

CONTRACT #3
RFS # 345.01-002
FA # 08-23551

Human Services

VENDOR:
The North Highland Company



**STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES**

CITIZENS PLAZA BUILDING
400 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-1403

TELEPHONE: 615-313-4700 FAX: 615-741-4165
TTY: 1-800-270-1349
www.state.tn.us/humanserv/

PHIL BREDESEN
GOVERNOR

RECEIVED

MAR 16 2009

FISCAL REVIEW

VIRGINIA T. LODGE
COMMISSIONER

March 16, 2009

TO: Leni Chick, Contract and Audit Coordinator
Tennessee General Assembly Fiscal Review Committee

FROM: Sandra Gray, Director of Contract Performance and Administration

RE: RFS #: 345.01-002-09

On Friday afternoon, I attempted to e-mail the enclosed documents to you so that they would reach you by the deadline for receiving documents that might need to be on the agenda for an upcoming FRC meeting. Unfortunately, I was unsuccessful in my attempts to get the documents to you electronically. Therefore, I am delivering these hard copies to you as early in the day as possible. I hope that given the fact that I did submit them, albeit unsuccessfully, you will accept them and consider them to have been submitted timely.

I sincerely apologize for any inconvenience. Please let me know if you have questions or concerns about the document submission. My phone number is 313-4794. If there are questions about the amendment, please contact DHS Assistant Commissioner Jeff Roberts at 313-4705.

Thank you for your attention to this matter.

Enclosures

1. Copy of e-mail message
2. Letter to Mr. White
3. *Request: Alternative Procurement Method Form*
4. *Non-competitive Amendment Request*
5. *Amendment #1 to FA 08-23551-01*
6. *Base Contract FA 08-23551-00*
7. *Supplemental Documentation Required for Fiscal Review Committee*

Supplemental Documentation Required for Fiscal Review Committee

*Contact Name:	Sandra Gray	*Contact Phone:	615-313-4794
*Contract Number:	FA 08-23551	*RFS Number:	345.01-50-08
*Original Contract Begin Date:	January 17, 2008	*Current End Date:	June 30, 2009
Current Request Amendment Number: <i>(if applicable)</i>	Amendment #1		
Proposed Amendment Effective Date: <i>(if applicable)</i>	January 1, 2009		
*Department Submitting:	Human Services		
*Division:	Finance and Administration		
*Date Submitted:	March 13, 2009		
*Submitted Within Sixty (60) days:	No		
<i>If not, explain:</i>	Because this amendment does not change the Scope of Services nor the Maximum Liability, the Department had not anticipated the need for FRC review. However after consultation with the Office of Contracts Review and FRC staff, the Department is forwarding this request for FRC staff pre-review.		
*Contract Vendor Name:	The North Highland Company		
*Current Maximum Liability:	\$796,000		
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>			
FY: 2008	FY: 2009	FY:	FY:
\$265,334	\$ 530,666	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)-STARS Printout Attached</i>			
FY: 2008	FY: 2009	FY:	FY:
\$79,600	\$79,600	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	Not applicable		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:	Not applicable		
IF Contract Expenditures exceeded Contract Allocation, please give the	Not applicable		

Supplemental Documentation Required for Fiscal Review Committee

reasons and explain how funding was acquired to pay the overage:				
*Contract Funding Source/Amount:	State:	\$145,194.00	Federal:	\$399,031.00
Interdepartmental:		\$0.00	Other:	\$251,775.00
If "other" please define: TennCare				
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>			Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Not applicable			Not applicable	
Method of Original Award: <i>(if applicable)</i>			Competitive Bid Solicitation	
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 funds. <i>(if applicable)</i>			Fiscal Year '08 \$79,600 Fiscal Year '09 \$237,400 Fiscal Year '10 \$479,000	
			18.2% State 50.1% Federal 31.7% Other All of these expenditures are professional services (object 08). There will be no excess funds.	
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>			The Federal Government mandates that QA/IV & V contractors be used when states construct new systems for food stamps, TANF, and Medicaid. The purpose of these contractors is to assist states in controlling costs and to help insure system quality.	
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>			This contract was competitively bid, and this amendment does not increase the maximum liability from the original bid. Two of the four bidders offered prices in excess of \$1.5 million. Because of the extended term of this contract and the resources necessary for a new vendor to become acclimated to the current status of the VIP project, it is almost certain that a re-bid price would significantly exceed the maximum liability of \$796,000 in the State's current contract. It is uncertain	

Supplemental Documentation Required for
Fiscal Review Committee

	whether or not additional federal funds would be approved for a new IV & V vendor. This could result in the State assuming 100% of the cost for any expenses above the current maximum liability of \$796,000.
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THE NORTH HIGHLAND COMPANY FA0823551 79,600.00 080829 34501 129

Total 79,600.00

FY 08

VENDORNAME	REEDOC	AMOUNT	PDATE	DEPT	CC
THE NORTH HIGHLAND COMPANY	FA0823551	79,600.00	080501	34501	129
Total		79,600.00			

STARS
DOCUMENT FILE

DEPT: 345 DIV: 01 FFY: 09 FUND: 11 DOC NO: FA0823551 00
PERIOD SE CMB (CMB PMB PY)

