



November 10, 2016

## MEMORANDUM OF AGREEMENT

### I. Purpose and Scope:

This Memorandum of Agreement (MOA) establishes a working relationship between the U.S. Department of \_\_\_\_\_ (\_\_\_\_), Office of the Government (OG) (Requesting Agency) and the NIH Information Technology Acquisition and Assessment Center (NITAAC) (Servicing Agency). This MOA establishes minimum levels of management duty and responsibility for \_\_\_\_\_ and NITAAC. This agreement refers only to NIH contracts administered through the NITAAC Program, specifically the Government-wide Acquisition Contracts (GWACs) managed by the NITAAC Program; hereafter collectively referred to as the "contracts."

### II. Authority:

The Servicing Agency's authority to provide acquisition assistance is:

- 40 U.S.C. 11302(e)
- The Economy Act (31 USC 1535)

### III. Period of Agreement:

The terms and conditions of this agreement become effective when signed by authorized officials of both agencies and will remain effective through the end of the contracts period of performance, unless amended or terminated.

Renewal of this agreement may be initiated by either party, no later than one month prior to the expiration date. Renewal requires the signed agreement of both parties.

Notice of termination of this agreement may be issued by either party and shall be by written memorandum only.

If the Requesting Agency terminates the agreement due to cancellation of a requirement by a program official that is not re-started, a cancellation fee will be applied. The cancellation fee is \$65 per hour for all time spent by the servicing agency on any duties and responsibilities described in the section IV, Duties and Responsibilities, of this MOA.

If the Requesting Agency determines there is a need to expedite the scope of work outlined in section IV, Duties and Responsibilities, an additional fee of 25% will be assessed against the total acquisition support fee.

### IV. Duties and Responsibilities:

#### A. Acquisition Planning: *Determine needs and develop requirements document.*

##### Requesting Agency:

- i. Establish that a requirement exists.
- ii. Provide documentation to the Servicing Agency, which must be in the form of a Statement of Work (SOW), Statement of Objectives (SOO), Performance Work Statement (PWS), or a set of detailed specifications, that includes a specific, definite,

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and clear description of a bona fide need in the fiscal year that the funds are available for new obligations. The need must be adequately documented.

- iii. Initiate acquisition planning as soon as a need is identified and involve the Servicing Agency, as appropriate, in the planning process.

### **Servicing Agency:**

- i. Assist the Requesting Agency in refining the requirements document package, including the description of key project objectives, unique project requirements, and performance expectations.
- ii. Inform the Requesting Agency the number of Full Time Equivalent (FTEs) that will be devoted to the requirement. For the current procurement, it is estimated that \_\_\_\_ FTE(s) will be assigned.

### **B. Acquisition Planning: *Prepare a funding document.***

#### **Requesting Agency:**

- i. Work with the Servicing Agency to prepare a funding document. The Requesting Agency shall provide the following:
  - A. A description of the products or services required and the acquisition activities to be performed by the Servicing Agency that is adequate to demonstrate a bona fide need and can be recorded as an obligation (see 31 U.S.C. 1501, 1502). This description shall consist of a Statement of Work, a Statement of Objectives, a Performance Work Statement, or a set of detailed specifications, and must be included as an attachment. Modifications must identify the contract number, the purpose of the modification, and the estimated period of performance for the modification.
  - B. Information on performance or delivery requirements along with projected milestones;
  - C. Data required for the proper transfer and obligation of funds, including the expiration date of the funding; and
  - D. Information on any agency-unique acquisition restrictions or limitations applicable to the funding being provided.
- ii. For all funding documents executed under this MOA, assign a financial point of contact who is a “certifying official” as that term is defined at 10 U.S.C. § 2773a(d) (for a DOD activity) or as that term is used in 31 U.S.C. § 3528 (for a civilian activity). The funds certifying official shall:
  - A. Timely execute all financial documents required for a valid funding request (i.e., to show funding meets purpose, time, and amount);
    - i. Funding shall be provided for all funding actions at least 15-30 days prior to execution of contract action via FMS 7600 forms. Cognizant contracting official may amend the funding request timeframe.
  - B. Ensure funds are certified and legally available for the specified acquisition – in terms of purpose, time, and amount – for the specific acquisition; and

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- C. Accept unexpended funds upon completion of the project or upon the need to de-obligate.

