

**Iowa Homeland Security  
Emergency Management Division  
Iowa Department of Public Defense**

**Request for Proposal (RFP)**

**583-2011-010-RFP**

VERSION 1.8

December 8, 2011

**Exercise and Development of  
Continuity of Operations (COOP)  
Plans**

## TABLE OF CONTENTS

### **Section 1 Introduction**

- 1.1 Purpose
- 1.2 Overview of the RFP Process
- 1.3 Background Information

### **Section 2 Administrative Information**

- 2.1 Issuing Officer
- 2.2 Restriction on Communication
- 2.3 Downloading the RFP from the Internet
- 2.4 Procurement Timetable
- 2.5 Questions, Requests for Clarification, and Suggested Changes
- 2.6 Amendment to the RFP and Bid Proposal and Withdrawal of Bid Proposal
- 2.7 Submission of Bid Proposals
- 2.8 Bid Proposal Opening
- 2.9 Costs of Preparing the Bid Proposal
- 2.10 Rejection of Bid Proposals
- 2.11 Disqualification
- 2.12 Nonmaterial and Material Variances
- 2.13 Reference Checks
- 2.14 Information from Other Sources
- 2.15 Verification of Bid Proposal Contents
- 2.16 Bid Proposal Clarification Process
- 2.17 Disposition of Bid Proposals
- 2.18 Public Records and Requests for Confidential Treatment
- 2.19 Copyrights
- 2.20 Release of Claims
- 2.21 Presentations
- 2.22 Evaluation of Bid Proposals Submitted
- 2.23 Award Notice and Acceptance Period
- 2.24 Definition of Contract
- 2.25 Choice of Law and Forum
- 2.26 Restrictions on Gifts and Activities
- 2.27 No Minimum Guaranteed
- 2.28 Performance Standards, Review, and Monitoring Provisions

### **Section 3 Service Requirements**

- 3.1 Introduction
- 3.2 Ownership of Materials and Deliverables
- 3.3 Scope of Work/Deliverables
- 3.4 Demonstration of Subject Matter Knowledge

### **Section 4 Format and Content of Bid Proposals**

- 4.1 Instructions
- 4.2 Technical Proposal
- 4.3 Cost Proposal
- 4.4 Narrative

**Section 5 Evaluation of Bid Proposals**

- 5.1 Evaluation Committee
- 5.2 Evaluation Process
- 5.3 Evaluation of Narrative
- 5.4 Selection Process and Evaluation Criteria

**Section 6 Contract Terms and Conditions**

- 6.1 Contract Terms and Conditions
- 6.2 Contract Length

**Attachments**

- 1. Proposal Certification
- 2. Certification of Independence and No Conflict of Interest
- 3. Certification Regarding Debarment, Suspension, and Eligibility, and Voluntary Exclusion
- 4. Authorization to Release Information
- 5. Service Contract

## **SECTION 1 INTRODUCTION**

### **1.1 Purpose**

The purpose of this Request for Proposals (RFP) is to solicit proposals from qualified service providers for certain projects and services related to exercising and developing Continuity of Operations (COOP) Plans of various state agencies. The successful bidder will be responsible for conduct of an exercise or exercises involving one or more agencies of Iowa state government and to help participating agencies prepare for such exercise through training sessions and by assisting them in inputting their plan components into LDRPS, a web-based continuity planning application. The vendor will also provide options and details for proposals for some kind of tracking system that will account for the whereabouts of state employees and contractors after an evacuation of a state facility. Deliverables will be provided to the Iowa Homeland Security Emergency Management Division of the Iowa Department of Public Defense (HSEMD).

Prospective vendors are asked to submit a single bid for all elements. HSEMD intends to award a contract or contracts beginning on **January 23, 2012**. The ending date of the contract is currently slated for **August 1, 2012**, but an extension of up to 6 months may be granted (though that is not at all guaranteed and bidders should submit their proposals ready to finish by August 1, 2012).

HSEMD retains an option to renew an agreement with the successful vendor under this title in subsequent years.

Any contract resulting from this RFP shall not be an exclusive contract and all deliverables provided by the vendor under this RFP and any resulting contract, including all reports and materials produced by the vendor for this project, will become the sole property of HSEMD. Distribution of the materials to third parties will be at HSEMD's sole discretion.

### **1.2 Overview of the RFP Process**

Vendors will be required to submit bid proposals in the manner specified in Section 2.7, Submission of Bid Proposals. It is HSEMD's intention to evaluate proposals from all vendors that submit timely Responsive Bid Proposals, and award the contract in accordance with Section 5, Evaluation and Selection.

### **1.3 Background Information**

This RFP is designed to provide vendors with the information necessary for the preparation of competitive bid proposals. The RFP process is intended to provide competitive information to assist in the selection process. It is not intended to be comprehensive. Each vendor is responsible for determining all factors necessary for submission of a comprehensive bid proposal.

- This RFP is issued by HSEMD, who will be working in coordination with other agencies of the State of Iowa.

- The Department of Homeland Security reserves a royalty-free, non-exclusive, an irrevocable license to reproduce, publish, or otherwise use, and authorize others to use, for Federal government purposes: (1) the copyright in any work developed under an award or subaward; and (2) any rights of copyright to which a recipient or subrecipient purchases ownership with Federal support.

## **SECTION 2 ADMINISTRATIVE INFORMATION**

### **2.1 Issuing Officer**

The Issuing Officer, identified below, is the sole point of contact regarding the RFP from the date of issuance until selection of the successful vendor.

**Terry Brown, Contracting Officer**  
**Iowa Homeland Security Emergency Management Division**  
**Camp Dodge, Bldg. W-4**  
**7105 NW 70th Ave.**  
**Johnston, IA 50131**  
**(515) 725-3203**  
[Terry.Brown@iowa.gov](mailto:Terry.Brown@iowa.gov)

### **2.2 Restriction on Communication**

From the issue date of this RFP until announcement of the successful vendor, vendors may contact only the Issuing Officer regarding this RFP. Vendors may be disqualified if they contact any employee or representative of HSEMD or any state that is a participant in the Partnership, other than the Issuing Officer, regarding this RFP. Questions related to the interpretation of this RFP must be submitted as provided in Section 2.5. Oral questions related to the interpretation of this RFP will not be accepted.

### **2.3 Downloading the RFP from the Internet**

All amendments will be posted on Iowa Homeland Security and Emergency Management's home page at: <http://www.iowahomelandsecurity.org/> . The vendor is advised to check the Iowa Homeland Security and Emergency Management's home page periodically for amendments to this RFP.

### **2.4 Procurement Timetable**

The following dates are set forth for informational and planning purposes; however, the HSEMD reserves the right to change the dates.

Issue RFP to TSB	December 8, 2011
Issue RFP to Main General Services Page	December 12, 2011
Questions for HSEMD regarding RFP	January 3, 2012
HSEMD Response to Questions	January 4, 2012
Closing Date for Receipt of Bid Proposals and Amendments	January 11, 2012
Announce Successful Vendor	January 19, 2012
Completion of Contract Negotiations and Execution of the Contract	February 15, 2012
Section 3.3.1 Deliverables Due Date	July 29, 2012
Section 3.3.2 Deliverables Due Date	May 20, 2012
Final Invoice Due Date and Completion of Contract	August 1, 2012

## **2.5 Questions, Requests for Clarification, and Suggested Changes**

Vendors are invited to submit written questions and requests for clarifications regarding the RFP. Vendors may also submit suggestions for changes to the requirements of this RFP. The questions, requests for clarifications, or suggestions must be in writing and received by the Issuing Officer before 12:00 noon, central time, **January 3, 2012**. Oral questions will not be permitted. If the questions, requests for clarifications, or suggestions pertain to a specific section of the RFP, the page and section number(s) must be referenced. Written responses to questions, requests for clarifications, or suggestions will be posted on the agency's website on or before 4:30 p.m., central time, **January 4, 2012**. If HSEMD decides to adopt a suggestion, HSEMD will issue an amendment to the RFP. HSEMD assumes no responsibility for verbal representation made by its officers or employees unless such representations are confirmed in writing and incorporated into the RFP.

## **2.6 Amendment to the RFP and Bid Proposal and Withdrawal of Bid Proposal**

HSEMD reserves the right to amend the RFP at any time. The vendor shall acknowledge receipt of an amendment in its proposal. If the amendment occurs after the closing date for receipt of bid proposals, HSEMD may, in its sole discretion, allow vendors to amend their bid proposals in response to HSEMD's amendment if necessary. The vendor may amend its bid proposal. The amendment must be in writing, signed by the vendor and received by time set for the receipt of proposals. Electronic mail and faxed amendments will not be accepted. Vendors who submit proposals in advance of the deadline may withdraw, modify, and resubmit proposals at any time prior to the deadline for submitting proposals. Vendors must notify the Issuing Officer in writing if they wish to withdraw their proposals. Electronic mail and faxed requests to withdraw will not be accepted.

## **2.7 Submission of Bid Proposals**

HSEMD must receive the bid proposal at: **Iowa Homeland Security and Emergency Management Division, Camp Dodge Bldg. W-4, 7105 NW 70th Ave., Johnston, IA 50131 before 4:30p.m., central time, January 11, 2012.**

**This is a mandatory requirement and will not be waived by HSEMD. Any bid proposal received after this deadline will be rejected and returned unopened to the vendor.** Vendors mailing bid proposals must allow ample mail delivery time to ensure timely receipt of their bid proposals. It is the vendor's responsibility to ensure that the bid proposal is received prior to the deadline. Postmarking by the due date will not substitute for actual receipt of the bid proposal. Electronic mail and faxed bid proposals will not be accepted. Vendors must furnish all information necessary to evaluate the bid proposal. Bid proposals that fail to meet the mandatory requirements of the RFP will be disqualified. Verbal or oral information provided by the vendor shall not be considered part of the vendor's proposal.

## **2.8 Bid Proposal Opening**

HSEMD will open bid proposals at **8:00 a.m., central time, January 12, 2012**. The bid proposals will remain confidential until the Evaluation Committee has reviewed all bid proposals submitted in response to this RFP and HSEMD has announced a notice of intent to award a contract. See Iowa Code Section 72.3. However, the names of vendors who submitted timely Bid Proposals may be publicly available after the Bid Proposal

Opening. The announcement of vendors who timely submitted Bid Proposals does not mean that an individual Bid Proposal has been deemed technically compliant or accepted for evaluation.

## **2.9 Costs of Preparing the Bid Proposal**

The costs of preparation and delivery of the bid proposal are solely the responsibility of the vendor.

## **2.10 Rejection of Bid Proposals**

HSEMD reserves the right to reject any or all bid proposals or any portion thereof without penalty at any time, including prior to the execution of a written contract. Issuance of this RFP in no way constitutes a commitment by HSEMD to award a contract or to execute a binding contract with the successful vendor that may be selected as a result of this RFP. HSEMD further reserves the right to cancel this RFP, to issue a new RFP or to award a contract in whole or in part if it is in the best interests of HSEMD or the Partnership. This RFP is designed to provide vendors with the information necessary to prepare a competitive bid proposal. This RFP process is for the benefit of HSEMD and the Partnership and is intended to provide HSEMD with competitive information to assist in the selection of a vendor to provide services. It is not intended to be comprehensive and each vendor is responsible for determining all factors necessary for submission of a comprehensive bid proposal.

## **2.11 Disqualification**

HSEMD will reject outright and will not evaluate proposals for any one of the following reasons:

- 2.11.1** The vendor fails to deliver the bid proposal by the due date and time.
- 2.11.2** The vendor fails to deliver the cost proposal in a separate envelope.
- 2.11.3** The vendor states that a service requirement cannot be met.
- 2.11.4** The vendor's response materially changes a service requirement.
- 2.11.5** The vendor's response limits the rights of HSEMD or the Partnership.
- 2.11.6** The vendor fails to include information necessary to substantiate that it will be able to meet a service requirement. A response of "will comply" or merely repeating the requirement is not sufficient. Responses must indicate present capability; representations that future developments will satisfy the requirement are not sufficient.
- 2.11.7** The vendor fails to respond to HSEMD's request for information, documents, or references.
- 2.11.8** The vendor fails to include any signature, certification, authorization, stipulation, disclosure or guarantee requested in section 4 of this RFP.
- 2.11.9** The vendor presents the information requested by this RFP in a format inconsistent with the instructions of the RFP.
- 2.11.10** The vendor initiates unauthorized contact regarding the RFP with any employee or representative of HSEMD, the State of Iowa, or any other state participant in the Partnership, other than the Issuing Officer.

**2.11.11** The vendor provides misleading or inaccurate responses.

**2.12 Nonmaterial and Material Variances**

HSEMD reserves the right to waive or permit cure of nonmaterial variances in the bid proposal if, in the judgment of HSEMD, it is in the best interest of HSEMD or the Partnership to do so. Nonmaterial variances include minor informalities that do not affect responsiveness; that are merely a matter of form or format; that do not change the relative standing or otherwise prejudice other vendors; that do not change the meaning or scope of the RFP; and/or that do not reflect a material change in the services. In the event that HSEMD waives or permits cure of nonmaterial variances, such waiver or cure will not modify the RFP requirements or excuse the vendor from full compliance with RFP specifications or other contract requirements if the vendor is awarded the contract. The determination of materiality is in the sole discretion of HSEMD.

**2.13 Reference Checks**

HSEMD reserves the right to contact any reference to assist in the evaluation of the bid proposal, to verify information contained in the bid proposal and to discuss the vendor's qualifications and the qualifications of any subcontractor identified in the bid proposal.

**2.14 Information From Other Sources**

HSEMD reserves the right to obtain and consider information from other sources concerning a vendor, such as the vendor's capability, financial strength, and performance under other contracts.

**2.15 Verification of Bid Proposal Contents**

The content of a bid proposal submitted by a vendor is subject to verification. Misleading or inaccurate responses shall result in disqualification.

**2.16 Bid Proposal Clarification Process**

HSEMD reserves the right to contact a vendor after the submission of bid proposals for the purpose of clarifying a bid proposal to ensure mutual understanding. This contact may include written questions, interviews, site visits, a review of past performance if the vendor has provided goods or services to the states and their agencies participating in the Partnership or any political subdivision wherever located, or requests for corrective pages in the vendor's bid proposal. HSEMD will not consider information received if the information materially alters the content of the bid proposal or alters the type of goods and services the vendor is offering to HSEMD. An individual authorized to legally bind the vendor shall sign responses to any request for clarification. Responses shall be submitted to HSEMD within the time specified in HSEMD's request. Failure to comply with requests for additional information may result in rejection of the bid proposal.

