State of Wisconsin

DOA-3261 (R08/2003)

s. 16.75, Wis. Statutes

|  |  |
| --- | --- |
| **PROPOSALS MUST BE SEALED AND ADDRESSED TO:**Department of Employee Trust FundsP.O. Box 7931Madison, WI 53707-7913 | Proposal envelope must be sealed and plainly marked in lower left corner with due date and **Request for Proposal ETD0013**. Late proposals shall be rejected. The soliciting purchasing office on or before the date and time that the proposal is due MUST date and time stamp proposals. Proposals dated and time stamped in another office shall be rejected. Receipt of a proposal by the mail system does not constitute receipt of a proposal by the purchasing office. Any proposal that is inadvertently opened as a result of not being properly and clearly marked is subject to rejection. Proposals must be submitted separately, i.e., not included with sample packages or other proposals. Proposal openings are public unless otherwise specified. Records will be available for public inspection after issuance of the notice of intent to award or the award of the contract. Vendor should contact person named below for an appointment to view the proposal record. Proposals shall be firm for acceptance for 180 days from date of proposal opening, unless otherwise noted. The attached terms and conditions apply to any subsequent award.  |
| REQUEST FOR PROPOSAL ETD0013 – Consulting Actuary for Group Insurance and Disability Programs |
| THIS IS NOT AN ORDER | Proposals MUST be in this office no later thanFebruary 17, 2:00 PM, CST | Public Opening [ ]  |
| VENDOR (Name and Address)     | No Public Opening [x]  |
| Name (Contact for further information) Mark Blank |
| Phone (608) 266-8989 | Date January 6, 2014 |
| Quote Price and Delivery FOB Madison, WI |
| Description: Request for Proposals (RFP) ETD0013 for services to be provided as the consulting actuary to the State of Wisconsin Employee Trust Funds Board for the Group Insurance and Disability Programs offered by the State of Wisconsin Group Insurance Board and the Wisconsin Retirement Board. RFP ETD0013 amendments and questions and answers will be posted on the ETF website <http://etfextranet.it.state.wi.us/> and will not be mailed. |
| Payment Terms:       | Delivery Time:       |
|  We claim minority proposer preference [Wis. Stats. s. 16.75(3m)]. Under Wisconsin Statutes, a 5% preference may be granted to CERTIFIED Minority Business Enterprises. Proposer must be certified. If you have questions concerning the certification process, contact the Minority Business Certification Program, 101 E Wilson St, 6th Floor, Madison, WI 53707; Tel: (608) 267-9550; Fax: (608) 267-0600;**DOABDMBD@Wisconsin.gov**.  **Does Not Apply to Printing Bids**.  We are a work center certified under Wis. Stats. s. 16.752 employing persons with severe disabilities. Questions concerning the certification process should be addressed to the Work Center Program, State Bureau of Procurement, 6th Floor, 101 E. Wilson St., Madison, Wisconsin 53702, (608) 266-2605. Wis. Stats. s. 16.754 directs the state to purchase materials which are manufactured to the greatest extent in the United States when all other factors are substantially equal. Materials covered in our proposal were manufactured in whole or in substantial part within the United States, or the majority of the component parts thereof were manufactured in whole or in substantial part in the United States. Yes No UnknownIn signing this proposal, we also certify that we have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit a proposal; that this proposal has been independently arrived at without collusion with any other vendor, competitor or potential competitor; that this proposal has not been knowingly disclosed prior to the opening of proposals to any other vendor or competitor; that the above statement is accurate under penalty of perjury. We will comply with all terms, conditions and specifications required by the State in this Request for Proposal and all terms of our proposal. |
| Name of Authorized Company Representative (Type or Print)      | Title      | Phone (       )       |
| Fax (       )       |
| Signature of Above | Date | Federal Employer Identification No. | Social Security No. if Sole Proprietor (Voluntary) |
|       |       |       |

**Request for Proposals (RFP) ETD0013**

**For services to be provided as the**

**CONSULTING ACTUARY TO THE STATE OF WISCONSIN EMPLOYEE TRUST FUNDS BOARD**

**for the**

**GROUP INSURANCE AND DISABILITY PROGRAMS**

**Offered by the State of Wisconsin**

**Group Insurance Board and the**

**Wisconsin Retirement Board.**

 Issued by the State of Wisconsin Department of Employee Trust Funds

On behalf of the Employee Trust Funds Board

For the Benefit of the Group Insurance Board and Wisconsin Retirement Board

Release Date: January 6, 2014

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# Proposal Procedures and Requirements

## RFP Information

The Department of Employee Trust Funds (ETF) is a Wisconsin state agency that administers retirement, health, life, income continuation, long-term disability, and long‑term care insurance programs for 570,000 state and local government employees and annuitants.

This section of the Request for Proposal (RFP) details the procedure the proposer must follow to submit a proposal for the consulting actuary to the State of Wisconsin Employee Trust Funds Board for the Group Insurance and Disability Programs offered by the State of Wisconsin Group Insurance Board and Wisconsin Retirement Board and the minimum requirements that the proposer must meet to be eligible for consideration.

The purpose of this document is to provide interested and qualified actuarial firms with information to enable them to prepare and submit competitive proposals for consulting actuarial services for the Group Insurance and Disability programs.

The Department intends to use the results of this process to award a contract. Either party may cancel this contract upon 180 business days notice to the other party.

This procurement is authorized under Chapter 40 of the Wisconsin State statutes. All decisions and actions under this request for proposal are solely under the authority of the State of Wisconsin Employee Trust Funds Board. Procurement statutes and rules that govern other state agencies may not be applicable.

For more information on this program, please refer to Section 4: Program Background Information.

### Procuring and Contracting Agency

This RFP is issued for the State of Wisconsin Employee Trust Funds Board by the Department of Employee Trust Funds. The Department is the sole point of contact for the State in the selection process.

Prospective proposers are prohibited from contacting any person other than the individual listed here regarding this RFP. Violation of this requirement may result in the proposer being disqualified from further consideration.

 Express delivery: Mail delivery:

Mark Blank Mark Blank

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

 801 West Badger Road P.O. Box 7931

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

Telephone: (608) 266-8989

 E-mail: ETFProcurement@etf.wi.gov

### Definitions

The following definitions are used throughout the RFP:

Proposer/firm/vendor means a firm submitting a proposal in response to this RFP.

Board means the State of Wisconsin Employee Trust Funds Board.

Department means the State of Wisconsin Department of Employee Trust Funds.

ETF means the State of Wisconsin Department of Employee Trust Funds.

GIB means the State of Wisconsin Group Insurance Board.

RFP means Request for Proposal.

State means State of Wisconsin.

WR means Wisconsin Retirement Board.

WRS means the Wisconsin Retirement System.

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

### Clarification of the Specifications and Requirements

Any questions concerning this RFP must be submitted via e-mail to ETFProcurement@etf.wi.gov on or before the date identified in Section 1.1.6, to the individual identified in Section 1.1.1. Proposers are expected to raise any questions they have concerning the RFP at this point in the process. Questions are to be submitted as an MS Word document using the format specified below:

Table Format for Submission of Clarification Questions

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

All questions must include the name of the firm and the person submitting the questions. The RFP number and title must be referenced in your email. A compilation of all questions and answers, along with any RFP updates, will be posted to the ETF Extranet (see below) no later than the date indicated in Section 1.1.6.

If a proposer discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in this RFP, the proposer should immediately notify the individual identified in Section 1.1.1 of such error and request modification or clarification of this RFP document.

In the event that it becomes necessary to update any part of this RFP, updates will be published on the Department’s Extranet at <http://etfextranet.it.state.wi.us/>, which is part of the Department’s website, and will not be mailed. Electronic versions of the RFP and all appendices and exhibits are available on ETF’s Extranet.

### Vendor Conference

A vendor conference may be held. The conference is an opportunity to ask questions. All proposers who intend to respond to this RFP are encouraged to attend the vendor conference either in person or via a telephone conference call, should one occur. Representatives will be limited to two per vendor. If the Department decides to hold the vendor conference, a notice will be posted on <http://etfextranet.it.state.wi.us/>. NOTE: Unless this notice is posted, no conference will be held.

Written or e-mailed questions submitted by the question deadline may be addressed at the vendor conference, should one occur. Only written responses will bind ETF. Responses to all questions submitted by the question deadline will be posted to <http://etfextranet.it.state.wi.us/>.

