

**CONTRACT #14**  
**RFS # 317.01-19127**  
**FA # Pending**

**Finance & Administration**  
**Office of eHealth Initiatives**

**VENDOR:**  
**Manatt Health Solutions**

RECEIVED

JUL 22 2009

SUMMARY LETTER

FISCAL REVIEW

The Office of eHealth Initiatives is requesting that the Fiscal Review Committee approve this contract in order for the State to quickly align itself for American Recovery and Reinvestment Act funding (ARRA). It was recently announced that the guidelines for applying for the Health Information Technology for Economic and Clinical Health Act (HITEC) funding will be released within a short time period and that the timeline for applying for these competitive grants has been accelerated to less than 90 days. Due to this unforeseen rigorous time frame, this request does not meet the 60-day required notice.

The State had a prior contract with Manatt Health Solutions that ended July 31, 2009 in the amount of \$250,000.00 to assist the State in preparing a governance model and conceptual architecture for an integrated, statewide health information exchange and a proposed plan to begin implementation through a Not-For-Profit (NFP) Entity. The previous contract plus, the contracts only amendment and Manatt's final report is attached to this request.

The HITEC grant funding will be obtained through competitive grant applications for the implementation of a Health Information Exchange (HIE) in the State of Tennessee. The requirements will include a statewide plan which will incorporate the plans from each of the Regional Health Information Exchanges (RHIOs) in the State and the State's plan for the continued development of the over arching state-wide technology, the eHealth Network, which will be operate through the State's secure network, NetTN.

The Office of eHealth, with Manatt's oversight and grant writing skills, will apply for these funds which will include submission of the statewide plan which Manatt will help to create. Once an award is funded, the Office of eHealth will receive those funds from the federal government. The Office will divide the funds pursuant to the statewide plan with a grant to the NFP and interagency grants to other State agencies. The NFP will then sub-grant the funds to the RHIOs and other qualified organizations pursuant to the statewide plan.

The Manatt Health Solutions contract contains tasks to develop the strategy to maximize "meaningful use" incentives under the Medicaid and Medicare portion of the HITEC Act. The Office of eHealth will administer these incentive funds for TennCare. The administrative funds used to develop and implement the strategy, education and implementation are subject to a federal match of 90/10. Therefore, the \$675,000 being paid to Manatt Health Solutions as well as other funds for the administration of this plan will be reimbursed by Centers for Medicare and Medicaid at 90% level.

Based on this background information, the State is requesting that Manatt Health Care Solutions assist with the following tasks:

- Task 1. Assist in Development of a Contractual Framework between State and Not-for-Profit
- Task 2. Assist in the Development of a State eHealth Plan (as required under HITECH)
- Task 3. Assist State and SDE Develop Responses to HITECH Request for Proposals
- Task 4. Develop TennCare Strategy to Maximize "Meaningful Use" Incentives
- Task 5. Develop a coalition of states to address policy and operational issues

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Melissa Hargiss	*Contact Phone:	615-532-1553
*Contract Number:	N/A	*RFS Number:	31701-19127
*Original Contract Begin Date:	8/7/09	*Current End Date:	8/6/10
Current Request Amendment Number: <i>(if applicable)</i>			
Proposed Amendment Effective Date: <i>(if applicable)</i>			
*Department Submitting:		Office of eHealth Initiatives	
*Division:		Finance And Administration	
*Date Submitted:		7/20/09	
*Submitted Within Sixty (60) days:		No	
<i>If not, explain:</i>		It is in the State's best interest to begin the contract in order to aid the State in significant work that must be done quickly in order for the State to develop a comprehensive plan conforming to federal requirements for funding under ARRA.	
*Contract Vendor Name:		Manatt Health Solutions, a division of Manatt, Phelps & Phillips, LLP	
*Current Maximum Liability:		\$1,285,000.00	
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>			
FY: 2010	FY:	FY:	FY:
\$1,285,000.00	\$	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>			
FY:2010	FY:	FY:	FY:
\$1,285,000	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:		The appropriated funds are to be used to advance health information technology statewide. The use of the funds for the Manatt contract will help us to continue this goal by applying for federal funding since the state is unable to fund this at this time. <b>Public Chapter No. 554, Section 36, Item 1</b>	