### **Servicing Agency:**

- i. Work with the Requesting Agency to prepare a funding document.
- ii. Do not accept the funding document unless it: (i) identifies proper funds -- including the type of funds to be used, their period of availability, and a funds citation; (ii) identifies the funds certifying official along with his / her signature; and (iii) adequately describes a bona fide need of the Requesting Agency by attaching a draft SOW/SOO/PWS or set of specifications or by including an adequate description of a modification.
- iii. Help the Requesting Agency comply with the bona fide needs rule by:
  - A. Managing funds according to the Requesting Agency's guidance;
  - B. Recording transactions in a timely fashion; and
  - C. Implementing and exercising controls to ensure compliance with all applicable statutory and regulatory fiscal requirements.

### **C. Acquisition Planning: *Develop acquisition strategy.***

#### **Requesting Agency:**

- i. Provide the Servicing Agency with information on project objectives, deliverables, and schedule milestones.
- ii. Work with the Servicing Agency to:
  - A. Build on initial acquisition planning and market research that was conducted to finalize requirements documents (e.g., share any information gathered on product/service requirements, characteristics, acceptance criteria and any independent cost estimates) and establish a formal acquisition plan, where required; and
  - B. Ensure sufficient time has been built into the acquisition schedule to maximize competition and encourage contractors to provide quality offers.

#### **Servicing Agency:**

- i. Conduct and document market research.
- ii. Depending on the size and complexity of the acquisition, establish a formal acquisition plan with assistance from the Requesting Agency addressing technical, business, management and other significant considerations that will control the acquisition.
- iii. Select an appropriate award type based on the nature of the requirement and the associated risk.
- iv. Advise the Requesting Agency of the risk associated with the acquisition strategy and award type.
- v. Provide the Requesting Agency with an opportunity to concur on award type as well as with acquisition plan, when required.

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### **D. Acquisition Planning: *Prepare, or finalize, statement of work (SOW) and/or specifications.***

#### **Requesting Agency:**

- i. Work with the Servicing Agency to ensure
  - Requirements are clearly defined so offerors may make informed business decisions on whether to respond and perform the due diligence necessary to propose the best solutions; and
  - Suitable performance standards are established against which results may be effectively measured.
- ii. For awards with award fees, work with the Servicing Agency to develop appropriate award fee criteria and composition of the award fee board, if one is to be established.

#### **Servicing Agency:**

- i. Assist the Requesting Agency in finalizing its requirements documents as necessary after executing any funding document under this MOA, based on the initial SOW/SOO/PWS/specs provided with the MOA, discussions with the Requesting Agency stakeholders, -- including program and project managers, contracting, fiscal, legal, and others participating in the acquisition process – market research, and other acquisition planning efforts.
- ii. Ensure requirements are clearly defined and suitable performance standards are established against which results may be effectively measured.
- iii. Provide the Requesting Agency with an opportunity to concur on SOW/SOO/PWS/specs before finalizing.
- iv. For awards with award fees, develop award fee criteria that are tied to identifiable acquisition outcomes, defined in terms of cost, schedule, and performance outcomes.

### **E. Acquisition Planning: *Prepare or finalize Quality Assurance Surveillance Plan.***

#### **Requesting Agency:**

- i. Assist the Servicing Agency in developing the of requirements documents such as Statement of Work, Performance Work Statement and Determination and Finding. Assist the Servicing Agency in developing the Quality Assurance Surveillance Plan (QASP), where required, including identification of the work requiring surveillance and the method of surveillance.
- ii. Provide qualified and trained personnel (e.g., Contracting Officer's Representative) to perform monitoring where monitoring is required.

#### **Servicing Agency:**

- i. Ensure that the requirements document are clear and concise to further ensure the Requesting Agency receive quality responses.
- ii. Consult with the Requesting Agency to identify work requiring surveillance and the method of surveillance.

