure and Security Incidents.

Reporting of Breach, Improper Use or Disclosure. BUSINESS ASSOCIATE will report to ETF the discovery of any breach, use or disclosure of Personal Information, not allowed by this Agreement or in violation of 45 C.F.R. Part 164 or HITECH. An occurrence of a breach, improper use or disclosure or security incident is considered to be discovered as of the first day on which such occurrence is known to BUSINESS ASSOCIATE, or, by exercising reasonable diligence, would have been known to BUSINESS ASSOCIATE.

1. BUSINESS ASSOCIATE shall provide notice to ETF of the occurrence. The notice shall include the identification of each individual whose unsecured Personal Information has been, or is reasonably believed by BUSINESS ASSOCIATE to have been accessed, acquired, or disclosed during such occurrence.

2. Within one business day of the discovery, BUSINESS ASSOCIATE shall notify ETF’s Privacy Officer. BUSINESS ASSOCIATE shall immediately conduct an investigation and report in writing within four business days the following information:

(a) The name and contact information of each individual whose Personal Information has been or is reasonably believed to have been accessed, acquired or disclosed during the occurrence.

(b) A brief description of what happened, including the date of the occurrence and the date of the discovery of the occurrence, if known.

(c) A description of the types of Personal Information that were involved in the occurrence (e.g., full name, date of birth, Social Security number, account number).

(d) A brief description of what BUSINESS ASSOCIATE is doing to investigate the occurrence, to mitigate losses and to protect against further occurrences.

(e) The actions BUSINESS ASSOCIATE has undertaken or will undertake to mitigate any harmful effect of the occurrence.

(f) A corrective action plan that includes the steps BUSINESS ASSOCIATE has taken or will take to prevent similar occurrences.

3. At ETF’s option, BUSINESS ASSOCIATE will be responsible for notifying individuals of the occurrence when ETF requires notification and to pay any cost of such notifications, as well as any costs associated with the breach, improper use or disclosure, including, without limitation, credit monitoring services. BUSINESS ASSOCIATE must obtain ETF’s approval of the time, manner and content of any such notifications, provide ETF with copies of the notifications, and provide the notifications within sixty (60) days after discovery of the breach, improper use or disclosure. BUSINESS ASSOCIATE shall have the burden of demonstrating to ETF that all notifications were made as required, including any evidence demonstrating the necessity of any delay beyond the 60 day calendar notification to affected individuals after the discovery of the breach by ETF or BUSINESS ASSOCIATE.

E. Duty to Mitigate Effect of Misuse or Unauthorized Disclosure and Notify Members of Unauthorized Acquisition:

1. BUSINESS ASSOCIATE will mitigate, as required by HIPAA, HITECH, state law and this agreement, to the extent practicable, any harmful effect that is known to BUSINESS ASSOCIATE of a breach, improper use or unauthorized disclosure reported pursuant to subsection D of this section.

2. BUSINESS ASSOCIATE will comply with the provisions of Wis. Stat. §134.98 and any subsequently adopted state law regarding mitigation of privacy breaches, and shall ensure by written contract that any subcontractor or agent with whom it contracts to carry out the provisions of the Underlying Contract also complies with the provisions of Wis. Stat. §134.98 and any subsequently adopted law regarding mitigation of privacy breaches.

F. Minimum Necessary. BUSINESS ASSOCIATE will make reasonable efforts to use, disclose, or request only the minimum amount of Personal Information necessary to accomplish the intended purpose and shall comply with regulations issued pursuant to HIPAA and HITECH. Internal disclosure of such information to employees of BUSINESS ASSOCIATE shall be limited only to those employees who need the information and only to the extent necessary to perform their responsibilities according to the Underlying Contract and this Agreement.

G. Disclosure to BUSINESS ASSOCIATE’s Subcontractors and Agents. BUSINESS ASSOCIATE shall require any of its agents or subcontractors to provide reasonable assurance, evidenced by written contract, that the agent or subcontractor will comply with the same privacy and security obligations as BUSINESS ASSOCIATE with respect to such Personal Information. Before entering into such a contract with an agent or subcontractor, BUSINESS ASSOCIATE shall obtain from ETF approval of the contract.

H. Access, Amendment and Disclosure Accounting.

1. Access. At the direction of ETF, BUSINESS ASSOCIATE agrees to provide access to any Protected Health Information held by BUSINESS ASSOCIATE which ETF has determined to be part of ETF’s Designated Record Set, in the time and manner designated by ETF, so that ETF may meet its access obligations under HIPAA and HITECH. All fees related to this access, as determined by BUSINESS ASSOCIATE, are the responsibility of the individual requesting the access.