### Reasonable Accommodations

ETF will provide reasonable accommodations, including the provision of informational material in an alternative format, for qualified individuals with disabilities upon request. If you will need accommodations at the vendor conference, contact the individual identified in 1.1.1*.*

### Calendar of Events

Listed below are the important dates by which actions related to this RFP must be completed. In the event that the Board or Department finds it necessary to change any of the specific dates and times in the calendar of events listed below, it will do so by issuing a supplement to this RFP via the ETF Extranet listed in Section 1.1.3. No other formal notification will be issued.

Table 2 Calendar of Events

|  |  |
| --- | --- |
| Date | Event |
| January 6, 2014 | ETF Issues RFP |
| January 21, 2014 | Vendor Questions and Letter of Intent Due |
| January 28, 2014 | ETF Posts Answers to Questions on ETF Extranet |
| **February 17, 2014 2:00 P.M. CST** | **Proposals Due** |
| April 16, 2014 | Presentations by finalists |
| April 21, 2014 | ETF Notifies Vendors of Intent to Award Contract |
| May 5, 2014 | Begin contract negotiations |
| October 1, 2014 | Contract start date |

### Letter of Intent

A letter of intent indicating that a proposer intends to submit a response to this RFP should be submitted to the Department by the date indicated in Section 1.1.6. In the letter, identify the proposer's organization and give the name, location, telephone number, fax number and e-mail address of one or more persons authorized to act on the proposer's behalf. Proposers should submit the letter of intent via email to the address in Section 1.1.1. The RFP number and title must be referenced in your email. The letter of intent does not obligate the proposer to submit a proposal.

### Contract Term

The contract is proposed to be effective October 1, 2014, and will extend unless and until either party gives the other 180 day’s notice of their intent to cancel the contract. Cost increases are capped at 3% per year or the rate of inflation per year as figured by the Department (whichever is lower) unless justified by the contractor and otherwise agreed to by the Department. Annual inflation will be calculated as the change in Consumer Price Index-All Urban Consumers, U.S. City Average. First increase to be effective January 2016.

### Due Diligence and Errors/Omissions Coverage

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

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

### Criminal Background Verification

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

### VendorNet Registration

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

###  Business Associate Agreement

A Business Associate Agreement must be entered into with the vendor and the Department at the time a contract is issued. It is the intention of the agreement to comply with the federal regulations implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA) concerning the privacy, security and transaction standards on the confidentiality of personal information.

## Preparing and Submitting a Proposal

### General Instructions

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

**Failure to respond to each of the requirements in Sections 2 & 3 of this RFP may be the basis for rejecting a proposal.** Each response must include the RFP section number or appendix letter when providing narratives required by the RFP.

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

### Incurring Costs

The State of Wisconsin, the Department and the Board are not liable for any costs incurred by vendors in replying to this RFP or making requested oral presentations.

### Submitting the Proposal

**Vendors must submit one (1) original (marked “Original”) and ten (10) complete paper copies of the proposal to the address listed in 1.1.1 by the deadline listed in 1.1.6.**

**Two (2) complete un-locked and non-password protected electronic copies (i.e., MS Word) of the proposal must also be provided on CD-ROM.**

**In addition, two electronic copies with all confidential material redacted must be provided on CD-ROM and marked as “Redacted for Confidentiality” per Appendix C.**

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

The electronic copies of the proposal must be in MS-Word format and must be one single document (except for the cost proposal, as identified in Appendix F).

Proposals submitted via fax or email will not be accepted.

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

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

* “[Proposer's Name and Address]”
* Title: ETD0013 Consulting Actuary for Group Insurance and Disability Programs
* Proposal Due Date: February 17, 2014, 2:00 P.M. CST

**An original plus two (2) copies of the cost proposal must be sealed and submitted as a separate part of the proposal.** The cost proposal must be packaged, sealed and show the following information on the outside of the package:

* “[Proposer's Name and Address]”
* Title: Cost Proposal, ETD0013 Consulting Actuary for Group Insurance and Disability Programs
* Proposal Due Date: February 17, 2014 2:00 P.M. CST
* Proposal Organization and Format

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

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

Proposers responding to this RFP must comply with the following format requirements.

1. PROPOSER CHECKLIST: Complete the proposer checklist provided as Appendix A to this RFP and include it with your proposal.
2. SIGNED COVER SHEET (DOA 3261): Complete DOA 3261, the first page in this proposal document, and include it with your proposal.
3. Tab 1 - TRANSMITTAL LETTER: A signed transmittal letter must accompany the proposal. The transmittal letter must be written on the vendor’s official business stationery and signed by an official that is authorized to legally bind the vendor. Include in the letter:
	1. Name, signature and title of proposer’s authorized representative
	2. Name and address of company
	3. Telephone number, fax number, and e-mail address of representative
	4. Title and RFP number: ETD0013 Consulting Actuary for Group Insurance and Disability Programs
	5. Executive Summary
	6. A statement that the proposal is a firm and irrevocable offer for six (6) months after the proposal due date
4. Tab 2 – REQUIRED FORMS: The vendor must complete and/or include the following required State of Wisconsin forms:
	1. Mandatory Requirements – Appendix B
	2. Designation of Confidential and Proprietary Information – Appendix C
	3. Standard Terms and Conditions (DOA-3054) and Supplemental Standard Terms and Conditions (DOA-3681) – Appendix D
	4. Vendor Information (DOA-3477) and Reference Sheets (DOA-3478) – Appendix E. The vendor must provide three (3) references. The Board will determine which, if any, references to contact to assess the quality of work performed and personnel assigned to the project. The results of any references will be used in scoring proposals. Although these clients shall serve as the primary references for purposes of this RFP, the Board specifically reserves the right to contact **any** clients or past clients for information about the firm's performance under past and present contracts.
5. Tab 3 - RESPONSE TO SECTIONS 2 & 3: Provide a point-by-point response to each and every statement in Sections 2 & 3. The response must exactly follow the same numbering system, use the same headings, and address each point or sub-point in Sections 2 & 3. Proposers should display each requirement immediately preceding the response to that requirement. Provide a succinct explanation of how each requirement is addressed. Merely indicating that you will complete a task without demonstrating how you will do so may result in your proposal being rejected. Use tab separations. The RFP sections that require a response are:
* Section 2 MANDATORY PROPOSER QUALIFICATIONS & TERMS
* Section 3 ACTUARIAL CONSULTING SERVICES REQUIRED
1. Tab 4 – ASSUMPTIONS AND EXCEPTIONS: All assumptions and exceptions must be included in this tab. Provide a succinct explanation for each item as well as a reference to the section of the proposal it relates to. **Any assumption or exception made but not included in this Tab 4 will be invalid.** Exceptions to the Department’s contract terms and conditions may be considered during contract negotiations if it is beneficial to the Department. **If exceptions to the standard terms are not presented in this section, they may not be discussed or considered during contract negotiations.** When documenting assumptions and exceptions, clearly label each exception with one of the following labels:
* RFP Assumption(s)
* RFP Exception(s)
* Standard Term Exception(s)
1. **Tab 5 – COST PROPOSAL: Cost Proposal located in Appendix F. Failure to provide a cost using the exact form provided in Appendix F will result in your proposal being disqualified and rejected**. **No mention of the cost proposal may be made in any other part of the response to this RFP.** In addition, proposers should provide the hourly rates which will be charged for special projects agreed to above and beyond the scope of the services covered in Section 3 of this RFP. The vendor's proposal shall include the annual retainer charge for the first year for the services described above. The annual retainer fee quoted must be inclusive of any travel costs and other expenses associated with providing services under this RFP. Increases in future annual charges during the contract term will be determined as described in Section 1.1.8. **Any exception to this requirement must be stated on the cost proposal.** Under no circumstances will proposals be considered if any increase exceeds the appropriate inflationary indices. If the vendor proposes additional services beyond those described in this RFP, such services should be outlined and separately priced in the sealed cost proposal.

### Multiple Proposals

Multiple proposals from a vendor are not permissible.

### Contacting Vendor References and Conducting Site Visits

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

## Proposal Review and Award Process

### Preliminary Evaluation

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

### Proposal Scoring

Proposals that pass the preliminary evaluation will be reviewed by an evaluation committee and scored against stated criteria. The committee will review written proposals, references, additional clarifications, oral presentations, site visits and other information to score proposals.

The Department may request reports on a vendor's financial stability, and if financial

stability is not substantiated, may reject a vendor's proposal.

The Department may request demonstrations of the vendor's proposed products(s) and/or

service(s), and review results of past awards to the vendor by the State of Wisconsin.

