



STATE OF TENNESSEE
Department of Finance and Administration, Division of TennCare
REQUEST FOR PROPOSAL # 31865-00622
AMENDMENT 2 FOR ESTATE RECOVERY SERVICES

DATE: May 12, 2021

RFP # 31865-00622 IS AMENDED AS FOLLOWS:

TennCare is in receipt of HMS' "pre-award protest letter." In consultation with the Central Procurement Office, the "pre-award protest" is respectfully denied at this time. Under Tenn. Code Ann. § 12-3-514, protests may only be filed within seven (7) days after the day on which the notice of award or notice of intent to award is issued.

1. This RFP Schedule of Events updates and confirms scheduled RFP dates. Any event, time, or date containing revised or new text is highlighted.

EVENT	TIME (central time zone)	DATE
1. RFP Issued		April 1, 2021
2. Disability Accommodation Request Deadline	2:00 p.m.	April 6, 2021
3. Pre-response Conference	1:00 p.m.	April 13, 2021
4. Notice of Intent to Respond Deadline	2:00 p.m.	April 14, 2021
5. Written "Questions & Comments" Deadline	2:00 p.m.	April 21, 2021
6. State Response to Written "Questions & Comments"		May 12, 2021
7. Response Deadline	2:00 p.m.	May 28, 2021
8. State Completion of Technical Response Evaluations		June 14, 2021
9. State Opening & Scoring of Cost Proposals	2:00 p.m.	June 15, 2021
10. Contract Negotiations		June 18, 2021 through June 21, 2021
11. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection	2:00 p.m.	June 23, 2021
12. End of Open File Period		June 30, 2021
13. State sends contract to Contractor for signature		July 6, 2021
14. Contractor Signature Deadline	2:00 p.m.	July 12, 2021

2. State responses to questions and comments in the table below amend and clarify this RFP.

HMS filed a pre-award protest letter

Any restatement of RFP text in the Question/Comment column shall NOT be construed as a change in the actual wording of the RFP document.

No.	RFP SECTION	PAGE #	QUESTION / COMMENT	STATE RESPONSE
1.	3.1 Response Form		<p>3.1.1.2 A response, as well as any reference material presented, must be written in English and must be written on standard 8 ½" x 11" pages (although oversize exhibits are permissible) and use a 12 point font for text.</p> <p>Q: Will the State allow a smaller font (i.e., 10 pt.) for graphics and tables?</p>	<p>Yes, provided the content is legible, font smaller than 10 pt. may be used for graphs and tables.</p>
2.	Section 3.3.1,		<p>A response must <u>not</u> include alternate contract terms and conditions. If a response contains such terms and conditions, the State, at its sole discretion, may determine the response to be a nonresponsive counteroffer and reject it.</p> <p>Q: May respondent submit a marked-up version of the Contract for TennCare's consideration during the RFP Process?</p>	<p>No.</p>
3.	Section 3.3.1,		<p>A response must <u>not</u> include alternate contract terms and conditions. If a response contains such terms and conditions, the State, at its sole discretion, may determine the response to be a nonresponsive counteroffer and reject it.</p> <p>Q: Does this response prohibition apply to all terms of the BAA attached to the RFP as Attachment D?</p> <p>May respondent submit a marked-up version of the BAA for TennCare's consideration during the RFP Process?</p>	<p>Submissions that contain redlines or otherwise qualify a response cannot be submitted as part of the response.</p> <p>See Section 3.3.1 – 3.3.3, Section 5.3.4 – 5.3.5, and the Statement of Assurances and Certifications, No. 3. Responses that do not accept all of the terms and conditions of the pro forma contract in Attachment 6.2., or otherwise qualify acceptance of any term and condition of the RFP and <i>pro forma</i> contract, including any terms and conditions related to liquidated damages, may be deemed nonresponsive for failure to accept and bind the respondent to the provisions of the RFP and the <i>pro forma</i> contract.</p>
4.	B.17		<p>Customer references email option.</p> <p>(iii) E-mail the reference directly to the Solicitation Coordinator by the RFQ Technical Response Deadline with the Subject line of the e-mail as "[Respondent Name] Reference for RFP 31865-00622.</p> <p>Q: Is the Contractor able to confirm with the State procurement officer that emailed references were received prior to the opening date?</p>	<p>Yes. A verification request to the solicitation coordinator Donovan Morgan, Donovan.Morgan2@tn.gov can be requested to confirm that all references have been received.</p>
5.	Contract: Section A: Scope		<p>A.3 Staffing a. Key Staff, #2</p>	<p>Job descriptions will be provided to the Vendor prior to the hiring of key staff that outline the tasks of each key staff person. An</p>

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			<p>TennCare will be solely responsible for assigning all tasks and duties to said Legal Assistants.</p> <p>Q: Please define the tasks assigned by the State to the Key Staff and how they will be communicated and coordinated with the Contractor to ensure the Contractor and Key Staff are able to meet the SLAs as outlined in the RFP.</p>	<p>example job description is attached, as Attachment A. Generally, the tasks of key staff people will be limited to paralegal and clerical assignments.</p> <p>TennCare will be able to communicate these requirements through the mandatory training of key staff as required by the contract. Additionally, the Vendor will be required to develop training materials for Key Staff that are subject to approval of TennCare.</p> <p>The work assigned to a key staff person may change at times given the demands of the contract. Therefore, the tasks assigned to key staff will always be at the sole discretion of the state.</p>
6.	Contract: Section A: Scope		<p>A.3 Staffing b. State Hiring and Removal of Key Staff c. Vacancies in Key Staff The hiring, removal, or replacement of any Key Staff shall be at the sole discretion of the State.</p> <p>Should the Contractor fail to fill the vacancy within thirty (30) calendar days, the Contractor shall deduct the</p> <p>following amount from the Contractor's monthly invoice to the State each month until the Key Staff position is filled: The daily salary of the former Key Staff member for each calendar day over thirty (30) days that the position has remained unfilled.</p> <p>Q: Is it the State's intent that the State, at its sole discretion, has the right to approve the Contractor's hiring, removal, or replacement of any Key Staff?</p> <p>If such approval is at the State's "sole discretion," please clarify how the Contractor will be assessed the penalty for failure to hire within the time limit required.</p>	<p>1) Yes.</p> <p>2) This is not a penalty, but rather a dollar for dollar reduction in the price of the contract.</p>
7.	Contract: Section A: Scope		<p>A.3. Staffing b. State Hiring and Removal of Key Staff. The hiring, removal, or replacement of any Key Staff shall be at the sole discretion of the State. The State's discretion shall be limited only by written policies of the Contractor that generally apply to all of Contractor's employees. The Contractor shall not fill any Key Staff position without</p> <p>the State's prior approval and interview of any potential candidate before filling any Key Staff position. The State may, at any time during the Contract period, require the removal of any Key Staff from work covered by this Contract. Upon notification by the State to the Contractor</p>	<p>1) "Hiring" in this context means the decision whether or not to hire. The state may refuse to allow Vendor to hire a person for any reason. However, functions associated with the hiring process like recruiting, interviewing, screening, completing a background check and drug screening will be the primarily responsibility of the Vendor.</p> <p>2) Response to question number two is not applicable, please see response number one.</p>

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			<p>that a request has been made for a Key Staff person to be removed, the Contractor shall ensure that Key Staff person shall immediately cease work under this Contract. The State may further request removal of any staff person assigned by the Contractor to perform ER services under this Contract, regardless of whether that person is Key Staff.</p> <p>Q: 1) When the State references "hiring" does this mean approval of staff recruited by the Contractor or does the State intend to recruit, interview, screen, complete background checks, drug screening, and onboard all key personnel in accordance with the Contractor's hiring and personnel requirements?</p> <p>2) If the State intends to recruit and hire all key staff, please describe the recruiting and hiring process to ensure compliance with the Contractor's corporate hiring and personnel standards.</p> <p>3) Will the State confirm that if an applicant does not meet the Contractor's background check and hiring criteria, the Contractor has the ability to remove them from the hiring process?</p> <p>4) Prior to requesting Key Staff to be removed from the project, will there be a probation period or warning for the staff member?</p> <p>5) Will there be a Performance Plan provided to the Contractor to assist in improvement opportunities for the key staff members?</p>	<p>3) Yes. The State's discretion is subject to written policies of the Contractor that generally apply to all of Contractor's employees.</p> <p>4) There will be no guarantee of a probation period or warning provided to the Key Staff.</p> <p>5) There will be no Performance Plan provided.</p>
8.	Contract: Section A: Scope		<p><u>A.4 Check Writing</u></p> <p>The Contractor shall develop procedures to print, endorse, and deliver checks within one (1) business day of TennCare's request. Within one (1) business day of the request, the Contractor shall physically deliver a signed check to TennCare or its designee. All TennCare requested checks shall be printed and signed by the Contractor's agent onsite at 310 Great Circle Road, Nashville, Tennessee. The Contractor shall ensure that at least one of its Key Staff is authorized to sign as the payor for checks.</p> <p>Q: Authority for printing and endorsing checks is a highly controlled function within most organizations. To ensure proper financial controls and to prevent fraud, will the State consider an approach which still provides expedited check processing without the requirement for an onsite check signee? An expedited process would only take 24-48</p>	<p>TennCare has considered this request, however, the request is denied.</p>