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- iii. Ensure the selected surveillance method, including costs and required resources, are appropriate for the risk associated with the acquisition.
  - iv. Consult with the Requesting Agency on the strategy for developing quality assurance (QA) documents (e.g., government develops QA Plan (QAP) as part of the SOW or QASP as part of PWS; offerors propose QASPs in response to SOO).
  - v. In preparing QA documents:
    - A. Consider drafts developed by the Requesting Agency.
    - B. If offerors are required to submit proposed QASPs, review the offer to ensure the plan meets the government's surveillance needs.
    - C. Review proposed QASPs with the Requesting Agency.
  - vi. Provide the Requesting Agency with an opportunity to concur on QASP or QAP before finalizing.
- F. Acquisition Planning: *Identify official to assist Contracting Officer with contract administration.***

### **Requesting Agency:**

- i. Provide qualified, trained, available, and willing individuals to be designated or appointed by the Servicing Agency Contracting Officer (CO) to serve as the Receiving Official or Contracting Officer's Representative (COR). The COR must be able to provide direct oversight of the work performed by the contractor. Identify qualified and trained fee determination officials for awards with award or incentive fees.
- ii. CORs must be qualified individuals with technical expertise and with appropriate acquisition training. All CORs must have a current certification issued by their parent agency that they have met all requirements of FAC-COR. The COR must maintain his or her certification throughout the period of the acquisition.
- iii. Ensure appointed individuals perform their duties as assigned (e.g., inspect work for compliance with award requirements; assess reasonableness of costs and expenditures on vouchers; make fee determination) and promptly report back to the Servicing Agency CO.
- iv. Provide alternate individuals within reasonable time should the appointed personnel provided by the Requesting Agency be found by the Servicing Agency CO to be unable or unavailable to perform the required duties.

### **Servicing Agency:**

- i. For each requirement, determine the required level of contract administration. For simple acquisitions, designate a Receiving Official from the Requesting Agency to accept delivery and verify invoice payment. For complex acquisitions, appoint a qualified and trained COR from the Requesting Agency before performance begins.
- ii. If the selected award-type involves a fee or incentive, appoint a fee determination official before performance begins.

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### **G. Contract Execution: *Comply with competition requirements.***

#### **Requesting Agency:**

- i. Ensure enough time is built into the acquisition strategy to foster competition (e.g. allow the servicing agency to develop reasonable response time considering the complexity, commerciality, availability, and urgency of need.)
- ii. Participate in the development of technical evaluation criteria.
- iii. If an exception to competition is required and justified (including exceptions to the fair opportunity process for GWACs/MACs and exceptions made under FAR Subpart 8.4 for MAS contracts), develop supporting rationale through market research and due diligence and provide appropriate documentation to the Servicing Agency.

#### **Servicing Agency:**

- i. Develop technical evaluation criteria in consultation with the Requesting Agency.
- ii. Seek competition unless an exception is justified and approved at the appropriate level.
- iii. Require the Requesting Agency to furnish supporting rationale and appropriate documentation to support an exception to competition.
- iv. Review sufficiency of justification and documentation before approving and proceeding with a non-competitive action.

### **H. Contract Execution: *Comply with customer-unique laws and policies.***

#### **Requesting Agency:**

- i. Apprise the Servicing Agency of all terms, conditions, and requirements to be incorporated into the award as necessary to comply with the statutes, regulations and directives that are unique to the Requesting Agency (e.g., funding restrictions, domestic source restrictions).
- ii. Provide information and timely clearance on security requirements applicable to the Requesting Agency's requirements or applicable to any award issued under the IA.

#### **Servicing Agency:**

- i. Ensure the Requesting Agency-unique laws or restrictions and data collection and reporting requirements that have been identified by the Requesting Agency are followed.
- ii. Work with the Requesting Agency to mutually agree to appropriate clauses addressing customer-unique laws and policies.

### **I. Contract Execution: *Ensure price reasonableness.***

#### **Requesting Agency:**

- i. Provide input to the Servicing Agency to assist in the determination of whether proposed prices are fair and reasonable.

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### **Servicing Agency:**

- i. Ensure appropriate price reasonableness and best value determination is conducted and documented at time of award. Consider the agreed-upon terms and conditions, promised quality, and delivery schedule. Request and consider any input from the Requesting Agency, including its independent cost estimate.

### **J. Contract Execution: *Conduct source evaluation and make award.***

#### **Requesting Agency:**

- i. Provide necessary resources for technical evaluation of offers and participation in activities that require technical expertise.
  - A. Participate in the development of technical evaluation criteria;
  - B. Attend oral presentations, technical evaluation discussions, and due diligence sessions; and
  - C. Conduct or assist with technical evaluations of offers.
- ii. Review the evaluation plan and have representation on the source evaluation board.
- iii. Provide the correct funding agency code needed for accurate reporting to the Federal Procurement Data System (FPDS).