## **2.17 Disposition of Bid Proposals**

All proposals become the property of HSEMD and shall not be returned to the vendor unless all bid proposals are rejected or the RFP is cancelled. In either event, vendors will be asked to send prepaid shipping instruments to HSEMD for return of the bid proposals submitted. In the event that HSEMD does not receive shipping instruments, HSEMD will destroy the bid proposals. Otherwise, at the conclusion of the selection process, the contents of all bid proposals will be in the public domain and be open to inspection by interested parties subject to exceptions provided in Iowa Code Chapter 22 or other applicable law.

## **2.18 Public Records and Requests for Confidential Treatment**

HSEMD will treat information submitted by a vendor as public information following the conclusion of the selection process unless the vendor properly requests that information be treated as confidential at the time of submitting the bid proposal. HSEMD's release of information is governed by Iowa Code Chapter 22. Vendors are encouraged to familiarize themselves with chapter 22, including Iowa Code section 22.7, before submitting a proposal. HSEMD will copy, disclose and permit examination of public records as required to comply with the public records laws. Any request for confidential treatment of information must be included in the transmittal letter with the vendor's bid proposal. In addition, the vendor must enumerate the specific grounds in Iowa Code Chapter 22 or other applicable law which support treatment of the material as confidential and explain why disclosure is not in the best interest of the public. The request for confidential treatment of information must also include the name, address, and telephone number of the person authorized by the vendor to respond to any inquiries by HSEMD concerning the confidential status of the materials. Any bid proposal submitted which contains confidential information must be conspicuously marked on the outside as containing confidential information, and each page upon which confidential information appears must be conspicuously marked as containing confidential information. Failure to properly identify specific confidential information shall relieve HSEMD from any responsibility if confidential information is viewed by the public, or a competitor, or is any way released. Identification of the entire bid proposal as confidential may be deemed non-responsive and disqualify the vendor. If the vendor designates any portion of the RFP as confidential, the vendor must submit one copy of the bid proposal from which the confidential information has been excised. This excised copy is in addition to the number of copies requested in section 4 of this RFP. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the bid proposal as possible. HSEMD will treat the information marked confidential as confidential information only to the extent such information is determined confidential under Iowa Code Chapter 22 or other applicable law by a court of competent jurisdiction. In the event that HSEMD receives a request for information marked confidential, written notice shall be given to the vendor seven calendar days prior to the release of the information to allow the vendor to seek injunctive relief pursuant to Section 22.8 of the Iowa Code. The vendor's failure to request confidential treatment of material will be deemed by HSEMD as a waiver of any right to confidentiality, which the vendor may have had.

## **2.19 Copyrights**

By submitting a bid proposal, the vendor agrees that HSEMD and participants in the Partnership may copy the bid proposal for purposes of facilitating the evaluation of the bid proposal or to respond to requests for public records. By submitting a bid, the vendor consents to such copying and represents and warrants that such copying will not violate the rights of any third party. HSEMD and other participants in the Partnership shall have the right to use ideas or adaptations of ideas that are presented in the bid proposals.

## **2.20 Release of Claims**

By submitting a bid proposal, the vendor agrees that it will not bring any claim or cause of action against HSEMD or any participant in the Partnership based on any misunderstanding concerning the information provided herein or concerning HSEMD's or any other Partnership participant's failure, negligent or otherwise, to provide the vendor with pertinent information as intended by this RFP.

## **2.21 Presentations**

Vendors may be required to make a presentation of the bid proposal. The presentation may occur at a location requested by HSEMD. The determination as to need for presentations, the location, order, and schedule of the presentations is at the sole discretion of HSEMD. The presentation may include slides, graphics and other media selected by the vendor to illustrate the vendor's bid proposal. The presentation shall not materially change the information contained in the bid proposal.

## **2.22 Evaluation of Bid Proposals Submitted**

Bid proposals that are timely submitted and are not subject to disqualification will be reviewed in accordance with Section 5 of the RFP. HSEMD will not necessarily award any contract resulting from this RFP to the vendor offering the lowest cost. Instead, HSEMD will award the contract to the compliant vendor whose proposal receives the most points in accordance with the evaluation criteria set forth prior to opening the proposals and subject to approval of the Evaluation Committee.

## **2.23 Award Notice and Acceptance Period**

Notice of intent to award the contract will be sent by mail to all vendors submitting a timely bid proposal. Negotiation and execution of the contract shall be completed no later than **February 23, 2012**. If the apparent successful vendor fails to negotiate and deliver an executed contract by close-of-business on **February 23, 2012**, HSEMD may, in its sole discretion, cancel the award and award the contract to the next highest ranked vendor.

## **2.24 Definition of Contract**

The full execution of a separate written contract shall constitute the making of a contract for services and no vendor shall acquire any legal or equitable rights relative to the goods

or services to be provided in connection with this RFP unless a separate written contract, with terms and conditions acceptable to HSEMD, has been fully executed by HSEMD and the successful vendor. By submitting a proposal, each vendor acknowledges that any award of a contract or selection of a successful vendor by HSEMD under this RFP, including, without limitation, any verbal or written notice thereof provided by or on behalf of HSEMD, shall not create any contractual rights or other obligations between HSEMD and the successful vendor until a separate, written contract has been executed by HSEMD and the successful vendor.

## **2.25 Choice of Law and Forum**

This RFP and the resulting contract are to be governed by the laws of the State of Iowa. Changes in applicable laws and rules may affect the award process or the resulting contract. Vendors are responsible for ascertaining pertinent legal requirements and restrictions. Any and all litigation or actions commenced in connection with this RFP shall be brought in the appropriate Iowa forum.

## **2.26 Restrictions on Gifts and Activities**

Iowa Code Chapter 68B restricts gifts which may be given or received by State of Iowa employees and requires certain individuals to disclose information concerning their activities with state government. Vendors are responsible to determine the applicability of this chapter to their activities and to comply with the requirements. In addition, pursuant to Iowa Code section 722.1, it is a felony offense to bribe or attempt to bribe a public official.

## **2.27 No Minimum Guaranteed**

HSEMD anticipates that the selected vendor will provide services as requested by HSEMD. HSEMD will not guarantee any minimum compensation will be paid to the vendor or any minimum usage of the vendor's services. HSEMD does not promise any minimum amount of compensation or business to the selected provider. Some examples include when the vendor will be paid on an hourly basis, a per client basis, a per case basis, or a per transaction basis.

## **2.28 Performance Standards, Review and Monitoring Provisions**

Iowa Code section 8.47 (1) and 11 Iowa Admin. Code ch. 107 require that State of Iowa agency contracts for services contain provisions which, among other things: (i) describe the amount or basis for paying compensation to the vendor based on the vendor's performance under the contract; (ii) vendor's compliance with the services contract; and (iii) describe the methods by which the agency can effectively review the vendor's performance of the services contract, including, but not limited to performance measurements. Please furnish, as a part of your proposal, recommended provisions for inclusion in the services contract that comply with the service contract requirements described above.

## **SECTION 3 SERVICE REQUIREMENTS**

### **3.1 Introduction**

The Homeland Security and Emergency Management Division (HSEMD) of the Iowa Department of Public Defense seeks to have completed by a contractor one or more projects related to continuity of operations planning and preparations. The selected vendor will be expected to work with the Issuing Officer, the project planner, and personnel from various state agencies and counties.

### **3.2 Ownership of Materials and Deliverables**

By submitting a proposal, each vendor agrees that all materials, work product and other deliverables (the "Deliverables") to be produced or provided under a contract and all intellectual property rights in or related to the Deliverables shall become and remain the sole and exclusive property of HSEMD on behalf of the Partnership. The successful vendor will be required to assign all right, title, and interest in and to all of the foregoing to HSEMD. As owner of the Deliverables and related intellectual property rights, HSEMD may: (i) obtain and hold copyrights, patents or such other registrations or intellectual property protections with respect to the Deliverables as may be desirable or appropriate, (ii) adapt, change, modify, edit, or use the Deliverables as HSEMD sees fit, including in combination with the works of others, (iii) prepare derivative works based on the Deliverables and publish, display, and distribute any Deliverable (s) in any medium, and (iv) sell, license, sublicense, lease, or permit others to use the Deliverables and any intellectual property rights therein or related thereto, all without payment of any additional compensation to vendor.

### **3.3 Scope of Work**

The scope of work includes two projects, each of which constitutes one or multiple deliverables. The projects are:

1. COOP Exercise(s) for State Agencies
2. System to Account for Human Resources Following Evacuation

#### **3.3.1 Project: COOP Exercise(s) for State Agencies**

##### **Background and General Information:**

a) Every state agency of the State of Iowa has a continuity of operations (COOP) plan which outlines actions to be taken to ensure the continued performance of essential government functions during a wide range of potential emergencies. The agency COOP Plans should be tested and exercised to ensure that appropriate staff are familiar with the Plan, discover any weaknesses in the Plan, and determine how plans should be improved. One of the primary projects of this RFP is meant to assist up to five (5) state agencies with such a COOP exercise. Exercises will be requested by an agency and will be limited to five (5) agencies playing in such exercise(s). The exercise or exercises must be

written and conducted using the Homeland Security Exercise and Evaluation Program (HSEEP) methodology.

- b) Part of the project will also include assisting agencies to prepare for an exercise by helping them update their plans in LDRPS. LDRPS stands for Living Disaster Recovery Planning System, a continuity planning application which allows users to build, store and retrieve their continuity plan on-line via the internet. The state owns several LDRPS licenses and many agencies have already stored continuity plan information using LDPRS (the state currently uses version 10, release 7).
- c) Attendance records and notes must be kept for all meetings that may be held as a part of this project. Payment will not be made for any work period in which a meeting was held unless attendance and notes are provided for meetings held during that period.
- d) Barring extenuating circumstances which must be negotiated with HSEMD, the vendor should consider expenses for this project (3.3.1) capped at \$100,000.00 if the maximum five agencies participate. If only one agency participates, expenses should not exceed \$30,000. The vendor should indicate what their not-to-exceed fee for this project will be if there is one, two, three, four or five agencies participating.

**Tasks for this project:**

- 3.3.1.1 **Invite state agencies to play in a COOP tabletop exercise.**  
This may mean multiple meetings with individual departments to explain the exercise, the project, and answer questions about continuity planning and how a department may be involved. Tell them possible objectives they may want to accomplish through such an exercise.
- 3.3.1.2 **Discover concept and objectives for participating agencies.**  
Consultant must facilitate a Concept and Objectives (C & O) meeting or meetings. A single C & O meeting could be held for all participating agencies to attend, or a C & O meeting could be held with each participating agency. Find out from participating agencies what objectives they want to meet through their involvement in the exercise(s). One of the objectives will be testing the communication capability of informing employees that the COOP Plan has been activated and other necessary details that employees would need to know in a disaster that impacts their work facility. Document other proposed objectives. Compile report of all the objectives of all participating agencies.

- 3.3.1.3 **Get exercise planners appointed, provide them orientation and training, and plan exercise with them.** Have participating agencies appoint exercise planners from agency. Gather input from these planners about scope, design, scenario, location, schedule, duration and other details of exercise. Develop draft exercise plan. Different meetings may be needed. Hold planning conferences (mid-term, MSEL, etc.) as needed to resolve logistical and organizational issues and to develop time-line and scenario. Draft exercise plan and player manuals. Hold a final planning conference to review the procedures for exercise conduct, drafts of exercise plan and other written materials, and to review logistics.
- 3.3.1.4 **Assist exercise-playing agencies in preparing for exercise and entering assignments and other information into LDRPS prior to exercise.** Meet with individual agencies on occasion to ensure that they are progressing in becoming prepared for exercise. Some may need to update plans and assign roles and responsibilities to staff who will be needed at exercise. Help them in these efforts. Also help agencies to enter assignments and other continuity plan information into LDRPS in preparation for exercise. The contractor will only help agencies that will be playing in the exercise, and only getting plan elements in place and printed that are needed for the exercise. By its nature, such work would have to be billed at an hourly rate. There will be a limit of 80 hours per agency that requests this type of assistance. Actual hours of assistance will be dependent on the needs of the agencies that request the assistance and will be determined in consultation between the agency, contractor and HSEMD project planner. Payment for hours of this type of assistance will not be made until written exercise plan(s) and player manual(s) are complete.
- 3.3.1.5 **Conduct tabletop exercise or exercises to test various continuity objectives.** Hold a players meeting or meetings (if multiple agencies involved). Facilitate exercise or exercises that tests objectives, including testing the communication capability of informing employees that the COOP Plan has been activated and other necessary details that employees would need to know in a disaster that impacts their work facility. It may be that more than one agency may want to play at the same time, and coordination will be needed to do that.
- 3.3.1.6 **Compile Exercise Evaluation Guides (EEGs) from exercises and draft After Action Report and Improvement Plan (AAR/IP).** Before exercise conduct, compose EEGs for agencies and hold training for evaluators. Gather EEGs from evaluators upon completion of exercise. As this is a tabletop

exercise, a hotwash may be redundant for players, but at least exercise planners and evaluators should meet after exercise to debrief and share thoughts. A hotwash may be necessary for players as well if the exercise turns out to be more “real-time”. The thoughts shared in hotwash/debriefing must be recorded for inclusion in AAR. EEG comments must also be included in AAR. Consultant will also give all players evaluation forms and collect them after the exercise. These will also be compiled and included in draft AAR.

3.3.1.7 **Hold AAR meeting with COOP exercise players and complete AAR/IP.** After draft AAR is composed, send it out to players for review and comment. Hold an AAR conference and draft Improvement Plans. Improvement Plans will need to be drafted for each participating agency. Complete final AAR/IP.

3.3.1.8 **Make changes to continuity plans based on AAR/IP.** If Improvement Plans identify changes that must be made to agency COOP plans, consultant may assist those agencies in updating their plans in LDRPS to include the identified changes. By its nature, such work would have to be billed at an hourly rate. There will be a limit of 40 hours per agency that requests this type of assistance. Actual hours of assistance will be dependent on the needs of the agencies that request the assistance and will be determined in consultation between the agency, contractor and HSEMD project planner. Payment for hours of this type of assistance will not be made until draft AAR/IP and AAR conference(s) are complete.