**RECEIVED**  
JUL 24 2009

**FISCAL REVIEW**

## Supplemental Documentation Required for Fiscal Review Committee

<b>IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:</b>				
<b>*Contract Funding Source/Amount:</b>	<b>State:</b>	<b>100%</b>	<b>Federal:</b>	
<b>Interdepartmental:</b>		<b>Other:</b>		
<b>If "other" please define:</b>				
<b>Dates of All Previous Amendments or Revisions: <i>(if applicable)</i></b>			<b>Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i></b>	
<b>Method of Original Award: <i>(if applicable)</i></b>				
Include a detailed breakdown of the actual expenditures anticipated in each year of the contract. Include specific line items, source of funding, and disposition of any excess fund. <i>(if applicable)</i>				
Include a detailed breakdown, in dollars, of any savings that the department anticipates will result from this contract. Include, at a minimum, reduction in positions, reduction in equipment costs, reduction in travel. <i>(if applicable)</i>				
Include a detailed analysis, in dollars, of the cost of obtaining this service through the proposed contract as compared to other options. <i>(if applicable)</i>				



# CONTRACT

(fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

<b>Agency Tracking #</b> 31701-19127	<b>Edison ID</b>
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<b>Contractor</b> Manatt Health Solutions, a division of Manatt, Phelps & Phillips, LLP	<b>Contractor Federal Employer Identification or Social Security #</b> <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 95-2375841
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**Service**  
Assist the State in development of a comprehensive plan conforming to federal requirements that will be submitted to the United States Department of Health and Human Services for funding under the American Recovery and Reinvestment Act to advance the eHealth initiatives in the State of Tennessee.

<b>Contract Begin Date</b> August 7, 2009	<b>Contract End Date</b> August 6, 2010	<b>Subrecipient or Vendor</b> <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	<b>CFDA #(s)</b>
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FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2010	\$1,285,000.00				\$1,285,000.00
<b>TOTAL:</b>	<b>\$1,285,000.00</b>				<b>\$1,285,000.00</b>

**American Recovery and Reinvestment Act (ARRA) Funding** –  YES  NO

— OCR Use — 	<b>Agency Contact &amp; Telephone #</b> Lovel VanArsdale, 615-253-8570	
	<b>Agency Budget Officer Approval</b> (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred)  Maureen Abbey, 615-741-6070	
	<table border="1"> <tr> <td><b>Speed Code</b> FA00001481</td> <td><b>Account Code</b> 71304000</td> </tr> </table>	<b>Speed Code</b> FA00001481
<b>Speed Code</b> FA00001481	<b>Account Code</b> 71304000	

**Contractor Ownership/Control**

<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input type="checkbox"/> Government
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input checked="" type="checkbox"/> NOT Minority/Disadvantaged Other	<input type="checkbox"/>

**Contractor Selection Method**

Alternative Competitive Method \*

Non-Competitive Negotiation \*

Other \*

**\*Procurement Process Summary**

There are no other consultants who have the vast experience and have worked with other States to create a comprehensive plan that conforms to the federal requirements of the American Recovery and Reinvestment Act, Health Information Technology for Economic and Clinical Health Act to allow the State to advance the eHealth activities in Tennessee.

DRAFT

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
AND**

**Manatt Health Solutions, a division of Manatt, Phelps & Phillips, LLP**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Office of eHealth Initiatives, hereinafter referred to as the "State" and Manatt Health Solutions, a division of Manatt, Phelps & Phillips, LLP, hereinafter referred to as the "Contractor," is for the provision of consulting services, as further defined in the "SCOPE OF SERVICES."

The Contractor is a division of a Limited Liability Partnership.  
Contractor Federal Employer Identification: 95-2375841  
Contractor Place of Incorporation or Organization: California