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			hours, depending on time requested and with the proper controls in place.	
9.	Contract: Section A: Scope		<p><u>A.5 Litigation Support</u> - The Contractor shall cooperate with TennCare attorneys and paralegals with litigation arising from any ER case before any court or tribunal at no additional cost to the State. The Contractor shall make its personnel available to testify, in person or by deposition, at any place within the State of Tennessee. Such personnel shall also be made available for any necessary pre-hearing preparation. The Contractor agrees to waive any objections to any subpoena issued by a Tennessee tribunal, in an ER case. The Contractor shall promptly provide TennCare with all information within the Contractor's control if required to do so by a discovery demand or court order.</p> <p>Q: Please clarify which "personnel" (Project Manager, Ops Manager, Legal Assistant, etc.) on the Contractor's staff that will be required to testify.</p> <p>How much notice and preparation time will the "personnel" be given to prepare for the hearing?</p>	<p>Any personnel employed by the Contractor. However, in most instances, this will likely be limited to key staff.</p> <p>The Contractor will be notified as soon as the information is known to the State. We anticipate that in most cases there will be at least 24 hours' notice.</p>
10.	Contract: Section A: Scope		<p><u>A.7 ERCMS</u></p> <p>a. General Requirements. The Contractor shall create, update, and maintain a single ERCMS in a format approved by TennCare. TennCare employees and Key Staff shall be able to remotely access any and all content and functions in the ERCMS. All data stored in the ERCMS shall be available to TennCare in real time. The Contractor shall ensure that the ERCMS shall contain a single case and only a single case for the following members:</p> <ol style="list-style-type: none"> 1. Every living and deceased TennCare member that received LTSS any time during the ten-year period that precedes the Implementation Date; 2. Every Living TennCare member that is receiving LTSS on the Implementation Date; 3. Every TennCare member that is approved for LTSS on or after the Implementation Date. The Contractor shall create the ERCMS cases within forty five (45) calendar days of the date that the person is approved for LTSS; and 4. Every living or deceased TennCare member that Contractor receives an inquiry on, regardless of when the member received LTSS. For the ERCMS cases, the Contractor 	<ol style="list-style-type: none"> 1) TennCare is not requiring that a case be opened for all TennCare recipients. Rather, only those that received LTSS and are identified in A.7.a of the contract. The initial eligibility file will contain date of death information. Contractor will be responsible for updating the ERCMS for the individual's date of death as it is supplied by TennCare. 2) The format of the ERCMS is described in the contract. See Section A.7. 3) Weekly 4) The CHOICES file will include the CHOICES effective date 5) The file including the CHOICES effective date will be sent on a weekly basis. 6) This question is already addressed in the contract. See A.9.a.3

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			<p>shall create the ERCMS case on the same business day that the inquiry is received.</p> <p>Q: With the requirement that a case must be opened for all TennCare recipients, please confirm that the TennCare eligibility file will include current Date of Death information for all TennCare members.</p> <p>Please provide guidance on the format that will be approved to aid the Contractor in the ERCMS development.</p> <p>What will be the frequency of the Contractor receiving the eligibility file?</p> <p>Please confirm that the CHOICES files will be modified to include the approval date.</p> <p>What is the length of time from approval of a member on LTSS to the Choices file being updated and sent to the Contractor?</p> <p>The requirement to contain a <u>single case and only a single case</u> and for the Contractor to create a case for any inquiry regardless of LTSS status, will require the caller to provide definitive identification information such as SSN in order to avoid creating a case for a member that subsequently enrolls in LTSS with a name variation and/or address change. Please confirm you are agreeable to the contractor requiring a mutually agreed upon form of identification in order to answer any inquiries.</p>	
11.	Contract: Section A: Scope		<p><u>A.7 ERCMS</u></p> <p>a. General Requirements. The Contractor shall create, update, and maintain a single ERCMS in a format approved by TennCare. TennCare employees and Key Staff shall be able to remotely access any and all content and functions in the ERCMS. All data stored in the ERCMS shall be available to TennCare in real time. The Contractor shall ensure that the ERCMS shall contain a single case and only a single case for the following members:</p> <p>Q: Please confirm the eligibility data stored in the ERCMS does not need to be real time, as it is a file that would be received from TennCare and loaded to the ERCMS on a preset data submission schedule.</p> <p>Please confirm the claims data does not need to be real time, as the Contractor is required to query TennCare's MMIS upon notification of death.</p>	<p>The eligibility data in the ERCMS file will be considered current so long as it reflects the data on the most recent eligibility file that TennCare has made available to vendor.</p> <p>The claims data shall be maintained in real time from the date that TennCare transmits the eligibility file to the Vendor reflecting the members death.</p>

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12.	Contract – Section A: Scope		<p>A.7.b Required Fields for ERCMS. For each ERCMS case, the Contractor shall include the fields listed in the table below:</p> <p>Q: Please provide the changes that will be made to current layouts to support the additional data requirements.</p>	It is unclear what “additional data requirements” the question is referring to.
13.	Contract – Section A: Scope		<p>A.7. e. Call Recordings. The Contractor shall store a recording of every phone call related to the ERCMS case for the applicable member. All call recordings shall be saved to the ERCMS on the same business day that the call is made or received.</p> <p>Q; Will the state allow the use of the cloud for data storage?</p>	Yes, we allow use of cloud storage provided that it meets all relevant privacy and security control requirements such as use of encryption and access controls.
14.	Contract – Section A: Scope		<p>A.7. e. Call Recordings. The Contractor shall store a recording of every phone call related to the ERCMS case for the applicable member. All call recordings shall be saved to the ERCMS on the same business day that the call is made or received.</p> <p>Q: Will the State please advise how long the recordings need to be kept?</p> <p>Please provide the States’ interpretation of how the contractor will link calls from Attorneys, who inquire about multiple cases, to each case record while complying with privacy standards. Information about other decedents would then be available in a case record for which it does not apply. Would the State confirm that it is agreeable to a policy which requires State Attorneys and TennCare Staff to only discuss one case per call (to mitigate against these privacy issues) or is there another alternative the State would support?</p>	<p>1) For the length of the contract.</p> <p>2) If a call concerns multiple cases, the entire call should be saved to each member’s file. The State will not consider an alternative approach.</p>
15.	Contract - Section A: Scope		<p>A.7.g. Template File. The ERCMS shall have the ability to merge data from all data fields in the ERCMS into templates. The templates shall be stored in the ERCMS in a separate Template File for this purpose. The Template File will contain only the most recent version of each TennCare-approved Template. Initially, TennCare shall provide the Contractor with all forms for the Template File. Every written communication from the Contractor shall be merged from the Template File. Contractor shall update, add or remove letters in the Template File within two (2) business days of the date that TennCare requests in writing.</p> <p>Q: Would the State please provide examples of what they are describing here as “templates”?</p>	Examples are attached, see Attachment B.