2. Amendment. At the direction of ETF, BUSINESS ASSOCIATE agrees to amend or correct Protected Health Information held by BUSINESS ASSOCIATE and which ETF has determined to be part of ETF’s Designated Record Set, in the time and manner designated by ETF, so that ETF may meet its amendment obligations pursuant to HIPAA and HITECH. All fees related to this amendment, as determined by BUSINESS ASSOCIATE, are the responsibility of the individual requesting the access.

3. Documentation of Disclosures. BUSINESS ASSOCIATE agrees to document such disclosures of Protected Health Information and information related to such disclosures so that ETF may meet its obligations under HIPAA and HITECH.

4. Accounting of Disclosures.

(a) BUSINESS ASSOCIATE shall maintain a process to provide ETF an accounting of disclosures of Protected Health Information for as long as BUSINESS ASSOCIATE maintains Protected Health Information received from or on behalf of ETF. BUSINESS ASSOCIATE agrees to provide to ETF or to an individual, in a time and manner designated by ETF, information collected in accordance with Subsection 3 above, to permit ETF to properly respond to a request by an individual for an accounting of disclosures pursuant to HIPAA and HITECH.

(b) Each accounting will provide:

(i) The date of each disclosure;

(ii) The name and address of the organization or person who received the Protected Health Information;

(iii) A brief description of the Protected Health Information disclosed; and

(iv) For disclosures other than those made at the request of the subject, the purpose for which the Protected Health Information was disclosed and a copy of the request or authorization for disclosure.

(c) For repetitive disclosures which BUSINESS ASSOCIATE makes to the same person or entity, including ETF, for a single purpose, BUSINESS ASSOCIATE may provide:

(i) The disclosure information for the first of these repetitive disclosures;

(ii) The frequency or number of these repetitive disclosures; and

(iii) The date of the last of these repetitive disclosures,

(iv) BUSINESS ASSOCIATE will make a log of this disclosure information available to ETF within five (5) business days of ETF’s request.

(d) BUSINESS ASSOCIATE need not record disclosure information or otherwise account for disclosures of Protected Health Information if:

(i) The disclosures are allowed under this Agreement or are expressly authorized by ETF in another written document; and

(ii) The disclosures are for one of the following purposes:

1. Treatment, Payment or Health Care Operations that are not made through an Electronic Health Record;
2. In response to a request from the Individual who is the subject of the disclosed Protected Health Information, or to that Individual’s Personal Representative;
3. Made to persons involved in the health care or payment for the health care of the Individual who is the subject of the disclosed Protected Health Information;
4. For notification for disaster relief purposes;
5. For national security or intelligence purposes;
6. As part of a Limited Data Set; or

vii. To law enforcement officials or correctional institutions regarding inmates.

5. Disclosure Tracking Time Periods. Except as otherwise provided in this paragraph, BUSINESS ASSOCIATE must have available to ETF the disclosure information required by this section, but in no case will BUSINESS ASSOCIATE be required to have available information from:

(a) More than six (6) years before ETF’s request for the disclosure information; or

(b) Any period during which BUSINESS ASSOCIATE did not provide services to ETF.

6. Disclosure Tracking for Disclosures made through Electronic Health Records: BUSINESS ASSOCIATE only needs to provide disclosures for Treatment, Payment or Health Care Operations made through an Electronic Health Record for three years prior to the date on which the accounting is requested. BUSINESS ASSOCIATE shall provide all information necessary for ETF to provide an accounting that includes all information required by regulations issued pursuant to HIPAA and HITECH.

7. Effective Date: The effective date for accounting required under subsection 6 depends on the date ETF acquires an Electronic Health Record. If ETF had an electronic Health Record as of January 1, 2009, subsection 6 will apply to Protected Health Information disclosures made by ETF on or after January 1, 2014. If ETF does not have an Electronic Health Record as of January 1, 2009, subsection 6 will apply to Protected Health Information disclosures made by ETF after the later of January 1, 2011 or the date ETF acquires an Electronic Health Record.

I. Accounting to ETF and Government Agencies. BUSINESS ASSOCIATE will make its internal practices, books, and records relating to its use and disclosure of Protected Health Information available to ETF to provide to the U.S. Department of Health and Human Services (HHS) in a time and manner designated by HHS for the purpose of determining ETF’s compliance with HIPAA and HITECH. BUSINESS ASSOCIATE shall promptly notify ETF of any inquiries made to it by HHS concerning ETF’s compliance with HIPAA.