**A. SCOPE OF SERVICES:**

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. In order to qualify for the American Recovery and Reinvestment Act (ARRA), Health Information Technology for Economic and Clinical Health Act (HITECH)'s State Planning and Implementation Program, the State will need to prepare and submit a comprehensive plan (Plan) for proposed eHealth activities in Tennessee. To be competitive, Tennessee's plan will need to inventory and develop detailed deliverables and costs for governance and oversight, clinical objectives, privacy and security, technical architecture, technical adoption, and financing. The plan will need to address health information exchanges, State related agencies (TennCare, Corrections, and Department of Health), integration between State and the proposed not-for-profit activities, implementation of Medicaid electronic incentive payments, and regional extension centers.
- A.2.a. Based on the preliminary assessment conducted by the Contractor for the State, the Contractor will work with the State, the proposed not-for-profit eHealth coordinating entity, and appropriate stakeholders to develop a plan that conforms to the federal requirements for the Recovery Act's State Planning and Implementation Program.
- A.2.b. Contractor will develop a detailed project timeline, work with the State to coordinate draft, review, and finalization of Plan components; collect and compile comments from external stakeholders; provide summary presentations of proposed Plan; and manage and oversee compilation of information into the final Plan that will be provided to the State and other designated entity for submission to the United States Department of Health and Human Services (HHS).
- A.2.c. Over an eight (8) week period, beginning August 7, 2009, the Contractor will deliver the following:
- i. Conduct a kick-off meeting in the Nashville area, to review project timeline, roles and assignments.
  - ii. Based on taxonomy of required elements to qualify for State Planning/Implementation Program, conduct a detailed gap analysis for Tennessee's readiness. Review inventories of Tennessee's eHealth capabilities.
  - iii. Develop a detailed outline of the Statewide Plan that includes proposed funding request, allocations, and activity timeline.
  - iv. Develop first draft of Plan and conduct meeting with key stakeholders to review.

- v. Develop second draft of Plan and conduct meeting with the State staff and its stakeholders to review.
- vi. Submit final draft of Plan to State or other designated entity for submission to United States Department of Health and Human Services.
- vii. Hold weekly calls with State staff and its stakeholders to review status.
- A.3. Within HITECH, there are a number of funding opportunities that can advance the eHealth efforts in Tennessee. These funding opportunities include those identified by statute (including the State Planning and Implementation Program, Regional Extension Centers, Electronic Health Record (EHR) loan program, use of Medicaid Administrative Funds for health information technology, broadband and telemedicine, and workforce development) and as yet unspecified programs that will emerge from the Office of the National Coordinator through its discretionary authority.
- A.3.a. The Contractor will provide the State and its stakeholders with a detailed overview and assessment of each HITECH-related funding opportunity. The overview will include updates on procurement requirements, eligibility criteria, timelines, and budgets, and the assessment will include an analysis of Tennessee's readiness and positioning of resources to maximize its receipt of funding and advance Tennessee's eHealth efforts.
- A.3.b. Over a sixteen (16) week period, beginning on August 7, 2009, the Contractor will deliver the following:
- i. A Microsoft Word document that identifies the status of key HITECH programs and provides recommendations for application strategies.
  - ii. Hold bi-weekly calls to review HITECH program and Grant Application that are developed by the Contractor and the State.
  - iii. On going review of the Grant Applications proposals.
- A.4. HITECH provides significant opportunities and obligations for State Medicaid agencies to support both the adoption of health IT and advance of health information exchange. Specifically, TennCare, through the Office of eHealth Initiatives will:
- Develop and administer a new EHR incentive program built around a definition of "meaningful use" that they will craft.
  - Develop policies for "qualified third parties" to receive Medicaid incentive funds to support adoption.
  - Develop programs and priorities for the use of administrative funding.
- A.4.a. Each requirement presents new challenges for the State who will be overseeing the Medicaid health IT adoption and advance of health information exchange, and raises difficult questions. For example, with respect to defining "meaningful use" for Medicaid providers, the State will need to define its objectives, assess the implications of alternative definitions, and develop a detailed proposal for HHS review.
- A.4.b. In addition, the State will need to understand how its ability to support qualified intermediaries for EHR adoption would impact the work of emerging regional extension centers.
- A.4.c. With respect to program administration, the State will have the ability to use administrative funds (which have a 90% federal match) to enhance health IT adoption and expand health information exchange. As a result, the State will need to ascertain what it is permitted to do, develop a methodology for selecting and prioritizing what it wants to do, and execute an implementation strategy.

