



Request for Proposal

**REQUEST FOR PROPOSAL (RFP)**  
**GENERAL CONTRACTOR FOR ICU EXPANSION AT BAPTIST MEMORIAL HOSPITAL**  
**COLLIERVILLE**



**350 N. HUMPHREYS BLVD.**  
**MEMPHIS, TN 38120**

**DATE**  
**MAY 28, 2024**

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## 1. SUMMARY AND BACKGROUND

BMHCC is a health care organization that was founded in 1912 and is focused on our vision of being the provider of choice by transforming the delivery of health care through partnering with patients, families, physicians, care providers, employers and payers; and by offering safe, integrated, patient-focused, high quality, innovative and cost-effective care. In keeping with the three-fold ministry of Christ — Healing, Preaching and Teaching — Baptist Memorial Health Care is committed to providing quality health care. The system consists of twenty-four hospitals, four home care associations, five hospice programs and a number of clinics and services throughout Tennessee, Mississippi, and Arkansas.

BMHCC's corporate headquarters are in Memphis, TN.

### FACILITY:

- BAPTIST MEMORIAL HOSPITAL COLLIERVILLE  
1500 W. POPLAR AVE.  
COLLIERVILLE, TN 38017

Baptist Memorial Health Care Corporation (BMHCC) is currently accepting proposals for a Contractor at Baptist Memorial Hospital Collierville for an ICU Expansion. The existing 7 bed ICU is located adjacent to the hospital's emergency department on the 1<sup>st</sup> floor. The planned expansion area is located on the 2nd floor in an areas previous used for labor and delivery rooms and associated support spaces. There is also shelled space that will be incorporated to create a 14-bed unit with the necessary support spaces. The square footage available for renovation is around 17,000 sq. ft. BMHCC is looking to collaborate with a company that can provide the ICU unit as designed per plans and specs by ESa, our architect.

The successful respondent will serve as the Contractor in coordination with the Owner through all phases of work, including the pre construction planning, mobilization, demolition, construction, coordination of required utility modifications to support ongoing operations, code authority approvals, and closeout, among others. Additional detail regarding the scope of services is provided in this RFP. It is BHMCC's intent that the resulting contract be funded, in whole or in part, by proceeds from the American Rescue Plan Act ("ARPA") administered through the Tennessee Department of Health as part of the Health Care Resiliency Program ("HRP"). Accordingly, all work must be completed in compliance with the U.S. Department of Treasury rules and guidance for the use of Coronavirus State and Local Fiscal Recovery Funds, as well as Federal laws, regulation, executive orders, and the rules applicable to federal grants, including the HRP, located at 2 C.F.R. Part 200. The resulting contract must contain the provisions required by 2 C.F.R. § 200.327, which are included for reference in Exhibit I to this RFP. Note that the HRP is a reimbursement grant program with monthly invoicing required. The successful Respondent must submit its invoices in an agreed upon template form. This project is on a strict timeline. All grant funds must be expended (building must be complete, final invoices submitted, and

final payments made) by June 30, 2026. The firm winning this bid award must be capable of starting work immediately and providing the required deliverables according to an acceptable timeline. Respondents must provide a list of anticipated deliverables for this project and a timeline associated with submission of each deliverable to BMHCC to ensure completion of the Project and the closeout process by June 30, 2026. **Proposals are due by July 10, 2024 at 5:00 PM EST.** Further instructions for submission of proposals are contained in this RFP. Interested persons or entities may obtain the RFP and any addenda by e-mailing John Curran at [John.Curran@BMHCC.org](mailto:John.Curran@BMHCC.org). BMHCC reserves the right to publicize this RFP and any addenda via other means. All proposals must be submitted via e-mail, subject RFP for BMHCC COLLIERVILLE ICU, to John Curran at [John.Curran@BMHCC.org](mailto:John.Curran@BMHCC.org), Laura Riggins at [Laura.Riggins@BMHCC.org](mailto:Laura.Riggins@BMHCC.org) and to Craig Holloway at [CraigH@esarch.com](mailto:CraigH@esarch.com). Please copy all three persons on the submissions.