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16.	Contract: Section A: Scope		<p>A.9 Telephone Services</p> <p>d. State Remote Access. State Remote Access. In addition, the Contractor shall provide the State and its designees with secure web-based, remote access to the Contractor's call recording and monitoring system and train designated staff on its use. The Contractor's system shall support recorded call searching capability at minimum by date and time, by name of Contractor's representative, or by incoming telephone number.</p> <p>e. State Direct Interface. The Contractor shall ensure that TennCare or its designee(s) may interface directly with the Contractor's call recording and monitoring system and obtain reports of any metric that is measured by Contractor's system.</p> <p>Q: Due to security requirements with live monitoring of calls via internet, would the state consider a nightly batch file of the calls recorded that day? Based on the nature of the calls, the ability to listen to calls within less than 24 hours of receipt will provide TennCare with the ability to oversee the call handling and provide direction and or feedback on the Contractor's performance.</p>	TennCare has considered the request, however, it is denied.
17.	Contract: Section A: Scope		<p>A.9 Telephone Services</p> <p>f. Call Recordings and Documentation. Call Recordings & Documentation. The Contractor shall document every call by placing a call note into the ERCMS. The Contractor shall ensure that call notes shall provide a comprehensive summary of the call and be legible and understandable to TennCare. Call recordings shall be saved to the appropriate case in the ERCMS, pursuant to the instructions outlined in Section A.7.</p> <p>Q: As indicated in the question for A.7.e., storing a recorded call on an individual case record when it potentially contains information about other cases may cause a privacy violation when subject to discovery or when records are provided to a party who does not have the proper authority. Please advise if the State will be agreeable to only allowing 1 case per call from Attorneys or State Staff or provide additional direction as to how to accommodate these recordings.</p>	If a call concerns multiple cases, the entire call should be saved to each member's file. The State will not consider an alternative approach.

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18.	Contract: Section A: Scope		<p>A.11 Check for Open Probate. The Contractor shall develop a plan, to check for probate cases, that have been opened for deceased members that received LTSS. For each deceased member, the Contractor shall telephone the probate court in the County of the last known residence according to the MMIS. The probate check shall occur no sooner than the 100th day after TennCare notifies the contractor of the of death and The Contractor shall develop a plan, to check for probate cases, that have been opened for deceased members that received LTSS. For each deceased member, the Contractor shall telephone the probate court in the County of the last known residence according to the MMIS. The probate check shall occur no sooner than the 100th day after TennCare notifies the contractor of the of death and no later than the 170th day after death. The Contractor shall record the date and time of the phone call to the probate court in the ERCMS. The contractor shall notate the County that is contacted in ERCMS.</p> <p>If the Contractor locates a Tennessee real estate asset that is located in a different county from the county of last known residence according to MMIS, then Contractor shall also telephone the probate Court located in the same county as the realty and inquire whether probate has been opened. The probate check shall occur no sooner than the 100th day after TennCare notifies the contractor of the of death and no later than the 170th day after death. The Contractor shall record the date and time of the phone call to the probate court in the ERCMS. The contractor shall notate the County that is contacted in ERCMS.</p> <p>Q: Will the State please provide how the State would like the Contractor to proceed if the county court is unresponsive to the call from the Contractor?</p>	The Vendor should continue to call until they make contact with the court. As described in the contract, the Vendor should record the date and time of the phone call and make a notation of their attempts in the ERCMS.
19.	Contract Section A: Scope		A.11, f. Asset Search. The Contractor shall complete an asset search on each deceased member. The Contractor shall review TennCare's records including MMIS, TEDS and other systems to determine if the member reported any assets to TennCare. Contractor, at its own expense, shall utilize Thomson Reuters, Lexis-Nexis or a similar asset search company. The Contractor shall ensure that the search results are saved in a manner that allows TennCare to see the actual returned results from the asset search company. The	The State will not provide access to these systems.

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			<p>Contractor shall ensure that the results of the asset search are saved to the ERCMS. TennCare shall have the right to approve or disapprove of any company chosen by the Contractor to perform the asset search. The Contractor shall complete the asset search within forty-five (45) calendar days of the date of death, or within five (5) business days of a request by TennCare, whichever is sooner.</p> <p>Q: Will the State provide the Contractor access to the State's systems (example, ACCENT, Clear, etc.) to supplement the Contractor's research for potential assets including those identified during the eligibility process?</p>	
20.	Contract: Section A: Scope		<p>A.11 Processing Estate Recover Cases</p> <p>i. Probate Case Referrals. Contractor shall refer probate cases to TennCare within five (5) business days of learning that probate was opened. In the event that Contractor learns of probate being opened in a case that was previously referred to TennCare for any reason, Contractor shall notify TennCare of the probate case within five (5) business days of learning that probate was opened. If probate has not been opened within 180 calendar days of death, Contractor shall refer the file to TennCare. The referral shall be made no sooner than the 180th calendar day after the date of death and no later than the 190th calendar day after death.</p> <p>If Contractor receives any documents regarding a case that has been referred (or otherwise transferred) to TennCare, Contractor shall save the document to the ER CMS and transmit the document to TennCare on the same business day that the document was received.</p> <p>Q: Please confirm that an asset must be identified before a case is referred to TennCare if probate has not been opened within 180 calendar days of death.</p>	All cases must be referred to TennCare regardless of whether the vendor locates assets.
21.	Contract: Section D: Mandatory Terms and Conditions		D.6 Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess	TennCare has considered the request, however, it is denied.

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			<p>of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.</p> <p>Q: Given the complexity of the requirements in this RFP, it is possible that failures to perform could be resultant from easily fixable errors if Contractor is informed of the defect. Accordingly, would the State consider a cure period of at least thirty (30) days in the event Contractor fails to properly perform its obligations?</p>	
22.	Contract: Section D: Mandatory Terms and Conditions		<p>D.32 Insurance.</p> <p>The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.</p> <p>Q: Contractor requests clarification of the statement in Section D.32 of the attached “Contract between the State of Tennessee, Department of Finance and Administration, Division of TennCare and Contractor Name” that “The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor...”</p> <p>Does this prohibit respondent from reducing its coverage during the course of the contract, even while abiding by the minimum required policy limits?</p>	<p>D.32 states that The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater</p> <p>As long as the minimum insurance requirements stated in this Contract are being met and the Contractor provides notice of those changes being made then they would be in compliance with the Contract.</p>
23.	Contract: Attachment D: HIPAA		OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Privacy Rule)	This would require further details as to the proposed use of the deidentified information. TennCare can approve it on a case by case

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	Business Associate Agreement		<p>Q: Would the State consider revising the permitted uses of PHI authorized in Section 2 to include de-identification of PHI in accordance with the standards set forth in 45 C.F.R. § 164.514(b)? Such use is explicitly authorized by HIPAA, does not endanger patient confidentiality, and will allow contractors to use TennCare information to continuously improve the quality of services provided to TennCare.</p>	<p>basis, but will not grant blanket permission to use de-identified information.</p>
24.	Attachment B 1.		<p>PROGRAM ISSUE: The Contractor failed to meet the implementation deadlines in Section A.6.1-4 of the Contract.</p> <p>DAMAGE: \$100,000 for each deadline that the Contractor fails to meet.</p> <p>Q: Concern exists that this liquidated damages amount is not a reasonable estimate of damage to the State related to this issue, but instead is an improper penalty provision. Excessive liquidated damages penalties are not permitted under Tennessee law and could harm the ability of bidders to offer competitive pricing to the State. Please provide clarification on how the State has calculated \$100,000 to be a reasonable estimate of harm associated with the implementation deadlines specified in A.6.1-4. Would the length of the delay be considered into the application of the \$100,000 in damages, and if so, what measurement would the State use to determine the impact? Would the State consider revisions to these amounts or approach to bring them more in line with actual harm to the State associated with the listed events?</p>	<p>TennCare has considered its experience, the terms of the contract and the impact that a contractor's breach would have on the division and its mission.</p> <p>TennCare has concluded, under the totality of the circumstances, that the amount(s) applicable to this event are appropriate amount(s) for the estimate of the liquidated damages for this procurement. The liquidated damages provided in the <i>pro forma</i> contract in Attachment 6.6. are not penalties but a reasonable estimate of the damages to TennCare.</p> <p>All respondents must sign the Statement of Certifications and Assurances, which includes acceptance of <u>all</u> the terms and conditions of the <i>pro forma</i> contract provided in Attachment 6.6., which includes acceptance of the terms and conditions for liquidated damages. See also the response to Question and Comment No. 3. above.</p>
25.	Attachment B 2.		<p>PROGRAM ISSUE: The Contractor failed to timely deliver a check to pay filing fees and court costs as set forth in Section A.4. of the Contract.</p> <p>DAMAGE: \$150 per day for each check that is late, until said performance or compliance has been resolved.</p> <p>Q: Concern exists that this liquidated damages amount is not a reasonable estimate of damage to the State related to this issue, but instead is an improper penalty provision. Excessive liquidated damages penalties are not permitted under Tennessee law and could harm the ability of bidders to offer competitive pricing to the State. Please provide clarification on how the State has calculated \$150 per day per check to be a reasonable estimate of harm associated with a delay in delivering a filing fee as specified in A.4. Would the State consider</p>	<p>TennCare has considered its experience, the terms of the contract and the impact that a contractor's breach would have on the division and its mission.</p> <p>TennCare has concluded, under the totality of the circumstances, that the amount(s) applicable to this event are appropriate amount(s) for the estimate of the liquidated damages for this procurement. See the answers to Questions and Comments in No. 3 and No. 24 above.</p>