The evaluation committee's scoring will be tabulated and proposals will be ranked based on the

numerical scores received.

Based on the results of the evaluation and taking into account all of the evaluation factors, the proposal determined to be most advantageous to the Board may be selected by the Board for further action.

### Evaluation Criteria

Proposals will be evaluated based upon the proven ability of the proposer to satisfy the requirements in an efficient, cost-effective manner, taking into account quality of service with minimal tolerance for error. Proposals will be scored using the following criteria:

20% on cost and 80% on the merits of the proposal and qualifications of the vendor.

### Oral Presentations

The proposer may be required to provide a personal interview with the Board or Department staff. Failure of a proposer to make a presentation to the Board or Department on the date scheduled or to respond to requests for additional written information may result in rejection of the submitted proposal.

Selected finalist(s) will be required to make an oral presentation to the Employee Trust Funds Board and/or its designated representatives. These presentations must be performed by the lead actuary that will be providing services under this contract. Other key staff that will be assigned to this contract must also be available at these presentations. It is intended that at least one such presentation will be held on the date listed in Section 1.1.6. Additional presentations may also be required.

### Right to Reject Proposals and Negotiate Contract Terms

This RFP does not commit the Board to awarding a contract, or pay any cost incurred in the preparation of a proposal in response to this RFP. The Board retains the right to accept or reject any or all proposals, or accept or reject any part of a proposal deemed to be in the best interest of the Board. The Board shall be the sole judge as to compliance with the instructions contained in this RFP.

The Board may negotiate the terms of the contract, including the award amount and the contract length, with the selected vendor prior to entering into a contract. The Board reserves the right to add contract terms and conditions to the contract during the contract negotiations.

### Contract Award

The Board will award the contract to the proposer whose proposal is determined to be most advantageous to the Board.

### Notice of Intent to Award

All vendors who respond to this RFP will be notified of ETF’s intent to award the contract as a result of this RFP. All decisions and actions under this RFP are solely under the authority of the Board. Procurement statutes and rules that govern other state agencies may not be applicable.

### Appeals Process

Notices of intent to protest and protests must be made in writing. Protestors should make their protests as specific as possible and must identify statutes and Wisconsin Administrative Code provisions that are alleged to have been violated.

The written notice of intent to protest the intent to award a contract must be filed with:

Employee Trust Funds Board

c/o Robert J. Conlin, Secretary

Department of Employee Trust Funds

P.O. Box 7931

Madison, WI 53703-7931

This notice must be received in that office no later than five (5) working days after the notice of award is issued. Fax documents will not be accepted. The written protest must be received within ten (10) working days after the notice of award is issued. The decision of the Board is final.

# mandatory proposer qualifications and Terms

All proposers must respond to the following by restating each question or statement and providing a detailed written response. Instructions for formatting the written response to this section are found in Section 1.2.

The proposer’s services must be able to be performed according to the requirements contained in this RFP. All resources necessary are to be provided by the proposer and included on the Cost Proposal.

The proposer must provide sufficient detail for the Department to understand how the vendor will comply with each requirement.

## Experience and References

The Vendor's proposal package, at minimum, must include the following items, organized as indicated below:

1. The firm's name, home office, address of the office providing services under the contract and the telephone number and appropriate FAX number.
2. A general description of the proposer, including size, number of employees, number of offices and locations, primary business (e.g. consulting, pension planning, insurance, etc.), other business or services, type of organization (franchise, corporation, partnership, etc.), and other descriptive material. Describe what you believe are your company’s strengths regarding client service; what distinguishes your company from your competitors? Highlight any acquisitions, and/or mergers or other material developments (changes in ownership, personnel, business, etc.) pending now or that occurred in the past five years at your company.
3. Identification of the supervising actuary available for assignment on the engagement. Identification of a second actuary who is available for working with the supervising actuary on this engagement. Each person must meet or exceed the "Standards for Supervising Actuary" as provided in Section 2.2 of these specifications.
4. Information regarding the professional and experience qualifications of all actuaries, underwriters and/or professional staff who will perform work under the contract. This must include a detailed description of their experience with other group insurance plans, including size and other characteristics of the plan, responsibilities in the engagement and duration of their involvement.
5. A description of the vendor's business recovery plan as it relates to the equipment, software and data files and personnel which would be used in providing the services described in this RFP. Describe your disaster recovery and alternate work site plans and relationships with key business partners. Describe the results of any disaster recovery testing, including the amount of time needed to transfer operations to an alternate site, if any. To the extent any operations are provided through outside vendors, please describe how you intend to assure quality delivery of these services in the event of a failure. Detail how your backup communications system operates in the event electronic communications become inoperable.
6. A statement of the availability and location of staff (including actuaries) and other required resources for performing all services and providing deliverables within indicated time frames. Also include a statement as to whether or not the services outlined in these specifications can be performed using only present staff and computer equipment/software/technology.
7. A list of the public sector and private sector employee group insurance programs including disability for which the firm currently provides actuarial services, including employer name, approximate number of participants and number of years the firm has been retained. Please also indicate the size and scope of the self-insured plans.
8. The address, telephone number, name and title of person(s) responsible for the administration of the group insurance programs for at least three major public employee disability insurance programs (include every system involving 50,000 or more participants) for which the proposing firm has consulted within the last three years. Although these firms shall serve as the primary references for purposes of this RFP, the Board specifically reserves the right to contact **any** of the listed systems for information about the firm's performance under past and present contracts.
9. A sample actuarial valuation prepared by vendor for another public employer for a long term disablity program or an integrated short-term and long-term disability insurance plan. (The Board prefers to have a sample of valuation from the largest applicable system currently under contract by vendor.)
10. Provide details of any pertinent judgment, criminal conviction, investigation or litigation pending against the firm. During the past five years, has the firm been subject to any litigation alleging breach of contract, fraud, breach of fiduciary duty or other willful or negligent misconduct? ETF reserves the right to reject a response based on this information. Provide certification that the firm has not been in bankruptcy and/or receivership within the last five calendar years.

## Standards for Supervising Actuaries

1. Fellow or Associate of the Society of Actuaries and/or Member of the American Academy of Actuaries.
2. Experience as a supervising actuary including consulting services, experience analysis and valuation assignments for major public employee benefit systems, with specific reference to involvement with experience in large governmental employee group insurance programs.
3. Experience in testifying before legislative and administrative bodies in support of actuarial positions and/or the principles used in valuing employee benefit systems or in estimating the costs of proposed legislation.
4. Ability to discuss in terms which can be understood by lay persons: actuarial theory, basis for assumptions, and other actuarial matters.

NOTE: The relative size and complexity of prior major assignments and other evaluation of the various material presented to satisfy the experience requirements above will be major factors in the Board's selection of an actuarial firm.

## Security and Privacy

Describe the ability of your organization to perform quality checks on any work performed by sub-contractors, on returned data. Also describe how your organization will protect respondent confidentiality and comply with HIPAA data security and privacy requirements. Note that the Department takes the security and privacy of member data very seriously. Should a vendor fail to properly protect private information, any cost ETF pays to mitigate the data breach will be subtracted from the total contract price. The vendor is responsible for taking timely action and must absorb the cost of mitigating the damages to affected members. The selected vendor must have a secure electronic method for exchanging files with the Department or agree to use the Department’s secured FTP site. The selected vendor will be required to sign the Department’s Business Associate Agreement (Appendix H) regarding the privacy and security of data and agree to the terms in the Department’s Information Confidentiality and Security Requirements (Appendix G).

## Quality Control

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

# actuarial consulting services required

## Income Continuation Insurance Program Review

### Annual Actuarial Review of State & Local Income Continuation Insurance (ICI) Programs

These self-­insured programs sponsored by the Group Insurance Board contain elements of both short-term and long-term disability income plans. The state plan has been operating for many years and has about 1,500 open claims at any point in time. The local program has been operating since 1989 and currently has 80 open claims. ICI is administered by a third party administrator. Claims data is furnished by the third party administrator early in February. Reports are due March 15 and must contain the following:

1. Present value of current open claims, summarized by year incurred,
2. Analysis of funding levels, and
3. Recommendations, as required, to adjust the premium schedule to maintain financial balance.

### Periodic Assistance On ICI RFP

Periodic assistance on rebidding the ICI administrative services contract, including suggestions for updating the RFP and independent review of proposals (about every fifth year).