DESCRIPTION: 011708 INFORMATION SYSTEMS
COST CENTER: 129 OBJ: 089 AGY OBJ: SRC: AGY SRC:
ORG CODE: 45 10 03 02 05 04 PROJECT: LOCATION:
PGM CODE: 450 011 001 002 008 004 GRANT: SUB ACCT:
VENDOR NO: V581823492 00 VENDOR NAME: THE NORTH HIGHLAND COMPANY

DATE SEGMENT DOCUMENT AMT: 530,666.00
CREATE: 072208 ADJUSTMENTS: .00
LAST PROC: 082908 LIQUIDATIONS: 79,600.00-
CLOSE: RECEIPT/PYMT: 79,600.00
DUE: RETENTION: .00
DOCUMENT: 063009
BALANCE 451,066.00

Z41 ENTER INQUIRY DATA

Z06 SUCCESSFUL RECALL



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PHIL BREDESEN
GOVERNOR

VIRGINIA T. LODGE
COMMISSIONER

March 13, 2009

Mr. James W. White, Executive Director
Tennessee General Assembly
Fiscal Review Committee
320 Sixth Ave., N.
8th Floor Rachel Jackson Building
Nashville, TN 34243

Dear Mr. White:

Accompanying this correspondence is a *Request: Non-Competitive Amendment* form, which relates to the procurement of services from The North Highland Company for Quality Assurance and Independent Verification and Validation Services (QA/IV&V) for our Department's Vision Integration Platform (VIP) systems project.

This amendment simply exercises the contract term extension available in Section B.2. and modifies the reporting requirements as detailed in the QA/IV & V plan mandated in Section A.4.b. In order to meet the State's requirements for ongoing validation and verification of the VIP system integrator's work, this amendment will establish incremental reporting and payment benchmarks according to the QA/IV & V plan. The aggregated total of these incremental payments will not exceed the current maximum liability. Because this amendment does not change the original maximum liability and the Contractor will receive payments on a delayed and extended timeframe, this will not provide any financial gain to the Contractor. Had the original solicitation included this extended timeframe, it is very likely that the cost to the State would have been significantly greater.

Because this amendment does not change the Scope of Services nor the maximum liability, the Department had not anticipated the need for FRC review. However after consultation with the Office of Contracts Review and FRC staff, the Department is forwarding this request for FRC staff pre-review. We await your disposition of our request for your pre-review. Should you have any questions, please feel free to call Jeff Roberts at 615-313-4705.

Sincerely,

A handwritten signature in cursive script that reads "Virginia T. Lodge".

Virginia T. Lodge
Commissioner

Attachments

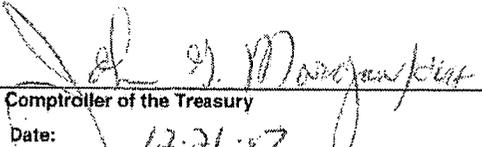
VTL:SRG

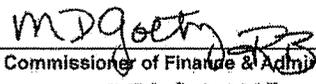
RECEIVED

Exhibit 1
8-6-05

REQUEST: ALTERNATIVE PROCUREMENT METHOD

cy07-1015

APPROVED 
Comptroller of the Treasury
Date: 12-21-07

APPROVED COMPTROLLER'S OFFICE OFFICE OF MANAGEMENT SERVICES 
Commissioner of Finance & Administration
Date: DEC 20 2007

Each of the request items below indicates specific information that <u>must</u> be individually detailed or addressed <u>as required</u> . A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.	
1) RFS #	345.01-050
2) State Agency Name :	Department of Human Services
3) Service Caption :	Quality Assurance/Independent Verification and Validation (QA/IV & V) Services
4) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	January 15, 2008
5) Contract End Date IF all Options to Extend the Contract are Exercised :	June 30, 2009
6) Total Maximum Cost IF all Options to Extend the Contract are Exercised :	\$3,000,000
7) Description of Service to be Acquired :	
Baseline status assessment and ongoing quality assurance and independent verification and validation of the Vision Integration Platform (VIP) system.	
8) Justification for Using an Alternative Procurement Method Rather Than an RFP :	
As with most information systems purchased using federal funds, an independent, third party validation and verification of the Department of Human Services' VIP system is required by the agency's federal partners. Having an independent third party validation and verification is imperative, given that the size, complexity, and cost of the Vision Integration Platform expose the state to potential significant risk. Since the VIP project's inception, OIR has been providing this required service. However, OIR has recently come to the conclusion because of the complexity and cost associated with the final phases of VIP, they cannot provide the level of independent, third party verification and validation that is required to reduce the potential risk. Because of this potential risk to the State, it is necessary to pursue this alternative procurement method in order to avoid a gap in the federally mandated independent third party validation and verification.	
9) Proposed Alternative Procurement Procedures & Contractor Selection Criteria :	
A. POTENTIAL CONTRACTOR IDENTIFICATION	
The Department of Human Services will obtain the list of entities submitting an <i>Intent to Propose</i> for RFP 317.03-003. Any entities who are integrators, will be removed from this list, as they have inherent conflicts with the current vendor due to intellectual property rights, trade secrets, and confidential business practices. Then, any remaining vendors known to the State's information technology community who perform these services will be added to the list. It is anticipated that the final list will contain no more than 12 vendors.	
B. BID SOLICITATION	
B.1. Procuring agency staff will use the attached <i>Professional Service Bid Solicitation Request</i> (Exhibit 1) to solicit bids from	

potential contractors.