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			<p>revisions to these amounts or approach to bring them more in line with actual harm to the State associated with the listed events?</p>	
26.	Attachment B 3.		<p>PROGRAM ISSUE: The Contractor failed to create an ERCMS Case set forth in Section A.7. of the Contract.</p> <p>DAMAGE: \$250 per day late for each case, until said performance or compliance has been resolved.</p> <p>Q: Concern exists that this liquidated damages amount is not a reasonable estimate of damage to the State related to this issue, but instead is an improper penalty provision. Excessive liquidated damages penalties are not permitted under Tennessee law and could harm the ability of bidders to offer competitive pricing to the State. Please provide clarification on how the State has calculated \$250 per day per case to be a reasonable estimate of harm associated with a delay in creating an ERCMS Case per Section A.7 of the contract. Would the State consider revisions to these amounts or approach to bring them more in line with actual harm to the State associated with the listed events?</p>	<p>TennCare has considered its experience, the terms of the contract and the impact that a contractor's breach would have on the division and its mission.</p> <p>TennCare has concluded, under the totality of the circumstances, that the amount(s) applicable to this event are appropriate amount(s) for the estimate of the liquidated damages for this procurement. See the answers to Questions and Comments in No. 3 and No. 24 above.</p>
27.	Attachment B 4. Attachment A and A.12		<p>PROGRAM ISSUE: The Contractor failed to timely or properly create or modify, as applicable, the required fields for an ERCMS case, as set forth in Section A.7.b. of the Contract.</p> <p>DAMAGE: \$1,000 per day for each day late for each field, until said performance or compliance has been resolved.</p> <p>Q: Concern exists that this liquidated damages amount is not a reasonable estimate of damage to the State related to this issue, but instead is an improper penalty provision. Excessive liquidated damages penalties are not permitted under Tennessee law and could harm the ability of bidders to offer competitive pricing to the State. Please provide clarification on how the State has calculated \$1000 per day per field to be a reasonable estimate of harm associated with the timely creation of fields in ERCMS per Section A.7.b. of the contract. Would the State consider revisions to these amounts or approach to bring them more in line with actual harm to the State associated with the listed events?</p> <p>A.7.b - Creation of Fields in ERCMS. Contractor shall create 100% of the required fields in the ERCMS within the timeframe indicated in A.7.b. If Contractor fails to comply,</p>	<p>TennCare has considered its experience, the terms of the contract and the impact that a contractor's breach would have on the division and its mission.</p> <p>TennCare has concluded, under the totality of the circumstances, that the amount(s) applicable to this event are appropriate amount(s) for the estimate of the liquidated damages for this procurement. Liquidated Damages and Performance Guarantees are used for entirely separate purposes by the State. Under no circumstance would the State apply Performance Guarantee withholds and Liquidated Damages for the same performance issue.</p> <p>The State will not consider an alternative approach.</p> <p>See the answers to Questions and Comments in No. 3 and No. 24 above.</p>

No.	RFP SECTION	PAGE #	QUESTION / COMMENT	STATE RESPONSE
	Performance Guarantee		<p>then Contractor shall reduce its total invoice by five percent (5%). A.7.b At any time during the contract, TennCare may request that the Contractor create additional fields or make changes to a field. The Contractor shall create or modify the fields within forty-five (45) calendar days of the date that TennCare requests creation or modification.</p> <p>Q: Performance Guarantee This performance guarantee appears to be in addition to and thus duplicative of the liquidated damages amount set forth in Attachment B.4. Please clarify how the performance guarantee of 5% for creation of 100% of the fields in ERCMS compensates for a different loss or harm to the State than the liquidated damages set forth in Attachment B.4. Will the state apply both liquidated damages and performance guarantees to the same issue? In addition, please provide clarification or explanation on how the State has calculated a 5% invoice reduction to be a reasonable estimate of harm or loss associated with the field creation requirement. Would the State consider revisions to these amounts or approach to bring them more in line with actual harm to the State associated with the listed events?</p>	
28.	Attachment B 5.		<p>PROGRAM ISSUE: The Contractor failed to comply with Document, Email, and Notation Retention requirements, as set forth in Section A.7.d of the Contract. DAMAGE: \$250 per day for each field or document that is late, until said performance or compliance has been resolved.</p> <p>Q: Concern exists that this liquidated damages amount is not a reasonable estimate of damage to the State related to this issue, but instead is an improper penalty provision. Excessive liquidated damages penalties are not permitted under Tennessee law and could harm the ability of bidders to offer competitive pricing to the State. Please provide clarification on how the State has calculated \$250 per day per each field or document as a reasonable estimate of harm associated with a delay per Section A.7.d. of the contract. Would the State consider revisions to these amounts or approach to bring them more in line with actual harm to the State associated with the listed events?</p>	<p>TennCare has considered its experience, the terms of the contract and the impact that a contractor's breach would have on the division and its mission.</p> <p>TennCare has concluded, under the totality of the circumstances, that the amount(s) applicable to this event are appropriate amount(s) for the estimate of the liquidated damages for this procurement. See the answers to Questions and Comments in No. 3 and No. 24 above.</p>

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29.	Attachment B 6.		<p>PROGRAM ISSUE: The Contractor failed to store a phone call recording relating to an ERCMS case on the same business day that the call was made or received, as set forth in Section A.7.e. of the Contract.</p> <p>DAMAGE: \$250 per day for each call recording that is posted late, until said performance or compliance has been resolved.</p> <p>Q: Concern exists that this liquidated damages amount is not a reasonable estimate of damage to the State related to this issue, but instead is an improper penalty provision. Excessive liquidated damages penalties are not permitted under Tennessee law and could harm the ability of bidders to offer competitive pricing to the State. Please provide clarification on how the State has calculated \$250 per day / per call recording to be a reasonable estimate of harm associated with a delay in posting to the ERCMS per Section A.7.e. of the contract. Would the State consider revisions to these amounts or approach to bring them more in line with actual harm to the State associated with the listed events?</p>	<p>TennCare has considered its experience, the terms of the contract and the impact that a contractor's breach would have on the division and its mission.</p> <p>TennCare has concluded, under the totality of the circumstances, that the amount(s) applicable to this event are appropriate amount(s) for the estimate of the liquidated damages for this procurement. See the answers to Questions and Comments in No. 3 and No. 24 above.</p>
30.	Attachment B 7. Attachment A and A.12 Performance Guarantee		<p>PROGRAM ISSUE: The Contractor failed to update, add, or remove a template in the Template File, as set forth in Section A.7.g of the Contract.</p> <p>DAMAGE: \$1,000 per day per occurrence, until said performance or compliance has been resolved.</p> <p>Q: Concern exists that this liquidated damages amount is not a reasonable estimate of damage to the State related to this issue, but instead is an improper penalty provision. Excessive liquidated damages penalties are not permitted under Tennessee law and could harm the ability of bidders to offer competitive pricing to the State. Please provide clarification on how the State has calculated \$1000 per day per field to be a reasonable estimate of harm associated with timely updates to the Template file per Section A.7.g. of the contract. Would the State consider revisions to these amounts or approach to bring them more in line with actual harm to the State associated with the listed events?</p> <p>A.7.g - Template File. Contractor shall create 100% of the requested Templates within the timeframe indicated in A.7.g. If Contractor fails</p>	<p>TennCare has considered its experience, the terms of the contract and the impact that a contractor's breach would have on the division and its mission.</p> <p>TennCare has concluded, under the totality of the circumstances, that the amount(s) applicable to this event are appropriate amount(s) for the estimate of the liquidated damages for this procurement. Liquidated Damages and Performance Guarantees are used for entirely separate purposes by the State. Under no circumstance would the State apply Performance Guarantee withholds and Liquidated Damages for the same performance issue.</p> <p>The State will not consider an alternative approach.</p> <p>See the answers to Questions and Comments in No. 3 and No. 24 above.</p>