J. Red Flag Rules. If applicable to BUSINESS ASSOCIATE, BUSINESS ASSOCIATE shall be responsible for implementation of an Identity Theft Monitoring Policy and procedure to protect Personal Information under the Federal Trade Commission regulations known as the “Red Flag Rules.”

PART II –ETF OBLIGATIONS

A. Changes in Permissions to Use and Disclose Protected Health Information. ETF shall promptly notify BUSINESS ASSOCIATE of any change in, or revocation of, permission by an individual to use or disclose Protected Health Information, to the extent that such change may affect BUSINESS ASSOCIATE’s use or disclosure of such Protected Health Information.

B. Changes in ETF’s Notice of Privacy Practices. ETF shall provide BUSINESS ASSOCIATE with a copy of ETF’s Notice of Privacy Practices and shall notify BUSINESS ASSOCIATE of any change made to the Notice of Privacy Practices, to the extent that such change may affect BUSINESS ASSOCIATE’s efforts to comply with this Agreement.

C. Changes in State Law. ETF shall notify BUSINESS ASSOCIATE of any relevant change in Wisconsin law, to the extent that such change may affect BUSINESS ASSOCIATE’s efforts to comply with this Agreement.

PART III - TERM, TERMINATION AND AMENDMENT

A. Term. This Agreement becomes effective on the effective date of the Underlying Contract. The Agreement is co-extensive with the term of the Underlying Contract, including any extensions made to the original Underlying Contract.

B. Termination for Breach. ETF shall have the right to terminate the Underlying Contract and this Agreement if BUSINESS ASSOCIATE, by pattern or practice, materially breaches any provision of this Agreement.

C. Reasonable Steps to Cure Breach. In addition to the right to terminate this Agreement and Underlying Contract pursuant to section B, above, ETF may provide BUSINESS ASSOCIATE with an opportunity to cure the material breach. If these efforts to cure the material breach are unsuccessful, as determined by ETF in its sole discretion, ETF may terminate the Underlying Contract and this Agreement, as soon as administratively feasible.

D. Effect of Termination: Return or Destruction of Protected Health Information.

Upon termination, cancellation, expiration, or other conclusion of the Agreement, BUSINESS ASSOCIATE shall:

1. Return to ETF or, if return is not feasible, destroy all Personal Information in whatever form or medium that BUSINESS ASSOCIATE received from or created on behalf of ETF. This provision shall also apply to all Personal Information that is in the possession of subcontractors or agents of BUSINESS ASSOCIATE. In such case, BUSINESS ASSOCIATE shall retain no copies of such information, including any compilations derived from and allowing identification of Personal Information. BUSINESS ASSOCIATE shall complete such return or destruction as promptly as possible, but not more than thirty (30) days after the effective date of the conclusion of this Agreement. Within such thirty (30) day period, BUSINESS ASSOCIATE shall certify on oath in writing to ETF that such return or destruction has been completed.

2. If BUSINESS ASSOCIATE destroys Personal Information, it shall be done with the use of technology or methodology that renders the Personal Information unusable, unreadable, or undecipherable to unauthorized individuals as specified by HHS in HHS guidance for the destruction of Protected Health Information. Acceptable methods for destroying Personal Information include: (i) paper, film, or other hard copy media shredded or destroyed in order that Personal Information cannot be read or reconstructed; and (ii) electronic media cleared, purged or destroyed consistent with the standards of the National Institute of Standards and Technology (NIST). HHS specifically excluded redaction as a method of destruction of Protected Health Information, unless the information is properly redacted so as to be fully de-identified.

3. If BUSINESS ASSOCIATE believes that the return or destruction of Personal Information is not feasible, BUSINESS ASSOCIATE shall provide written notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction is not feasible, BUSINESS ASSOCIATE shall extend the protections of this Agreement to Personal Information received from or created on behalf of ETF, and limit further uses and disclosures of such Personal Information, for so long as BUSINESS ASSOCIATE maintains the Personal Information.

E. Agreement to Amend Agreement. The parties to this contract acknowledge that federal laws relating to transactions, security and privacy are rapidly evolving and that amendment to this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, HITECH and their implementing regulations. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, HITECH and applicable federal regulations. If this Agreement is not amended by the effective date of any final regulation or amendment to final regulations with respect to HIPAA and HITECH, this Agreement will automatically be amended on such effective date such that the obligations they impose on BUSINESS ASSOCIATE remain in compliance with the regulations then in effect.

