



## OFFICIAL RESPONSES TO VENDOR QUESTIONS RFP-2024-DBH-04-BEHAV

No.	Question	Answer
1.	<p><b>General</b> Was a previous solicitation issued for these services?</p>	<p>Yes, the Department previously issued a solicitation for these services, which was cancelled. The Department is re-issuing a new solicitation with additional and modified scope.</p>
2.	<p><b>Section 1.3 Procurement Timetable</b> Would the Department consider extending the RFP due date?</p>	<p>The Department does not anticipate extending the due date at this time.</p>
3.	<p><b>Subsection 2.1.12 Reporting</b> Who is the audience for these reports, and are they intended to be made public?</p>	<p>The Department intends to use the reports, described in <b>Subsection 2.1.12.</b>, with internal and external stakeholders for planning purposes. These reports may be made public.</p>
4.	<p><b>Appendix A - General Provisions</b> If a vendor has an existing agreement with the State of New Hampshire, would the Department consider leveraging this existing agreement for this engagement?</p>	<p>The Department considers modifications to <b>Appendix A - General Provisions</b> on a case by case basis, taking into account the scope of services for each contract.</p>
5.	<p><b>Appendix A - General Provisions</b> Will the Department agree to delete <b>Section 8.2.2?</b></p>	<p>No</p>
6.	<p><b>Appendix A - General Provisions</b> Will the Department agree to add the following language to <b>Section 10.2?</b>  Provided, however, that Contractor may retain</p>	<p>No</p>



No.	Question	Answer
	<p>one copy of the data for purposes of complying with its internal archival and records retention policies, subject to Contractor's continued compliance with the confidentiality and non-use restrictions set forth in this Agreement.</p>	
7.	<p><b>Appendix A - General Provisions</b> Will the Department consider adding the following new section regarding Third Party Beneficiaries and Distribution of Contractor Work?</p> <p>The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit. The Contractor's work is prepared solely for the use and benefit of the State in accordance with its statutory and regulatory requirements. The Contractor recognizes that materials it delivers to the State may be public records subject to disclosure to third parties; however, the Contractor does not intend to benefit and assumes no duty or liability to any third parties who receive the Contractor's work and may include disclaimer language on its work product so stating. The State agrees not to remove any such disclaimer language from the Contractor's work. To the extent that the Contractor's work is not subject to disclosure under applicable public records laws, the State agrees that it shall not disclose the Contractor's work to third parties without the Contractor's prior written consent; provided, however, that the State may distribute the Contractor's work to: (i) its professional service providers who are subject</p>	No



No.	Question	Answer
	to a duty of confidentiality and who agree to not use the Contractor's work for any purpose other than to provide services to the State, or (ii) any applicable regulatory or governmental agency, as required.	
8.	<p><b>Appendix A - General Provisions</b> Will the Department consider adding the following new section regarding Protection for Contractor “Tools” Used in the Engagement?</p> <p>Notwithstanding anything to the contrary in this Agreement, the Contractor shall retain all rights, title and interest (including, without limitation, all copyrights, patents, service marks, trademarks, trade secret and other intellectual property rights) in and to all technical or internal designs, data, databases, methods, ideas, concepts, know-how, techniques, generic documents and templates (“Tools”) that have been previously developed by the Contractor or such Tools developed during the course of the provision of the Services provided such Tools do not contain and/or are not based upon or derived from Confidential Information or proprietary data of the State. Rights and ownership by the Contractor of its Tools shall not extend to or include all or any part of the State’s proprietary data or Confidential Information of the State. To the extent that the Contractor may include in the materials any Tools, the Contractor agrees that the State shall be deemed to have a fully paid up perpetual license to make copies of the Tools as part of this engagement for its</p>	No