#### **Servicing Agency:**

- i. Appoint the Source Selection Authority (SSA) and the Source Evaluation Board.
- ii. Ensure source evaluations are conducted fairly and offers are evaluated based solely on the factors and sub-factors in the solicitation. When necessary, lead oral presentations with contractors during the competition process.
- iii. Ensure award decisions are properly documented; including the rationale for any tradeoffs made or relied on by the SSA.
- iv. Consult with the Requesting Agency prior to making a final decision.
- v. Execute the award decision and debrief offerors as necessary.
- vi. Ensure the funding agency code provided by the Requesting Agency is entered into FPDS.

### **K. Contract Administration: *Conduct inspection, acceptance, and surveillance.***

#### **Requesting Agency:**

- i. Ensure deliverables are received in a timely manner and quality is acceptable. Inspect work for compliance with contract requirements. Within 30 calendar days of receipt, or another period as specified in the award, promptly reject work that does not comply with contract requirements, or accept work that meets the terms of the award, and immediately notify the Servicing Agency's CO.
- ii. Conduct appropriate surveillance, which may include site visits, pre-planned inspections, random unscheduled inspections, review of contractor reporting requirements (e.g., progress reports, shop plans, and blueprints), and periodic meetings with contractor officials.

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- iii. Perform duties in a timely manner in accordance with the QASP or QAP.
- iv. Advise the Servicing Agency's CO immediately of any circumstances that affect performance by the contractor, including failures to comply with technical requirements of the award or to show a commitment to customer satisfaction, particularly if the contractor does not make corrections.

### **Servicing Agency:**

- i. Ensure that personnel who have been appointed to perform contract administration are carrying out the responsibilities related to inspection, acceptance, and surveillance and reporting back in a timely manner.
- ii. Ensure appropriate surveillance is conducted. The type and extent of surveillance should be commensurate with the criticality of the service or task and the resources available to accomplish the surveillance. Surveillance should ensure that the government receives the value for which it contracted.
- iii. Work with Requesting Agency, as necessary, to identify respective roles for other applicable contract administration responsibilities identified in FAR 42.302.
- iv. Take appropriate and timely actions to address performance problems. Typically, problems will be identified by a COR.

### **L. Contract Administration: *Evaluate the merits of proposed contract modifications.***

#### **Requesting Agency:**

- i. Work with the Servicing Agency to evaluate proposals for changes. If requested by the Servicing Agency's CO, participate in negotiation of changes, modifications, and claims.
- ii. Ensure the Requesting Agency is not authorizing work (making commitments or promises, issuing instructions to start or stop work, directing changes), changing any contractual documents, modifying the scope of work (including the period of performance), authorizing accrual of costs, or otherwise providing direction to the contractor, except as expressly authorized in the appointment by the Servicing Agency's CO.

#### **Servicing Agency:**

- i. Work with the Requesting Agency to evaluate proposals for changes.
- ii. Ensure that any modifications to the requirements or price of the award remain within the overall scope of the original award.
- iii. Work with the Requesting Agency to develop funding documents to cover modifications.

### **M. Contract Administration: *Prepare contractor performance evaluations.***

#### **Requesting Agency:**

- i. Track, measure, and report to the Servicing Agency CO on the performance of the contractor.

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- ii. Assist in the preparation of formal contractor performance evaluations (both final and interim) for each award that exceeds \$150,000 at the time that work is completed.

### **Servicing Agency:**

- i. Evaluate the contractor's performance, taking into consideration data provided by (a) the COR and (b) the end users from the Requesting Agency when the appointed COR is not an end user.
- ii. Provide evaluations to the contractor as soon as practicable after completion of the evaluation. Review performance with the contractor in accordance with FAR 42.1502.
- iii. Document performance in the contract file. The ultimate conclusion on the performance evaluation is a responsibility of the Servicing Agency.
- iv. Input data into the Contractor Performance Assessment Reporting System (CPARS).

### **N. Contract Administration: *Review and approve invoices and make payment.***

#### **Requesting Agency:**

- i. Review invoices and advise the Servicing Agency CO whether to approve or disapprove payment in accordance with the award's terms and conditions.
- ii. If the Servicing Agency CO does not approve payment, the Requesting Agency payment office should not pay the invoice in the case of direct fund cite (where the Requesting Agency finance office retains funds and pays the contractor directly).
  - a. Other invoicing/payment procedures shall be followed depending on the acquisition strategy.
- iii. If the Requesting Agency uses a direct fund cite, the payment office should ensure a copy of each paid invoice is returned to the Servicing Agency contracting office for inclusion in the official contract file.