The purpose of this Request for Proposal (RFP) is to solicit proposals from various candidate organizations, conduct a fair and extensive evaluation based on criteria presented, and select the candidate who best represents the direction BMHCC wishes to go.

The preferred contractor will present existing credentials to perform this work in the State of Tennessee and show experience navigating the requirements of the State of Tennessee Department of Health review submissions. Ability to comply with the Shelby County Code Authority requirements as amended is preferred. Proof of a Sam.gov number is a must. The preferred contractor will show proof at bid time that all suppliers and subcontractors with a contract value over \$25,000 must either have a Sam.gov number or show a pending application number to secure one.

The preferred contractor will detail experience constructing a programs that match the facilities operations, communities served and required practice parameters utilizing proven processes and approaches through the phases of construction.

The preferred Vendor will show experience assisting the organization with identifying the suppliers and subcontractors required to create a complete operable ICU project under this Fixed Bid Construction RFP.

The preferred vendor will show costs of services in enough detail to compare submitted proposals. Fixed price will be a selection criteria.

## **2. PROPOSAL GUIDELINES**

This Request for Proposal represents the requirements for an open and competitive process. Proposals will be accepted until **July 10, 2024 at 5pm CST.** All proposals must be signed by an official agent or representative of the company submitting the proposal.

If the organization submitting a proposal will self perform contract work to meet the requirements contained herein, this must be clearly stated in the proposal. Additionally, all

costs included in proposals must be all-inclusive to include any outsourced or contracted work as well as any set-up costs, reimbursement costs, etc.

All costs must be itemized to include an explanation of all fees and costs.

Submission of a response to the RFP does not guarantee your company will be given the opportunity to present to the RFP Steering Group or be selected to provide any services to Customer's facilities.

Contract terms and conditions will be negotiated upon selection of the winning bidder for this RFP. All contractual terms and conditions will be subject to review by BMHCC legal department and will include scope, budget, schedule, and other necessary items pertaining to the project. A draft contract will be provided before contract award.

### **Liability**

The issuance of this document and the receipt of information thereby will not cause Customer to incur any liability or obligation to Vendor, financial or otherwise.

THIS RFP DOES NOT CONSTITUTE, AND SHOULD NOT BE CONSTRUED TO CONSTITUTE A LEGALLY BINDING AGREEMENT OR AN OFFER TO ENTER INTO A LEGALLY BINDING AGREEMENT. CUSTOMER RESERVES THE RIGHT, IN ITS SOLE DISCRETION TO ASK FOR ADDITIONAL INFORMATION FROM ONE OR MORE VENDORS, AND/OR TO REJECT ANY OR ALL PROPOSALS RECEIVED IN RESPONSE TO THIS RFP FOR ANY REASON OR NO REASON WHATSOEVER. CUSTOMER FURTHER RESERVES THE RIGHT TO SELECT VARIOUS ELEMENTS OF THE PROPOSALS RECEIVED TO DEVELOP A SEPARATE SOLUTION. THIS SOLICITATION DOES NOT COMMIT CUSTOMER TO AWARD A CONTRACT OR PAY ANY COSTS INCURRED IN PREPARING A PROPOSAL. IT IS ALSO UNDERSTOOD THAT THE CRITERIA FOR AWARDED BUSINESS AS A RESULT OF THIS RFP WILL NOT BE AWARDED ON PRICE ALONE.

- a) Upon award, Vendor shall provide proof of the following insurance coverage:
- Workers Compensation as provided by statute
  - Employers Liability of at least \$1,000,000 each accident, \$1,000,000 Disease-policy limit, and 1,000,000 Disease-each employee.
  - General Liability, including Products and Completed Operations Liability, and Personal and Advertising Injury, in an amount not less than \$1,000,000 per occurrence and \$5,000,000 aggregate, Fire Damage Limit of \$50,000 and Medical Expenses Limit (any one person) of \$5,000. This may be on an occurrence form, or claims made form, and may be established by a primary policy, or the combination of a primary plus excess policy. If this coverage is on a claims made basis, supplier agrees to purchase an unlimited extended reporting period endorsement or tail coverage at any time this coverage is cancelled or not renewed. This coverage will be evidenced by a certificate of insurance allowing a