## Annual Review of Section 40.65 Duty Disability Program

This program, under the authority of the Wisconsin Retirement Board, is a lifetime disability income replacement plan for protective occupation members. This review includes adequacy of contributions supporting the Section 40.65 Duty Disability program and any recommended changes in the rate structure. Claims data is furnished by ETF in late January. Reports are due March 15 and must contain the following:

1. Present value of current open claims, summarized by year incurred,
2. Analysis of funding levels, and
3. Recommendations, as required, to adjust the premium schedule to maintain financial balance.

## Review of Long-term Disability Insurance Program

### Annual Actuarial Review of Long-Term Disability Insurance (LTDI) Program

Annual actuarial review of benefits being paid under the Wis. Adm. Rules Ch. ETF 50 LTDI program which is administered by a third party administrator. Claims data is furnished by the third party administrator in late January. Reports are due March 15 and must contain the following:

1. Present value of current open claims, summarized by year incurred.
2. Analysis of funding levels, and
3. Recommendations, as required, to adjust the premium schedule to maintain financial balance.

### Periodic Assistance On LTDI RFP

Periodic assistance on rebidding the LTDI administrative services contract, including suggestions for updating the RFP and independent review of proposals (about every fifth year).

## Review of Optional Employee-pay-all Insurance Programs

The Group Insurance Board is authorized to establish guidelines and authorize voluntary employee-pay-all insurance programs on a payroll deduction basis. Services required include:

1. Provide general consultation services to the Board and staff, advising on optional employee-pay-all plans offered by the Department or State. This includes, but is not limited to, developments in legislation or regulation, fiscal and administrative problems of implementing new legislation, and any technical, policy or administrative problems arising during the course of operations.
2. Review proposals submitted by insurance companies (approximately two per year). Currently, we provide the following insurance programs: long-term care, accidental death and dismemberment, accidental injury, vision, dental and catastrophic medical.
3. Periodically review and recommend changes to guidelines for employee-pay-all programs, e.g., minimum loss ratio standards.
4. Review claims experience and premium development for existing plans and those submitted for approval. Fees for any detailed cost studies are paid by the applicant plans and are not included in the basic retainer fee.

## Review of Group Life Insurance Plans

1. Provide general consultation services to the Board and staff, advising on life insurance industry performance standards, underwriting standards and industry trends or other generic life insurance information as requested (estimated at a maximum of five hours per year).
2. Provide independent analysis of recommendations for program changes made by the current life plan carrier. These changes typically involve premium rates, coverage or contractual/financial agreements with the Board, new benefits, funding status and/or plan liabilities as requested by the Board (estimated at a maximum of five hours of consultation per year).

##  Other Technical Services

1. Assist independent actuaries in the performance of actuarial audits, including an audit every five years of the disability program.  This includes assisting auditors with explanations of actuarial methods and assumptions, providing valuation documentation including sample liability calculations, and responding to audit questions, findings and recommendations.  The supervising actuary may be required to attend Board or other oversight body meetings to address audit findings.
2. Assist independent auditors in the performance of financial audits of the WRS.  This includes assisting auditors with explanations of actuarial methods and assumptions, providing valuation documentation including sample liability calculations, and responding to audit questions, findings and recommendations.
3. Respond to and cooperate with Department’s of Office of Internal Audit and the Wisconsin Legislative Audit Bureau.
4. Ad hoc analysis as needed.
5. If software is provided by the vendor that software needs to meet these requirements:
	1. Preference – Run from a browser, Internet Explorer 10 or higher.
	2. If it’s not browser based, it must be compatible with Windows 8 (desktop mode).
	3. If it uses Java (RTE), it must be version 6.20 or higher.

# program background information

The section includes information relating to the WRS and is provided to assist the proposer in completing the RFP response document. **This section is for informational purposes; no response is required from the proposer.**

## Wisconsin Retirement System (WRS) Disability Programs Overview

### Income Continuation Insurance (ICI) (§40.61, §40.62 and § ETF 50.10)

ICI is available on a voluntary basis to all state employees, and to local government employees whose employer offers the program. It provides replacement income for disabilities that are considered short term in nature, as well as those which may last for extended periods. ICI benefits will not duplicate other benefits available to the individual, such as Social Security, Worker’s Compensation, Unemployment Compensation, other WRS benefits, etc. Individuals are required to repay duplicate benefits back to the ICI program.

The ICI Program is administered by a Third Party Administrator.

### Long-Term Disability Insurance (LTDI) (§ ETF 50.40)

LTDI is available to all WRS employees who have been employed since October 16, 1992 (and those employed earlier if they elect to give up rights to §40.63 benefits). Depending on the individual’s age when applying for LTDI, the benefit may be available beyond normal retirement age. An individual must be totally disabled by a mental or physical impairment, which is likely to be of an indefinite duration. LTDI benefits may be reduced upon receipt of, or eligibility for, certain Wisconsin Retirement System annuity or lump sum benefits.

The LTDI Program is administered by a Third Party Administrator.

### Duty Disability Benefits (§ 40.65 and § ETF 52)

Duty Disability is an income replacement program that is available to all WRS protective occupation participants, such as police officers and fire fighters. This benefit is completely funded by the employer. The individual must be permanently disabled by a work-related injury or disease and can no longer work full protective duty. Income from a variety of sources will reduce Duty Disability benefits.

## Additional Information on WRS

For additional information on the WRS, please review the following WRS related Web sites:

Table Reference Materials

|  |  |
| --- | --- |
| Document | Web Address |
| WI State Statutes Ch. 40 | http://docs.legis.wisconsin.gov/statutes/statutes/40.pdf |
| Ch. ETF 50, 52 and 70, WI Admin. Code | <http://docs.legis.wisconsin.gov/code/admin_code/etf/50.pdf><http://docs.legis.wisconsin.gov/code/admin_code/etf/52.pdf>http://docs.legis.wisconsin.gov/code/admin\_code/etf/70.pdf |
| WRS Program Fact Sheet | http://etf.wi.gov/publications/et8901.pdf |
| ETF Web site | http://etf.wi.gov/ |
| State ICI 2012 Program Fact Sheet | <http://etf.wi.gov/publications/et8918.pdf> |
| Local ICI 2012 Program Fact Sheet | <http://etf.wi.gov/publications/et8931.pdf> |
| Insurance Forms and Brochures | <http://etf.wi.gov/publications.htm> |
| Duty Disability Program Actuarial Review | <http://etf.wi.gov/publications/actuarial_studies.htm> |

# Special terms and conditions

The vendor will comply with the following terms and conditions outlined in this section as well as the Standard Terms and Conditions in Appendix D.

## Legal Relations

* The vendor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct.
* In carrying out any provisions of this RFP or in exercising any power or authority granted to the vendor thereby, there shall be no liability upon the Department, it being understood that in such matters that the Department acts as an agent of the state.
* The vendor accepts full liability and agrees to hold harmless the Department, its employees, agents and vendors for any act or omission of the vendor, or any of its employees, in connection with this contract.
* No employee of the vendor may represent himself or herself as an employee of the Department.

## Termination of Contract

* The Department may terminate any contract issued as a result of this RFP at any time at its sole discretion by delivering 180 calendar days written notice to the vendor.
* Upon termination, the Department's liability shall be limited to the prorated cost of the services performed as of the date of termination plus expenses incurred with the prior written approval of the Department.
* In the event that the vendor terminates this contract, for any reason whatsoever, it shall refund all payments made hereunder by the Department to the vendor for work not completed or not accepted by the Department. Such termination shall require written notice to that effect to be delivered by the vendor to the Department not less than 180 days prior to said termination.

## Ownership of Materials

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

## Continuance of RFP

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

## Confidentiality of Participant Records

In addition to the requirements of this section, please refer to the Business Associate Agreement in Appendix H for additional privacy and security requirements.

* (As provided by Wis. Stat. § 40.07 and Wis. Admin. Code § 10.70 (1) and by HIPAA, individual personal information in the Department's records (including but not limited to address, social security number, birth date, marital status, earnings, Wisconsin Retirement System (WRS) contributions, WRS interest crediting, beneficiary designations, WRS creditable service and medical information), is not a public record and must be kept confidential. Confidential information may be disclosed to the vendor under this contract as the Department determines is necessary for the proper administration of this contract, as provided by Wis. Stat. § 40.07 (1) (d) and (3).
* The vendor agrees to maintain the strict confidentiality of individual records supplied to the vendor or its employees under this RFP. In addition, the vendor will only share confidential information with its employees and subcontractors on a need to know basis.
* The vendor agrees not to disclose any information furnished to the vendor or its employees, by the Department including any information derived directly or indirectly from information furnished by the Department to any person or entity of any description who is not a party to this RFP without express, written approval of the Secretary of the Department in advance.
* Under no circumstances are participant names, addresses, or other data to be used or made available for any purpose other than specifically provided for in this contract.
* All media in the possession of the vendor including, but not limited to diskettes, CD’s, files and written documents containing confidential participant information shall be destroyed or turned over to the Department within 60 calendar days of the completion of this contract. The vendor shall furnish to the Department a written certification that all such media have been destroyed or returned to the Department, unless the Department makes any exceptions to this requirement in writing.