- B.2. Procuring agency staff will post the *Bid Solicitation* on the Office of Contracts Review (OCR) web page for RFPs & Other Public Notices.
- B.3. Procuring agency staff will provide written notification, via e-mail, to all vendors on the list described in Section A. above to solicit participation in this procurement process.
- B.4. Entities desiring to submit a bid must do so by 12:00 P.M. GST on Thursday, January 10, 2008.

C. BID EVALUATION

- C.1. A team of three procuring agency employees will review the supporting documentation from each bidder.
 - C.1.1. In order for a bid to be accepted for further evaluation, the evaluators must determine (based upon the minimum criteria detailed by the *Bid Solicitation*) that a bidder's documentation of qualifications indicates that the bidder would be, at least, minimally acceptable as a contractor for QA/IV & V services.
 - C.1.2. The evaluator determinations regarding each bidder will be documented in writing for the procurement file. Solicitations meeting qualifications will be referred to the procurement coordinator by the evaluation team.
- C.2. The procurement coordinator will open and review the separately sealed *Cost Proposal Bid Sheet* of each bidder determined to meet qualifications by the evaluation team.
 - C.2.1. The procurement coordinator will determine whether each *Cost Proposal Bid Sheet* complies, without qualification, with *Bid Solicitation* instructions and will document any finding(s) of noncompliance in writing for the procurement file.
 - C.2.2. The procurement coordinator will review all compliant *Cost Proposal Sheets* to identify the bidder offering the lowest cost to the State.
- C.3. The Department of Human Services will award the contract (drafted as detailed in the *Bid Solicitation* and in accordance with relevant F&A regulations) to the acceptable bidder offering the lowest cost to the State.

B.1. Documentation of Office for Information Resources Endorsement :
(required only if the subject service involves information technology)

select one: Documentation Not Applicable to this Request Documentation Attached to this Request

C.1. Documentation of Department of Personnel Endorsement :
(required only if the subject service involves training for state employees)

select one: Documentation Not Applicable to this Request Documentation Attached to this Request

D.1. Documentation of State Architect Endorsement :
(required only if the subject service involves construction or real property related services)

select one: Documentation Not Applicable to this Request Documentation Attached to this Request

REQUESTING AGENCY HEAD SIGNATURE & DATE :
(must be signed & dated by the procuring agency head or authorized signatory)

Deanna Hodge *12/20/07*
 Agency Head Signature Date

NON-COMPETITIVE AMENDMENT REQUEST:

APPROVED

Commissioner of Finance & Administration

1) RFS #	345.01-002-09	
2) Procuring Agency :	Department of Human Services	
EXISTING CONTRACT INFORMATION		
3) Service Caption :	Quality Assurance Independent Verification and Validation	
4) Contractor :	The North Highland Company	
5) Contract #	FA 08-23551	
6) Contract Start Date :	January 17, 2008	
7) CURRENT Contract End Date : (if ALL options to extend the contract are exercised)		
8) CURRENT Maximum Cost : (if ALL options to extend the contract are exercised)	\$ 796,000	
PROPOSED AMENDMENT INFORMATION		
9) Amendment #	# 1	
10) Amendment Effective Date : (attached explanation required if < 60 days after F&A receipt)	January 1, 2009	
11) PROPOSED Contract End Date : (if ALL options to extend the contract are exercised)	January 16, 2013	
12) PROPOSED Maximum Cost : (if ALL options to extend the contract are exercised)	\$ 796,000	
13) Approval Criteria : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
14) Description of the Proposed Amendment Effects & Any Additional Service :	<p>This amendment is to extend the term of the current contract for an additional year and to disaggregate the payment milestones into incremental rather than capstone amounts. There is no increase to the maximum liability of the contract, and no additional services are added via the amendment.</p>	
15) Explanation of Need for the Proposed Amendment :	<p>The contract being amended is for quality assurance and independent verification and validation of the Department of Human Services' Vision Integration Platform (VIP) information systems project. In addition to these services being federally mandated, it is also in the best interest of the State to acquire them in order to insure that the VIP system is being developed appropriately. Because the services are related to development of the VIP system, they are by their very nature tied to the schedule in that contract. The revisions reflected in this amendment simply seek to align this contract with the schedule of the VIP contract.</p>	
16) Name & Address of Contractor's Current Principal Owner(s) : (not required for a TN state education institution)	<p>The North Highland Company 100 Winners Circle, Suite 154 Brentwood, TN 37027</p>	

17) Office for Information Resources Endorsement : (required for information technology service; n/a to THDA)

Documentation is ... Not Applicable to this Request Attached to this Request

18) eHealth Initiative Endorsement : (required for health-related professional, pharmaceutical, laboratory, or imaging service)

Documentation is ... Not Applicable to this Request Attached to this Request

19) Department of Human Resources Endorsement : (required for state employees training service)

Documentation is ... Not Applicable to this Request Attached to this Request

20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

This contract was competitively bid. Because the current contractor is well into the project, and because this amendment does not increase the maximum liability of the contract, it was deemed a financial risk to the State to undertake efforts to identify an alternative method to procure these services. As a result, the Department is seeking this amendment, since it is in the best interest of the State to continue with the current contractor.