- 30-day notice of cancellation and naming Baptist Memorial Health Care Corporation, its subsidiaries and affiliates as additional insureds.
- Property Damage Liability including coverage for the following hazards:
  - Comprehensive Automobile Liability (including owned, non-owned or hired)
  - Combined Single Limit of Liability including Bodily Injury and Property Damage, not less than: \$1,000,000
  - Property Damage, Each Occurrence: \$1,000,000

Vendor receiving the award (if any) shall be required to furnish Baptist with a Certificate of Insurance naming Baptist as an Additional Insured.

- In addition to the coverages specifically named above, Vendor agrees to carry Umbrella Liability coverage of \$2,000,000.
- The Umbrella Liability policy or a Follow Form Excess Liability policy may be utilized to establish the required liability limits for the named General Liability, Property Damage Liability and Professional Liability coverages. This policy may be on an occurrence form, or claims made form and must be excess of underlying General Liability and Professional Liability. If this coverage is on a claims made basis, supplier agrees to purchase an unlimited extended reporting period endorsement or tail coverage at any time this coverage is cancelled or not renewed. This coverage will be evidenced by a certificate of insurance allowing a 30-day notice of cancellation and naming Baptist Memorial Health Care Corporation, its subsidiaries and affiliates as additional insureds.

(b) Vendor agrees (i) the insurance will extend five (5) years after the expiration of any agreement derived from this RFP process in accordance with the Terms and Conditions cited herein, (ii) to furnish Baptist a Certificate(s) of Insurance from its Insurance Carrier(s) evidencing coverage of the Vendor's operations and the period of the policy and indicating the type, kind and amount of insurance in effect, (iii) Vendor agrees to furnish each Certificate of Insurance, in duplicate, to Baptist for approval within thirty (30) days from the effective date of any agreement subsequent to this RFP process, unless otherwise specifically authorized by Baptist in writing. Vendor agrees to notify Baptist thirty (30) days in advance of the effective date of any reduction in coverage, or cancellation of, this policy.

### **3. PROJECT PURPOSE AND DESCRIPTION**

**The purpose and description of this project is as follows:** To partner with a company that can provide full contractual construction services to comply with plans and specifications as developed by ESa Construction Drawings dated 5/17/2024.

### **4. PROJECT SCOPE**

The scope of this project includes construction services for a 17,000 sq. ft., 14 bed ICU. The existing 7 bed ICU is located adjacent to the hospital's emergency department on the 1<sup>st</sup>

floor. The planned expansion area is located on the 2nd floor in an areas previous used for labor and delivery rooms, 2 C-section suites, and associated support spaces. There is also shelled space that will be incorporated to create a 14-bed unit with the necessary support spaces. BMHCC is looking to collaborate with a company that can provide contracted construction services that accommodates the many areas described above.

The selected bidder will be responsible for assisting BMHCC with tailoring the product to our operational needs at Collierville.

**Product Health Insurance Portability and Accountability Act (HIPAA) Compliance**

See Attachment C

Regulatory requirements related to HIPAA and vendor supported systems.

Vendor will agree to participate in Baptist’s vendor security risk assessment process which may involve a third party assessor prior to formal engagement and vendor selection.

Vendor understands and agrees to assist the owner meeting all grant documentation requirements.

## 5. REQUEST FOR PROPOSAL AND PROJECT TIMELINE

**Request for Proposal Timeline:**

All proposals in response to this RFP are due no later than **5pm CST July 10, 2024.**

Customer may elect to accept or reject and return proposals received after the deadline at its sole discretion. Customer reserves the right to modify the schedule of the RFP process. Pricing information supplied with the response to the RFP must be valid for at least one year after the submission date.