## Payment Terms

* Invoices must be itemized by cost proposal categories of expenses actually incurred.
* Invoices must be submitted to the following address:

Accounts Payable

Department of Employee Trust Funds

P.O. Box 7931

Madison, WI 53707-7931

or

Email: ETFAccountsPayable@etf.wi.gov

* Approved payment will be made to the vendor within 30 calendar days of receipt of a proper invoice.

Appendices:

APPENDIX A Proposer’s Checklist

APPENDIX B Mandatory Requirements

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

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

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

APPENDIX F Cost Proposal

APPENDIX G Information Confidentiality and Security Requirements

APPENDIX H Business Associate Agreement

Appendix A
Proposer’s Checklist

**RFP ETD0013**

**Mandatory**

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

( ) PROPOSER CHECKLIST: Complete the proposer checklist provided as Appendix A to this RFP and include it with your proposal.

( ) SIGNED COVER SHEET (DOA 3261): Complete DOA 3261, the first page in this proposal document, and include it with your proposal.

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

1. Name, signature and title of proposer’s authorized representative
2. Name and address of company
3. Telephone number, fax number, and e-mail address of representative
4. Title and RFP number: RFP ETD0013 Consulting Actuary for Group Insurance and Disability Programs
5. Executive Summary
6. A statement that the proposal is a firm and irrevocable offer for six (6) months after the proposal due date

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

* 1. Mandatory Requirements – Appendix B
	2. Designation of Confidential and Proprietary Information – Appendix C
	3. Standard Terms and Conditions (DOA-3054) and Supplemental Standard Terms and Conditions (DOA-3681) – Appendix D
	4. Vendor Information (DOA-3477) and Reference Sheets (DOA-3478) – Appendix E. The vendor must provide three (3) references. The Board will determine which, if any, references to contact to assess the quality of work performed and personnel assigned to the project. The results of any references will be used in scoring proposals. Although these clients shall serve as the primary references for purposes of this RFP, the Board specifically reserves the right to contact **any** clients or past clients for information about the firm's performance under past and present contracts.

 ( ) Tab 3 - RESPONSE TO SECTIONS 2 & 3: Provide a point-by-point response to each and every statement in Sections 2 & 3. The response must exactly follow the same numbering system, use the same headings, and address each point or sub-point in Sections 2 & 3. Proposers should display each requirement immediately preceding the response to that requirement. Provide a succinct explanation of how each requirement is addressed. Merely indicating that you will complete a task without demonstrating how you will do so may result in your proposal being rejected. Use tab separations. The RFP sections that require a response are:

* Section 2 MANDATORY PROPOSER QUALIFICATIONS & TERMS
* Section 3 ACTUARIAL CONSULTING SERVICES REQUIRED

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

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

( ) **Tab 5 – COST PROPOSAL: Cost Proposal located in Appendix F. Failure to provide a cost using the exact form provided in Appendix F will result in your proposal being disqualified and rejected**. **No mention of the cost proposal may be made in any other part of the response to this RFP.** In addition, proposers should provide the hourly rates which will be charged for special projects agreed to above and beyond the scope of the services covered in Section 3 of this RFP. The vendor's proposal shall include the annual retainer charge for the first year for the services described above. The annual retainer fee quoted must be inclusive of any travel costs and other expenses associated with providing services under this RFP. Increases in future annual charges during the contract term will be determined as described in Section 1.1.8. **Any exception to this requirement must be stated on the cost proposal.** Under no circumstances will proposals be considered if any increase exceeds the appropriate inflationary indices. If the vendor proposes additional services beyond those described in this RFP, such services should be outlined and separately priced in the sealed cost proposal.

PROPOSING VENDOR NAME: DATE:

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

AUTHORIZED REPRESENTATIVE:

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

Appendix B
Mandatory Requirements

**RFP ETD0013**

**Mandatory**

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

|  |  |
| --- | --- |
| **ETD0013 MANDATORY REQUIREMENTS** | **Check One** |
| *The following requirements are mandatory and must be met by any vendor who* *submits a proposal. Failure to comply with one or more of the mandatory* *requirements may disqualify the proposal. A response to each* *item in Appendix B is a mandatory requirement. If you cannot agree* *to each item listed, you must so specify along with the reason in Proposal* *Tab 4 – Assumptions and Exceptions – of your proposal response.*  | **Agree** | **Disagree** |
| The firm has no conflict of interest with regard to any other work performed by the firm for the State of Wisconsin. |  |  |
| The firm adhered to the instructions in this RFP on preparing and submitting the proposal. |  |  |
| The firm has not been suspended or debarred from performing government work. |  |  |
| The firm agrees to meet all contractual requirements as stated in Sections 1, 2, 3, 4, 5 and Appendix D. The Proposer agrees to adhere to all ETF Department standards, terms, policies and procedures. Any exceptions to this statement must be cleared, in writing, by ETF. |  |  |
| The firm has not been the subject of any disciplinary action or inquiry during the past five years. |  |  |
| During the past five years, the firm has not been involved with any litigation alleging breach of contract, fraud, breach of fiduciary duty or other willful or negligent misconduct. |  |  |
| The firm's level of expertise and experience will be evaluated and scored based on the responses submitted to Section 2 and 3. Using the Reference Sheet in Appendix E, provide at least three references. Each reference must identify the state or plan for which you have provided similar services. |  |  |
| The Proposer agrees to the terms in the Department’s Information Confidentiality and Security Requirements in Appendix G and and agrees to execute, if awarded this proposal, the Business Associate Agreement in Appendix H.  |  |  |

Appendix C
Designation of Confidential and Proprietary Information

**RFP ETD0013**

**Mandatory**

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

**The proposer must supply 2 electronic copies with all confidential material redacted on CD-ROM and marked as “Redacted for Confidentiality.”**

**STATE OF WISCONSIN**

DOA-3027 N(R01/98)

**DESIGNATION OF CONFIDENTIAL AND PROPRIETARY INFORMATION**

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

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

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

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

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

We request that the following pages not be released:

Section Page # Topic

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

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

 Company Name

 Authorized Representative

 Signature

 Authorized Representative

 Type or Print

 Date

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

Appendix D
Standard Terms and Conditions

**RFP ETD0013**

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

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

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

Standard Terms and Conditions (Request for Bids / Proposals)

Wisconsin Department of Administration

Chs. 16, 19, 51

DOA-3054 (R10/2005)

**1.0 SPECIFICATIONS:** The specifications in this request are the minimum acceptable. When specific manufacturer and model numbers are used, they are to establish a design, type of construction, quality, functional capability and/or performance level desired. When alternates are bid/proposed, they must be identified by manufacturer, stock number, and such other information necessary to establish equivalency. The State of Wisconsin shall be the sole judge of equivalency. Proposers/proposers are cautioned to avoid bidding alternates to the specifications which may result in rejection of their bid/proposal.

**2.0 DEVIATIONS AND EXCEPTIONS:** Deviations and excep­tions from original text, terms, conditions, or specifications shall be described fully, on the proposer's/proposer's letter­head, signed, and attached to the request. In the absence of such statement, the bid/proposal shall be accepted as in strict compliance with all terms, conditions, and specifica­tions and the proposers/proposers shall be held liable.

**3.0 QUALITY:** Unless otherwise indicated in the request, all material shall be first quality. Items which are used, demonstrators, obsolete, seconds, or which have been discontinued are unacceptable without prior written approval by the State of Wisconsin.

**4.0 QUANTITIES:** The quantities shown on this request are based on estimated needs. The state reserves the right to increase or decrease quantities to meet actual needs.

**5.0 DELIVERY:** Deliveries shall be F.O.B. destination freight prepaid and included unless otherwise specified.

**6.0 PRICING AND DISCOUNT:** The State of Wisconsin quali­fies for governmental discounts and its educational institu­tions also qualify for educational discounts. Unit prices shall reflect these discounts.

**6.1** Unit prices shown on the bid/proposal or contract shall be the price per unit of sale (e.g., gal., cs., doz., ea.) as stated on the request or contract. For any given item, the quantity multiplied by the unit price shall establish the extended price, the unit price shall govern in the bid/proposal evaluation and contract administration.