- A.4.d. To assist the State Medicaid agencies in developing strategies to address these new responsibilities, the Contractor will: (1) develop a plan that outlines the key considerations, implementation options, and recommended next steps for the State, and (2) build an implementation strategy and support the State's execution of the strategy.
- A.4.e. Over a nine (9) month period, beginning August 7, 2009, the Contractor will deliver the following:
- i. Background review of statute and most current guidance from Center for Medicare and Medicaid Services (CMS).
  - ii. Kick-off meeting to review the results of the background review detailed in Contract Section A.4.e.i above, project scope, statute, and CMS guidance.
  - iii. Conduct interviews of TennCare officials, key Tennessee stakeholders, Medicaid Directors in two other states, and CMS officials.
  - iv. Analyze and develop recommendations regarding the State's role in support of Tennessee's eHealth Plan. This deliverable will be an early priority and dependent on the timing and requirements of HHS's State Planning and Implementation Grant Program.
  - v. Develop Preliminary Plan and host meeting with Tennessee stakeholders to review Preliminary Plan.
  - vi. Solicit feedback on Preliminary Plan from national experts and revise as necessary.
  - vii. Develop Final Plan and host meeting in the Nashville area to review.
  - viii. Develop implementation strategy for the State and serve as subject matter experts to support State's implementation strategy.
- A.5. As contemplated by the proposed Tennessee eHealth governance framework, a new not-for-profit organization will be created to coordinate eHealth policy development and lead Tennessee's response to funding opportunities and obligations posed by the Recovery Act.
- A.5.a. In order to ensure accountability, the State of Tennessee will need a contract with the new not-for-profit organization that defines roles, obligations, and reserve powers for the State. Manatt will work with the Tennessee Department of Finance and Administration to develop a contract that ensures the new not-for-profit organization serves the broad public interest and meets existing State and federal accountability requirements.
- A.5.b. At the State's request, the Contractor will deliver the following:
- i. Review draft of current assessment Word document of Tennessee's contractual options vis-a-vis the proposed not-for-profit organization.
  - ii. Review proposed contract drafts as needed.
  - iii. Support development of clauses for reserve State powers.
  - iv. Hold weekly calls to review status.
- A.6. The Contractor will develop a coalition of states and State Designated Entities ("SDEs") to address policy and operational issues related to implementation of the emerging national health information technology agenda. The goal of the coalition is to allow like-minded states and SDEs to come together to develop and advocate for policies that recognize and support states' roles in advancing health IT adoption and health information exchange as the nation builds a nationwide health information network.

A.6.a. The contractor will provide the following:

- i. Staffing/Administration of all Coalition Committees: Contractor will facilitate the coalition, including staffing the executive steering and subcommittees, calling and facilitating meetings, drafting agendas and materials, and posting minutes.
- ii. Federal Monitoring: Based on needs of coalition members, Contractor will monitor ARRA developments and implementation activities by the following agencies:
  - Office of the National Coordinator
  - HIT Policy and Standards Committees
  - Department of Agriculture (including the Rural Utilities Service)
  - Department of Commerce (including National Telecommunications and Information Administration)
  - Federal Communications Commission
  - Department of Health and Human Services (including the Office of Civil Rights)
  - Federal Trade Commission (PHR breach notification regulations)
  - National Institute for Standards and Technology
  - Health Resources and Services Administration
  - Centers for Medicare and Medicaid Services
  - National Institutes of Health
  - Food and Drug Administration
  - Agency for Health Care Research and Quality
- iii. In tracking the activities of these agencies, contractor will identify key program staff and contact information for each agency, leading regulatory, policy, and/or procurement issuances and opportunity for public comment, as well as procurement award tracking. Contractor will also provide the following:
  - Monthly email updates detailing recent ARRA implementation activities by the various federal agencies involved in administering ARRA's various provisions;
  - Monthly in-depth webinars on specific ARRA implementation issues (e.g. telehealth and broadband).
- iv. Development of Policy Memorandums on Federal Policy: Contractor will develop policy memorandums on federal policy issues, including meaningful use and others, as described above in the activities of the Policy Subcommittee. Contractor will also facilitate meetings with key policy influencers and decision-makers on behalf of the coalition as appropriate.
- v. Facilitation of Discussions/Solutions Relating to State Implementations of Health Information Exchanges (HIEs): Contractor will facilitate discussions related to state implementation of HIEs, as described above in the description of the activities of the Operations Subcommittee.

A.7. The services the Contractor will involve policy and business consulting and do not include providing legal advice to the State.