No.	Question	Answer
	<p>internal business purposes and provided that such Tools cannot be modified or distributed outside of the State without the written permission of the Contractor or except as otherwise permitted in this Agreement.</p>	
9.	<p><b>Appendix A - General Provisions</b> Will the Department agree to modify <b>Section 13</b>. Indemnification to include the following proposed modifications?</p> <p>The Contractor shall indemnify, defend, and hold harmless the State, its officers, and employees from and against all <b>third party actions, claims, damages, demands, judgments, fines, liabilities, losses, and other expenses</b>, including, without limitation, reasonable attorneys' fees, <b>to the extent arising out of or relating to this Agreement directly or indirectly arising from</b> death, personal injury, <b>property</b> damage to tangible property, intellectual property infringement, or other claims asserted against the State, its officers, or employees <b>is</b> caused by the <b>grossly negligent</b> acts or omissions <b>of negligence</b>, reckless or willful misconduct, or fraud by the Contractor, its employees, agents, or subcontractors. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the State's sovereign immunity, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of</p>	No



No.	Question	Answer
	this Agreement.	
10.	<p><b>Appendix A - General Provisions</b> Will the Department agree to add the following Limitation of Liability provisions?</p> <p>In the event of any claim arising from services provided by the Contractor at any time, the total liability of the Contractor, its officers, directors, agents and employees to the State shall not exceed, in the aggregate, five million dollars (\$5,000,000). This limit applies regardless of the theory of law under which a claim is brought, including indemnity, negligence, tort, contract, or otherwise. In no event shall Contractor be liable for lost profits of the State or any other type of incidental or consequential damages. The foregoing limitations shall not apply in the event of the gross negligence, intentional fraud, or willful misconduct of the Contractor.</p>	No
11.	<p><b>Appendix A - General Provisions</b> Will the Department agree to add the following jury waiver to <b>Section 19. Choice of Law and Forum?</b></p> <p>19.2 Any actions arising out of this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be brought and maintained in the Merrimack County Superior Court of New Hampshire which shall have exclusive jurisdiction thereof. <b>The parties agree to waiver the right to a trial by jury.</b></p>	No



No.	Question	Answer
12.	<p><b>Appendix A – Exhibit E: DHHS Information Security Requirements, Section I. RESPONSIBILITIES OF DHHS AND THE CONTRACTOR A. 3.</b></p> <p>Will the Department agree to add the following language to <b>Section A.3</b>?</p> <p>If DHHS notifies the Contractor that DHHS has agreed to be bound by additional restrictions over and above those uses or disclosures or security safeguards of PHI pursuant to the Privacy and Security Rule, the Contractor must be bound by such additional restrictions and must not disclose PHI in violation of such additional restrictions and must abide by any additional security safeguards, <i>provided such additional restrictions do not impose an undue burden on Contractor.</i></p>	Yes
13.	<p><b>Appendix A – Exhibit E: DHHS Information Security Requirements, Section I. RESPONSIBILITIES OF DHHS AND THE CONTRACTOR, Section A. 6.</b></p> <p>Will the Department agree to modify <b>Section A.6.</b> to include the following proposed modifications?</p> <p><i>With reasonable prior written notice, during normal business hours and at a mutually agreed upon time, The Contractor agrees to grant access to the DHHS Data to the authorized representatives of DHHS for the</i></p>	Yes



No.	Question	Answer
	purpose of inspecting to confirm compliance with the terms of this Contract.	
14.	<p><b>Appendix A – Exhibit E: DHHS Information Security Requirements, Section III. RETENTION AND DISPOSITION OF INDENTIFIABLE RECORDS, First Paragraph</b></p> <p>Will the Department agree to modify the <b>first paragraph</b> to include the following proposed modifications?</p> <p>The Contractor will only retain the data and any derivative of the data for the duration of this Contract. After such time, the Contractor will have 30 days to destroy the data and any derivative in whatever form it may exist, unless, otherwise required by law or <a href="#">necessary to comply with Contractor’s backup, archival, or record retention policies permitted under this Contract</a>. To this end, the parties must:</p>	No
15.	<p><b>Appendix A – Exhibit E: DHHS Information Security Requirements, Section III. RETENTION AND DISPOSITION OF INDENTIFIABLE RECORDS, Section A.5.</b></p> <p>Will the Department agree to modify <b>Section A.5.</b> to include the following proposed modifications?</p> <p>The Contractor agrees Confidential Data stored in a Cloud <del>must be in a FedRAMP /HITECH compliant solution and</del> comply with all applicable statutes and regulations regarding</p>	Yes