**6.2** Prices established in continuing agreements and term contracts may be lowered due to general market conditions, but prices shall not be subject to increase for ninety (90) calendar days from the date of award. Any increase proposed shall be submitted to the contracting agency thirty (30) calendar days before the proposed effective date of the price increase, and shall be limited to fully documented cost increases to the contractor which are demonstrated to be industry wide. The conditions under which price increases may be granted shall be expressed in bid/proposal documents and contracts or agreements.

**6.3** In determination of award, discounts for early payment will only be considered when all other con­ditions are equal and when payment terms allow at least fifteen (15) days, providing the discount terms are deemed favorable. All payment terms must allow the option of net thirty (30).

**7.0 UNFAIR SALES ACT:** Prices quoted to the State of Wisconsin are not governed by the Unfair Sales Act.

**8.0 ACCEPTANCE-REJECTION:** The State of Wisconsin reserves the right to accept or reject any or all bids/proposals, to waive any technicality in any bid/proposal submitted, and to accept any part of a bid/proposal as deemed to be in the best interests of the State of Wisconsin.

 Bids/proposals MUST be date and time stamped by the soliciting purchasing office on or before the date and time that the bid/proposal is due. Bids/proposals date and time stamped in another office will be rejected. Receipt of a bid/proposal by the mail system does not constitute receipt of a bid/proposal by the purchasing office.

**9.0 METHOD OF AWARD:** Award shall be made to the lowest responsible, responsive proposer unless otherwise specified.

**10.0 ORDERING:** Purchase orders or releases via purchasing cards shall be placed directly to the contractor by an authorized agency. No other purchase orders are authorized.

**11.0 PAYMENT TERMS AND INVOICING:** The State of Wisconsin normally will pay properly submitted vendor invoices within thirty (30) days of receipt providing goods and/or services have been delivered, installed (if required), and accepted as specified.

 Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order including reference to purchase order number and submittal to the correct address for processing.

 A good faith dispute creates an exception to prompt payment.

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

**12.0 TAXES:** The State of Wisconsin and its agencies are exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise taxes as described below.

 The State of Wisconsin, including all its agencies, is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of Wisconsin sales or use tax on its purchases. The State of Wisconsin may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Contractors perform­ing construction activities are required to pay state use tax on the cost of materials.

**13.0 GUARANTEED DELIVERY:** Failure of the contractor to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the contractor liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs shall include the administrative costs.

**14.0 ENTIRE AGREEMENT:** These Standard Terms and Conditions shall apply to any contract or order awarded as a result of this request except where special requirements are stated elsewhere in the request; in such cases, the special requirements shall apply. Further, the written contract and/or order with referenced parts and attach­ments shall constitute the entire agreement and no other terms and conditions in any document, acceptance, or acknowledgment shall be effective or binding unless expressly agreed to in writing by the contracting authority.

**15.0 APPLICABLE LAW AND COMPLIANCE:** This contract shall be governed under the laws of the State of Wisconsin. The contractor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct. The State of Wisconsin reserves the right to cancel this contract if the contractor fails to follow the requirements of s. 77.66, Wis. Stats., and related statutes regarding certification for collection of sales and use tax. The State of Wisconsin also reserves the right to cancel this contract with any federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.

**16.0 ANTITRUST ASSIGNMENT:** The contractor and the State of Wisconsin recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Wisconsin (purchaser). Therefore, the contractor hereby assigns to the State of Wisconsin any and all claims for such overcharges as to goods, materials or services purchased in connection with this contract.

**17.0 ASSIGNMENT:** No right or duty in whole or in part of the contractor under this contract may be assigned or dele­gated without the prior written consent of the State of Wisconsin.

**18.0 WORK CENTER CRITERIA:** A work center must be certi­fied under s. 16.752, Wis. Stats., and must ensure that when engaged in the production of materials, supplies or equipment or the performance of contractual services, not less than seventy-five percent (75%) of the total hours of direct labor are performed by severely handicapped individuals.

**19.0 NONDISCRIMINATION / AFFIRMATIVE ACTION:** In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), Wis. Stats., sexual orientation as defined in s. 111.32(13m), Wis. Stats., or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including appren­ticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities.

**19.1** Contracts estimated to be over fifty thousand dollars ($50,000) require the submission of a written affirmative action plan by the contractor. An exemp­tion occurs from this requirement if the contractor has a workforce of less than fifty (50) employees. Within fifteen (15) working days after the contract is awarded, the contractor must submit the plan to the contracting state agency for approval. Instructions on preparing the plan and technical assistance regarding this clause are available from the contracting state agency.

**19.2** The contractor agrees to post in conspicuous places, available for employees and applicants for employ­ment, a notice to be provided by the contracting state agency that sets forth the provisions of the State of Wisconsin's nondiscrimination law.

**19.3** Failure to comply with the conditions of this clause may result in the contractor's becoming declared an "ineligible" contractor, termination of the contract, or withholding of payment.

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

**20.0 PATENT INFRINGEMENT:** The contractor selling to the State of Wisconsin the articles described herein guarantees the articles were manufactured or produced in accordance with applicable federal labor laws. Further, that the sale or use of the articles described herein will not infringe any United States patent. The contractor covenants that it will at its own expense defend every suit which shall be brought against the State of Wisconsin (provided that such contractor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent by reason of the sale or use of such articles, and agrees that it will pay all costs, damages, and profits recov­erable in any such suit.

**21.0 SAFETY REQUIREMENTS:** All materials, equipment, and supplies provided to the State of Wisconsin must comply fully with all safety requirements as set forth by the Wisconsin Administrative Code and all applicable OSHA Standards.

**22.0 WARRANTY:** Unless otherwise specifically stated by the Proposer, equipment purchased as a result of this request shall be warranted against defects by the Proposer for one (1) year from date of receipt. The equipment manufacturer's standard warranty shall apply as a minimum and must be honored by the contractor.

**23.0 INSURANCE RESPONSIBILITY:** The contractor performing services for the State of Wisconsin shall:

**23.1** Maintain worker's compensation insurance as required by Wisconsin Statutes, for all employees engaged in the work.

**23.2** Maintain commercial liability, bodily injury and prop­erty damage insurance against any claim(s) which might occur in carrying out this agreement/contract. Minimum coverage shall be one million dollars ($1,000,000) liability for bodily injury and property damage including products liability and completed operations. Provide motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out this contract. Minimum coverage shall be one million dollars ($1,000,000) per occurrence combined single limit for automobile liability and property damage.

**23.3** The state reserves the right to require higher or lower limits where warranted.

**24.0 CANCELLATION:** The State of Wisconsin reserves the right to cancel any contract in whole or in part without penalty due to non-appropriation of funds or for failure of the contractor to comply with terms, conditions, and specifica­tions of this contract.

**25.0 VENDOR TAX DELINQUENCY:** Vendors who have a delinquent Wisconsin tax liability may have their payments offset by the State of Wisconsin.

**26.0 PUBLIC RECORDS ACCESS:** It is the intention of the state to maintain an open and public process in the solicita­tion, submission, review, and approval of procurement activities.

 Bid/proposal openings are public unless otherwise speci­fied. Records may not be available for public inspection prior to issuance of the notice of intent to award or the award of the contract.

**27.0 PROPRIETARY INFORMATION:** Any restrictions on the use of data contained within a request, must be clearly stated in the bid/proposal itself. Proprietary information submitted in response to a request will be handled in accordance with applicable State of Wisconsin procurement regulations and the Wisconsin public records law. Proprie­tary restrictions normally are not accepted. However, when accepted, it is the vendor's responsibility to defend the determination in the event of an appeal or litigation.

**27.1** Data contained in a bid/proposal, all documentation provided therein, and innovations developed as a result of the contracted commodities or services cannot be copyrighted or patented. All data, docu­mentation, and innovations become the property of the State of Wisconsin.

**27.2** Any material submitted by the vendor in response to this request that the vendor considers confidential and proprietary information and which qualifies as a trade secret, as provided in s. 19.36(5), Wis. Stats., or material which can be kept confidential under the Wisconsin public records law, must be identified on a Designation of Confidential and Proprietary Informa­tion form (DOA-3027). Proposers/proposers may request the form if it is not part of the Request for Bid/Request for Proposal package. Bid/proposal prices cannot be held confidential.