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			<p>to comply, then Contractor shall reduce its total invoice by five percent (5%).</p> <p>A.7.g - Contractor shall update, add or remove letters in the Template File within two (2) business days of the date that TennCare requests in writing.</p> <p>Q: Performance Guarantee This performance guarantee appears to be in addition to and thus duplicative of the liquidated damages amount set forth in Attachment B.7. Please clarify how the performance guarantee of 5% for updating the template file compensates for a different loss or harm to the State than the liquidated damages set forth in Attachment B.7. Will the state apply both liquidated damages and performance guarantees to the same issue? In addition, please provide clarification or explanation on how the State has calculated a 5% invoice reduction to be a reasonable estimate of harm or loss associated with the updating letter templates file requirement. Would the State consider revisions to these amounts or approach to bring them more in line with actual harm to the State associated with the field creation requirement?</p>	
31.	Attachment B 8.		<p>PROGRAM ISSUE: The Contractor failed to use the most recent version of a TennCare approved template in one its communications, as set forth in Section A.7.g. of the Contract.</p> <p>Q: Concern exists that this liquidated damages amount is not a reasonable estimate of damage to the State related to this issue, but instead is an improper penalty provision. Excessive liquidated damages penalties are not permitted under Tennessee law and could harm the ability of bidders to offer competitive pricing to the State. Please provide clarification on how the State has calculated \$1000 per occurrence to be a reasonable estimate of harm associated with failing to use most recent approved template per Section A.7.g. of the contract. Would the State consider revisions to these amounts or approach to bring them more in line with actual harm to the State associated with the listed events?</p>	<p>TennCare has considered its experience, the terms of the contract and the impact that a contractor's breach would have on the division and its mission.</p> <p>TennCare has concluded, under the totality of the circumstances, that the amount(s) applicable to this event are appropriate amount(s) for the estimate of the liquidated damages for this procurement. See the answers to Questions and Comments in No. 3 and No. 24 above.</p>
32.	Attachment B 9.		<p>PROGRAM ISSUE: The Contractor failed to timely post a payment within one (1) business day following receipt, as set forth in Section A.7.i. of the Contract.</p> <p>DAMAGE: \$250 per day per occurrence, until said performance or compliance has been resolved.</p>	<p>TennCare has considered its experience, the terms of the contract and the impact that a contractor's breach would have on the division and its mission.</p> <p>TennCare has concluded, under the totality of the circumstances, that the amount(s) applicable to this event are appropriate</p>

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			<p>Q: Concern exists that this liquidated damages amount is not a reasonable estimate of damage to the State related to this issue, but instead is an improper penalty provision. Excessive liquidated damages penalties are not permitted under Tennessee law and could harm the ability of bidders to offer competitive pricing to the State. Please provide clarification on how the State has calculated \$250 per occurrence to be a reasonable estimate of harm associated with a 1-day delay in posting a payment per Section A.7.i of the contract. Would the State consider revisions to these amounts or approach to bring them more in line with actual harm to the State associated with the listed events?</p>	<p>amount(s) for the estimate of the liquidated damages for this procurement. See the answers to Questions and Comments in No. 3 and No. 24 above.</p>
33.	Attachment B 10.		<p>PROGRAM ISSUE: The Contractor failed to update the payment record on an individual case within one (1) business day following receipt of a list of payments from TennCare, as set forth in Section A.7.i of the Contract.</p> <p>DAMAGE:\$250 per day for each posting that is late, until said performance or compliance has been resolved.</p> <p>Q: Concern exists that this liquidated damages amount is not a reasonable estimate of damage to the State related to this issue, but instead is an improper penalty provision. Excessive liquidated damages penalties are not permitted under Tennessee law and could harm the ability of bidders to offer competitive pricing to the State. Please provide clarification on how the State has calculated \$250 per day / per posting to be a reasonable estimate of harm associated with a delay in posting per Section A.7.i. of the contract. Would the State consider revisions to these amounts or approach to bring them more in line with actual harm to the State associated with the listed events?</p>	<p>TennCare has considered its experience, the terms of the contract and the impact that a contractor's breach would have on the division and its mission.</p> <p>TennCare has concluded, under the totality of the circumstances, that the amount(s) applicable to this event are appropriate amount(s) for the estimate of the liquidated damages for this procurement. See the answers to Questions and Comments in No. 3 and No. 24 above.</p>
34.	Attachment B 11.		<p>PROGRAM ISSUE: The Contractor failed to make updates to the ERCMS, as applicable, in real-time, as set forth in Section A.7.j of the Contract.</p> <p>DAMAGE:\$250 per occurrence, until said performance or compliance has been resolved.</p> <p>Q: Concern exists that this liquidated damages amount is not a reasonable estimate of damage to the State related to this issue, but instead is an improper penalty provision. Excessive liquidated damages penalties are not permitted under Tennessee law and could harm the ability of bidders to offer competitive pricing to the State. Please provide clarification on how the State has calculated \$250 per</p>	<p>TennCare has considered its experience, the terms of the contract and the impact that a contractor's breach would have on the division and its mission.</p> <p>TennCare has concluded, under the totality of the circumstances, that the amount(s) applicable to this event are appropriate amount(s) for the estimate of the liquidated damages for this procurement. See the answers to Questions and Comments in No. 3 and No. 24 above.</p>

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			<p>a different loss or harm to the State than the liquidated damages set forth in Attachment B.12. Will the state apply both liquidated damages and performance guarantees to the same issue?</p> <p>In addition, please provide clarification or explanation on how the State has calculated a 5% invoice reduction to be a reasonable estimate of harm or loss associated with timely creation of 100% of the Report Templates. Would the state consider revisions to this negative incentive provision to bring it more in line with actual harm to the State associated with field creation requirement?</p>	
36.	Attachment B 13.		<p>PROGRAM ISSUE: The Contractor failed to timely submit a Monthly Report to TennCare, as set forth in Section A.8.d.of the Contract.</p> <p>DAMAGE: \$2,000 per day for each report that is late, until said performance or compliance has been resolved.</p> <p>Q: Concern exists that this liquidated damages amount is not a reasonable estimate of damage to the State related to this issue, but instead is an improper penalty provision. Excessive liquidated damages penalties are not permitted under Tennessee law and could harm the ability of bidders to offer competitive pricing to the State. Please provide clarification on how the State has calculated \$2000 per day /per report to be a reasonable estimate of harm associated with a delay in delivering a report as set forth in A.8.d. of the contract. Would the State consider revisions to these amounts or approach to bring them more in line with actual harm to the State associated with the listed events?</p>	<p>TennCare has considered its experience, the terms of the contract and the impact that a contractor's breach would have on the division and its mission.</p> <p>TennCare has concluded, under the totality of the circumstances, that the amount(s) applicable to this event are appropriate amount(s) for the estimate of the liquidated damages for this procurement. See the answers to Questions and Comments in No. 3 and No. 24 above.</p>
37.	Attachment B 14.		<p>PROGRAM ISSUE: The Contractor failed to comply with a Telephone Service Metric, as set forth in Section A.10 of the Contract.</p> <p>DAMAGE: \$5,000 per week for each call metric that is deficient during that week, until said performance or compliance has been resolved.</p> <p>Q: Concern exists that this liquidated damages amount is not a reasonable estimate of damage to the State related to this issue, but instead is an improper penalty provision. Excessive liquidated damages penalties are not permitted under Tennessee law and could harm the ability of bidders to offer competitive pricing to the State. Please provide clarification on how the State has calculated \$5000 per week per call metric to be a reasonable</p>	<p>TennCare has considered its experience, the terms of the contract and the impact that a contractor's breach would have on the division and its mission.</p> <p>TennCare has concluded, under the totality of the circumstances, that the amount(s) applicable to this event are appropriate amount(s) for the estimate of the liquidated damages for this procurement. See the answers to Questions and Comments in No. 3 and No. 24 above.</p>