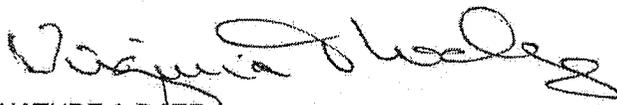
21) Justification for the Proposed Non-Competitive Amendment :

The subject contract is for quality assurance and independent verification and validation (QA/IV & V) of the Department of Human Services' Vision Integration Platform (VIP) information systems project. These services are federally mandated and are also in the best interest of the State in order to insure that the VIP system is being developed appropriately. The Contractor's services under this contract are by nature inextricably linked to the development schedule of the VIP system. Therefore, this amendment is necessary in order to ensure that QA/IV & V services remain available as needed in conjunction with the VIP contract.

This amendment simply exercises the contract term extension available in Section B.2. and modifies the reporting requirements as detailed in the QA/IV & V plan mandated in Section A.4.b. In order to meet the State's requirements for ongoing validation and verification of the VIP system integrator's work, this amendment will establish incremental reporting and payment benchmarks according to the QA/IV & V plan. The aggregated total of these incremental payments will not exceed the current maximum liability. Because this amendment does not change the original maximum liability and the Contractor will receive payments on a delayed and extended timeframe, this will not provide any financial gain to the Contractor. Had the original solicitation included this extended timeframe, it is very likely that the cost to the State would have been significantly greater.

AGENCY HEAD SIGNATURE & DATE :

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)



3/13/09

SIGNATURE & DATE

CONTRACT SUMMARY SHEET

121107

RFS #	Contract #
345.01-050-08	FA 08-23551-01

State Agency	State Agency Division
Department of Human Services	Administration

Contractor Name	Contractor ID # (FEIN or SSN)
The North Highland Company	<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 581823492-00

Service Description			
Information Systems			

Contract BEGIN Date	Contract END Date	Subrecipient or Vendor?	CFDA #
January 17, 2008	June 30, 2010	Vendor	

Mark Each TRUE Statement	
<input checked="" type="checkbox"/> Contractor is on STARS	<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts

Allotment Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
345.01	129	089	11	N/A	N/A

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2008	\$14,519.00	\$39,903.00	\$0.00	\$25,178.00	\$79,600.00
2009	\$43,303.00	\$119,008.00	\$0.00	\$75,089.00	\$237,400.00
2010	\$87,372.00	\$240,122.00	\$0.00	\$151,506.00	\$479,000.00
					\$0.00
					\$0.00
					\$0.00
TOTAL:	\$145,194.00	\$399,033.00	\$0.00	\$251,773.00	\$796,000.00

COMPLETE FOR AMENDMENTS ONLY	State Agency Fiscal Contact & Telephone #
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FY	Base Contract & Prior Amendments	THIS Amendment ONLY	State Agency Budget Officer Approval
2008	\$265,334.00	(\$185,734.00)	Jeffrey W. Roberts
2009	\$530,666.00	(\$293,266.00)	
2010	\$0.00	\$479,000.00	

Funding Certification (certification, required by T.C.A. § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)

TOTAL:	\$796,000.00	\$0.00	
End Date	6/30/2009	6/30/2010	

Contractor Ownership (complete for ALL base contracts -- N/A to amendments or delegated authorities)

<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 type="checkbox"/> NOT Minority/Disadvantaged	<input type="checkbox"/> Other

Contractor Selection Method (complete for ALL base contracts -- N/A to amendments or delegated authorities)

<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation*	<input type="checkbox"/> Alternative Competitive Method*
<input type="checkbox"/> Non-Competitive Negotiation*	<input type="checkbox"/> Negotiation w/ Government (ID,GG,GU)	<input type="checkbox"/> Other

Procurement Process Summary (complete for Non-Competitive Negotiation, Competitive Negotiation, OR Alternative Method)

**AMENDMENT ONE
TO FA 08-23551**

This Contract Amendment is made and entered by and between the State of Tennessee, Department of Human Services, hereinafter referred to as the "State" and The North Highland Company, hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

1. The text of Contract Section B.1. is deleted in its entirety and replaced with the following:
 - B.1. This Contract shall be effective for the period commencing on January 17, 2008 and ending on June 30, 2010. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

2. The text of Contract Section C.3. is deleted in its entirety and replaced with the following:
 - 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:

	Service Description	Amount (per compensable increment)
	Baseline Assessment and Initial QA/IV&V plan development (as required in contract sections A.4)	\$79,600.00
	Detail Design Phase Report (as required in contract sections A.5)	\$79,600.00
UPL 4/28/09	Construction Phase One Collaboration and Report – Milestone 1 (as defined in Contractor's QA/IV&V plan—see contract section A.5.b.)	4/28/09 \$78,800.00
UPL 4/28/09	Construction Phase Two Collaboration and Report – Milestone 2 (as defined in Contractor's QA/IV&V plan—see contract section A.5.b.)	4/28/09 \$79,000.00
UPL 4/28/09	Construction Phase Three Collaboration and Report – Milestone 3 (as defined in Contractor's QA/IV&V plan—see contract section A.5.b.)	4/28/09 \$79,000.00
UPL 4/28/09	Monitoring and Assessment #1 (as defined in Contractor's QA/IV&V plan—see contract section A.5.b.)	4/28/09 \$50,000.00
UPL 4/28/09	Monitoring and Assessment #2 (as defined in Contractor's QA/IV&V plan—see contract section A.5.b.)	4/28/09 \$50,000.00
UPL 4/28/09	Monitoring and Assessment #3 (as defined in Contractor's QA/IV&V plan—see contract section A.5.b.)	4/28/09 \$50,000.00
UPL 4/28/09	Monitoring and Assessment #4 (as defined in Contractor's QA/IV&V plan—see contract section A.5.b.)	4/28/09 \$50,000.00
UPL 4/28/09	Monitoring and Assessment #5 (as defined in Contractor's QA/IV&V plan—see contract section A.5.b.)	4/28/09 \$50,000.00
UPL 4/28/09	Monitoring and Assessment #6 (as defined in Contractor's QA/IV&V plan—see contract section A.5.b.)	4/28/09 \$50,000.00
UPL 4/28/09	Monitoring and Assessment #7 (as defined in Contractor's QA/IV&V plan—see contract section A.5.b.)	4/28/09 \$50,000.00
UPL 4/28/09	Monitoring and Assessment #8 (as defined in Contractor's QA/IV&V plan—see contract section A.5.b.)	4/28/09 \$50,000.00

The revisions set forth herein shall be effective January 1, 2009. All other terms and conditions not expressly amended herein shall remain in full force and effect.

CONTRACT SUMMARY SHEET

12110

RFS # 345.01-050-08	Contract # FA-08-23551-00
State Agency DEPARTMENT OF HUMAN SERVICES	State Agency Division ADMINISTRATION
Contractor Name THE NORTH HIGHLAND COMPANY	Contractor ID # (FEIN or SSN) <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- V581823492-00

Service Description
INFORMATION SYSTEMS

Contract Begin Date January 15, 2008	Contract End Date June 30, 2009	SUBRECIPIENT or VENDOR? VENDOR	CFDA #
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Mark Each TRUE Statement

Contractor is on STARS Contractor's Form W-9 is on file in Accounts

Allotment Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
345.01	129	089	11		
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2008	\$48,398.00	\$133,011.00	\$0.00	BASED TO \$83,925.00	\$265,334.00
2009	\$96,796.00	\$266,020.00	\$0.00	ITS DIVISION \$167,850.00	\$530,666.00
JAN 17 2008					
BY OFFICE OF CONTRACTS REVIEW					
TOTAL:	\$145,194.00	\$399,031.00	\$0.00	\$251,775.00	\$796,000.00

— COMPLETE FOR AMENDMENTS ONLY —			State Agency Fiscal Contact & Telephone #
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Marvel Howard 400 Deaderick Street, Citizens Plaza Building - 5th Floor, Nashville, TN 37248 (615) 313-5409
			State Agency Budget Officer Approval Jeffrey W. Roberts January 15, 2008
			Funding Certification (Certification required by T.C.A. § 9-4-5113 that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)
TOTAL:	\$0.00	\$0.00	JAN 17 2008
End Date:			

Contractor Ownership (complete for ALL base contracts -- N/A to amendments or delegated authorities)

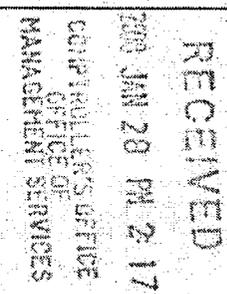
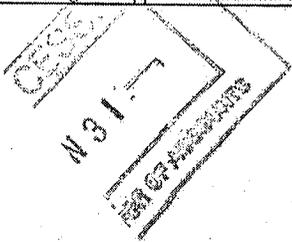
African American Person w/ Disability Hispanic Small Business NOT minority/disadvantaged
 Asian Female Native American

Contractor Selection Method (complete for ALL base contracts -- N/A to amendments or delegated authorities)

RFP Competitive Negotiation * Alternative Competitive Method *
 Non-Competitive Negotiation * Negotiation w/ Government (e.g., ID, GG, GU)

*** Procurement Process Summary** (complete for selection by Non-Competitive Negotiation, Competitive Negotiation, OR Alternative Method)

The _____ was selected through an approved Alternative Competitive Process.



CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF HUMAN SERVICES
AND
THE NORTH HIGHLAND COMPANY

NCS 1-17-08
DTZ
BCT 1/17/08

This Contract, by and between the State of Tennessee, Department of Human Services, hereinafter referred to as the "State" and THE NORTH HIGHLAND COMPANY, hereinafter referred to as the "Contractor," is for the provision of Quality Assurance/Independent Verification and Validation ("QA/IV&V") services, as further defined in the "SCOPE OF SERVICES."