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

**28.0 DISCLOSURE:** If a state public official (s. 19.42, Wis. Stats.), a member of a state public official's immediate family, or any organization in which a state public official or a member of the official's immediate family owns or controls a ten percent (10%) interest, is a party to this agreement, and if this agreement involves payment of more than three thousand dollars ($3,000) within a twelve (12) month period, this contract is voidable by the state unless appro­priate disclosure is made according to s. 19.45(6), Wis. Stats., before signing the contract. Disclosure must be made to the Wisconsin Government Accountability Board, P.O. Box 7984, Madison, WI 53707-7984; by fax, to 608-267-0500; or by email to gab@wi.gov.

State classified and former employees and certain University of Wisconsin faculty/staff are subject to separate disclosure requirements, s. 16.417, Wis. Stats.

**29.0 RECYCLED MATERIALS:** The State of Wisconsin is required to purchase products incorporating recycled mate­rials whenever technically and economically feasible. Proposers are encouraged to bid products with recycled content which meet specifications.

**30.0 MATERIAL SAFETY DATA SHEET:** If any item(s) on an order(s) resulting from this award(s) is a hazardous chemi­cal, as defined under 29CFR 1910.1200, provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).

**31.0 PROMOTIONAL ADVERTISING / NEWS RELEASES:** Reference to or use of the State of Wisconsin, any of its departments, agencies or other subunits, or any state offi­cial or employee for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the State of Wisconsin. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the contracting agency.

**32.0 HOLD HARMLESS:** The contractor will indemnify and save harmless the State of Wisconsin and all of its officers, agents and employees from all suits, actions, or claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from the operations of the contractor, or of any of its contractors, in prosecuting work under this agreement.

1. **FOREIGN CORPORATION:** A foreign corporation (any corporation other than a Wisconsin corporation) which becomes a party to this Agreement is required to conform to all the requirements of Chapter 180, Wis. Stats., relating to a foreign corporation and must possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a certificate of authority. Any foreign corporation which desires to apply for a certificate of authority should contact the Department of Financial Institutions, Division of Corporation, P. O. Box 7846, Madison, WI 53707-7846; telephone (608) 261-7577.
2. **WORK CENTER PROGRAM**: The successful Proposer shall agree to implement processes that allow the State agencies, including the University of Wisconsin System, to satisfy the State's obligation to purchase goods and services produced by work centers certified under the State Use Law, s.16.752, Wis. Stat. This shall result in requiring the successful Proposer to include products provided by work centers in its catalog for State agencies and campuses or to block the sale of comparable items to State agencies and campuses.

**35.0 FORCE MAJEURE**: Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.

State of Wisconsin Division of Agency Services

Department of Administration Bureau of Procurement

DOA-3681 (01/2001)

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

**SUPPLEMENTAL STANDARD TERMS AND CONDITIONS
For PROCUREMENTS FOR SERVICES**

**1.0 ACCEPTANCE OF BID/PROPOSAL CONTENT:** The con­tents of the bid/proposal of the successful contractor will become contractual obligations if procurement action ensues.

**2.0 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION:** By signing this bid/proposal, the Proposer certifies, and in the case of a joint bid/proposal, each party thereto certifies as to its own organi­zation, that in connection with this procurement:

**2.1** The prices in this bid/proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competi­tion, as to any matter relating to such prices with any other Proposer or with any competitor;

**2.2** Unless otherwise required by law, the prices which have been quoted in this bid/proposal have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer prior to opening in the case of an advertised procure­ment or prior to award in the case of a negotiated procurement, directly or indirectly to any other Proposer or to any competitor; and

**2.3** No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a bid/proposal for the purpose of restricting competition.

**2.4** Each person signing this bid/proposal certifies that: He/she is the person in the proposer's/proposer's organi­zation responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to 2.1 through 2.3 above; (or)

He/she is not the person in the proposer's/proposer's organization responsible within that organization for the decision as to the prices being offered herein, but that he/she has been authorized in writing to act as agent for the persons responsible for such decisions in certifying that such persons have not participated, and will not participate in any action contrary to 2.1 through 2.3 above, and as their agent does hereby so certify; and he/she has not participated, and will not partici­pate, in any action contrary to 2.1 through 2.3 above.

**3.0 DISCLOSURE OF INDEPENDENCE AND RELATIONSHIP:**

**3.1** Prior to award of any contract, a potential contractor shall certify in writing to the procuring agency that no relationship exists between the potential contractor and the procuring or contracting agency that interferes with fair competition or is a conflict of interest, and no relationship exists between the contractor and another person or organization that constitutes a conflict of interest with respect to a state contract. The Department of Administration may waive this provi­sion, in writing, if those activities of the potential con­tractor will not be adverse to the interests of the state.

**3.2** Contractors shall agree as part of the contract for services that during performance of the contract, the contractor will neither provide contractual services nor enter into any agreement to provide services to a person or organization that is regulated or funded by the contracting agency or has interests that are adverse to the contracting agency. The Department of Administration may waive this provision, in writing, if those activities of the contractor will not be adverse to the interests of the state.

**4.0 DUAL EMPLOYMENT:** Section 16.417, Wis. Stats., prohibits an individual who is a State of Wisconsin employee or who is retained as a contractor full-time by a State of Wisconsin agency from being retained as a contractor by the same or another State of Wisconsin agency where the individual receives more than $12,000 as compensation for the individual’s services during the same year. This prohibition does not apply to individuals who have full-time appointments for less than twelve (12) months during any period of time that is not included in the appointment. It does not include corporations or partnerships.

**5.0 EMPLOYMENT:** The contractor will not engage the services of any person or persons now employed by the State of Wisconsin, including any department, commission or board thereof, to provide services relating to this agreement without the written consent of the employing agency of such person or persons and of the contracting agency.

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

**6.0 CONFLICT OF INTEREST:** Private and non‑profit corpora­tions are bound by ss. 180.0831, 180.1911(1), and 181.0831 Wis. Stats., regarding conflicts of interests by directors in the conduct of state contracts.

**7.0 RECORDKEEPING AND RECORD RETENTION:** The contractor shall establish and maintain adequate records of all expenditures incurred under the contract. All records must be kept in accordance with generally accepted accounting procedures. All procedures must be in accordance with federal, state and local ordinances.

The contracting agency shall have the right to audit, review, examine, copy, and transcribe any pertinent records or documents relating to any contract resulting from this bid/proposal held by the contractor. The contractor will retain all documents applicable to the contract for a period of not less than three (3) years after final payment is made.

**8.0 INDEPENDENT CAPACITY OF CONTRACTOR:** The parties hereto agree that the contractor, its officers, agents, and employees, in the performance of this agreement shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the state. The contractor agrees to take such steps as may be necessary to ensure that each subcontractor of the contractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the state.

APPENDIX E – Vendor Information
and ReferenceS

**RFP ETD0013**

**Mandatory**

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

**STATE OF WISCONSIN**

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

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

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

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

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

Appendix f
Cost proposal

**ETD0013**

**GROUP INSURANCE AND DISABILITY PROGRAMS**

**State of Wisconsin**

**Department of Employee Trust Funds**

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

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

(Print or type)

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

(Signature of authorized person)

Proposed 2014 Partial-Year (Oct-Dec) Retainer Fee: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Proposed 2015 Full-Year Annual Retainer Fee: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Total of the fees will be used to calculate weighted cost points per Section 1, 1.3.3 Evaluation Criteria.

The annual retainer shall be inclusive of all services identified in Section 3, except for 3.6. Cost increases are capped at 3% per year or the rate of inflation per calendar year as figured by the Department, whichever is lower. The first increase will be effective January 2016 and calculated on the 2015 full-year annual retainer fee.

After considering the proposals and prior to awarding a contract, the Board reserves the right to negotiate with any or all vendors a discounted final cost based on the vendor(s) being awarded more than one contract.

Hourly Rates for Key Staff/Supplemental Services

|  |  |  |  |
| --- | --- | --- | --- |
| **Category** | **Name** | **Hourly Rate** |  |
| Lead Actuary |  |  |  |
| Secondary Actuary |  |  | The method for determining cost adjustments to the initial contract year rates for subsequent contract years is described in Section 1.1.8. Any exceptions to this method must be explained in detail and included with this cost proposal |
| Other (describe) |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

 Appendix g – Information Confidentiality and Security Requirements

1. **Definitions***.* For purposes of this document, the following definitions shall apply:

Public Information: Information that is not protected or private. Information classified as public has no state, federal, or international legal restrictions on access. Additionally, risk of unintended disclosure would be of low to no risk to ETF. There may occasionally be a policy reason to restrict certain access.