PART IV – GENERAL PROVISIONS

A. Conflict. The provisions of this Agreement override and control any conflicting provision of the Underlying Contract. All non-conflicting provisions of the Underlying Contract remain in full force and effect.

B. Election to Not Treat As Representative. Nothing in this Agreement shall be construed to limit the discretion of ETF, under 45 C.F.R. § 164.502 (g) (5), to elect not to treat a person as the representative of an individual.

C. No Third Party Beneficiaries. Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any entity other than ETF and BUSINESS ASSOCIATE, any rights, remedies, obligations or liabilities whatsoever.

D. Documentation. All documentation that is required by this Agreement or by 45 C.F.R. Part 164 will be retained by BUSINESS ASSOCIATE for six (6) years from the date of creation or when it was last in effect, whichever is longer.

E. Survival. The parties’ obligations and rights, with respect to BUSINESS ASSOCIATE’s engagement to provide services, will be unaffected by the termination of the Underlying Contract and this Agreement. In particular, the provisions of Part III, Sections D and E, and this section, shall survive termination of the Underlying Contract and this Agreement.

Company Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_

Authorized Person \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_

(Print or type)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature of authorized person)

Appendix i – sample doa-3049

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| --- | --- | --- |
| State of Wisconsin  Department of Employee Trust Funds  DOA-3049 (R02/2014))  S. 51.01(5) Wis. Stats.; s. 111.32(13m) Wis. Stats. |  | Department of Employee Trust Funds  801 W. Badger Road  P. O. Box 7931  Madison, WI 53707-7931 |

Contract By Authorized Board

|  |  |
| --- | --- |
| **Commodity or Service:**  Financial Statements Audits for the Wisconsin Deferred Compensation Program | **Contract No./Request for Bid/Proposal No:**  RFB ETE0011 |
|  | **Authorized Board:**  Wisconsin Deferred Compensation Board |
| **Contract Period:** July 1, 2015 through July 1, 2019, plus an option to renew for two additional two-year periods | |

1. This Contract is entered into by and between the State of Wisconsin, Wisconsin Deferred Compensation Board hereinafter referred to as the “Board” and the State of Wisconsin, Department of Employee Trust Funds hereinafter referred to as the “Department”, and XXXXX hereinafter referred to as the “Contractor”, whose address and principal officer appears on page X. The Department is the sole point of contact for this Contract.
2. Whereby the Department of Employee Trust Funds agrees to direct the purchase and the contractor agrees to supply the contract requirements cited above in accordance with the State of Wisconsin standard terms and conditions of the request for ETE0011 bid or proposal cited above, and in accordance with the Contractor's ETE0011 bid or proposal dated hereby incorporated into this Contract by reference.
3. In connection with the performance of work under this Contract, the Contractor agrees not to discriminate against any employees 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. The Contractor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.
4. Contracts estimated to be over fifty thousand dollars ($50,000) require the submission of a written affirmative action plan. Contractors with an annual work force of less than fifty (50) employees are exempted from this requirement. Within fifteen (15) business days after the award of the contract, the plan shall be submitted for approval to the Department. Technical assistance regarding this clause is provided by the Purchasing Agent, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931, 608.261.0737, or via e-mail at [ETFProcurement@etf.wi.gov](file:///\\etf-fnps01\workareas\users\ACCTG\BLACKR\Contracts\2014\ETFProcurement@etf.wi.gov).
5. For purposes of administering this Contract, the Order of Precedence is:   
   A) This Contract with XXXXX and  
   B) the RFB dated August 11, and;

C) Contractor’s bid dated XXXX.

Contract Number & Service:

ETE0011 Financial Statements Audits for the Wisconsin Deferred Compensation Program

|  |  |  |
| --- | --- | --- |
| **State of Wisconsin** |  | **Contractor to Complete** |
| **Department of Employee Trust Funds** |
| By Authorized Board *(Name)* | Legal Company Name |
| **Wisconsin Deferred Compensation Board** |  |
| Signature | Trade Name |
|  |  |
| Title | Taxpayer Identification Number |
| **Chair**  **Wisconsin Deferred Compensation Board** |  |
| Phone | Company Address *(City, State, Zip)* |
| 608.XXX.XXXX |
| Date *(MM/DD/CCYY)* | By *(Name)* |
|  |  |
|  | Signature |
|  |  |
|  |  | Title |
|  |  |  |
|  |  | Phone |
|  |  |  |
|  |  | Date *(MM/DD/CCYY)* |
|  |  |  |