**Due Date: July 30, 2012**

### **3.3.2 Project: System to Account for Human Resources Following Evacuation**

#### **Background and General Information:**

Some disaster situations would necessitate the evacuation of a building. Facilities have evacuation plans that are exercised periodically (e.g. fire drills). The facility evacuation plan is not necessarily a part of an agency’s COOP plan, but would precede it. The proposed exercise above will not necessarily include an evacuation exercise, but the accountability of and ability to communicate with evacuated personnel needs to be taken into account because the COOP activation could begin while the facility is evacuated. In such an event, employees would need to be contacted. For this reason, it is important that there be a human resources management and tracking system that will facilitate the accounting of the whereabouts of employees and contractors after an evacuation and a means of initiating a temporary communications structure with employees and contractors. One of the projects from this RFP is for the service provider to research best practices and present different options for accounting for and

communicating with employees and contractors after a disaster, and giving cost estimates for those different options.

**Tasks for this project:**

- 3.3.2.1 Research several other agencies/organizations that have implemented such a system, including at least two (2) government agencies, with at least one being a state agency in some other state.
- 3.3.2.2 Analyze the systems researched and provide an analysis of at least 3 different options with pros and cons to each option in relation to Iowa state agencies. Describe possible challenges to implementing such systems in Iowa state government agencies. Describe opportunities for implementing such systems in Iowa state government agencies for departments that are large (over 250 employees), small (less than 50 employees), or mid-sized.
- 3.3.2.3 Provide cost estimates for such systems.
- 3.3.2.4 Outline a proposal for steps that should be taken to implement at least two of the options.

**Due Date: May 20, 2012**

**3.4 Demonstration of Subject Matter Knowledge**

Qualified candidates must have credentials and/or experience in continuity planning, LDRPS (version 10.7), continuity exercises, and have completed the HSEEP Training Course (minimum 3 day course). Candidate vendors should therefore provide evidence of such credentials, knowledge or experience. Pursuant to Section 4.2.5.4, the vendor also will provide project references for previous work accomplished in continuity planning.

**SECTION 4 FORMAT AND CONTENT OF BID PROPOSALS**

**4.1 Instructions**

**4.1.1** The bid proposal must be submitted in hardcopy to the address below:

**Exercise and Development of COOP Plans BID  
Terry Brown, Contracting Officer  
Iowa Homeland Security and Emergency Management  
Camp Dodge, Bldg. W-4  
7105 NW 70th Ave.  
Johnston, IA 50131**

**4.1.2** If the vendor designates any information in its proposal as confidential pursuant to Section 2.18, the vendor must also submit one (1) copy of the bid proposal from which confidential information has been excised. The confidential

material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the bid proposal as possible.

**4.1.3** Bid proposals shall not contain promotional or display materials.

**4.1.4** Attachments shall be referenced in the bid proposal.

**4.1.5** If a vendor proposes more than one method of meeting these requirements, each should be labeled and submitted separately. Each will be evaluated separately.

**4.1.6** Detailed biographies of all personnel that will be assigned to this contract should be provided with the bid.

**4.1.7** The vendor's proposal package must include three (3) hard copies of the proposal and one (1) electronic copy using Microsoft Office Suite software and/or Adobe PDF files on a compact disc identified with the vendor's company name, RFP title (key words) and RFP number.

## **4.2 Technical Proposal**

The following documents and responses shall be included in the bid proposal in the order given below:

### **4.2.1 Transmittal Letter**

An individual authorized to legally bind the vendor shall sign the transmittal letter. The letter shall include the vendor's mailing address, electronic mail address, fax number, and telephone number. Any request for confidential treatment of information shall be included in the transmittal letter in addition to the specific statutory basis supporting the request and an explanation why disclosure of the information is not in the best interest of the public. The transmittal letter shall also contain the name, address and telephone number of the individual authorized to respond to HSEMD about the confidential nature of the information.

### **4.2.2 Table of contents**

The vendor shall include a table of contents of its bid proposal.

### **4.2.3 Service Requirements**

The vendor shall address each service requirement in Section 3 of the RFP and explain how it plans to approach each requirement. Proposals must be fully responsive to service requirements. Merely repeating the requirements will be considered non-responsive and may disqualify the vendor. Proposals must identify any deviations from the requirements of this RFP or requirements the vendor

cannot satisfy. Any deviations from the requirements of the RFP or any requirement of the RFP that the vendor cannot satisfy may disqualify the vendor.

#### **4.2.4 Background Information**

The vendor shall provide the following general background information:

**4.2.4.1** Name, address, telephone number, fax number and e-mail address of the vendor including all d/b/a's or assumed names or other operating names of the vendor.

**4.2.4.2** Form of business entity (e.g., corporation, partnership, proprietorship, limited liability company).

**4.2.4.3** State of incorporation, state of formation, or state of organization.

**4.2.4.4** Identity and specify the location(s) and telephone numbers of the major offices and other facilities that relate to the vendor's performance under the terms of this RFP.

**4.2.4.5** Local office address and phone number (if any).

**4.2.4.6** Number of employees.

**4.2.4.7** Name, address and telephone number of the vendor's representative to contact regarding all contractual and technical matters concerning this proposal.

**4.2.4.8** Name, address and telephone number of the vendor's representative to contact regarding scheduling and other arrangements.

**4.2.4.9** Name and qualifications of any subcontractors who will be involved with this project.

**4.2.4.10** Identify the vendor's accounting firm.

**4.2.4.11** The successful vendor will be required to register to do business in Iowa. If already registered, provide the date of the vendor's registration to do business in Iowa and the name of the vendor's registered agent.

#### **4.2.5 Experience**

The vendor must provide the following information regarding its experience:

**4.2.5.1** Number of years experience with providing the types of services sought by the RFP.

**4.2.5.2** Describe the level of technical experience in providing the types of services sought by the RFP.

**4.2.5.3** List all services similar to those sought by this RFP that the vendor has provided to other businesses or governmental entities.

**4.2.5.4** References from three (3) previous clients knowledgeable of the vendor's performance in providing services similar to the services described in this RFP and a contact person and telephone number for each reference.

#### **4.2.6 Personnel**

The vendor must provide resumes for all key personnel, including the project manager, who will be involved in providing the services contemplated by this RFP. The following information must be included in the resumes:

**4.2.6.1** Full name.

**4.2.6.2** Education.

**4.2.6.3** Years of experience and employment history particularly as it relates to the scope of services specified herein.

#### **4.2.7 Terminations, Litigation, Debarment**

The vendor must provide the following information:

**4.2.7.1** During the last five (5) years, has the vendor had a contract for services terminated for any reason? If so, provide full details related to the termination.

**4.2.7.2** During the last five (5) years, describe any damages or penalties or anything of value traded or given up by vendor under any of its existing or past contracts as it relates to services performed that are similar to the services contemplated by this RFP. If so, indicate the reason for the penalty or exchange of property or services and the estimated amount of the cost of that incident to the vendor.

**4.2.7.3** During the last five (5) years, describe any order, judgment or decree of any Federal or State authority barring, suspending or otherwise limiting the right of the vendor to engage in any business, practice or activity.

**4.2.7.4** During the last five (5) years, list and summarize pending or threatened litigation, administrative or regulatory proceedings, or similar matters that could affect the ability of the vendor to perform the required services. The vendor must also state whether it or any owners, officers, or primary partners have ever been convicted of a felony. Failure to disclose

these matters may result in rejection of the bid proposal or in termination of any subsequent contract. This is a continuing disclosure requirement. Any such matter commencing after submission of a bid proposal, and with respect to the successful vendor after the execution of a contract, must be disclosed in a timely manner in a written statement to HSEMD.

#### **4.2.8 Proposal Certification**

The vendor shall sign and submit with the bid proposal the document included as Attachment # 1 in which the vendor shall certify that the contents of the bid proposal are true and accurate.

#### **4.2.9 Acceptance of Terms and Conditions**

The vendor shall specifically agree that the bid proposal is predicated upon the acceptance of all terms and conditions stated in the RFP. If the vendor objects to any term or condition, the vendor must specifically refer to the RFP page, and section. Objections or responses that materially alter the RFP may be deemed non-responsive and disqualify the vendor.

#### **4.2.10 Certification of Independence and No Conflict of Interest**

The vendor shall verify that it developed the bid proposal independently. The vendor shall also certify that no relationship exists or will exist during the contract period between the vendor and HSEMD that interferes with fair competition or is a conflict of interest. HSEMD reserves the right to reject a bid proposal or cancel the award if, in its sole discretion, any relationship exists that could interfere with fair competition or conflict with the interests of HSEMD or the Partnership. See Attachment #2.

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

The vendor shall sign and submit with the bid proposal the document included as Attachment # 3 in which the vendor shall certify that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal, department or agency.

#### **4.2.12 Authorization to Release Information**

The vendor shall sign and submit with the bid proposal the document included as Attachment # 4 in which the vendor authorizes the release of information to the HSEMD.

#### **4.2.13 Firm Bid Proposal Terms**

The vendor shall guarantee in writing the availability of the services offered and that all bid proposal terms, including price, will remain firm a minimum of 120 days following the deadline for submitting proposals.

#### **4.3 Cost Proposal**

Each vendor will provide its cost proposal based upon the deliverables described in section 3.3. The cost proposal should include a separate cost for each of the two (2) major deliverables, as described in section 3.3. Iowa Code section 8.47 (1) and 11 Iowa Admin. Code ch. 107 require that State of Iowa agency contracts for services contain provisions which, among other things, describes the amount or basis for paying compensation to the vendor based on the vendor's performance under the contract. Please furnish such recommended provisions as a part of your proposal. Except for tasks 3.3.1.4 and 3.3.1.8 (found in Section 3.3 Scope of Work), all fees and other compensation payable to the vendor shall not be compensated on a time (hourly) basis, and the vendor should propose another method or basis for payment with a fixed, not-to-exceed amount for completion of all other tasks and work. Tasks 3.3.1.4 and 3.3.1.8 will be paid on an hourly basis and vendor shall propose an hourly rate for completion of these tasks.

#### **4.4 Narrative**

The prospective vendor will submit a narrative outlining those steps the vendor would take to address the following criteria. Elements of the narrative should include but not necessarily be limited to the following:

- a. Provide a quality and comprehensive plan to accomplish the Scope of Work, and a product that does not overburden the end-users (state agencies) in its implementation.
- b. Specificity of the proposal to the deliverables and how the proposal relates to the scope of work.
- c. Experience and qualification of the staff assigned to accomplish the work including but not limited to citations of past work of staff who will be assigned to the project.
- d. Past experience of the vendor including experience on similar projects of both complexity and type, and assurance that the company has the ability, capacity and skill to do the job.
- e. Providing a performance history including similar projects previously accomplished, the identity of the contracting agent, and a brief outline of the purpose of the project.

## **SECTION 5 EVALUATION OF BID PROPOSALS**

The evaluation process is designed to award the contract not necessarily to the vendor of least cost, but rather to the vendor with the best combination of attributes to perform the required services.

### **5.1 Evaluation Committee**

An Evaluation Committee will be formed to examine and evaluate all compliant proposals. The membership of the committee will be at the sole discretion of HSEMD.

### **5.2 Evaluation Process**

The evaluation and award process shall consist of the following:

- a. Proposal packages will be opened by the Issuing Officer and the names of all consultants that submitted a proposal will be read aloud and released to all submitting vendors via fax or e-mail.
- b. The Issuing Officer will review the proposals for compliance with the proposal format instructions. This will consist of verification of each proposal's full compliance with the requirements of section 4 of the RFP.
- c. The Issuing Officer will retain non-compliant proposals.
- d. Copies of compliant proposals will be distributed to the Evaluation Committee.
- e. The Evaluation Committee's evaluation will include a review of each proposal, as well as verification that all requirements of Section 3 of the RFP have been met.
- f. All information and answers provided to the RFP's requirements and questions are subject to verification. Misleading and/or inaccurate information and answers shall be grounds for disqualification at any stage in the procurement process.
- g. HSEMD reserves the right to make written request for additional information from a prospective vendor to assist in understanding or clarifying their proposal. Any information received shall not be considered in the evaluation if it materially alters the content of the proposal.

### **5.3 Evaluation of Narrative**

The narrative will be used in conjunction with the proposal in total as the basis for the evaluation process.

### **5.4 Selection Process and Evaluation Criteria**

To be selected, candidates must meet minimum qualification requirements. To be considered to have met the minimum requirements of qualification, a prospective vendor must have credentials and/or experience in continuity planning, LDRPS (version 10.7), and continuity exercises, and have completed the HSEEP Training Course (minimum 3

day course). Proposals from those who meet these minimum qualification requirements will be evaluated by the Evaluation Committee. A weighted scoring system will be used to represent the Evaluation Committee's assessment of the relative merits of the bid proposals relating to each prospective vendor's overall qualifications and capabilities to provide the requested services, address the scope of work, assign qualified staff, and references.

Evaluation criteria categories and assigned points value:

▪ Continuity Planning Experience and Credentials	150 points
▪ Credentials and Experience with LDRPS (particularly with LDRPS version 10.7)	150 points
▪ Experience with Continuity Exercises	150 points
▪ Homeland Security Exercise and Evaluation Program (HSEEP) Training/Credentials	25 points
▪ Experience working with Iowa government agencies (particularly relating to continuity or disaster recovery issues)	125 points
▪ Project Design / Approach	250 points
▪ Costs	150 points
Total	1000 points

## **SECTION 6 CONTRACT TERMS AND CONDITIONS**

### **6.1 Contract Terms and Conditions**

Any contract between HSEMD and the successful vendor shall be a combination of the specifications, terms and conditions of the Request for Proposal, including the terms contained in Attachment #5, the offer of the vendor contained in the vendor's proposal, written clarifications or changes made in accordance with provisions herein, and any other terms deemed necessary or acceptable by HSEMD and its counsel.

The contract terms contained in Attachment #5 are not intended to be a complete listing of all contract terms but are provided only to enable vendors to better evaluate the costs associative with the RFP and the potential resulting contract. Vendors should plan on such terms being included in any contract awarded as a result of this RFP. All costs associated with complying with these requirements should be included in the cost proposal or any pricing quoted by the vendor.