The Contractor is A FOR-PROFIT CORPORATION.

Contractor Federal Employer Identification or Social Security Number: 581823492

Contractor Place of Incorporation or Organization: GEORGIA.

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all services 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. The Contractor shall provide QA/IV&V services for the Vision Integration Platform (VIP) development life-cycle by verifying and validating the processes, products, metrics, and deliverables of both the VIP Contractor and the State, focusing on issues of substance that could introduce or increase risk during the course of the project. The Contractor shall perform all QA/IV&V services from the start date of this contract through the Implementation Phase of the VIP contract. Services provided by the Contractor shall adhere to industry standard methodologies and approaches. The Contractor shall provide all deliverables to the VIP Project Steering Committee for approval. Approval of all deliverables shall be at the sole discretion of the state and will be provided in writing.
- A.3. The Contractor shall perform the following QA/IV&V services:
 - a. Baseline Assessment of the project, including: schedule, technical approach/infrastructure, detail design process and methodology, and quality assurance;
 - b. Verification and Validation of processes, products, metrics, and deliverables of both the VIP Contractor and the State;
 - c. Review on-going project documentation for comprehensiveness and applicability;
 - d. Identify to the State and VIP Contractor potential risks to successful implementation of VIP and recommend possible mitigation and/or resolution strategies; and,
 - e. Report to the VIP Project Steering Committee the on-going status of the VIP project.
- A.4. Baseline Assessment and Plan Development.
 - A.4.a The Contractor shall perform a Baseline Assessment of the VIP project within forty-five (45) calendar days of the contract start date and shall include the following:
 - (1) Project Schedule
 - A. Evaluate the current project schedule to determine it is complete and inclusive of all dependent tasks.
 - B. Evaluate the current and planned resources to determine whether they are reasonable to accomplish the tasks.
 - C. Evaluate the project schedule for its ability to be achieved.
 - D. Evaluate the schedule for potential slippages and causes.
 - (2) Technical Approach/Infrastructure
 - A. Evaluate the technical architecture for efficiency, stability, and scalability.
 - B. Evaluate the current source code for sound programming practices and adherence to industry standards to ensure usability and maintainability.
 - C. Evaluate the version control process.

- D. Evaluate the database design, including:
 - i. Data Requirement Definitions;
 - ii. File Structures, Organization, Access, and Processing Limitations;
 - iii. Logical Data Model or Entity Relationship Diagram;
 - iv. Physical Data Model or Physical Database Diagram;
 - v. Data Dictionary;
 - vi. Referential Integrity; and
 - vii. Trigger and Stored Procedure Usage Document

(3) *Detail Design Process and Methodology*

- A. Evaluate the detail design documentation for comprehensiveness and applicability for a project of the scope and complexity of VIP.
- B. Evaluate the detail design documentation to assess its sufficiency for construction.

(4) *Quality Assurance*

- A. Evaluate the completeness and effectiveness of contractor quality assurance activities, including internal reviews, metrics collection, and reporting.

A.4.b. The Contractor shall submit to the State, within forty-five (45) calendar days of the contract start date, a plan to verify and validate VIP processes, products, metrics, and deliverables utilizing the Baseline Assessment performed per section A.4.a. The Contractor will maintain and keep this plan up-to-date throughout each of the VIP contract phases. This QA/IV&V plan, in a form and substance acceptable to the State, shall include the following:

- (1) Scope of the plan, including identifying related VIP project management documents;
- (2) Project quality objectives and the metrics needed to assess progress toward those objectives; Each identified metric will be fully defined in terms of:
 - A. Purpose and expected use.
 - B. Definition of data elements used in the metric.
 - C. Collection, calculation, and reporting method, schedule, and responsibility.
- (3) Standards to be used in the project (these may be references to external documents);
- (4) Schedule of IV&V Documentation and Reporting
- (5) Quality control activities;
- (6) Documentation of executive-level, milestone or phase transition point review activities, including but not limited to, conversion and pilot.
- (7) Risk identification and mitigation and resolution activities.

A.5. Verification and Validation.

A.5.a. The Contractor shall be fully responsible for on-going verification and validation of processes, products, metrics, and deliverables of all phases of the VIP project from the start of this contract through the Implementation Phase of the VIP contract.

- (1) Verify and validate the processes necessary to design, construct, test, implement, and maintain VIP;
- (2) Verify and validate products necessary to design, construct, test, implement, and maintain VIP, including, but not limited to, technical architecture, source code, data base, and documentation;
- (3) Verify and validate the metrics used to determine progress and status of VIP appropriateness and accuracy;
- (4) Verify and validate deliverables associated with each of the following phases of the VIP contract
 - A. Detail Design
 - B. Construction
 - C. User Acceptance Testing
 - D. Implementation

A.5.b. The Contractor shall document and report results of such verification and validation efforts and report same to the State in a manner detailed in the approved QA/IV&V plan.

A.5.c. The Contractor shall, within 10 days of State receipt of written acknowledgement of completion of phase deliverables by the VIP Contractor, document and report results of the respective phase deliverable acknowledged as complete by the VIP Contractor.