**B. CONTRACT TERM:**

B.1 This Contract shall be effective for the period commencing on August 7, 2009 and ending on August 6, 2010. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

B.2 Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that such an extension of the contract term is effected prior to

the current, contract expiration date by means of an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract, and shall be based upon payment rates provided for in the original Contract.

**C. PAYMENT TERMS AND CONDITIONS:**

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One million, two hundred and eighty five thousand dollars (\$1,285,000.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

<b>Service Description</b>	<b>Amount (per compensable increment)</b>
Under A.2 Two equal installments will be made at the beginning and upon completion to the State's satisfaction	<b>\$300,000.00</b>
Under A.3 Monthly payments for 4 months with final payment upon completion to the State's satisfaction	<b>\$100,000.00</b> (\$25,000.00 per month)
Under A.4 Monthly payments for 9 months with final payment upon completion to the State's satisfaction	<b>\$675,000.00</b> (\$75,000.00 per month)
Under A.5 Equal installments will be made at the beginning and upon completion to the State's satisfaction	<b>\$10,000.08</b>
Under A.6 Monthly payments for 12 months with final payment upon completion to the State's satisfaction	<b>\$199,999.92</b> (\$16,666.66 per month)

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Department of Finance and Administration  
Office of eHealth Initiatives  
312 Rosa L. Parks Avenue, 13<sup>th</sup> Floor  
Nashville, TN 37243

b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

- (1) Invoice/Reference Number (assigned by the Contractor);
- (2) Invoice Date;
- (3) Invoice Period (period to which all invoiced charges are applicable);
- (4) Contract Number (assigned by the State to this Contract);
- (5) Account Name: Department of Finance and Administration, Office of eHealth Initiatives;
- (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
- (7) Contractor Name;
- (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
- (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
- (10) Contractor Remittance Address;
- (11) Complete Itemization of Charges, which shall detail the following:
  - i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
  - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
  - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
  - iv. Amount Due by Service; and
  - v. Total Amount Due for the invoice period.

c. The Contractor understands and agrees that an invoice to the State under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) not include any future work but will only be submitted for completed service; and
- (3) not include sales tax or shipping charges.

d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.

e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or

Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.

- C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

**D. STANDARD TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty days (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
  - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.*.
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the

parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

**E. SPECIAL TERMS AND CONDITIONS:**

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Melissa E. Hargiss, Director of Office of eHealth Initiatives  
Department of Finance and Administration  
312 Rosa L. Parks Avenue, 13<sup>th</sup> Floor  
Nashville, TN 37243  
Melissa.hargiss@tn.gov  
Telephone # 615-532-1553  
FAX # 615-532-2849

The Contractor:

William Bernstein  
Manatt Health Solutions, a Division of Manatt, Phelps & Phillips, LLP  
7 Times Square  
New York, NY 10036  
wbernstein@manatt.com  
Telephone # (212) 830-7282  
FAX # (212) 830-7321

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

E.5. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.

- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
- b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
- c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: [www.state.tn.us/finance/rds/ocr/waiver.html](http://www.state.tn.us/finance/rds/ocr/waiver.html). The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

**IN WITNESS WHEREOF,**

**MANATT HEALTH SOLUTIONS, A DIVISION OF MANATT, PHELPS & PHILLIPS, LLP**

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**CONTRACTOR SIGNATURE**

**DATE**

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PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION:

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M.D. GOETZ, JR. COMMISSIONER

DATE

**DRAFT**

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	Manatt Health Solutions, a division of Manatt, Phelps & Phillips, LLP
<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER:</b> (or Social Security Number)	95-2375841

**The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.**

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**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**



STATE OF TENNESSEE  
DEPARTMENT OF FINANCE AND ADMINISTRATION

Office of eHealth Initiatives  
312 Eighth Avenue North  
Suite 1300 William R. Snodgrass Tennessee Tower  
Nashville, Tennessee 37243  
Phone (615) 253-8570  
FAX (615) 532-2849

Dave Gostz  
COMMISSIONER

Melissa E. Hargiss  
ACTING DIRECTOR

TO: Robert Barlow  
FROM: Buddy Lee *Buddy Lee*  
DATE: July 17, 2009 *Lee*  
SUBJECT: A 60 Day Waiver for Start Date for Contract *by [unclear]*

The contract between Finance and Administration and Manatt, Phelps and Phillips, LLC needs to begin on August 7, 2009 thereby waiving the 60 day start date requirement. I have approved this waiver because it is in the State's best interest to begin the contract in order to aid the State in significant work that must be done quickly in order for the State to meet the anticipated criteria for funding. Specifically, the State must develop two comprehensive plans and draft the State Grant Application that conforms to specific federal requirements that will be submitted to the United States Department of Health and Human Services for funding under the American Recovery and Reinvestment Act (ARRA) to advance the eHealth initiatives in the State of Tennessee.