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			<p>estimate of harm associated with Section A.10. of the contract. Would the amount of the deficiency be considered into the application of the \$5000 in damages, and if so, what measurement would the State use to determine the impact? Would the State consider revisions to these amounts or approach to bring them more in line with actual harm to the State associated with the listed events?</p>	
38.	Attachment B 15.		<p>PROGRAM ISSUE: The Contractor failed to timely mail a Condolence Letter, as set forth in Section A.11.b of the Contract.</p> <p>DAMAGE: \$250 per day for each letter that is late, until said performance or compliance has been resolved.</p> <p>Q: Concern exists that this liquidated damages amount is not a reasonable estimate of damage to the State related to this issue, but instead is an improper penalty provision. Excessive liquidated damages penalties are not permitted under Tennessee law and could harm the ability of bidders to offer competitive pricing to the State. Please provide clarification on how the State has calculated \$250 per day per letter to be a reasonable estimate of harm associated with a delay in mailing a condolence letter as set forth in A.11.b. of the contract. Would the State consider revisions to these amounts or approach to bring them more in line with actual harm to the State associated with the listed events?</p>	<p>TennCare has considered its experience, the terms of the contract and the impact that a contractor's breach would have on the division and its mission.</p> <p>TennCare has concluded, under the totality of the circumstances, that the amount(s) applicable to this event are appropriate amount(s) for the estimate of the liquidated damages for this procurement. See the answers to Questions and Comments in No. 3 and No. 24 above.</p>
39.	Attachment B 16.		<p>PROGRAM ISSUE: The Contractor failed to timely comply with requirements relating to MMIS Queries and Production of Claim Itemizations, as set forth in Section A.11.c of the Contract.</p> <p>DAMAGE: \$500 per day per occurrence, until said performance or compliance has been resolved.</p> <p>Q: Concern exists that this liquidated damages amount is not a reasonable estimate of damage to the State related to this issue, but instead is an improper penalty provision. Excessive liquidated damages penalties are not permitted under Tennessee law and could harm the ability of bidders to offer competitive pricing to the State. Please provide clarification on how the State has calculated \$500 per day per occurrence to be a reasonable estimate of harm associated with a timely completion of 100% of required MMIS Queries and claim itemizations as set forth in A.11.c. of the contract. Would the State consider revisions to these amounts or approach to bring them</p>	<p>TennCare has considered its experience, the terms of the contract and the impact that a contractor's breach would have on the division and its mission.</p> <p>TennCare has concluded, under the totality of the circumstances, that the amount(s) applicable to this event are appropriate amount(s) for the estimate of the liquidated damages for this procurement.</p> <p>Liquidated Damages and Performance Guarantees are used for entirely separate purposes by the State. Under no circumstance would the State apply Performance Guarantee withholds and Liquidated Damages for the same performance issue.</p> <p>The State would not consider an alternative approach.</p>

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	Attachment A and A.12 Performance Guarantee		<p>more in line with actual harm to the State associated with the listed events?</p> <p>A.11.c - MMIS Queries and Production of Claim Itemizations. Contractor shall complete 100% of the required MMIS Queries and Production of Claim Itemizations within the timeframe indicated in A.11.c. If Contractor fails to comply, then Contractor shall reduce its total invoice by five percent (5%).</p> <p>A.11.c MMIS Queries and Production of Claim Itemizations. Contractor shall query TennCare's MMIS, obtain an itemization of LTSS Charges, save the itemization to the members ERCMS file, and populate the Claim Amount field in the ERCMS. Contractor shall complete this task within forty-five (45) business days of the date that TennCare notifies Contractor of the member's death or within five (5) business days of a request by TennCare, whichever is sooner.</p> <p><i>Q: Performance Guarantee</i> This performance guarantee appears to be in addition to and thus duplicative of the liquidated damages amount set forth in Attachment B.16. Please clarify how the performance guarantee of 5% for timely completion of 100% of required MMIS queries and claim itemizations compensates for a different loss or harm to the State than the liquidated damages set forth in Attachment B.16. Will the state apply both liquidated damages and performance guarantees to the same issue? In addition, please provide clarification or explanation on how the State has calculated a 5% invoice reduction to be a reasonable estimate of harm or loss associated with timely creation of 100% of the required MMIS queries and claim itemizations. Would the state consider revisions to this negative incentive provision to bring it more in line with actual harm to the State associated with MMIS query and claim itemization requirement?</p>	See the answers to Questions and Comments in No. 3 and No. 24 above.
40.	Attachment B 17.		<p>PROGRAM ISSUE: The Contractor failed to timely release a claim that is under \$10,000, as set forth in Section A.11.d of the Contract.</p> <p>DAMAGE: \$250 per day for each release that is late, until said performance or compliance has been resolved.</p> <p><i>Q: Concern exists that this liquidated damages amount is not a reasonable estimate of damage to the State related to this issue, but instead is an improper penalty provision.</i></p>	<p>TennCare has considered its experience, the terms of the contract and the impact that a contractor's breach would have on the division and its mission.</p> <p>TennCare has concluded, under the totality of the circumstances, that the amount(s) applicable to this event are appropriate amount(s) for the estimate of the liquidated damages for this procurement. See the answers to Questions and Comments in No. 3 and No. 24 above.</p>

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			<p>Excessive liquidated damages penalties are not permitted under Tennessee law and could harm the ability of bidders to offer competitive pricing to the State. Please provide clarification on how the State has calculated \$250 per day to be a reasonable estimate of harm associated with a delay in releasing a claim under \$10,000 as set forth in A.11.d. of the contract. Would the State consider revisions to these amounts or approach to bring them more in line with actual harm to the State associated with the listed events?</p>	
41.	Attachment B 18.		<p>PROGRAM ISSUE: The Contractor failed to properly check for open probate, as set forth in Section A.11.e of the Contract.</p> <p>DAMAGE: \$250 per day for each probate check that is early (Q - in what situations might a probate check be early?) \$500 per day for each probate check that is late, until said performance or compliance has been resolved.</p> <p>Q: Concern exists that this liquidated damages amount is not a reasonable estimate of damage to the State related to this issue, but instead is an improper penalty provision. Excessive liquidated damages penalties are not permitted under Tennessee law and could harm the ability of bidders to offer competitive pricing to the State. Please provide clarification on how the State has calculated \$250 per day per probate check that is early and \$500 per day per probate check that is late to be a reasonable estimate of harm associated with untimely confirmation of probate as set forth in A.11.e. of the contract. Would the State consider revisions to these amounts or approach to bring them more in line with actual harm to the State associated with the listed events?</p>	<p>TennCare has considered its experience, the terms of the contract and the impact that a contractor's breach would have on the division and its mission.</p> <p>TennCare has concluded, under the totality of the circumstances, that the amount(s) applicable to this event are appropriate amount(s) for the estimate of the liquidated damages for this procurement. See the answers to Questions and Comments in No. 3 and No. 24 above.</p>
42.	Attachment B 19.		<p>PROGRAM ISSUE: The Contractor failed to timely complete an asset search, as set forth in Section A.11.f of the Contract.</p> <p>DAMAGE: \$250 per day for asset search that is late, until said performance or compliance has been resolved.</p> <p>Q: Concern exists that this liquidated damages amount is not a reasonable estimate of damage to the State related to this issue, but instead is an improper penalty provision. Excessive liquidated damages penalties are not permitted under Tennessee law and could harm the ability of bidders to offer competitive pricing to the State. Please provide clarification on how the State has calculated \$250 per day</p>	<p>TennCare has considered its experience, the terms of the contract and the impact that a contractor's breach would have on the division and its mission.</p> <p>TennCare has concluded, under the totality of the circumstances, that the amount(s) applicable to this event are appropriate amount(s) for the estimate of the liquidated damages for this procurement. See the answers to Questions and Comments in No. 3 and No. 24 above.</p>