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

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

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

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

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

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

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

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

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

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

1. ***Workstation/Laptop encryption.*** All workstations and laptops that process and/or store ETF PPI must be encrypted with an ETF approved solution. The encryption solution must be full disk.
2. Only the minimum necessary amount of ETF PPI may be downloaded to a laptop or hard drive when absolutely necessary for current business purposes.
3. ***Removable media devices.*** All electronic files that contain PPI data must be encrypted when stored on any removable media type device (i.e. USB thumb drives, floppies, CD/DVD, etc.) with an ETF approved solution.
4. ***Email security.*** All emails that include ETF PPI must be sent in an encrypted method using an ETF approved solution.
5. ***Antivirus software.*** All workstations, laptops and other systems that process and/or store ETF PPI must have a commercial third-party anti-virus software solution with a minimum daily automatic update.
6. ***Patch Management.*** All workstations, laptops and other systems that process and/or store ETF PPI must have security patches applied and up-to-date.
7. ***User IDs and Password Controls.*** All users must be issued a unique user name for accessing ETF PPI. Passwords are not to be shared. Must be at least eight characters. Must be a non-dictionary word. Must not be stored in readable format on the computer. Must be changed every 60 days. Must be changed if revealed or compromised. Must be composed of characters from at least three of the following four groups from the standard keyboard:
* Upper case letters (A-Z)
* Lower case letters (a-z)
* Arabic numerals (0-9)
* Non-alphanumeric characters (punctuation symbols)
1. ***Data Destruction.*** All ETF PPI must be wiped from systems when the data is no longer necessary. The wipe method must conform to Department of Defense standards for data destruction. All ETF PPI on removable media must be returned to ETF when the data is no longer necessary. Once data has been destroyed, the ETF contract manager must be notified. ETF can review computers or other media storage at any time to ensure the data has been wiped.
2. ***Remote Access.*** Any remote access to ETF PPI must be executed over an encrypted method approved by ETF. All remote access must be limited to minimum necessary and least privilege principles.
3. **System Security Controls**
4. ***System Timeout.*** The system must provide an automatic timeout after no more than 20 minutes of inactivity.
5. ***Warning Banners.*** All systems containing ETF PPI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only. User must be directed to log off the system if they do not agree with these requirements.
6. ***System Logging.*** The system must log successes and failures of user authentication at all layers. The system must log all system administrator/developer access and changes if the system is processing and/or storing PPI. The system must log all user transactions at the database layer if processing and/or storing ETF PPI.
7. ***Access Controls.*** The system must use role based access controls for all user authentications, enforcing the principle of least privilege.
8. ***Transmission encryption.*** All data transmissions must be encrypted end-to-end using a ETF approved solution when transmitting ETF PPI.
9. ***Host Based Intrusion Detection.*** All systems that are accessible via the Internet or store ETF PPI must actively use a comprehensive third-party real-time host based intrusion detection and prevention solution
10. **Audit Controls**
11. ***System Security Review.*** All systems processing and/or storing ETF PPI must have at least an annual system security review. Reviews must include administrative and technical vulnerability scanning tools.
12. ***Log Reviews.*** All systems processing and/or storing ETF PPI must have a routine procedure in place to review system logs for unauthorized access.
13. ***Change Control.*** All systems processing and/or storing ETF PPI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.
14. **Business Continuity / Disaster Recovery Controls**
15. ***Emergency Mode Operation Plan.*** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic ETF PPI in the event of an emergency. An emergency is an interruption of business operations for more than 24 hours.
16. ***Data Backup Plan.*** Contractor must have established documented procedures to backup ETF PPI to maintain retrievable exact copies of ETF PPI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and the amount of time to restore ETF PPI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of ETF data.
17. **Paper Document Controls**
18. ***Supervision of Data.*** ETF PPI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. ETF PPI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
19. ***Escorting Visitors.*** Visitors to areas where ETF PPI is contained shall be escorted and ETF PPI shall be kept out of sight while visitors are in the area.
20. ***Confidential Destruction.*** ETF PPI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
21. ***Removal of Data.*** ETF PPI must not be removed from the premises of the Contractor except with express written permission of ETF.
22. ***Faxing.*** Faxes containing ETF PPI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending.
23. ***Mailing.*** ETF PPI shall only be mailed using secure methods. Large volume mailings of ETF PPI shall be by a secure, bonded courier with signature required on receipt. Disks and other transportable media sent through the mail must be encrypted with an ETF approved solution.
24. ***Security Officer***. The Contractor shall designate a Security Officer to oversee its data security program who will be responsible for carrying out its privacy and security programs and for communicating on security matters with ETF.
25. ***Training***. The Contractor shall provide training on its data privacy and security policies, at least annually, at its own expense, to all its employees and volunteers who assist in the performance of functions or activities on behalf of ETF under this Agreement and use or disclose PPI.
26. The Contractor shall require each employee and volunteer who receives data privacy and security training to sign a certification, indicating the employee’s/volunteer’s name and the date on which the training was completed.
27. The Contractor shall retain each employee’s/volunteer’s written certifications for ETF inspection for a period of three years following contract termination.
28. ***Discovery and Notification of Breach***. The Contractor shall notify ETF **immediately by telephone call plus email** upon the discovery of breach of security of PPI in computerized form if the PPI was, or is reasonably believed to have been, acquired by an unauthorized person, **or within twenty-four (24) hours by email** of the discovery of any suspected security incident, intrusion or unauthorized use or disclosure of PPI in violation of this Agreement, this provision, the law, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the ETF Program Contract Manager, the ETF Privacy Officer and the ETF Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PPI, notification shall be provided by calling the ETF Bureau of Information Technology Services (BITS) Help Desk. Contractor shall take:
29. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
30. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
31. ***Investigation of Breach***. The Contractor shall immediately investigate such security incident, breach, or unauthorized use or disclosure of PPI and within seventy-two (72) hours of the discovery, shall notify the ETF Program Contract Manager, the ETF Privacy Officer, and the ETF Information Security Officer of:
32. What data elements were involved and the extent of the data involved in the breach,
33. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PPI,
34. A description of where the PPI is believed to have been improperly transmitted, sent, or utilized, and
35. A description of the probable causes of the improper use or disclosure.
36. ***Written Report***. The Contractor shall provide a written report of the investigation to the ETF Program Contract Manager, the ETF Privacy Officer, and the ETF Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.
37. ***Notification of Individuals***. The Contractor shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The ETF Program Contract Manager, the ETF Privacy Officer, and the ETF Information Security Officer shall approve the time, manner and content of any such notifications.
38. ***Affect on lower tier transactions.*** The terms of this document shall apply to all contracts, subcontracts, and subawards, regardless of whether they are for the acquisition of services, goods, or commodities. The Contractor shall incorporate the contents of this Exhibit into each subcontract or subaward to its agents, subcontractors, or independent consultants.
39. **Contact Information***.* To direct communications to the above referenced ETF staff, the Contractor shall initiate contact as indicated herein. ETF reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this document to which it is incorporated.

|  |  |  |
| --- | --- | --- |
| **ETF Program Contract Manager** | **ETF Privacy Officer** | **ETF Information Security Officer** |
| See the Statement of Work exhibit for Program Contract Manager information | Mary Alice McGreevyPrivacy OfficerEmployee Trust FundsP.O. Box 7931Madison, WI 53707-7931Email: maryalice.mcgreevy@etf.wi.govTelephone: (608) 267-2354 | Jon FordeInformation Security OfficerEmployee Trust FundsP.O. Box 7931Madison, WI 53707-7931Email: jon.forde@etf.wi.govTelephone: (608) 267-9033 |

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

appendix h – business associate agreement

BUSINESS ASSOCIATE AGREEMENT

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

RECITALS:

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

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

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

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

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

DEFINITIONS:

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

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

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

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

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

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

PART I – OBLIGATIONS OF BUSINESS ASSOCIATE

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

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

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

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

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

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

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

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

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

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

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

B. Compliance with Standard Transactions.

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

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

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

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

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

(e) Otherwise violates 45 CFR §162.915.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

H. Access, Amendment and Disclosure Accounting.

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

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

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

4. Accounting of Disclosures.

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

(b) Each accounting will provide:

(i) The date of each disclosure;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART II –ETF OBLIGATIONS

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

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

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

PART III - TERM, TERMINATION AND AMENDMENT

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

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

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

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

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

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

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

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

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

PART IV – GENERAL PROVISIONS

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

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

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

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

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

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

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

 (Print or type)

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

 (Signature of authorized person)