By submitting a proposal, each vendor acknowledges its acceptance of these specifications, terms and conditions contained in the RFP, including those in Attachment #5, without change except as otherwise expressly stated in its proposal. If a vendor takes exception to a provision, it must state the reason for the exception and set forth in its proposal the specific contract language it proposes to include in place of the provision. Exceptions that materially change these terms or the requirements of the RFP may be deemed non-responsive by HSEMD, as determined in its sole discretion, resulting in possible disqualification of the vendor's proposal. HSEMD reserves the right to refuse to enter into a contract with the successful vendor, even after delivery of notice of selection

or intent to award a contract, if HSEMD and the vendor are unable to agree to terms and conditions that are acceptable to HSEMD or if the best interests of HSEMD or the Partnership would be served.

## **6.2 Contract Length**

The term of the contract will commence on or about January 23, **2012** and end on **August 1, 2012** unless extended/renewed.

**Attachment # 1**

Date

**Terry Brown, Contracting Officer**  
**Iowa Homeland Security and Emergency Management**  
**Camp Dodge, Bldg. W-4**  
**7105 NW 70th Ave.**  
**Johnston, IA 50131**

Re: Request for Proposal Number: **583-2011-010-RFP**

PROPOSAL CERTIFICATION

Dear Mr. Brown:

I certify that the contents of the proposal submitted on behalf of (Name of Vendor) in response to Iowa Homeland Security and Emergency Management Division Request for Proposal Number **583-2011-010-RFP** for **Exercise and Development of Continuity of Operations (COOP) Plans** are true and accurate. I also certify that (Name of Vendor) has not made any knowingly false statements in its proposal.

Sincerely,

---

Name and Title

**Attachment #2**

Date

**Terry Brown, Contracting Officer  
Iowa Homeland Security and Emergency Management  
Camp Dodge, Bldg. W-4  
7105 NW 70th Ave.  
Johnston, IA 50131**

Re: Request for Proposal Number **583-2011-010-RFP**  
CERTIFICATION OF INDEPENDENCE AND NO CONFLICT OF INTEREST

Dear Mr. Brown:

By submitting a proposal in response to Iowa Homeland Security and Emergency Management Division Request for Proposal Number **583-2011-010-RFP** for **Exercise and Development of Continuity of Operations (COOP) Plans**, the undersigned certifies the following:

1. The proposal has been developed independently, without consultation, communication or agreement with any employee or representative of, or consultant to, HSEMD or any participant in the Multi-State Partnership for Security in Agriculture who has worked on the development of this RFP, or with any person serving as a member of the evaluation committee.
2. The proposal has been developed independently, without consultation, communication or agreement with any other vendor or parties for the purpose of restricting competition.
3. Unless otherwise required by law, the information found in the proposal has not been knowingly disclosed and will not be knowingly disclosed prior to the award of the contract, directly or indirectly, to any other vendor.
4. No attempt has been made or will be made by (Name of Vendor) to induce any other vendor to submit or not to submit a proposal for the purpose restricting competition.
5. No relationships exist or will exist during the contract period between (Name of Vendor) and HSEMD that interfere with fair competition or are a conflict of interest.

Sincerely,

---

Name and Title

**Attachment #3**

Date

**Terry Brown, Contracting Officer  
Iowa Homeland Security and Emergency Management  
Camp Dodge, Bldg. W-4  
7105 NW 70th Ave.  
Johnston, IA 50131**

Re: Request for Proposal Number **583-2011-010-RFP**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, ELIGIBILITY, AND  
VOLUNTARY EXCLUSION**

Dear Mr. Brown:

By submitting a proposal in response to the Iowa Homeland Security and Emergency Management Division Request for Proposal Number **583-2011-010-RFP** for **Exercise and Development of Continuity of Operations (COOP) Plans**, the undersigned certifies the following:

1. I certify that, to the best of my knowledge, (Name of Vendor) and all of its principals: (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal Agency or Agencies ; (b) have not within a three year period preceding this proposal been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of antitrust statutes or commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property; (c) are not presently indicted for or other criminally or civilly charged by a government entity (federal, state, or local) with the commission of any of the offenses enumerated in (b) of this certification; and (d) have not within a three year period preceding this proposal had one or more public transactions (federal, state, or local) terminated for cause.

2. This certification is a material representation of fact upon which HSEMD has relied upon when this transaction was entered into. If it is later determined that the undersigned knowingly rendered an erroneous certification, in addition to other remedies available, HSEMD may pursue available remedies including suspension, debarment, or termination of the contract.

Sincerely,

---

Name and Title

**Attachment # 4**

Date

**Terry Brown, Contracting Officer**  
**Iowa Homeland Security and Emergency Management**  
**Camp Dodge, Bldg. W-4**  
**7105 NW 70th Ave.**  
**Johnston, IA 50131**

Re: Request for Proposal Number **583-2011-010-RFP**  
AUTHORIZATION TO RELEASE INFORMATION

Dear Mr. Brown:

**[name of vendor]** hereby authorizes the Iowa Homeland Security and Emergency Management Division (HSEMD) to obtain information regarding its performance on other contracts, agreements or other business arrangements, its business reputation, and any other matter pertinent to evaluation and the selection of a successful vendor in response to Request for Proposal Number **583-2011-010-RFP**.

The vendor acknowledges that it may not agree with the information and opinions given by such person or entity in response to a reference request. The vendor acknowledges that the information and opinions given by such person or entity may hurt its chances to receive contract awards from HSEMD or may otherwise hurt its reputation or operations. The vendor is willing to take that risk.

The vendor hereby releases, acquits and forever discharges the State of Iowa, HSEMD, and their officers, directors, employees and agents from any and all liability whatsoever, including all claims, demands and causes of action of every nature and kind affecting the undersigned that it may have or ever claim to have relating to information, data, opinions, and references obtained by or on behalf of HSEMD and/or the Partnership in the evaluation and selection of a successful vendor in response to Request for Proposal Number **583-2011-010-RFP**.

The vendor authorizes representatives of HSEMD and the Partnership to contact any and all of the persons, entities, and references which are, directly or indirectly, listed, submitted, or referenced in the undersigned's proposal submitted in response to Request for Proposal Number **583-2011-010-RFP**.

The vendor further authorizes any and all persons, entities to provide information, data, and opinions with regard to the undersigned's performance under any contract, agreement, or other business arrangement, the undersigned's ability to perform, the undersigned's business reputation, and any other matter pertinent to the evaluation of the undersigned. The undersigned hereby releases, acquits and forever discharges any such person or entity and their officers, directors, employees and agents from any and all

Iowa Homeland Security and Emergency Management Division

liability whatsoever, including all claims, demands and causes of action of every nature and kind affecting the undersigned that it may have or ever claim to have relating to information, data, opinions, and references supplied to HSEMD or any other agency of the State of Iowa in the evaluation and selection of a successful vendor in response to Request for Proposal Number **583-2011-010-RFP**.

A photocopy or facsimile of this signed Authorization is as valid as an original.

Sincerely,

---

Printed Name of Vendor Organization

---

Name and Title of Authorized Representative Date

**Attachment # 5**

Date

**SERVICES CONTRACT**

This Agreement for professional services (this “Agreement”), made and effective as of [ ], by and between the Iowa Department of Public Defense, Homeland Security and Emergency Management Division (“HSEMD”) and [ ], a [corporation] organized under the laws of [ ] (“Vendor”). The parties agree as follows:

**Section 1. Purpose.** The parties have entered into this Agreement for the purpose of retaining Vendor to provide professional services and other deliverables in connection with **Exercise and Development of Continuity of Operations (COOP) Plans**. HSEMD seeks to better prepare the State of Iowa for continuing operations in the event of disasters that may interrupt normal business operations by identifying certain best practices, preparing COOP plans, and exercising COOP plans under a grant received from the United States Department of Homeland Security, Office of Domestic Preparedness.

**Section 2. Definitions.**

**2.1 “Acceptance”** means that one or more Deliverables have satisfied HSEMD’s Acceptance Tests or have otherwise satisfied HSEMD, as determined by HSEMD. Final Acceptance means that all Deliverables have satisfied HSEMD’s Acceptance Tests or have otherwise reasonably satisfied HSEMD, as determined by HSEMD. Non-acceptance means that one or more Deliverables have not satisfied HSEMD’s Acceptance Tests or have otherwise not satisfied HSEMD, as determined by HSEMD.

**2.2 “Acceptance Criteria”** means the Specifications, functions, features, goals, performance measures, testing results and/or other criteria determined by HSEMD against which the Deliverables shall be evaluated for purposes of Acceptance or Non-acceptance thereof.

**2.3 “Acceptance Tests” or “Acceptance Testing”** mean the tests, reviews, evaluations and other activities that are performed by or on behalf of HSEMD or the Partnership, with the assistance of Vendor at HSEMD’s request, to determine whether the Deliverables meet the Acceptance Criteria, or otherwise satisfy HSEMD, and that there are no Deficiencies with respect to any of the Deliverables.

**2.4 “Confidential Information”** means, subject to any applicable State and federal laws and regulations, including but not limited to Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either party (a “disclosing party”) to the other party (a “receiving party”) that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential. Confidential Information does not include any information that:

**2.4.1** Was rightfully in the possession of the receiving party from a source other than the disclosing party prior to the time of disclosure of the information by the disclosing party to the receiving party;

**2.4.2** Was known to the receiving party prior to the disclosure of the information by the disclosing party;

**2.4.3** Was disclosed to the receiving party without restriction by an independent third party having a legal right to disclose the information;

**2.4.4** Becomes public knowledge, other than through an act or failure to act of the disclosing party;

**2.4.5** Is publicly available or in the public domain at or prior to the time such information was disclosed by the disclosing party;

**2.4.6** Is independently developed by the receiving party without any reliance on Confidential Information disclosed by the disclosing party;

**2.4.7** Is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or

**2.4.8** Is disclosed by the receiving party with the written consent of the disclosing party.

**2.5 “Deficiency”** means a failure, omission, defect, interruption of service, or any other problem of any nature whatsoever with respect to a Deliverable, including, without limitation, any failure of a Deliverable to conform to or meet an applicable Specification or applicable Acceptance Criteria.

**2.6 “Deliverables”** mean the services, goods, emergency response analysis and coordination materials to be provided by Vendor to HSEMD under this Agreement as more specifically described in the Scope of Work attached hereto as Schedule A. Unless otherwise expressly provided in this Agreement, Deliverables shall include any and all Documentation, designs, copy, artwork, data, information, graphics, images, processes, inventions, techniques, materials, plans, papers, forms, reports, studies, source code, object code, devices, modifications, content, concepts, work product, and all other tangible and intangible works, materials and property of every kind and nature related to the Deliverables or otherwise produced or provided by Vendor in connection with this Agreement.

**2.7 “Documentation”** means all technical information, commentary, design documents, training materials and guides, manuals, worksheets, and all other information, documentation and materials related to or used in conjunction with the Deliverables.

**2.8 “Project”** means the project for **Exercise and Development of Continuity of Operations (COOP) Plans** and other Deliverables required to be provided by Vendor as described in this Agreement.

**2.9 “Project Completion Date”** means the date by which Vendor must complete all work and provide all Deliverables pursuant to this Agreement. For purposes of this Agreement, the Project Completion Date is **July 30, 2012**.

**2.10 “Project Plan”** means the Project Plan attached hereto as Schedule C, as modified from time to time upon written agreement of the parties. The Project Plan is incorporated into this Agreement by this reference as if fully set forth in this Agreement.

**2.11 “Specifications”** mean any and all specifications, requirements, performance standards, representations and criteria related to the Deliverables and stated or expressed in this Agreement (including the Scope of Work), Documentation, the RFP (as defined below), and the Proposal (as defined below). Specifications shall include Acceptance Criteria and any specifications, requirements, standards or criteria stated or set forth in any applicable state, federal, foreign and local laws, rules and regulations. The Specifications are incorporated into this Agreement by reference as if fully set forth in this Agreement.

**2.12 “Scope of Work”** means Schedule A to this Agreement, which describes or may describe the Deliverables, specific activities, milestones, delivery dates, Specifications, compensation, and any other information related to the Deliverables. The Scope of Work, which may be amended from time to time upon the written agreement of the parties, is incorporated into this Agreement by this reference as if fully set forth in this Agreement.

**2.13 “Third Party”** means a person or entity (including, but not limited to any form of business organization, such as a corporation, Partnership, limited liability corporation, association, etc.) that is not a party to this Agreement.

### **Section 3. Documents Incorporated.**

**3.1 Incorporation.** HSEMD’s Request for Proposal No. **583-2011-010-RFP** dated **December 8, 2011**, in response to the RFP ("Proposal"), together with any clarifications, attachments, appendices, amendments or other writings of HSEMD or Vendor are incorporated into this Agreement by this reference as if fully set forth in this Agreement; provided, however, that none of Vendor’s proposed revisions or modifications to the sample Services Contract attached to the RFP shall be incorporated into this Agreement unless expressly set forth herein.

**3.2 Contractual Obligations.** The terms and conditions of the RFP and of the Proposal are made contractual obligations of Vendor, except that any proposed revisions or modifications made by Vendor to the sample Services Contract attached to the RFP Proposal shall not be deemed to limit, modify or otherwise affect any of the contractual obligations of Vendor or HSEMD hereunder, unless expressly stated herein.

**3.3 Preference.** In the case of any inconsistency or conflict between the specific provisions of this document, the RFP or the Proposal, any inconsistency or conflict shall be resolved as follows: first, by giving preference to the specific provisions of this document; second, by giving preference to the specific provisions of the RFP; and third, by giving preference to the specific provisions of the Proposal.

**3.4 No Inconsistency.** The references to the parties' obligations, which are contained in this document, are intended to change, modify, supplement or clarify the obligations as stated in the RFP and the Proposal. The failure of the parties to make reference to the terms of the RFP or Proposal in this document shall not be construed as creating a conflict and will not relieve Vendor of the contractual obligations imposed by the terms of the RFP and the Proposal. Terms offered in the Proposal, which exceed the requirements of the RFP, shall not be construed as creating an inconsistency or conflict with the RFP or this document. The contractual obligations of HSEMD cannot be implied from the Proposal.