No.	Question	Answer
	<p><del>the</del> privacy and security. All servers and devices must have currently-supported and hardened operating systems, the latest anti-viral, antihacker, anti-spam, anti-spyware, and anti-malware utilities. The environment, as a whole, must have aggressive intrusion-detection and firewall protection.</p>	
16.	<p><b>Appendix A – Exhibit E: DHHS Information Security Requirements, Section IV. PROCEDURE FOR SECURITY, Section A.9.</b> Will the Department agree to modify <b>Section A.9.</b> to include the following proposed modifications?</p> <p>The Contractor will work with the Department at its <b>reasonable</b> request to complete a System Management Survey. The purpose of the survey is to enable the Department and Contractor to monitor for any changes in risks, threats, and vulnerabilities that may occur over the life of the Contractor engagement. The survey will be completed annually, or an alternate time frame at the Departments discretion with agreement by the Contractor, or the Department may request the survey be completed when <b>there is a substantial change in the</b> scope of the engagement between the Department and the Contractor <del>changes.</del></p>	Yes
17.	<p><b>Appendix A – Exhibit E: DHHS Information Security Requirements, Section IV. PROCEDURE FOR SECURITY, Section A.10.</b> Will the Department agree to modify <b>Section</b></p>	No





No.	Question	Answer
	<p><b>A.10.</b> to include the following proposed modifications?</p> <p>The Contractor will not store, knowingly or unknowingly, any State of New Hampshire or Department data offshore or outside the boundaries of the United States unless prior express written consent is obtained from the Information Security Office leadership member within the Department. <a href="#">Such authorization shall not be unreasonably withheld.</a></p>	
18.	<p><b>Appendix A – Exhibit E: DHHS Information Security Requirements, Section IV. PROCEDURE FOR SECURITY, Section A.11.</b></p> <p>Will the Department agree to modify <b>Section A.11.</b> to include the following proposed modifications?</p> <p>Data Security Breach Liability. In the event of any security breach Contractor shall make efforts to investigate the causes of the breach, promptly take measures to prevent future breach and minimize any damage or loss resulting from the breach. The State shall recover from the Contractor all <a href="#">out-of-pocket</a> costs of response and recovery from the breach, including but not limited to: credit monitoring services, mailing costs and costs associated with website and telephone call center services necessary due to the breach.</p>	No
19.	<p><b>Appendix A – Exhibit E: DHHS Information Security Requirements, Section IV.</b></p>	No



No.	Question	Answer
	<p><b>PROCEDURE FOR SECURITY, Section A.14.</b> Will the Department agree to modify <b>Section A.14.</b> to include the following proposed modifications?</p> <p>Contractor agrees to maintain a documented breach notification and incident response process. The Contractor will notify the State’s Privacy Officer and the State’s Security Officer of any security breach <del>immediately</del> promptly, at the email addresses provided in Section VI. This includes a confidential information breach, computer security incident, or suspected breach which affects or includes any State of New Hampshire systems that connect to the State of New Hampshire network.</p>	
20.	<p><b>Appendix A – Exhibit E: DHHS Information Security Requirements, Section IV. PROCEDURE FOR SECURITY, Section A.16. Last Paragraph</b> Will the Department agree to modify <b>Section A.16. Last Paragraph</b> to include the following proposed modifications?</p> <p>Contractor is responsible for oversight and compliance of their End Users. DHHS reserves the right to conduct onsite inspections through a mutually agreed upon third-party inspector. Such inspection shall not exceed three (3) business days, will be limited to no more than once annually and at DHHS’ expense. The scope shall be limited to Contractor’s <del>monitor</del></p>	No



No.	Question	Answer
	<p>compliance with this Contract, including the privacy and security requirements provided <del>in</del> herein, HIPAA, and other applicable laws and Federal regulations <del>until such time the Confidential Data is disposed of in accordance with this Contract.</del></p>	
21.	<p><b>Appendix A – Exhibit E: DHHS Information Security Requirements, Section V. LOSS REPORTING, First Paragraph.</b></p> <p>Will the Department agree to modify the <b>First Paragraph</b> to include the following proposed modifications?</p> <p>The Contractor must notify the State’s Privacy Officer and Security Officer of any Security Incidents and Breaches <del>immediately</del> promptly, at the email addresses provided in Section VI.</p>	No