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			<p>per asset search to be a reasonable estimate of harm associated with a delay in completing an asset search as set forth in A.11.f. of the contract. Would the State consider revisions to these amounts or approach to bring them more in line with actual harm to the State associated with the listed events?</p>	
43.	Attachment B 20.		<p>PROGRAM ISSUE: The Contractor failed to timely attach a completed title search to an ERCMS case, as set forth in Section A.11.g. of the Contract.</p> <p>DAMAGE: \$250 per day for each title search that is late, until said performance or compliance has been resolved.</p> <p>Q: Concern exists that this liquidated damages amount is not a reasonable estimate of damage to the State related to this issue, but instead is an improper penalty provision. Excessive liquidated damages penalties are not permitted under Tennessee law and could harm the ability of bidders to offer competitive pricing to the State. Please provide clarification on how the State has calculated \$250 per day per title search to be a reasonable estimate of harm associated with a delay in completing a title search as set forth in A.11.g. of the contract. Would the State consider revisions to these amounts or approach to bring them more in line with actual harm to the State associated with the listed events?</p>	<p>TennCare has considered its experience, the terms of the contract and the impact that a contractor's breach would have on the division and its mission.</p> <p>TennCare has concluded, under the totality of the circumstances, that the amount(s) applicable to this event are appropriate amount(s) for the estimate of the liquidated damages for this procurement. See the answers to Questions and Comments in No. 3 and No. 24 above.</p>
44.	Attachment B 21.		<p>PROGRAM ISSUE: The Contractor failed to timely mail a claim, review a claim for return, or transmit a filed claim, as set forth in Section A.11.h of the Contract.</p> <p>DAMAGE: \$1,000 per day for each mailing, review and transmittal that is late, until said performance or compliance has been resolved.</p> <p>Q: Concern exists that this liquidated damages amount is not a reasonable estimate of damage to the State related to this issue, but instead is an improper penalty provision. Excessive liquidated damages penalties are not permitted under Tennessee law and could harm the ability of bidders to offer competitive pricing to the State. Please provide clarification on how the State has calculated \$1000 per day for each mailing, review and transmittal to be a reasonable estimate of harm associated with a delay as set forth in A.11.h. of the contract. Would the State consider revisions to these amounts or approach to bring them</p>	<p>TennCare has considered its experience, the terms of the contract and the impact that a contractor's breach would have on the division and its mission.</p> <p>TennCare has concluded, under the totality of the circumstances, that the amount(s) applicable to this event are appropriate amount(s) for the estimate of the liquidated damages for this procurement. See the answers to Questions and Comments in No. 3 and No. 24 above.</p>

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			more in line with actual harm to the State associated with the listed events?	
45.	Attachment B 22.		<p>PROGRAM ISSUE: The Contractor failed to timely refer a probate case to TennCare, as set forth in Section A.11.i of the Contract.</p> <p>DAMAGE: \$250 per day for each probate referral that is late, until said performance or compliance has been resolved.</p> <p>Q: Concern exists that this liquidated damages amount is not a reasonable estimate of damage to the State related to this issue, but instead is an improper penalty provision. Excessive liquidated damages penalties are not permitted under Tennessee law and could harm the ability of bidders to offer competitive pricing to the State. Please provide clarification on how the State has calculated \$250 per day per each probate referral be a reasonable estimate of harm associated with a delay as set forth in A.11.i. of the contract. Would the State consider revisions to these amounts or approach to bring them more in line with actual harm to the State associated with the listed events?</p>	<p>TennCare has considered its experience, the terms of the contract and the impact that a contractor's breach would have on the division and its mission.</p> <p>TennCare has concluded, under the totality of the circumstances, that the amount(s) applicable to this event are appropriate amount(s) for the estimate of the liquidated damages for this procurement. See the answers to Questions and Comments in No. 3 and No. 24 above.</p>
46.	Attachment B 23.		<p>PROGRAM ISSUE: The Contractor failed to timely refer a non-probate case to TennCare, as set forth in Section A.11.i of the Contract.</p> <p>DAMAGE: \$250 per day for each non probate referral that is early or late, until said performance or compliance has been resolved.</p> <p>Q: Concern exists that this liquidated damages amount is not a reasonable estimate of damage to the State related to this issue, but instead is an improper penalty provision. Excessive liquidated damages penalties are not permitted under Tennessee law and could harm the ability of bidders to offer competitive pricing to the State. Please provide clarification on how the State has calculated \$250 per day per each non-probate referral be a reasonable estimate of harm associated with being early or late as set forth in A.11.i. of the contract. Would the State consider revisions to these amounts or approach to bring them more in line with actual harm to the State associated with the listed events?</p>	<p>TennCare has considered its experience, the terms of the contract and the impact that a contractor's breach would have on the division and its mission.</p> <p>TennCare has concluded, under the totality of the circumstances, that the amount(s) applicable to this event are appropriate amount(s) for the estimate of the liquidated damages for this procurement. See the answers to Questions and Comments in No. 3 and No. 24 above.</p>
47.	Attachment B 24.		PROGRAM ISSUE: The Contractor failed to timely or properly save a document to the ERCMS or failed to transmit a document to TennCare, as set forth in Section A.11.i of the Contract.	TennCare has considered its experience, the terms of the contract and the impact that a contractor's breach would have on the division and its mission.

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			<p>DAMAGE: \$250 per day for each document that is late, until said performance or compliance has been resolved.</p> <p>Q: Concern exists that this liquidated damages amount is not a reasonable estimate of damage to the State related to this issue, but instead is an improper penalty provision. Excessive liquidated damages penalties are not permitted under Tennessee law and could harm the ability of bidders to offer competitive pricing to the State. Please provide clarification on how the State has calculated \$250 per day per document a reasonable estimate of harm associated with a delay as set forth in A.11.i. of the contract. Would the State consider revisions to these amounts or approach to bring them more in line with actual harm to the State associated with the listed events?</p>	<p>TennCare has concluded, under the totality of the circumstances, that the amount(s) applicable to this event are appropriate amount(s) for the estimate of the liquidated damages for this procurement. See the answers to Questions and Comments in No. 3 and No. 24 above.</p>
48.	Attachment B 1st Paragraph 2b.		<p>b) assess liquidated damages against Contractor for an amount that is reasonable in relation to the Contract performance or compliance failure as measured at the time of discovery of the Contract performance or compliance failure. In the event that the State chooses to assess a Liquidated Damage for a Contract performance or compliance failure according to the immediately preceding sentence, in no event shall such Liquidated Damage be in excess of \$1,000 for any single Contract performance or compliance failure.</p> <p>Q: Please clarify the statement “in no event shall such liquidated Damage be in excess of \$1000 for any single contract performance or compliance failure”. How is single contract performance or compliance failure defined? Will this maximum apply per item identified or per the identified performance or compliance failure encompassing multiple items? How is this calculated as when the performance guarantee or liquidated damage amount stated exceeds \$1000.</p> <p>Would the State consider revisions to these provisions to allow for this liquidated damages provision to be interpreted with more precision?</p>	<p>Depending upon the performance or compliance issue, a single contract performance or compliance failure could be calculated per identified item or per occurrence.</p> <p>The paragraph referenced in this section is only used when a “performance or compliance failure” has not been addressed by Attachment B. Therefore, the liquidated damage would be by the terms of the contract.</p> <p>The State will not consider revisions to this provision.</p> <p>See the answers to Questions and Comments in No. 3 and No. 24 above.</p>
49.	Pro-Forma Contract – Section A.7 –ERCMS – pg. 7		<p>What data will a new contractor receive at the onset of the contract?</p> <ol style="list-style-type: none"> Will this include a transfer of data from current vendor ERCMS to include every living and deceased TennCare member that received LTSS at any time during the ten-year period preceding the Implementation Date, and every TennCare member that is receiving LTSS on the Implementation Date? 	<p>The contractor will receive the data identified in A.7.a.(1-2). With weekly data for newly enrolled members after the implementation date.</p> <ol style="list-style-type: none"> Yes.