#### **Section 4. Scope of Work.**

**4.1 Scope of Work.** Vendor shall provide to HSEMD all of the Deliverables specified in Schedule A, the Scope of Work, in accordance with the terms and conditions of this Agreement.

**4.2 Amendments to Scope of Work and Specifications.** The parties agree that Schedule A, Scope of Work, may be revised, replaced, or amended at any time during the term of this Agreement to reflect changes in Deliverables upon the mutual written consent of the parties.

**4.3 Performance Standards.** The parties agree that the performance standards and related payment, monitoring and review provisions set forth in Schedule B are incorporated herein by this reference as if fully set forth in this Agreement.

**4.4 Compliance with Grant Requirements.** At HSEMD's request, Vendor shall use its best efforts to assist HSEMD in complying with any laws, rules, regulations, OMB Circulars, conditions or requirements applicable to HSEMD in connection with HSEMD's receipt, use or administration of the grant funds it received from the United States Department of Homeland Security, Office of Domestic Preparedness ("ODP") under the Urban Areas Security Initiative Discretionary Grant Program. Such assistance may include, but is not limited to, providing any information necessary to assist HSEMD with the preparation of financial and performance/progress reports and responding to audits.

**4.5 Grant Management.** Vendor acknowledges and agrees that the Project will be subject to review, oversight and control by the ODP, and that the ODP may direct, specify or otherwise require HSEMD and the Vendor to modify Deliverables, work and/or activities associated with the Project based on program-related guidance or other inputs resulting from evaluations, progress reports, report submissions or as a result of information provided during regularly schedule meetings. Vendor agrees that it will use its best efforts to assist HSEMD in complying with any directives, orders or other requirements specified by the ODP and will participate, at HSEMD's request, in any

meetings or conference calls with the ODP in the event HSEMD determines that such participation is necessary or desirable.

**4.6 State Agency Involvement.** Vendor acknowledges that the Project is a collaborative effort involving multiple state agencies, and that participating state agencies may direct, specify or otherwise require modifications to the Deliverables. The Vendor agrees to cooperate with participating state agencies and to participate, at HSEMD's request, in any meetings or conference calls in the event HSEMD determines that such participation is necessary or desirable.

## **Section 5. Compensation and Additional Rights and Remedies.**

**5.1 Compensation.** In consideration of Vendor providing HSEMD with the Deliverables in accordance with the terms and conditions of this Agreement, Vendor shall be entitled to receive the fees associated with such Deliverables as specified in Schedule A, subject to all terms and conditions of this Agreement, including, without limitation Section 5.2 (Invoices) and Section 5.3 (Retention). Except for tasks 3.3.1.4 and 3.3.1.8 (found in Section 3.3 Scope of Work), all fees and other compensation payable hereunder to Vendor are fixed, not-to-exceed amounts, and Vendor shall not be compensated on a time and materials basis except in relation to completion of tasks 3.3.1.4 and 3.3.1.8. Tasks 3.3.1.4 and 3.3.1.8 will be paid on an hourly basis as specified in Schedule A, subject to retention (section 5.3). It is expressly understood and agreed that in no event will the total fees or compensation to be paid hereunder exceed the sum of \$ HSEMD shall not be required to pay any additional fees, expenses, costs, charges or other amounts in connection with the Deliverables to be provided hereunder other than as expressly stated herein. Vendor is not entitled to payment for any Deliverables provided under this Agreement if HSEMD reasonably determines that any Deliverables or services have not been satisfactorily or completely delivered or performed, or that any Deliverable fails to meet any applicable Specifications. No payment, including final payment, shall be construed as acceptance of defective Deliverables or incomplete work, and Vendor shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement notwithstanding Vendor's receipt of any Acceptance or payment from HSEMD. Vendor's acceptance of the last payment from HSEMD shall operate as a release of all claims against HSEMD by the Vendor and any subcontractor utilized by Vendor. No advance payments shall be made for any Deliverables provided by Vendor pursuant to this Agreement.

**5.2 Invoices.** Upon receipt of notice of Acceptance from HSEMD with respect to one or more Deliverables, Vendor shall submit an invoice to HSEMD requesting payment of the fee(s) specified in Schedule A associated with such Deliverables, less the Retained Amount(s) to be withheld in accordance with Section 5.3. All invoices submitted by Vendor shall contain appropriate documentation as necessary to support the fees or charges included on the invoice and shall comply with all applicable rules concerning payment of such fees, charges or other claims and shall contain all information reasonably requested by HSEMD. HSEMD shall pay all approved invoices in arrears and in conformance with Iowa Code section 8A.514 and Iowa Administrative Code r. 11-41.1(2). HSEMD may pay in less than sixty (60) days, as provided in Iowa Code section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an

implied waiver of Iowa Code section 8A.514. Notwithstanding anything herein to the contrary, HSEMD shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if HSEMD believes the invoice is inaccurate or incorrect in any way.

**5.3 Retention.** Vendor and HSEMD acknowledge that certain performance will be required of Vendor subsequent to Acceptance of the Deliverables by HSEMD. Accordingly, to secure Vendor's performance under this Agreement, 10% of the fees or other compensation payable hereunder shall be retained by HSEMD (the "Retained Amounts"). The Retained Amounts shall be payable upon HSEMD's delivery of notice of Final Acceptance to Vendor, subject to the terms and conditions hereof.

**5.4 Erroneous Payments and Credits.** Vendor shall promptly pay or refund to HSEMD the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by the Vendor or notification by HSEMD of the overpayment or erroneous payment. In the event Vendor fails to timely pay or refund any amounts due HSEMD under this section 5.4, HSEMD will charge interest of one percent (1%) per month compounded on the outstanding balance after the date payment or refund is due, or the maximum amount allowed by law, whichever is greater. HSEMD may, in its sole discretion, elect to have Vendor apply any amounts due to HSEMD under this section 5.4 against any amounts payable by HSEMD under this Agreement.

**5.5 Reimbursable Expenses.** There shall be no reimbursable expenses associated with this Agreement separate from the compensation referred to in this section. Vendor shall be solely responsible for all costs, charges and expenses it incurs in connection with its performance under this Agreement, including, but not limited to, travel, mileage, meals, lodging, equipment, supplies, personnel, training, salaries, benefits, insurance, conferences, long distance telephone, and all other costs and expenses incurred by Vendor.

**5.6 Set-off Against Sums Owed by Vendor.** In the event that Vendor owes HSEMD or the State any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, HSEMD may set off such sum against any sum invoiced to HSEMD by Vendor in HSEMD's sole discretion unless otherwise required by law. Amounts due to HSEMD as liquidated damages or any other damages may be deducted by HSEMD without a judgment or any court action from any money or sum payable by HSEMD to Vendor pursuant to this Agreement or any other agreement between Vendor and HSEMD.

**5.7 Withholding Payments.** In addition to pursuing any other remedy provided herein or by law, HSEMD may withhold compensation or payments to Vendor, in whole or in part, without penalty to HSEMD or work stoppage by Vendor, in the event HSEMD determines that: (i) Vendor has failed to perform any of its duties or obligations as set forth in this Agreement; or (ii) any Deliverable has failed to meet or conform to any applicable Specifications. No interest shall accrue or be paid to Vendor on any compensation or other amounts withheld or retained by HSEMD under this Agreement.

**5.8 Correction.** HSEMD may correct any Deficiencies in any Deliverable or cure any Vendor default under this Agreement without prejudice to any other remedy it may have if Vendor fails to correct such Deficiencies as required in this Agreement or if Vendor otherwise defaults or fails to perform any provision of the Agreement within the time period specified in a notice of default from HSEMD. HSEMD may provide or procure the services reasonably necessary to cure the default, in which event Vendor shall reimburse HSEMD for the reasonable cost of such services. In addition, Vendor must cooperate with HSEMD or any third parties retained by HSEMD who assist in curing such default, including by allowing access to any pertinent materials or work product of Vendor.

**5.9 Monitoring and Review.** HSEMD shall monitor and review Vendor's performance under this Agreement to ensure compliance with this Agreement and output and quality measures. Such review and monitoring shall include HSEMD's assessment of invoices and reports furnished by Vendor pursuant to this Agreement.

## **Section 6. Acceptance Tests, Project Management, Key Personnel and Liquidated Damages.**

**6.1.** Time is of the essence in this Agreement. Vendor shall commence work under this Agreement and complete all phases and aspects of work and provide all Deliverables in accordance with the deadlines, timelines, terms, conditions, Specifications and other requirements specified in this Agreement, including those specified in the Scope of Work and the Project Plan.

**6.2** All Deliverables shall be subject to HSEMD's Acceptance Testing and Acceptance, unless otherwise specified in the Scope of Work. Upon completion of all phases and aspects of work to be performed by Vendor with respect to any Deliverable, Vendor shall deliver a written notice to HSEMD certifying that the Deliverable is ready for HSEMD to conduct Acceptance Tests. At HSEMD's request, Vendor shall assist HSEMD in performing Acceptance Tests at no additional cost to HSEMD. Within a reasonable period of time after HSEMD has completed its Acceptance Testing, HSEMD shall provide Vendor with written notice of Acceptance or Non-acceptance with respect to each Deliverable that was evaluated during such Acceptance Testing. If HSEMD concludes that a Deliverable satisfies applicable Acceptance Criteria and HSEMD's Acceptance Tests, HSEMD shall provide Vendor with notice of Acceptance with respect to such Deliverable. If HSEMD concludes that a Deliverable fails to satisfy applicable Acceptance Criteria or HSEMD's Acceptance Tests, HSEMD shall provide Vendor with notice of Non-acceptance with respect to such Deliverable. In the event HSEMD provides notice of Non-acceptance to Vendor with respect to any Deliverable, Vendor shall correct and repair such Deliverable and submit it to HSEMD within ten (10) days of Vendor's receipt of HSEMD's notice of Non-acceptance so that HSEMD may re-conduct its Acceptance Tests with respect to such Deliverable. In the event HSEMD determines, after re-conducting its Acceptance Tests with respect to any Deliverable that Vendor has attempted to correct or repair pursuant to this Section 6.2, that such Deliverable fails to satisfy applicable Acceptance Criteria or HSEMD's Acceptance Tests, then HSEMD shall have the continuing right, in its sole discretion to: (i) require Vendor to correct and repair such Deliverable within such period of time as HSEMD may specify in a written notice to Vendor, (ii) refuse to accept such Deliverable without penalty and without any obligation

to pay any fees or other amounts associated with such Deliverable (or receive a refund of any fees or amounts already paid with respect to such Deliverable); (iii) accept such Deliverable on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to HSEMD's satisfaction, the Deficiencies present therein and any reduced value or functionality of such Deliverable or the costs incurred by HSEMD to correct such Deficiencies, including any costs or fees incurred as a result of retaining Third Party professional services; or (iv) terminate this Agreement and/or obtain and seek any and all available rights and remedies, including damages. Notwithstanding the provisions of Section 10 of this Agreement, HSEMD may terminate this Agreement pursuant to this Section 6.2 without providing Vendor with any further or additional notice or opportunity to cure. HSEMD's right to exercise the foregoing rights and remedies, including termination of this Agreement, shall remain in effect until Acceptance Tests are successfully completed to HSEMD's satisfaction. If HSEMD concludes, in its sole discretion, that all Deliverables satisfy HSEMD's Acceptance Tests or otherwise satisfy HSEMD in its sole discretion, HSEMD shall provide Vendor with notice of Final Acceptance with respect to such Deliverables.

### **6.3 Project Management and Reporting.**

**6.3.1 Project Manager.** At the time of execution of this Agreement, Vendor shall designate, in writing, a Project Manager acceptable to HSEMD to serve until the expiration of this Agreement. Vendor will assign a Project Manager of a management level sufficient to assure timely responses from all Vendor personnel, timely completion of tasks and achievement of milestones, and whose resume and qualifications will be reviewed and approved by HSEMD prior to her or his appointment as Vendor's Project Manager. Vendor represents that its Project Manager will be fully qualified to perform the tasks required of that position under this Agreement. Vendor's Project Manager shall be able to make binding decisions pursuant to this Agreement on behalf of and for Vendor. Any written commitment by Vendor's Project Manager and persons designated by her/him in writing for this purpose, within the scope of this Agreement, shall be binding upon Vendor. Vendor's Project Manager shall exercise her or his best efforts while performing under this Agreement. Vendor's Project Manager shall be at HSEMD's site as needed during the course of work under this Agreement and will be available either in person, by telephone or E-mail to respond promptly (in no event less than 4 hours) during the business day to inquiries from HSEMD.

**6.3.2 Review Meetings.** Commencing with performance of this Agreement, Vendor's Project Manager shall meet weekly with HSEMD project manager and representatives, unless otherwise mutually agreed, to discuss progress made by the Vendor in the performance of this Agreement. Vendor's Project Manager shall provide a status report, listing any problem or concern encountered since the last meeting. Records of such reports and other communications issued in writing during the course of Agreement performance shall be maintained by Vendor.

**6.3.3 Reports.** At the next scheduled meeting after which any party has identified a problem, the Vendor shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion

dates of such activities. Any party may recommend alternative courses of action or changes that will facilitate problem resolution. At a minimum, reports prepared by Vendor's Project Manager shall describe the previous week's activities, including any problems encountered and their disposition, results of tests, whether or not deadlines were met, status of Deliverables, proposed changes to the Project Plan and any problems that may have arisen that need to be addressed before proceeding to the next activities. Vendor's proposed format and level of detail for its status reports shall be subject to HSEMD's approval.

**6.3.4 Problem Reporting Omissions.** HSEMD's receipt of acceptance of a problem report shall not relieve Vendor of any obligation under this Agreement or waive any other remedy under this Agreement or at law or equity that HSEMD may have. HSEMD's failure to identify the extent of a problem or Deficiency, or the extent of damages incurred as a result of a problem or Deficiency, shall not act as a waiver of performance under this Agreement.

**6.3.5 Change Order Procedure.** HSEMD may at any time request a modification to the Scope of Work using a change order. The following procedures for a change order shall be followed:

**6.3.5.1 Written Request.** HSEMD shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Work.

**6.3.5.2 Vendor's Response.** Vendor shall submit to HSEMD a firm time and cost proposal and any proposed modifications to the Project Plan for the requested change order within five (5) business days of receiving HSEMD's change order request.