**Examination of Proposal Documents**

Prior to submitting a proposal, the Vendor will carefully examine all RFP documents and instructions. Submission of a proposal will be interpreted as evidence that such examination was completed. Bidders will submit the RFP intent to bid by June 12, 2024. All questions are to be posed to the three listed contacts by June 28, 2024 and all answers will be shared with all acknowledged bidders.

If additional information or discussions are needed with any bidders during this window, the bidder(s) will be notified. Selected bidders might be asked to present their proposals and products to our selection committee on or around the week of **July 24, 2024.**

The selection decision for the winning bidder will be made no later than August **15, 2024 by the selection committee.**

Upon notification, the contract negotiation with the winning bidder will begin immediately. Contract negotiations will be completed **ASAP**.

Notifications to bidders who were not selected will be completed by **August 22, 2024**.

**RFP Timetable**

The tentative timetable below is provided for planning purposes only and may be modified by Customer at its sole discretion.

<b>Activities</b>	<b>Target Dates</b>
RFP distributed to participants	June 5, 2024
RFP acknowledgement – 5:00 PM CST - Attachment A	June 12, 2024
Deadline for questions – 5:00 PM CST	June 28, 2024
<b>Deadline for RFP responses – 5:00 PM CST</b>	<b>July 10, 2024</b>
Initial internal evaluation of responses complete	July 17, 2024
Vendor Presentations (week of)	July 24, 2024
Last and final bids from finalists	NA
Tentative Vendor selection ( <i>formal awards are not made until contract negotiations are final</i> )	August 15, 2024
ShoulContract Finalization	TBD

**Project Timeline:**

Project initiation phase must be completed by **August, 2024**.

**Points of Contact**

Customer is establishing two BMHCC contacts and an architect contact for the RFP process:

**Primary**

•Laura Riggins– Corporate Contracts  
 Office: 901-227-5167  
 Email: [laura.riggins@bmhcc.org](mailto:laura.riggins@bmhcc.org)

**Secondary:**

•John Curran– System Director of Construction  
 Office: (901) 227-8168  
 Email: [john.curran@bmhcc.org](mailto:john.curran@bmhcc.org)

In addition respondents will copy:

Craig Holloway  
 ESA  
 CraigH@esarch.com

All questions from RFP respondents should be forwarded to Laura Riggins and John Curran. Questions will be logged and answers distributed to all active respondents. If required, changes to RFP requirements will be distributed to all active respondents.



From the time the RFP is released until a contract, if any, is awarded, all inquiries regarding the RFP process are to be directed to the contact persons provided. These are the only persons authorized by the Customer to receive questions and provide information regarding the RFP process. Attempts to contact employees of the Customer directly may result in excluding the Vendor from consideration.

### **Use and Disclosure of Information**

Customer specifically reserves the right to use any general concept or methods contained in any proposal received in response to this RFP without compensating the provider. Materials, data or other information submitted by Vendor that are considered confidential, proprietary or otherwise protected must be clearly identified and marked as such. Customer reserves the right to use outside consultants to review the proposals and may provide them with proprietary information produced by Vendor.

Customer may be subject to an Open Records Act. To the extent permitted by such Act, RFPs and any accompanying documents or correspondence submitted by Vendor will be accorded confidentiality by Customer as “trade secret” privileged information, confidential commercial property, financial data furnished by or obtained from any person or entity. Information will only be released to requesting organizations when required by statute or so ordered by a court of appropriate jurisdiction and only after notifying Vendor of such request.

Customer is under no obligation to return any materials submitted in response to this RFP. The information contained in this RFP is proprietary to Customer. All Vendors agree to treat all the information contained in this RFP as confidential. The information is to be used by each Vendor only for preparing a proposal in response to this request. The information in this RFP may not be used or shared with any other parties for any other purpose, without obtaining Customer’s prior written consent.

Vendor must immediately return Customer’s confidential information and any Vendor information incorporating Customer’s confidential information upon Customer’s request.

### **Vendor Questions and Clarifications**

If Vendor does not understand any portion of the RFP or has questions about the RFP requirements or process, it is Vendor’s responsibility to request clarification. Questions must be submitted via email to the contacts provided. All questions must be received in writing via email no later than **June 28, 2024 at 5:00 PM CST**.