#### **Servicing Agency:**

- i. Ensure the award addresses the appropriate processes for invoice submittal and approval and identifies the payment office, which typically is the Servicing Agency.
- ii. Work with the appointed COR or other official responsible for invoice review, to facilitate accurate and timely review and payment to the contractor.
- iii. Approve or disapprove payment in accordance with the award terms and conditions.
  - A. Pay non-disputed invoice and bill the Requesting Agency for reimbursable services.
  - B. Return improper invoice within specified time periods (e.g., in accordance with the Prompt Payment Act where applicable).
  - C. Do not authorize payment if the work being invoiced is disputed or the invoice is otherwise found to be improper.
  - D. Regardless of the funding source, the Servicing Agency CO retains the authority to stop payment when necessary.

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### **O. Contract Administration: *Perform Contract Closeout.***

#### **Requesting Agency:**

- i. Support contract close-out functions, to include providing appropriate funding to satisfy settlement agreements and/or claims, and contributing to final contractor performance evaluations.
- ii. Take appropriate action to retrieve unexpended balances.

#### **Servicing Agency:**

- i. Close out award upon ensuring that all award requirements and administrative actions have been completed.
- ii. Return unused balance of the funds to the Requesting Agency.

### **P. Other Responsibilities: *Track contract activity.***

#### **Requesting Agency:**

- i. Ensure that correct data is provided in a timely manner to the Servicing Agency to facilitate accurate and complete data reporting.
- ii. Provide the correct funding agency ID to the Servicing Agency needed for accurate reporting to the Federal Procurement Data System (FPDS).

#### **Servicing Agency:**

- i. Ensure accurate contract data reporting into the applicable government-wide database – e.g., report use of competition for placement of task and delivery orders and contract awards in the FPDS; report contractor performance assessments in the Contractor Performance System on past performance evaluations, (consistent with the Requesting Agency's threshold for reporting); and ensure contractor is reporting required subcontracting data into the Electronic Subcontracting Reporting System (ESRS).
- ii. Confer with the Requesting Agency if funding agency ID has not been provided.
- iii. In accordance with FAR Subpart 34.2, for contracts involving significant development work, provide earned value management report to the Project Manager.
- iv. Ensure proper socio-economic credit is assigned to the Requesting Agency.

### **Q. Other Responsibilities: *NITAAC Fee Agreement.***

#### **Requesting Agency:**

- i. Reimburse NITAAC the 2% acquisition support services fee and the .35 - .65% contract access fee when adding funds to any active task orders under the contracts active at the time this agreement is executed.

*(IGCE/Contractor Proposal Amount + NCAF) + Assisted Order Fee = Total Effort Amount*

- ii. If the Requesting Agency terminates the agreement for any reason, a cancellation fee will be applied. The cancellation fee is \$65 per hour for all time spent by the servicing agency on any duties and responsibilities described in the section IV, Duties and Responsibilities, of this MOA.

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- iii. If the Requesting Agency determines there is a need to expedite the scope of work outlined in the Duties and Responsibilities of this agreement, a fee of 25% will be assessed.

**Servicing Agency:**

- i. Initiate/Review the Intra-agency Agreement (IAA)/7600A & B and send to the Requesting Agency to get the appropriate accounting information.
- ii. Forward the completed IAA to OFM and OD-Budget for processing.

We, the undersigned, agree with the terms of this Memorandum of Agreement.

\_\_\_\_\_  
**John Smith**  
Director  
Office of the US Government

\_\_\_\_\_  
Date

Prepared By:

\_\_\_\_\_  
**Charles R. Hicks**  
Supervisory Contracting Officer  
NIH/DITA/NIH Information Technology  
Acquisition and Assessment Center

\_\_\_\_\_  
Date

Approved       Disapproved

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**Bridget Gauer**  
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\_\_\_\_\_  
Date

Approved       Disapproved

\_\_\_\_\_  
**Brian K. Goodger**  
Associate Director  
NIH/Office of Logistics & Acquisition Operations

\_\_\_\_\_  
Date