**6.3.5.3 Acceptance of Vendor's Estimate.** If HSEMD accepts Vendor's proposal, Vendor shall perform the modified services subject to the firm time and cost proposals included in Vendor's response and subject to the terms and conditions of this Agreement.

**6.4 Key Personnel.** HSEMD considers [name project manager and any other key personnel of Vendor] from Vendor to be essential to a successful project. Vendor shall not remove, reassign or substitute the individual(s) identified in this section except in the event of death, illness, retirement, disability, or termination from employment, conditions permitting absence from employment under the Family and Medical Leave Act of 1993, or in the event of HSEMD's written consent. If at any time during the term of this Agreement, HSEMD becomes dissatisfied with the performance of any individual who is part of Vendor's personnel, HSEMD shall notify Vendor of the reasons for such dissatisfaction and may request the replacement of such individual. Vendor will promptly investigate such request and the reasons for such dissatisfaction and report back to HSEMD on the corrective action Vendor believes is appropriate to address HSEMD's concerns and dissatisfaction. If the parties determine that such individual needs to be replaced, the replacement shall be effected promptly with a substitute individual having equal or greater ability, experience and qualifications than the departing individual.

**Section 7. Term.** The term of this contract shall be from **January** , **2012** through, **2012**.

## **Section 8. Representations, Warranties and Covenants**

**8.1** Vendor represents and warrants that the Deliverables (in whole and in part) shall: (i) be free from material Deficiencies, and (ii) meet, conform to and operate in accordance with all Specifications and in accordance with this Agreement for a period of six (6) months following the date on which HSEMD provides notice of Final Acceptance. During the Warranty Period, Vendor shall, at HSEMD's request, repair, correct or replace any Deliverable that contains or experiences material Deficiencies or fails to meet, conform to or operate in accordance with Specifications at no cost to HSEMD within five (5) business days of receiving notice of such Deficiencies or failures from HSEMD. In the event Vendor is unable to repair, correct or replace such Deliverable, Vendor shall refund the fees or other amounts paid for the Deliverables and for any services related thereto. The foregoing shall not constitute an exclusive remedy under this Agreement and HSEMD shall be entitled to pursue any other available contractual, legal or equitable remedy.

**8.2** Vendor represents and warrants that it is fully aware of HSEMD's business requirements and intended uses for the Deliverables as set forth in the RFP and this Agreement, and the Deliverables shall satisfy such requirements in all material respects and are fit for such intended uses.

**8.3** Vendor represents and warrants that: (a) all Deliverables shall be wholly original with and developed and prepared solely by Vendor (except for any materials prepared by HSEMD and provided to Vendor for its use in connection with this Agreement); (b) it owns, possesses, holds, and has received or secured all rights (including intellectual property rights in or related to the Deliverables), permits, permissions, licenses and authority necessary to provide the services and Deliverables to HSEMD hereunder and to assign, grant and convey the benefits, licenses and other rights assigned, granted or conveyed to HSEMD hereunder without violating any rights of any Third Party; and (c) HSEMD shall peacefully and quietly have, hold, possess, use and enjoy the Deliverables without suit, disruption or interruption.

**8.4** Vendor represents and warrants that: (i) the Deliverables (and all intellectual property rights therein and related thereto); and (ii) HSEMD's use of, or exercise of any rights with respect to, the Deliverables (and all intellectual property rights therein and related thereto), do not and shall not misappropriate a trade secret or infringe upon any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any Third Party. Vendor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right, or misappropriation of a trade secret related to the Deliverables. Vendor shall inform HSEMD in writing immediately upon becoming aware that HSEMD's use of or exercise of any rights with respect to any Deliverable may give rise to a claim of or cause of action for

infringement or violation or an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim arises, or in HSEMD's opinion is likely to arise, then Vendor shall, at HSEMD's request: (i) procure for HSEMD the right or license to continue to use the Deliverable at issue; (ii) replace such Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; (iii) modify or replace the affected portion of the Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; or (iv) accept the return of the Deliverable at issue and refund to HSEMD all fees, charges and any other amounts paid by HSEMD with respect to such Deliverable, including professional service fees, licensing fees, support fees and any other fees or amounts paid by HSEMD under this Agreement. In addition, Vendor agrees to indemnify, defend, protect and hold harmless HSEMD and the State and their officers, directors, employees, officials and agents as provided in the Indemnification section of this Agreement with respect to any claim, litigation or action that is based on a claim of infringement, misappropriation or violation of an intellectual property right, proprietary right, personal right or trade secret related to the Deliverables. The foregoing remedies shall be in addition to and not exclusive of other remedies available to HSEMD and shall survive termination of this Agreement.

**8.5** Vendor agrees that all Deliverables, including, without limitation, all patents, copyrights, inventions, trade secrets and all other intellectual property rights and proprietary rights therein or related thereto, shall become and remain the sole and exclusive property of HSEMD. Vendor hereby irrevocably transfers, assigns and conveys all right, title and interest in and to such Deliverables and all intellectual property rights and proprietary rights therein or related thereto to HSEMD. Vendor represents and warrants that HSEMD shall acquire good and clear title to such Deliverables, free from any claims, liens, security interests, encumbrances or other rights or interests of Vendor or of any Third Party. Vendor shall take all actions as may be necessary or requested by HSEMD to irrevocably transfer, assign and convey such Deliverables and all intellectual property rights and proprietary rights therein and related thereto to HSEMD. HSEMD shall have the right to obtain and hold in its own name or in the name of the State of Iowa copyrights, patents or such other registrations or intellectual property protections as may be desirable or appropriate to the subject matter, and any extensions or renewals thereof. Vendor shall assist HSEMD to obtain or perfect copyrights, patents or other intellectual property rights, registrations or protections with respect to all such Deliverables in the United States and any other countries. Vendor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer or cause to transfer to HSEMD all the right, title and interest in and to such Deliverables. Vendor also agrees to waive and not assert any moral rights it may have with regard to such Deliverables. The Vendor shall not retain any property interests or other rights in and to such Deliverables and shall not use such Deliverables, in whole or in part, for any purpose, without the prior written consent of HSEMD and the payment of such royalties or other compensation as HSEMD deems appropriate. As the owner of such Deliverables, HSEMD may: (i) adapt, change, modify, edit or use the Deliverables as HSEMD sees fit, including in combination with the works of others, prepare derivative works based on the Deliverables, and publish, display and distribute throughout the world any Deliverable(s) in any medium, whether now known or later devised, including, without limitation, any digital or optical medium, and (ii) make, use,

sell, license, sublicense, or lease the Deliverables and any intellectual property rights therein or related thereto without payment of additional compensation to Vendor.

**8.6** All warranties made by Vendor in this Agreement, whether or not this Agreement specifically denominates Vendor's promise as a warranty or whether the warranty is created only by Vendor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to HSEMD, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Vendor.

**8.7** Vendor represents, warrants and covenants that all services to be performed under this Agreement shall be performed in a professional, competent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms and Specifications of this Agreement and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Agreement, the parties agree that the applicable specification shall be the generally accepted industry standard. So long as HSEMD notifies Vendor of any services performed in violation of this standard, Vendor shall re-perform the services at no cost to HSEMD, such that the services are rendered in the above-specified manner, or if the Vendor is unable to perform the services as warranted, Vendor shall reimburse HSEMD any fees paid to Vendor for the unsatisfactory services.

**8.8** Vendor represents, warrants and covenants that it has complied with, and shall comply with, all applicable federal, state, foreign and local laws, rules, regulations, codes, and ordinances in connection with its performance under this Agreement.

**8.9** Vendor represents, warrants and covenants that it has no interest and shall not acquire any direct or indirect interest that would conflict in any manner or degree with the performance of its obligations under this Agreement.

**8.10** Vendor represents and warrants that the Deliverables shall comply with any applicable federal, state foreign and local laws, rules, regulations, codes, and ordinances in effect during the term of this Agreement.

**8.11** Vendor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Vendor pursuant to this Agreement are or will be fully satisfied by the Vendor so that HSEMD will not have any obligations with respect thereto.

## **Section 9. Indemnification.**

**9.1** Vendor and its successors and permitted assigns shall defend, protect, indemnify and hold harmless HSEMD, the State and their employees, officers, board members, agents, representatives, and officials ("Indemnitees") from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies,

judgments, costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnatee) directly or indirectly related to, resulting from or arising out of this Agreement, including but not limited to any claims related to, resulting from, or arising out of:

**9.1.1** Any violation or breach of any term or condition of this Agreement by or on behalf of Vendor, including, without limitation, the furnishing or making by Vendor of any statement, representation, warranty or certification in connection with this Agreement, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete; or

**9.1.2** Any act or omissions of Vendor, including, without limitation, any negligent acts or omissions, intentional or willful misconduct, or unlawful acts of Vendor, its officers, employees, agents, board members, contractors or subcontractors or any other person in connection with the services or Deliverables provided hereunder or Vendor's performance of this Agreement; or

**9.1.3** Any failure by Vendor or its employees, agents, officers, directors, contractors or subcontractors to make all reports, payments and withholdings required by Federal and state law with respect to social security, worker's compensation, employee income and other taxes, fees or costs required by the Vendor to conduct business in the State of Iowa; or

**9.1.4** Any alleged or actual infringement, misappropriation or violation of any intellectual property rights, proprietary rights or personal rights of any Third Party, including, without limitation, any patents, trademarks, trade dress, trade secrets, or copyrights of a Third Party.

**9.2** Vendor's duties as set forth in this Section 9 shall survive the termination of this Agreement and shall apply to all acts or omissions taken or made in connection with the performance of this Agreement regardless of the date any potential claim is made or discovered by HSEMD or any other Indemnatee.

**9.3** HSEMD will reasonably cooperate with Vendor to facilitate the defense of any action defended by Vendor. HSEMD reserves the right to participate in the defense of any such action.

## **Section 10. Default and Termination.**

**10.1 Termination for Cause.** HSEMD may terminate this Agreement upon written notice for the breach by Vendor of any material term, condition or provision of this Agreement, if such breach is not cured within the time period specified in HSEMD's notice of breach or any subsequent notice or correspondence delivered by HSEMD to Vendor, provided that cure is feasible. Following expiration of the opportunity to cure or notice from HSEMD, HSEMD may seek any available contractual, legal or equitable remedies. [Any time allowed for cure of a default shall not eliminate or reduce any liability Vendor may have for liquidated damages.] Vendor may only terminate this Agreement upon written notice for the breach by HSEMD of any material term, condition or provision of this

Agreement, if such breach is not cured within 60 days of HSEMD's receipt of Vendor's written notice of breach. In addition, HSEMD may terminate this Agreement effective immediately without advance notice and without penalty for any of the following reasons:

- 10.1.1** Vendor furnished any statement, representation, warranty or certification in connection with this Agreement, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete;
- 10.1.2** Vendor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws;
- 10.1.3** Vendor terminates or suspends its business;
- 10.1.4** HSEMD reasonably believes that Vendor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- 10.1.5** Vendor has failed to comply with any applicable international, federal, state, or local laws, rules, ordinances, regulations or orders when performing within the scope of this Agreement; or
- 10.1.6** Vendor infringes or allegedly infringes on any patent, trademark, copyright, trade dress or other intellectual property right or proprietary right, or Vendor misappropriates or allegedly misappropriates a trade secret.

**10.2 Termination Upon Notice.** Following thirty (30) days written notice, HSEMD may terminate this Agreement in whole or in part for convenience without the payment of any penalty or incurring any further obligation to Vendor.

**10.3 Termination Due to Lack of Funds or Change in Law.** Notwithstanding anything in this Agreement to the contrary, and subject to the limitations set forth below, HSEMD shall have the right to terminate this Agreement without penalty and without any advance notice as a result of any of the following:

- 10.3.1** The legislature or governor fail in the sole opinion of HSEMD to appropriate funds sufficient to allow HSEMD to either meet its obligations under this Agreement or to operate as required and to fulfill its obligations under this Agreement; or
- 10.3.2** If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by HSEMD to make any payment hereunder are insufficient or unavailable for any other reason as determined by HSEMD in its sole discretion; or
- 10.3.3** If HSEMD's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified; or
- 10.3.4** If HSEMD's duties, programs or responsibilities are modified or materially altered; or
- 10.3.5** If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that

materially or adversely affects HSEMD's ability to fulfill any of its obligations under this Agreement or to participate in the ODP grant program or Partnership.

HSEMD shall provide Vendor with written notice of termination pursuant to this section.

**10.4 Limitation of HSEMD's Payment Obligations in the Event of Termination.** In the event of termination of this Agreement for any reason by either party (except for termination by HSEMD pursuant to Section 10.1 and its subparts), HSEMD shall pay only those amounts, if any, due and owing to Vendor for Deliverables for which notice of Acceptance has been provided by HSEMD and for which HSEMD is obligated to pay pursuant to this Agreement. Payment will be made only upon submission of invoices and proper proof of Vendor's claim. Notwithstanding the foregoing, this Section 10.4 in no way limits the rights or remedies available to HSEMD and shall not be construed to require HSEMD to pay: (i) any compensation or other amounts in the event of Vendor's breach, or (ii) any amounts withheld by HSEMD in accordance with the terms of this Agreement. In no event shall HSEMD be liable for any of the following:

**10.4.1** The payment of unemployment compensation to Vendor's employees;

**10.4.2** The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;

**10.4.3** Any costs incurred by Vendor in its performance of the Agreement, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Agreement;

**10.4.4** Any damages or other amounts, including amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement;

**10.4.5** Any taxes Vendor may owe in connection with the performance of this Agreement, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

**10.5 Vendor's Termination Duties.** Vendor, upon receipt of notice of termination or upon request of HSEMD, shall:

**10.5.1** Cease work under this Agreement and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within 30 days of the date of notice of termination, describing the status of all work performed under the Agreement and such other matters as HSEMD may require.

**10.5.2** Immediately cease using and return to HSEMD any property (including, without limitation, HSEMD Property and Partnership Participant Property) or materials, whether tangible or intangible, provided to Vendor by HSEMD or any state or state agency participant in the Partnership.

**10.5.3** Cooperate in good faith with HSEMD and its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement service provider.

**10.5.4** Immediately return to HSEMD any payments made by HSEMD for services or Deliverables that were not rendered or provided by Vendor.