Customer will consolidate all questions from Vendors and make every effort to provide a written response within one (1) business day. All Vendors participating in the RFP process will receive a copy of all questions and responses.



**RFP Changes and Revocation**

Although not anticipated, should Customer need to change or revoke this RFP, it reserves the right to do so at Customer's sole discretion and will promptly notify Vendors accordingly. Although this RFP represents Customer's efforts to document its requirements, Customer reserves the right to adjust the specifications or scope stated in this RFP in any way deemed appropriate.

**Proposal Format**

Vendor is required to submit one electronic copy (via email in compatible MS Word and Excel formats as the RFP was presented) of its proposal in response to this RFP. All supporting documentation and manuals that will be submitted in response to this RFP will become the property of Customer.

Responses should be tailored specifically to the requirements set forth in this RFP. High-level "sales" material should not be used within the body of the response. Vendors may attach such material in a separate appendix, if desired. It is essential that the response be thorough and concise. Avoid broad, unenforceable, or immeasurable responses.

Proposals that deviate from the requested format make comparative evaluation difficult and may be disqualified from further consideration.

Vendors should be prepared to translate the statements made in their proposal to terms within a final contract. If a Vendor provides information in the proposal that will not be formalized in a final contract, the Vendor must clearly identify such information in **BOLD CAPS** indicating its exclusion as a term of any final contract. Customer may take such exclusion into consideration as part of the evaluation process.

Although many of the terms and conditions of the contract are set forth as elements within this RFP, Customer reserves the right to include additional contract terms and conditions derived from the evaluation process.

It is expected that the awarded Vendor will negotiate in good faith to execute agreement(s) reflecting the final form of its proposal and the terms and conditions agreed to with Customer.

Awarded Vendor must comply with all laws of the state of Tennessee and all local codes governing contracts in general and the provision of services to healthcare organizations.

**Response Preparation****Submission of Response and Submittal Checklist**

Prior to preparing a response to this RFP, Vendor shall thoroughly review the RFP document and accompanying attachments. The Vendor shall submit a response by reviewing all information and completing the forms in accordance with the instructions provided.

The following table is a summary of the required sections within the RFP response. Please check that submitted proposal is complete.

<b>SUBMITTAL CHECK LIST</b>		
<b>Item #</b>	<b>Section Title</b>	<b>Included</b>
1	Executive Summary/Cover Letter	
2	Basis of Pricing Breakdown/Proposal	
3	Attachment C – Process Requirements – Sign PO Ammendment	
4	Applicable Supporting Documentation	

#### **A. Executive Summary/Cover Letter**

A brief narrative (maximum two-page) highlighting Vendor’s proposed program and how it addresses the Customer’s objectives. The document should also point out key program elements thought to differentiate the Vendor from the competition and how cost savings, cost avoidance and improved efficiency are achieved.

Please ensure the summary is signed and dated by an officer of your company possessing appropriate authority and that all required materials are included. The signed document may be scanned and submitted in PDF format.

#### **B. Pricing Breakdown**

This document (spreadsheet) contains the listing of elements and associated costs to be included in negotiating the agreement. Please include your company’s name in the file name.

#### **C. Attachment B – Process Requirements – Program Elements**

Please complete and return the Process Requirements – Program Elements in the attached Excel Spreadsheet, which is outlined in Attachment B. Also, please review this attachment thoroughly and include your response to every requirement and provide either your acknowledgement and commensurate acceptance, or objection for each requirement. This summary must be submitted as part of the Vendor RFP response.

#### **D. Applicable Supporting Documentation**

Please ensure clear cross-reference between the RFP question/section being supplemented and the documentation itself. Include your company’s name in the file name.

### **DEBARMENT/EXCLUSION/ SUSPENSION/INELIGIBILITY**

Are you or your company or any of its employees currently ineligible to participate in Federal health care programs or Federal procurement or non-procurement programs because of being excluded, debarred, suspended or otherwise declared ineligible to participate?

Yes\_\_\_ No\_\_\_

If you answered Yes, please provide a complete explanation on an attached sheet of paper.