- A.5.d The State is the sole judge of any report's acceptability. When the report is acceptable, the State will document this in writing. The Contractor shall not rely on any verbal commitment from the State regarding report acceptability. The State will not consider any report to be final or eligible for payment until the report has received written State approval. The State will provide reasonable but limited support to the Contractor for producing acceptable reports.

The State's review will consider the following report characteristics:

- (1) Completeness (full coverage of all topics within the defined scope of the report)
- (2) Accuracy, correctness
- (3) Level of detail (sufficient to prevent, minimize, avoid errors when used as intended)
- (4) Usability (clarity, conciseness, consistency)
- (5) Conformance to applicable State standards
- (6) Pervasiveness of cosmetic errors (spelling, grammar, syntax, etc.)

- A.5.e. The State will complete its review and provide results in writing to the Contractor within a time frame determined by the scope and complexity of the deliverable, but not to exceed fifteen (15) business days. The review cycle will begin on the next business day after the date the Contractor submits the report to the State for review. The State will formally communicate to the Contractor in writing all deficiencies found in a deliverable.

A.6. Project Documentation Review.

- A.6.a. Review on-going project documentation for applicability to design, construct, test, implement, and maintain VIP.

- A.6.b. The Contractor's review shall consider the following characteristics:

- (1) Completeness (full coverage of all topics within the defined scope of the deliverable)
- (2) Accuracy, correctness
- (3) Level of detail (sufficient to prevent, minimize, avoid errors when used as intended)
- (4) Usability (clarity, conciseness, consistency)
- (5) Conformance to applicable State standards
- (6) Pervasiveness of cosmetic errors (spelling, grammar, syntax, etc.)

A.7. Risks.

- A.7.a The Contractor shall identify and document risks to successful design, construction, testing, implementation, and maintenance of VIP.

- A.7.b. The Contractor shall report any identified risks and the potential level of severity of such risks in accordance with the approved QA/IV&A plan.

- A.7.c. The Contractor shall recommend mitigation and/or resolution strategies to manage and/or eliminate the identified risks.

A.8. Status Reporting.

- A.8.a The Contractor shall present to the VIP Steering Committee a report of the status of the Project Quality Objectives in accordance with the approved QA/IV&V plan relating to:

- (1) Schedule
- (2) Risks
- (3) VIP contract phase deliverables

- A.8.b The Contractor shall present to the VIP Steering Committee bi-weekly or as otherwise specified in the approved QA/IV&V plan.

- A.8.c. The Contractor shall produce a summary report to provide guidance and direction for the ongoing maintenance and operation of VIP.

- A.9. Dispute Resolution Process. Disputes between the QA/IV&V Contractor and the VIP Contractor with respect to project activities and deliverables under QA IV&V review will be resolved at the lowest possible level. The QA/IV&V Contractor and VIP Contractor management should meet to discuss and come to a mutually agreeable solution to any issues that arise. If the issue cannot be resolved at this level, the

QA/IV&V Contractor and VIP Contractor management will meet with the State's VIP Project Director to resolve the issue. If the issue cannot be resolved at the VIP Project Director level, then the issue will be presented to the VIP Steering Committee for resolution.

A.10 Work Location.

- A.10.a. The Contractor shall locate sufficient staff at a State office site in Nashville, Tennessee to implement the approved QA/IV&V plan.
- A.10.b. The State may also request that QA/IV&V Contractor personnel travel away from the official station of Nashville, Tennessee to perform project-related tasks. (Reference Section C.4.)
- A.10.c. Normal State work hours are 8:00 a.m. to 4:30 p.m., Central Time, with additional hours worked as necessary to meet project deadlines. All work performed on the State's premises shall be completed during the State's standard business hours, unless otherwise agreed to by the State.
- A.11. The State shall provide office space, meeting room space, and phone service to the Contractor. The State shall also provide connectivity to the State's network and access to printers.

B. CONTRACT TERM:

- B.1. This Contract shall be effective for the period commencing on January 17, 2008 and ending on June 30, 2009. 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 Seven Hundred Ninety-Six Thousand Dollars and No Cents (\$796,000.00). The payment rates in Section C.3 and the Travel Compensation provided in Section C.4 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:

Service Description	Amount (per compensable increment)
Baseline Assessment and Initial QA/IV&V plan development (as required in contract sections A.4)	\$ 79,600.00
Detail Design Phase Report (as required in contract sections A.5)	\$ 79,600.00
Construction Phase Report (as required in contract sections A.5)	\$ 159,200.00
User Acceptance Testing Phase Report (as required in contract sections A.5)	\$ 199,000.00
Implementation Phase Report (as required in contract sections A.5)	\$ 199,000.00
Completion Summary Report (as required in contract sections A.8.c)	\$ 79,600.00