# TRANSMITTAL

## Request for Procurement Document Endorsement

**TO :** **Melissa E. Hargiss,** **FAX # 532-2849**  
**Assistant Director of the eHealth Initiative**  
13th Floor Tennessee Tower  
312 Eight Avenue North  
Nashville, TN 37243  
(615) 532-1553

**FROM :** **Melissa Hargiss, Director of Office of eHealth** **FAX # 532-2849**

**DATE :** **July 17, 2009**

**RFS #** 31701-19127

**RE :** **Manatt, Phelps and Phillips, LLC**

The attached service procurement document involves the state of Tennessee buying medical/mental health-related professional, pharmaceutical, laboratory, or imaging type services. Accordingly, it requires the review and support of the eHealth Initiative staff. The purpose of this communication is to request said review and support.

**Please sign below to document the review and support of the subject procurement document by the eHealth Initiative, and return this communication at your earliest convenience.**

If there are any questions or concerns about this matter, contact **Melissa Hargiss** at **532-1553**  
Thank you for your help.

Attachment(s)

(Note to Requesting Party: Attachment(s) must include the entire proposed RFP, non-competitive contract request, competitive negotiation request, alternative procurement process request, contract, or amendment)

**eHealth Initiative Endorsement :**

**Assistant Director of the eHealth Initiative**

**Date 7/16/09**

**FA CONTRACT INFORMATION SUPPLEMENT**

FOR ALL FA-TYPE CONTRACTS — COMPLETE EITHER SECTION A OR SECTION B

<b>Contract RFS #</b>	31701-19127		
<b>Contractor:</b>	Manatt Health Solutions, a division of Manatt, Phelps & Phillips, LLP		
<b>SECTION A— CONTRACTOR IS AN INDIVIDUAL</b>		<b>SECTION B— CONTRACTOR IS A COMPANY</b> <i>(e.g., sole proprietorship, partnership, or corporation)</i>	
<p><b>Is or has the contractor been a state employee?</b></p> <p><input type="checkbox"/> <b>NO</b> <i>(no additional information required)</i></p> <p><input type="checkbox"/> <b>YES</b></p>		<p><b>Does an individual, who is or has been a state employee, own controlling interest in (or own) the contractor company?</b></p> <p><input checked="" type="checkbox"/> <b>NO</b> <i>(no additional information required)</i></p> <p><input type="checkbox"/> <b>YES</b></p>	
<p><b>Was such employment within the past six months?</b></p> <p><input type="checkbox"/> <b>NO</b></p> <p><input type="checkbox"/> <b>YES</b> <i>(an approved rule exception permitting a contract within six months of employment is also required)</i></p>		<p><b>Was such employment within the past six months?</b></p> <p><input checked="" type="checkbox"/> <b>NO</b></p> <p><input type="checkbox"/> <b>YES</b> <i>(an approved rule exception permitting a contract within six months of employment is also required)</i></p>	
<p><b>Does the contractor receive Tennessee Consolidated Retirement System (TCRS) retirement benefits?</b></p> <p><input type="checkbox"/> <b>NO</b></p> <p><input type="checkbox"/> <b>YES</b> <i>(the procuring agency general counsel MUST sign an analysis of this procurement using the TCRS analysis guidelines)</i></p>		<p><b>Does the individual who owns controlling interest in the contractor company receive Tennessee Consolidated Retirement System (TCRS) retirement benefits?</b></p> <p><input checked="" type="checkbox"/> <b>NO</b></p> <p><input type="checkbox"/> <b>YES</b> <i>(the procuring agency general counsel MUST sign an analysis of this procurement using the TCRS analysis guidelines)</i></p>	
<b>CONTRACTOR SIGNATURE</b>			
<b>CONTRACTOR</b>		<b>DATE</b>	