**Section 11. Insurance.**

**11.1 Insurance Policies.** Vendor shall maintain in full force and effect, with insurance companies of recognized responsibility, at its expense, insurance covering its work of the type and in amounts required by this Agreement. Vendor’s insurance shall, among other things, insure against loss or damage resulting from Vendor’s performance of this Agreement. All such insurance policies shall remain in full force and effect for the entire term of this Agreement and shall not be canceled or changed without HSEMD’s prior written consent.

Unless otherwise requested by HSEMD, Vendor shall, at its sole cost, cause to be issued and maintained in effect during the entire term of this Agreement not less than the insurance coverage’s set forth below each naming HSEMD and the State of Iowa as an additional insured or loss payee, as applicable:

<b>Type of Insurance</b>	<b>LIMIT</b>	<b>AMOUNT</b>
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$2 million
	Prod./Comp.	
	Aggregate	\$1 million
	Personal injury	\$1 million
Excess Liability, umbrella form	Each Occurrence	\$1 million
	Aggregate	\$2 million
Errors and Omissions Insurance	Each Occurrence	\$1 million
	Property Damage	\$1 million
Workers Compensation and Employer Liability	Each Occurrence	\$1 million
	Aggregate	\$2 million
	As Required by Iowa law	

HSEMD reserves the right to negotiate actual limits with Vendor.

**11.2 Claims Provision.** All insurance policies required by this Agreement must provide coverage for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy.

**11.3 Certificates of Coverage.** Certificates of the insurance described above shall be submitted to HSEMD within thirty (30) days after the effective date of this Agreement and shall be subject to approval by HSEMD. Vendor shall provide certificates for the coverage required. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days prior written notice to HSEMD.

**11.4 No Limitation of Liability.** Acceptance of the insurance certificates by HSEMD shall not act to relieve Vendor of any obligation under this Agreement. All insurance policies and certificates shall be issued only by companies authorized to transact business in the State of Iowa. It shall be the responsibility of Vendor to keep the

respective insurance policies and coverages current and in force during the life of this Agreement.

**11.5 Warranty.** Vendor warrants that it has examined its insurance coverage to determine whether HSEMD and the State can be named as additional insureds without creating an adverse effect on Vendor's coverage.

**11.6 Waiver of Subrogation Rights.** Vendor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against HSEMD or the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to HSEMD.

## **Section 12. Contract Administration.**

**12.1 Independent Contractor.** Vendor is an independent contractor performing services for HSEMD. Vendor shall not hold itself out as an employee or agent of HSEMD. HSEMD shall not provide Vendor with office space, support staff, equipment or tools, or supervision beyond the terms of this Agreement. Neither Vendor nor any of its staff are eligible for any State employee benefits, including, but not limited to, retirement benefits, insurance coverage or the like. Vendor and its staff shall not be considered employees of HSEMD or the State for any purpose, including federal and State tax purposes. HSEMD shall not withhold taxes on behalf of Vendor, unless required by law. Vendor shall be responsible for payment of all taxes in connection with any income earned from performing this Agreement.

### **12.2 Compliance with the Law and Regulations.**

**12.2.1** Vendor and its employees, agents, officers, directors, approved contractors and subcontractors shall comply with all applicable federal, state, international, and local laws, rules, ordinances, codes, regulations and orders when performing within the scope of this Agreement, including without limitation, all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Management and the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws, and laws relating to the use of targeted small businesses as subcontractors or suppliers. Vendor shall comply with any applicable reporting and compliance standards of the Department of Management regarding equal employment. Vendor may be required to submit its affirmative action plan to the Department of Management to comply with the requirements of 541 IAC Chapter 4. Vendor shall make the provisions of this section a part of its contracts with any approved subcontractors providing goods or services related to Vendor's performance of this Agreement.

**12.2.2** Vendor agrees that any Web sites developed by it pursuant to this Agreement will comply with Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Access Board and the Iowa Department of Administrative Services, Information Technology Enterprise

("ITE"). Vendor agrees that it will comply with and adhere to all information technology standards specified by ITE, including any applicable technical and security standards, procedures and protocols in connection with the development by Vendor of any Web site.

**12.2.3** Vendor shall give notice to any labor union with which it has a bargaining or other agreement of its commitment under this section of the Agreement. Vendor shall make the provisions of this section a part of its contracts with any approved subcontractors providing goods or services related to the fulfillment or performance of this Agreement.

**12.2.4** HSEMD may consider the failure of Vendor to comply with any law or regulation as a material breach of this Agreement.

### **12.3 Confidentiality.**

**12.3.1** Vendor and its employees, agents, approved contractors and subcontractors may have access to Confidential Information, data, software, hardware, programs or other information or property possessed, owned or maintained by HSEMD or the State ("HSEMD Property"), or by any other state agency to the extent necessary to carry out its responsibilities under the Agreement. All HSEMD Property shall always remain the property of HSEMD and/or the State. Vendor shall preserve the confidentiality of all State and HSEMD Property disclosed or furnished to Vendor under this Agreement and shall maintain procedures for safeguarding such property. Vendor must designate one individual who shall remain the responsible authority in charge of all State and HSEMD Property received, collected, used, or disseminated by Vendor in connection with the performance of the Agreement. Vendor shall accept responsibility for providing adequate supervision and training to its agents, employees and any approved contractors and subcontractors to ensure compliance with the terms of this Agreement. Vendor and its employees, agents, and any approved contractors or subcontractors may be required by HSEMD or a state or state agency participant to execute confidentiality or non-disclosure agreements to obtain access to certain State and HSEMD Property.

**12.3.2** Vendor and its employees, agents, approved contractors and subcontractors shall not disclose, publish, reproduce, disseminate or otherwise use any State and HSEMD Property received, collected, maintained, or used in the course of performance of the Agreement except as permitted by HSEMD or the pertinent state or state agency participant to enable Vendor to perform its obligations under this Agreement and except as required by applicable laws, rules or regulations, either during the term of this Agreement or thereafter. Vendor agrees to return any and all HSEMD Property and received, collected, accessed, maintained, created, or used in the course of the performance of the Agreement in whatever form it is maintained promptly at the request of HSEMD or any state or state agency participant. In the event that Vendor receives a request for access to any State or HSEMD Property, Vendor shall immediately communicate such request to HSEMD for consideration and handling.

**12.3.3** Vendor shall indemnify HSEMD, the State and all other indemnitees in the manner provided for indemnification elsewhere in this Agreement for a violation of this section. In the event of a breach of this section, HSEMD may terminate this Agreement immediately without notice of default and opportunity to cure. Vendor's obligations under this section shall survive expiration or termination of this Agreement.

**12.3.4** Vendor shall hold in confidence and shall not publish, disseminate, or otherwise disclose critical infrastructure data obtained or acquired from any source during its performance under this Agreement.

**12.4 Amendments.** This Agreement may be amended in writing from time to time by mutual consent of the parties. Both parties must execute all amendments to this Agreement.

**12.5 Third Party Rights.** No person other than the Vendor, the State, HSEMD, or state agency participants may rely on or derive any rights pursuant to or under this Agreement. This Agreement is intended only to benefit HSEMD, the State, all state agency participants and Vendor.

**12.6 Choice of Law and Forum.**

**12.6.1** The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Agreement without regard to the choice of law provisions of Iowa law.

**12.6.2** Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division.

**12.6.3** This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to HSEMD or the State.

**12.6.4** Vendor irrevocably consents to service of process by certified or registered mail addressed to the Vendor's designated agent. The Vendor appoints [name] at [address] Des Moines, Iowa, as its agent to receive service of process. If for any reason the Vendor's agent for service is unable to act as such or the address of the agent changes, Vendor shall immediately appoint a new agent and provide HSEMD with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon

actual receipt by HSEMD. Nothing in this provision will alter the right of HSEMD to serve process in any other manner permitted by law.

**12.6.5** This Section 12.6 shall survive termination of this Agreement.

**12.7 Assignment and Delegation.** This Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party, except that HSEMD may assign this Agreement to any State agency or unit of State government that succeeds HSEMD's duties hereunder or otherwise assumes responsibility for functions or duties currently assumed by HSEMD to which the Deliverables relate. For purposes of construing this clause, a transfer of a controlling interest in Vendor, a merger, sale or consolidation of Vendor, or a sale of substantially all of Vendor's assets shall be considered an assignment. Vendor agrees that it shall provide HSEMD with the earliest possible advance notice of any proposed sale or transfer or any controlling interest in or substantial assets of Vendor and of any proposed merger, sale or consolidation of Vendor. Vendor agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Vendor or any affiliate thereof without the prior written consent of HSEMD.

**12.8 Use of Third Parties.** None of the services to be provided by Vendor pursuant to this Agreement shall be subcontracted or delegated to any Third Party without the prior written consent of HSEMD. HSEMD's consent shall not be deemed in any way to provide for the incurrence of any obligation of HSEMD in addition to the total fixed price agreed upon in this Agreement. Any subcontract to which HSEMD has consented shall be in writing and shall in no way alter the terms and conditions of this Agreement. All subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that HSEMD may deem necessary. Vendor is solely liable for any and all payments that may be due to the subcontractor pursuant to its subcontract with Vendor. Vendor shall indemnify, defend and hold harmless HSEMD and the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Vendor's breach of any subcontract in which it enters, including Vendor's failure to pay any and all amounts due by Vendor to any subcontractor. All subcontracts shall contain provisions for HSEMD access to the subcontractor's books, documents, and records and for inspections of work, as required of Vendor herein. No subcontract or delegation of work shall relieve or discharge Vendor from any obligation, provision, or liability under this Agreement. Vendor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any such contractor or subcontractor. Any action of a subcontractor, which, if done by Vendor, would constitute a breach of this Agreement, shall be deemed a breach by Vendor and have the same legal effect.

**12.9 Integration.** This Agreement represents the entire Agreement between the parties concerning the subject matter hereof, and neither party is relying on any representation that may have been made which is not included in this Agreement. HSEMD shall not be bound by any "shrink-wrap" or "click-wrap" license or any other similar agreement that may accompany or relate to a Deliverable. Vendor acknowledges that it has thoroughly read this Agreement and all related schedules, exhibits, and other documents and has

had the opportunity to receive competent advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against HSEMD on the basis of draftsmanship or preparation thereof.

**12.10 Obligation Beyond Agreement Term.** This Agreement shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Agreement. Vendor's obligations under this Agreement which by their nature would continue beyond the termination of this Agreement, including, by way of illustration and not by limitation, those obligations set forth in Sections 4.1, 5.1– 5.9, 8.1 - 8.11, 9.1 - 9.3, 10.4 - 10.5, 11, 12.2, 12.3, 12.6, 12.8, 12.10 - 12.15, 12.19, 12.24, 12.28, 12.30, 12.32, 12.33, 12.35, and 12.36 shall survive termination of this Agreement and/or termination of Support.

**12.11 Supersedes Former Agreements.** This Agreement supersedes all prior Agreements between HSEMD and Vendor for the goods and services provided in connection with this Agreement.

**12.12 Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of HSEMD and Vendor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

**12.13 Notices.**

**12.13.1 Notices.** Notices under this Agreement shall be in writing and delivered to the representative of the party to receive notice (identified below) at the address of the party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be effected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

If to HSEMD:

**Terry Brown, Contracting Officer**  
**Iowa Homeland Security Emergency Management**  
**Camp Dodge, Bldg. W-4**  
**7105 NW 70th Ave.**  
**Johnston, IA 50131**

If to Vendor:

**12.13.2** Any notice or communication sent by U.S. Mail under this Agreement shall be deemed given upon receipt as evidenced by the U.S. Postal Service return receipt card, or if sent by overnight delivery service, upon receipt as evidenced by the signature attained by the carrier.

**12.13.3** From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

**12.14 Cumulative Rights.** The various rights, powers, options, elections and remedies of HSEMD and the State provided in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed HSEMD and the State by law, and shall in no way affect or impair the right of HSEMD or the State to pursue any other contractual, equitable or legal remedy to which HSEMD and the State may be entitled as long as any default remains in any way unremedied, unsatisfied, or undischarged. The election by HSEMD or the State of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

**12.15 Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

**12.16 Time is of the Essence.** Time is of the essence with respect to Vendor's performance of its obligations under this Agreement. Vendor shall ensure that all personnel providing services to HSEMD are responsive to HSEMD's requirements and requests in all respects.

**12.17 Authorization.** Vendor represents and warrants that it has the right, power and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Agreement, and this Agreement constitutes a legal, valid and binding obligation of Vendor, enforceable in accordance with its terms.

**12.18 Successors in Interest.** All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties' hereto and their respective successors, assigns, and legal representatives.

**12.19 Records Retention and Access.** Vendor shall maintain books, documents and records that sufficiently and properly document Vendor's performance under this Agreement, including records that document all fees and other amounts charged during the term of this Agreement, for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or the completion of any required audit. Vendor shall permit the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, electronic or optically stored and created records or other records of Vendor relating directly or indirectly to Vendor's performance under this Agreement. Vendor shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit or examination of such books, documents and records. Vendor shall require its subcontractors to agree to the same provisions of this section.

**12.20 Headings or Captions and Terms.** The section headings or captions are for identification purposes only and do not limit or construe the contents of the sections. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word "or" has the inclusive meaning represented by the phrase "and/or." The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The words "thereof," "herein," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.

**12.21 Multiple Counterparts.** This agreement shall be executed in two or more counterparts, any one of which shall be an original without reference to the others.

**12.22 Not a Joint Venture.** Nothing in this Agreement shall be construed as creating or constituting the relationship of the Partnership, joint venture, (or other association of any kind or agent/principal relationship) between the parties hereto. Each party shall be deemed an independent contractor contracting for services and acting toward the mutual benefits expected to be derived herefrom. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another party to this Agreement.

**12.23 Additional Provisions.** The parties agree that if an Addendum, Rider, Schedule, Appendix or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

**12.24 Further Assurances and Corrective Instruments.** The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

**12.25 Obligations of Joint Entities.** If Vendor is a joint entity, consisting of more than one individual, Partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this agreement, and for any default of such activities and obligations.

**12.26 Force Majeure.**

**12.26.1** Neither Vendor nor HSEMD shall be liable to the other for any delay or failure of performance of this Agreement, and no delay or failure of performance shall constitute a default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by a "force majeure" and not as a result of the fault or negligence of a party.