Have you or your company or any of its employees been convicted of any of the following offenses: program-related crimes, crime relating to patient abuse, felony conviction relating to health care fraud, or felony conviction relating to controlled substances, but have not yet been excluded, debarred, suspended or otherwise declared ineligible to participate in Federal health care programs or Federal procurement or non-procurement programs?

Yes\_\_\_ No\_\_\_

If you answered Yes, please provide a complete explanation on an attached sheet of paper.

If you furnish products/goods/services from other vendors/contractors/suppliers, do you verify with them at the time of contracting that neither the company nor any of its employees is ineligible to participate in Federal health care programs or Federal procurement or non-procurement programs because of being excluded, debarred, suspended or otherwise declared ineligible to participate?

Yes\_\_\_ No\_\_\_

If you answered No, and you are awarded this contract, you will be required to undertake this screening for any vendors/contractors/suppliers that will be providing goods or services pursuant to this contract prior to the effective date of the agreement. Such screening is to be performed utilizing the OIG's List of Excluded Individuals/Entities and the GSA's Excluded Parties Listing System.

If you furnish products/goods/services from other vendors / contractors / suppliers, do you verify with them that neither the company nor any of its employees has been convicted of any of the following offenses: program-related crimes, crimes relating to patient abuse, felony conviction relating to health care fraud, or felony conviction relating to controlled substances, but have not yet been excluded, debarred, suspended or otherwise declared ineligible to participate in Federal health care programs or Federal procurement or non-procurement programs?

Yes\_\_\_ No\_\_\_

If you answered No, and you are awarded this contract, you will be required to undertake this screening for any vendors/contractors/suppliers that will be providing goods or services

pursuant to this contract prior to the effective date of the agreement. Such screening is to be performed utilizing the OIG's List of excluded Individuals/Entities and the GSA's Excluded Parties Listing System.

## **6. BUDGET**

All proposals must include proposed costs to complete the project as defined by the ESa documents plans and specifications.

## **7. BIDDER QUALIFICATIONS**

Bidders should provide the following items as part of their proposal for consideration:

- Company history, size
- Executive background
- Description of experience in health care market construction.
- List of how many full time, part time, and contractor staff in your organization
- Examples of 5 or more representative construction projects provided to health care organizations by your company
- Testimonials from past clients (minimum of 3)
- Anticipated resources you will assign to this project (total number, role, title, experience)
- A full development and deployment plan
- Proposed construction timeframe to completion
- Project management methodology

## **8. PROPOSAL EVALUATION CRITERIA**

BMHCC will evaluate all proposals based on the following criteria. To ensure consideration for this Request for Proposal, your proposal should be complete and include all of the following criteria:

The preferred vendor will present existing credentials to perform this work in the State of Tennessee and show experience navigating the requirements of the State of Tennessee Department of Health review submissions. Ability to comply with the Shelby County Code Authority requirements as amended is preferred.

The preferred Vendor will show experience constructing programs that match the facilities operations, communities served and required industry parameters utilizing proven processes and approaches through the phases of construction. Bidders must provide descriptions and documentation of staff technical expertise and experience. Bidders must provide examples of relationship Management and three references.

The preferred Vendor will show experience assisting the organization with identifying the suppliers and subcontractors required to create a complete operable ICU project under this Fixed Bid Construction RFP.

The preferred vendor will show proposed costs of their solution(s) based on the work to be performed in accordance with the scope of this project as defined in the ESA contract documents.

Each bidder may submit **6** copies of their proposal to the address below June 26, 2024 by 5pm EST and must email one copy of the proposal to the points of contact designated below:

**Baptist Memorial Health Care Corporation**

Attn: Laura Riggins & John Curran

350 N. Humphreys Blvd.

Memphis, TN 38120

Email: [Laura.Riggins@BMHCC.org](mailto:Laura.Riggins@BMHCC.org)

**Secondary:**

**John Curran– System Director of Construction**

Office: (901) 227-8168

Email: [john.curran@bmhcc.org](mailto:john.curran@bmhcc.org)

Architect

Esa

Craig Holloway

Email: [Craigh@esarch.com](mailto:Craigh@esarch.com)

The initial evaluation will identify Vendors that meet all requirements and outline programs that most closely match the Customer's vision. The evaluation team will then focus its attention on the proposals provided by this 'short list' of Vendors, analyzing the various features and if appropriate, modifying the required elements. If any such modifications are made, each of the Vendors on the short list will have the opportunity to tailor its proposal and resubmit.