No.	RFP SECTION	PAGE #	QUESTION / COMMENT	STATE RESPONSE
50.	Pro Forma Contract Section A.7 – ERCMS – pg. 7		a. Can the State confirm the number of users for the case management system? b. How many admin users will there be for the case management system? c. What type of user roles will be required to have access to the case management system? 1. Can the State provide a number of licenses required by role? d. How many cases are opened and resolved in a year?	a. TennCare will have between 10-20 users of the case management software. This number does not include any of the contractor's employees that will need access to the ERCMS. b. 3 c. Administrator (3), read-only (5-10), advanced operator (5-8). Specific provisions of the contract also require that certain functions be limited to only certain users (example, modifying the template and instruction file. d. The answer depends upon what is considered "opened and resolved." TennCare processed and pursued approximately 2300 cases through its case management system last year and closed approximately 1300 in the same year.
51.	Pro-Forma Contract – Section A.9 Telephone Services – pg. 10		a. What is the current vendor's monthly call volume, separated between inbound and outbound?	For March 2021, the current vendor had 549 incoming calls. For February 2021, the number was 305. The current vendor does not keep records of outbound calls.
52.	Pro-Forma Contract – Section E.21.a.4 – pg. 46		Would the State accept a summary report of an independent external penetration test and vulnerability assessment in lieu of the State performing these?	Yes
53.	Pro-Forma Contract – Sections E.21.a – pg. 45		Please confirm that "Confidential State Data" is limited to the data specific to this RFP.	Yes
54.	Pro-Forma Contract – Section E.21 – pg. 45		This section refers to "contractor hosted services." How is the term "hosted services" defined in context of this RFP?	This would include hosting on contractor premises or cloud hosting environment managed by contractor. (Anything not hosted in State managed environment.)
55.	RFP – Section 3.1.1.2 (Response Requirements) – pg. 6		For tables, charts, and graphics, is a smaller font permissible (than the required 12 pt font for text)?	See response to #1 above.
56.	RFP – Section 4.8 (Disclosure of Response Contents) – pg. 12		Please confirm that nothing in our proposals may be marked as confidential/trade secrets in order to be withheld from public release.	The State does not allow redacted proposals to be submitted in response to the RFP. As provided in Section 4.8, of the RFP, all response contents and associated documents and materials become the property of the State and are open to public

No.	RFP SECTION	PAGE #	QUESTION / COMMENT	STATE RESPONSE
				inspection in accordance with Tenn. Code Ann. 10-7-504(a)(7).
57.	RFP Section 2 (RFP Schedule of Events) – pg. 5		In order to assess the impact of the answers to questions on our proposed solution, would the State consider moving the proposal response deadline to May 28 (assuming Q&A is issued on May 5)?	Yes.
58.	RFP Attachment 6.2 Section B– Section B.15 (Commitment to Diversity) – pg. 21		a. Is there a small, veteran, minority, or women’s business enterprise subcontracting goal for this contract? b. Will additional points be awarded to proposers who identify subcontracting opportunities for an estimated percentage of participation for small, veteran, minority, or women’s business enterprises?	No.
59.	RFP Attachment 6.2 Section C – Section C.6 (Responses to A.9 and A.11) –pgs. 25 and 26		The designation of the number C.6 appears twice in this section. Should we renumber in our response to avoid the duplication?	See amended RFP Attachment 6.2 Technical Response & Evaluation Guide Section C, Item 3 below.
60.	RFP Attachment 6.4 – Reference Questionnaire – pg 35		This form lists Matt Brimm as the contact to whom to return the questionnaire. Is this correct or should his contact information be replaced with that of the Solicitation Coordinator Donovan Morgan (as noted in Attachment 6.2 (B.17: Email instructions)?	See amended Section of RFP Attachment 6.4 Reference Questionnaire, item 4 below.
61.	General		Can the State provide the following for 2020: <ul style="list-style-type: none"> • Number of Recovered Estates. • Total Recoveries (\$). • Average Recovery per Estate (\$). 	<ol style="list-style-type: none"> 1) 1036 (partial or full payment) 2) \$24,378,967.62 total calendar year 2020 recovery 3) \$23,531.82
62.	General		Can the State share the fees paid to the current vendor for estate recovery services? If exact dollar amounts are not available, can the State estimate the amount of the current fees that are dedicated to estate recovery (vs TPL)?	The fees paid to the current vendor are 10% of recoveries. The total fees for calendar year 2020 would be approximately \$2,437,896.76

3. Delete RFP Attachment 6.2 Section C, Technical Response & Evaluation Guide in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

RFP ATTACHMENT 6.2. — SECTION C

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION C: TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH. The Respondent must address all items (below) and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below.

A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the response to each item. Each evaluator will use the following whole number, raw point scale for scoring each item:

0 = little value 1 = poor 2 = fair 3 = satisfactory 4 = good 5 = excellent

The Solicitation Coordinator will multiply the Item Score by the associated Evaluation Factor (indicating the relative emphasis of the item in the overall evaluation). The resulting product will be the item's Raw Weighted Score for purposes of calculating the section score as indicated.

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
	C.1.	Provide a narrative that illustrates the Respondent's understanding of the State's requirements and project schedule.		3	
	C.2.	Provide a narrative that illustrates how the Respondent will complete the scope of services, accomplish required objectives, and meet the State's project schedule.		3	
	C.3.	Provide a narrative that illustrates how the Respondent will manage the project, ensure completion of the scope of services, and accomplish required objectives within the State's project schedule.		3	
	C.4.	Provide a narrative that illustrates how Respondent will perform the services required by Section A.4 Check Writing. This narrative should include the following: the process flow from start to finish, quality controls, methods of accounting, and person (by name or job title) responsible for completing each task, systems and software used to complete the task.		8	
	C.5.	Provide a narrative that illustrates how Respondent will create and maintain the ER CMS detailed in Section A.7. This narrative should identify all hardware that Respondent will utilize including the physical location (city and state) of any hardware and the method that the hardware will be accessed by Respondent's employees and TennCare's employees. This narrative should also identify all software that will be used by Contractor and shall identify any aspects of the system or data that the contractor claims is proprietary with sufficient legal documentation verifying its proprietary nature. In addition to the narrative, please include diagrams for the report modules, template module and note module. Also, describe the accounting methods that contract will use to track incoming payments and post them to the ERCMS.		8	
	C.6.	Provide a narrative that illustrate how Respondent will fulfill the requirements of section A.9. Include the number of employee hours that Contractor will budget for this task, the proposed physical location of the		8	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
		employees, a name and description of all hardware that will be used and the name and description of all software that will be used to fulfill this function.			
	C.7.	Provide a narrative of how Respondent shall fulfill the requirements of Section A.11. Include an outline of the process that Contractor will use to search for realty and order title reports, check for open probate, file claims as needed with Courts.		8	
	C.8.	<p>Provide a narrative of Respondents general quality control measures and specifically address proposed measures to avoid the following mistakes:</p> <ol style="list-style-type: none"> 1. Deliver a check outside the time required by section A.4. 2. Producing duplicate checks based on a single request. 3. Having multiple ERCMS cases open for a single member. 4. Failure to create a field with 45 days of a request. 5. Failure of an employee to document notes, events or record in the ERCMS in real time. 6. Failure of employee to document notes, events or records to the correct ERCMS case. 7. Failure to store a recording of any phone call to the ERCMS on the day that the call occurred. 8. Failure of Respondents employees to merge templates as required. 9. Failure of Respondent to submit any Monthly Report as required. 10. Failure of Respondent to meet call metrics. 11. Failure of an employee to document a call on the day the call occurred. 12. Failure of respondent to send condolence letter as required. 13. Failure of Respondent timely perform and document MMIS queries. 14. Failure of Respondent to timely open a case as required. 15. Failure of Respondent to timely mail a claim and follow-up on claim as required. 		9	
<i>The Solicitation Coordinator will use this sum and the formula below to calculate the section score. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i>			Total Raw Weighted Score:		
			<i>(sum of Raw Weighted Scores above)</i>		
Total Raw Weighted Score		X 50			
Maximum Possible Raw Weighted Score		<i>(maximum possible score)</i>	= SCORE:		
<i>(i.e., 5 x the sum of item weights above)</i>					

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
<i>State Use – Evaluator Identification:</i>					
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>					

4. Delete the following header Section of RFP Attachment 6.4, Reference Questionnaire in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

REFERENCE SUBJECT: RESPONDENT NAME (completed by Respondent before reference is requested)

The “reference subject” specified above, intends to submit a response to the State of Tennessee in response to the Request for Proposals (RFP) indicated. As a part of such response, the reference subject must include a number of completed and sealed reference questionnaires (using this form).

Each individual responding to this reference questionnaire is asked to follow these instructions:

- complete this questionnaire (either using the form provided or an exact duplicate of this document);
- sign and date the completed questionnaire and follow either process outlined below;

Physical:

- seal the completed, signed, and dated questionnaire in a new standard #10 envelope;
- sign in ink across the sealed portion of the envelope; and
- return the sealed envelope containing the completed questionnaire directly to the reference subject.

E-Mail:

- email the completed Questionnaire to Donovan Morgan at Donovan.Morgan2@tn.gov.

5. **RFP Amendment Effective Date.** The revisions set forth herein shall be effective upon release. All other terms and conditions of this RFP not expressly amended herein shall remain in full force and effect.