**12.26.2** As used in this Agreement, "force majeure" includes acts of God, war, civil disturbance and any other causes which are beyond the control and anticipation of the party effected and which, by the exercise of reasonable diligence, the party was unable to anticipate or prevent. Failure to perform by a subcontractor or an agent of Vendor shall not be considered a "force majeure" unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Agreement. "Force Majeure" does not include financial difficulties of Vendor or any parent, subsidiary, affiliated or associated company of Vendor or claims or court orders that restrict Vendor's ability to deliver the goods or services contemplated by this Agreement.

**12.26.3** If a "force majeure" delays or prevents Vendor's performance, Vendor shall immediately commence to use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be reasonably determined solely by HSEMD.

**12.26.4** During the performance period of the Agreement, events beyond the control of a partnership state may occur (e.g., disaster declaration) that could significantly alter the ability of the partnership state to contribute, or the ability of the Vendor to receive, the requisite level of data and/or participation from the state. If a dispute occurs between the partnership state and Vendor due to extenuating circumstances that can reasonably be attributed to no fault of a participating state or the Vendor, and if the Vendor meets the needs of a majority of the participating states in performance of deliverables, then Vendor's performance under the Agreement shall be considered sufficient and Vendor will neither be in breach of this Agreement nor

will compensation be deprived to Vendor for reasonably expended time, travel, and materials invested.

**12.27 Material Breaches.** The references in this Agreement to specific material breaches of this Agreement shall not be construed as implying that other breaches of this Agreement are not material.

**12.28 Right of Inspection.** Vendor shall allow HSEMD, or anyone designated by HSEMD, to inspect its facilities and books and records at all reasonable times in order to monitor and evaluate performance of this Agreement.

**12.29 Taxes.** Vendor shall be responsible for paying any taxes incurred by Vendor in the performance of this Agreement. HSEMD and the State are exempt from the payment of State sales and other taxes.

**12.30 Title to Property.** Title to all property (including HSEMD Property) furnished by HSEMD and/or the State to Vendor to facilitate the performance of this Agreement shall remain the sole property of HSEMD and/or the State. All such property shall only be used by Vendor for purposes of fulfilling its obligations under this Agreement and shall be returned to HSEMD upon the earliest of completion, termination, or cancellation of this Agreement or at HSEMD's request. Vendor acknowledges that it shall acquire no interest or rights in and to such property. Except as expressly provided in this Agreement, Vendor shall not disclose or use such property for any purpose, including pledging or encumbering it, selling or using it for monetary gain, using it to compile mailing lists, solicit business or pursue other business activities, or otherwise. Title to all property purchased by Vendor, for which Vendor has been reimbursed or paid by HSEMD under this Agreement, shall pass to and vest in the State, except as otherwise provided in this Agreement.

**12.31 Exclusivity.** This Agreement is not exclusive. During the term of this Agreement, HSEMD may obtain similar services from other service providers.

**12.32 Award of Related Agreements.** HSEMD may undertake or award supplemental or successor agreements for work related to this Agreement. Vendor shall cooperate fully with other contractors, consultants and other persons who may be engaged by HSEMD in connection with this Agreement. Vendor will ensure that any of its contractors or subcontractors that have been approved by HSEMD will abide by this provision.

**12.33 Sovereign Immunity.** HSEMD and the State do not waive sovereign immunity by entering into this Agreement and specifically retain and reserve the defense of sovereign immunity and all defenses available to them under State and federal laws, rules and regulations for any claim arising out of or related to this Agreement.

**12.34 Disclaimer.** All information contained in the RFP and any appendices or attachments thereto reflect the information available to HSEMD at the time the above-cited documents were prepared. HSEMD does not warrant the accuracy of any

such information and shall not be liable for any errors or omissions, or the results of errors or omissions, which may be discovered, at any time, to exist in those documents.

**12.35. Attorney's Fees and Expenses.** Subject to the other terms and conditions of this Agreement, in the event Vendor defaults in any obligations under this Agreement, Vendor shall pay to HSEMD all costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by or on behalf of HSEMD) incurred by HSEMD in enforcing this Agreement or any of its rights and remedies with respect thereto.

**12.36 Care of Property.** Vendor shall be responsible for the proper custody and care of any HSEMD-owned property (including data, databases, software, interfaces, hardware, telecommunications lines and equipment, intellectual property and HSEMD Property) and any state agency participant property furnished for Vendor's use in connection with the performance of the Agreement. Vendor shall exercise its best efforts to prevent damage to all such property and shall, at HSEMD's request, restore damaged property to the extent possible to its condition prior to the damage at the sole expense of Vendor. Such restoration shall be complete when judged satisfactory by HSEMD. In addition, at HSEMD's request, Vendor will reimburse HSEMD for any loss or damage to such property caused by Vendor, or any agent, contractor or subcontractor employed or utilized by Vendor. Vendor shall not take any action that would impair the value of, or goodwill associated with, the name, property and intellectual property rights of HSEMD and the State, or of any other state or state agency that is a participant in the Partnership. Vendor shall obtain the prior advance written approval from HSEMD prior to Vendor's use of the name, marks or intellectual property rights of HSEMD or the State. Vendor shall obtain the prior advance written approval from any other state agency participant prior to Vendor's use of the name, marks or intellectual property rights of such participant.

**12.37 Suspension and Debarment.** Vendor certifies pursuant to 31 CFR Part 19 that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions or participation in this Agreement by any Federal department or agency.

**12.38 Lobbying Restrictions.** Vendor shall comply with all certification and disclosure requirements prescribed by 31 U.S.C. Section 1352 and any implementing regulations and shall be responsible for ensuring that any subcontractor fully complies with all certification and disclosure requirements.

**12.39 Certified Audits.** Local governments and non-profit subrecipient entities that expend \$300,000 or more in a year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Circular A-133 "Audit of States, Local Governments, and Non-Profit Organizations." A copy of the final audit report shall be submitted to HSEMD if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to Federal awards provided by HSEMD. If an audit report is not required to be submitted per the criteria above, the subrecipient must provide written notification to HSEMD that the audit was conducted in accordance with Government Auditing Standards and that neither the schedule of findings and questioned costs nor the summary schedule

of prior audit findings includes any audit findings related to Federal awards provided by HSEMD. See A-133 Section 21 for a discussion of subrecipient versus vendor relationships.

**12.40 Drug Free Work Place.** Vendor shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988 and all applicable regulations.

**IN WITNESS WHEREOF**, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

**Iowa Department of Public Defense,  
Homeland Security and Emergency  
Management Division**

[Vendor]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## **SCHEDULE A SCOPE OF WORK**

The scope of work includes two projects, each of which constitutes one or multiple deliverables. The projects are:

1. COOP Exercise(s) for State Agencies
2. System to Account for Human Resources Following Evacuation

### **3.3.1 Project: COOP Exercise(s) for State Agencies**

#### **Background and General Information:**

- a) Every state agency of the State of Iowa has a continuity of operations (COOP) plan which outlines actions to be taken to ensure the continued performance of essential government functions during a wide range of potential emergencies. The agency COOP Plans should be tested and exercised to ensure that appropriate staff are familiar with the Plan, discover any weaknesses in the Plan, and determine how plans should be improved. One of the primary projects of this RFP is meant to assist up to five (5) state agencies with such a COOP exercise. Exercises will be requested by an agency and will be limited to five (5) agencies playing in such exercise(s). The exercise or exercises must be written and conducted using the Homeland Security Exercise and Evaluation Program (HSEEP) methodology.
- b) Part of the project will also include assisting agencies to prepare for an exercise by helping them update their plans in LDRPS. LDRPS stands for Living Disaster Recovery Planning System, a continuity planning application which allows users to build, store and retrieve their continuity plan on-line via the internet. The state owns several LDRPS licenses and many agencies have already stored continuity plan information using LDPRS (the state currently uses version 10, release 7).
- c) Attendance records and notes must be kept for all meetings that may be held as a part of this project. Payment will not be made for any work period in which a meeting was held unless attendance and notes are provided for meetings held during that period.
- d) Barring extenuating circumstances which must be negotiated with HSEMD, the vendor should consider expenses for this project (3.3.1) capped at \$100,000.00 if the maximum five agencies participate. If only one agency participates, expenses should not exceed \$30,000. The vendor should indicate what their not-to-exceed fee for this project will be if there is one, two, three, four or five agencies participating.

#### **Tasks for this project:**

- 3.3.1.1 **Invite state agencies to play in a COOP tabletop exercise.** This may mean multiple meetings with individual departments to explain the exercise, the project, and answer questions about continuity planning and how a department may be involved. Tell them possible objectives they may want to accomplish through such an exercise.
- 3.3.1.2 **Discover concept and objectives for participating agencies.** Consultant must facilitate a Concept and Objectives (C & O) meeting or meetings. A single C & O meeting could be held for all participating agencies to attend, or a C & O meeting could be held with each participating agency. Find out from participating agencies what objectives they want to meet through their involvement in the exercise(s). One of the objectives will be testing the communication capability of informing employees that the COOP Plan has been activated and other necessary details that employees would need to know in a disaster that impacts their work facility. Document other proposed objectives. Compile report of all the objectives of all participating agencies.
- 3.3.1.3 **Get exercise planners appointed, provide them orientation and training, and plan exercise with them.** Have participating agencies appoint exercise planners from agency. Gather input from these planners about scope, design, scenario, location, schedule, duration and other details of exercise. Develop draft exercise plan. Different meetings may be needed. Hold planning conferences (mid-term, MSEL, etc.) as needed to resolve logistical and organizational issues and to develop time-line and scenario. Draft exercise plan and player manuals. Hold a final planning conference to review the procedures for exercise conduct, drafts of exercise plan and other written materials, and to review logistics.
- 3.3.1.4 **Assist exercise-playing agencies in preparing for exercise and entering assignments and other information into LDRPS prior to exercise.** Meet with individual agencies on occasion to ensure that they are progressing in becoming prepared for exercise. Some may need to update plans and assign roles and responsibilities to staff who will be needed at exercise. Help them in these efforts. Also help agencies to enter assignments and other continuity plan information into LDRPS in preparation for exercise. The contractor will only help agencies that will be playing in the exercise, and only getting plan elements in place and printed that are needed for the exercise. By its nature, such work would have to be billed at an hourly rate. There will be a limit of 80 billable hours per agency that requests this type of assistance. Actual hours of assistance

will be dependent on the needs of the agencies that request the assistance and will be determined in consultation between the agency, contractor and HSEMD project planner. Payment for hours of this type of assistance will not be made until written exercise plan(s) and player manual(s) are complete.

- 3.3.1.5 **Conduct tabletop exercise or exercises to test various continuity objectives.** Hold a players meeting or meetings (if multiple agencies involved). Facilitate exercise or exercises that tests objectives, including testing the communication capability of informing employees that the COOP Plan has been activated and other necessary details that employees would need to know in a disaster that impacts their work facility. It may be that more than one agency may want to play at the same time, and coordination will be needed to do that.
- 3.3.1.6 **Compile Exercise Evaluation Guides (EEGs) from exercises and draft After Action Report and Improvement Plan (AAR/IP).** Before exercise conduct, compose EEGs for agencies and hold training for evaluators. Gather EEGs from evaluators upon completion of exercise. As this is a tabletop exercise, a hotwash may be redundant for players, but at least exercise planners and evaluators should meet after exercise to debrief and share thoughts. A hotwash may be necessary for players as well if the exercise turns out to be more “real-time”. The thoughts shared in hotwash/debriefing must be recorded for inclusion in AAR. EEG comments must also be included in AAR. Consultant will also give all players evaluation forms and collect them after the exercise. These will also be compiled and included in draft AAR.
- 3.3.1.7 **Hold AAR meeting with COOP exercise players and complete AAR/IP.** After draft AAR is composed, send it out to players for review and comment. Hold an AAR conference and draft Improvement Plans. Improvement Plans will need to be drafted for each participating agency. Complete final AAR/IP.
- 3.3.1.8 **Make changes to continuity plans based on AAR/IP.** If Improvement Plans identify changes that must be made to agency COOP plans, consultant may assist those agencies in updating their plans in LDRPS to include the identified changes. By its nature, such work would have to be billed at an hourly rate. There will be a limit of 40 billable hours per agency that requests this type of assistance. Actual hours of assistance will be dependent on the needs of the agencies that request the assistance and will be determined in consultation between the agency, contractor and HSEMD project planner. Payment for

hours of this type of assistance will not be made until draft AAR/IP and AAR conference(s) are complete.

**Due Date: July 30, 2012**

### **3.3.2 Project: System to Account for Human Resources Following Evacuation**

#### **Background and General Information:**

Some disaster situations would necessitate the evacuation of a building. Facilities have evacuation plans that are exercised periodically (e.g. fire drills). The facility evacuation plan is not necessarily a part of an agency's COOP plan, but would precede it. The proposed exercise above will not necessarily include an evacuation exercise, but the accountability of and ability to communicate with evacuated personnel needs to be taken into account because the COOP activation could begin while the facility is evacuated. In such an event, employees would need to be contacted. For this reason, it is important that there be a human resources management and tracking system that will facilitate the accounting of the whereabouts of employees and contractors after an evacuation and a means of initiating a temporary communications structure with employees and contractors. One of the projects from this RFP is for the service provider to research best practices and present different options for accounting for and communicating with employees and contractors after a disaster, and giving cost estimates for those different options.

#### **Tasks for this project:**

- 3.3.2.1 Research several other agencies/organizations that have implemented such a system, including at least two (2) government agencies, with at least one being a state agency in some other state.
- 3.3.2.2 Analyze the systems researched and provide an analysis of at least 3 different options with pros and cons to each option in relation to Iowa state agencies. Describe possible challenges to implementing such systems in Iowa state government agencies. Describe opportunities for implementing such systems in Iowa state government agencies for departments that are large (over 250 employees), small (less than 50 employees), or mid-sized.
- 3.3.2.3 Provide cost estimates for such systems.
- 3.3.2.4 Outline a proposal for steps that should be taken to implement at least two of the options.

**Due Date: May 20, 2012**

**SCHEDULE B**

**PERFORMANCE STANDARDS AND RELATED PROVISIONS**

**SCHEDULE C**

**PROJECT PLAN**

**EXHIBIT \_\_**