- C.4. Travel Compensation. With regard to Travel, the following provisions shall apply:
- C.4.a. The project site "Official Station," which is defined as the location at which Contractor personnel shall perform the major portion of their duties when on site, is Nashville, Tennessee.
- C.4.b. Neither the Contractor, its personnel, nor its agents shall be eligible for reimbursements for any travel expenses related to work performed at Contractor maintained or sanctioned work locations, or at the Official Station. This includes, but is not limited to, travel to and from the Official Station, and food and lodging therein.
- C.4.c. In some cases, at the State's request and with prior written approval, Contractor personnel may be required to travel and work away from the Official Station. Such travel expenses, provided that the destination is greater than fifty (50) miles from the Official Station, shall be reimbursed in accordance with the *State of Tennessee Comprehensive Travel Regulations*, as amended from time to time (see <http://www.state.tn.us/finance/act/policy.html>).
- 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:
- Tennessee Department of Human Services
Fiscal Services Office
11th Floor Citizens Plaza Building
400 Deaderick St.
Nashville, TN 37243-1403
- 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 & Administration, OIR;
- (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 Description for each service invoiced;
 - ii. Number of Units, Increments, or Milestones of each service invoiced;
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) for each service invoiced;
 - iv. Amount Due by Service; and
 - v. Travel Compensation requested in accordance with and attaching to the invoice appropriate documentation and receipts as required by the above-referenced "State Comprehensive Travel Regulations;" and
 - vi. 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.

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.

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 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 (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. 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.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. 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.13. 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.14. State Liability. The State shall have no liability except as specifically provided in this Contract.

- 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. 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.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. 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.13. 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.14. State Liability. The State shall have no liability except as specifically provided in this Contract.

- D.15. 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, acts of God, natural disasters, riots, wars, epidemics or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. 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.18. 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.19. 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.20. 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:

Lynne Diver
Tennessee Department of Human Services
7th Floor Citizens Plaza Building
400 Deaderick St.
Nashville, TN 37243-1403
Email: Lynne.Diver@state.tn.us
Phone: (615) 313-5281
Fax: (615) 741-2185

The Contractor:

Lee Malone
The North Highland Company
100 Winners Circle, Suite 154
Nashville, TN 37027
E-mail: lmalone@northhighland.com
Phone: (615) 429-5709
Fax: (615) 370-2797

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. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:
- failure to perform in accordance with any term or provision of the Contract;
 - partial performance of any term or provision of the Contract;
 - any act prohibited or restricted by the Contract, or
 - violation of any warranty.

For purposes of this contract, these items shall hereinafter be referred to as a "Breach."

a. Contractor Breach — The State shall notify Contractor in writing of a Breach.

- (1) In event of a Breach by Contractor, the state shall have available the remedy of Actual Damages and any other remedy available at law or equity.
- (2) Partial Default— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the written notice to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

Upon Partial Default, 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. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken.

- (3) Contract Termination — In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as the Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in

the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

- b. **State Breach** — In the event of a Breach of Contract by the State, the Contractor shall notify the State in writing within thirty (30) days of any Breach of Contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.
- E.6. **Partial Takeover.** The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least thirty (30) days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service subject to the Partial Takeover, said amounts to be determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, 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.7. **State Furnished Property.** The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.
- E.8. **Confidentiality of Records.** Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.9. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.10. Limitation of Liability. The parties agree that the total liability of the Contractor for breach of this Contract shall not exceed two (2) times the value of this contract. The value shall be established by the Contract Maximum Liability in Section C.1 and increased by subsequent amendments if any. The foregoing provision shall not limit the contractor's liability for intentional torts, criminal acts or fraudulent conduct.
- E.11. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:
- a. The Contract document and its attachments
 - b. The Contractor's Bid and all clarifications and addenda made to it

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

- E.12. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- E.13. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

E.14. State Ownership of Work Products. The State shall have ownership, right, title, and interest, including ownership of copyright, in all work products, including computer source code, created, designed, developed, derived, documented, installed, or delivered under this Contract subject to the next subsection and full and final payment for each "Work Product." The State shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.

- a. To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the State shall acquire no right, title or interest in or to such Contractor Materials EXCEPT the Contractor grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State's internal purposes, any Contractor Materials reasonably associated with any Work Product provided under the Contract.
- b. The Contractor shall furnish such information and data as the State may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Work Product and Contractor Materials reasonably associated with any Work Product, in accordance with this Contract and applicable state law.
- c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
- d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

IN WITNESS WHEREOF:

THE NORTH HIGHLAND COMPANY:

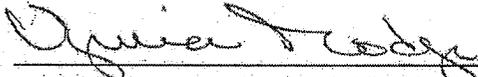


NANCY SCHULTZ, VICE PRESIDENT

1/13/08

DATE

DEPARTMENT OF HUMAN SERVICES:

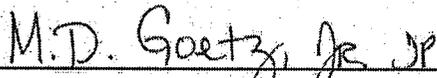


VIRGINIA T. LODGE, COMMISSIONER

01-15/08

DATE

APPROVED:



M. D. GOETZ, JR., COMMISSIONER
DEPARTMENT OF FINANCE AND ADMINISTRATION

1-28-08

DATE



JOHN G. MORGAN, COMPTROLLER OF THE TREASURY

1/29/08

DATE

Contract Attachment A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	The North Highland Company
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	58-1823492

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.



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.

Nancy Schultz Vice President
PRINTED NAME AND TITLE OF SIGNATORY

1/13/08
DATE OF ATTESTATION