### **Vendor Presentations**

Formal presentations by Vendors may be scheduled at Customer's sole discretion. No date has been set for formal presentations **however, we are targeting these presentations to take place the week (s) of July 15, 2024.** Additional information about such presentations, including Customer's determination of Vendors to invite for presentations, will be provided as soon as possible. Such information, however, may not be finalized until Customer has reviewed all RFP responses.

### **Vendor Selection and Negotiation**

This RFP is not an offer to contract. Customer reserves the right to accept or reject any or all responses to this RFP. Neither the act of submitting a proposal by Vendor nor the receipt of such proposal by Customer obligates the Customer to make an award to any Vendor, whether or not the requirements stated in this RFP are or are not met, nor shall such action limit the Customer's right to negotiate or act in Customer's best interest.

Customer may choose to negotiate with one or more Vendors for more favorable terms or terms more in line with the organizational mission. It is important that Vendors be represented at all meetings by personnel who are knowledgeable about the Vendor's programs and have the authority to make commitments on their organization's behalf. Failure to finalize commitments in a timely manner during negotiations may result in Vendor's dismissal from the process.

When deemed appropriate by Customer, selected Vendor may be required to meet Customer representatives at a Customer facility or alternate location at mutually agreeable date(s) and time(s) to finalize program features in contractual form and to execute the agreement(s).



Attachment A

OFFEROR NOTICE OF INTEREST LETTER

Date: \_\_\_\_\_

Via email to:

\_\_\_\_\_  
Baptist Memorial Health Care Corporation  
360 N. Humphreys Blvd  
Memphis, TN 38120  
Office: 901-227-  
Fax: 901-227-  
[@bmhcc.org](mailto:bmhcc.org)

**Subject: Request for Proposal for Contractorural Design Services for ICU Expansion at Baptist Memorial Hospital Collierville**

Dear \_\_\_\_\_:

This acknowledges receipt of the above referenced Request for Proposal (RFP). In addition to acknowledging the receipt and conditions of this RFP, we specifically agree to the terms in Section 3 with respect to "Participation Requirements".

The undersigned: [check one]

\_\_\_\_\_ **will** submit a proposal in response to the RFP.

\_\_\_\_\_ **will not** submit a proposal. We are returning the RFP and all accompanying materials. We will not submit a proposal because:

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

Sincerely,

\_\_\_\_\_  
(Offeror Company)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)



**Attachment B****HEALTH INSURANCE PORTABILITY  
and  
ACCOUNTABILITY ACT (HIPAA) COMPLIANCE****Baptist Memorial Health Care Corporation****OCCURRENCE REPORTING, COMPLAINTS & GRIEVANCES, CLAIMS, ETC. RFP**

1. Current federal law, specifically Sections 1173 and 1175 of the Social Security Act (the Health Insurance Portability and Accountability Act of 1996) and 45 CFR Parts 160, 162, and 164 arising from that Act and commonly referenced as the Privacy & Security Rules (hereinafter referred to as "HIPAA"), and as further modified by the American Recovery and Reinvestment Act of 2009, establish enforceable privacy regulations governing the access, use, and disclosure of certain individually identifiable information. Baptist stores and transfers patient information in a manner that brings it within the scope of these laws. In accordance with HIPAA, Baptist is required to enter into an agreement with Service Provider regarding Vendor's (hereafter Service Provider's, Service Provider) ability to access, use, and disclose information about Baptist's patients. Accordingly, Service Provider and Baptist agree to follow the terms and conditions set forth in this Agreement.
2. The parties acknowledge that federal and state laws relating to the security of electronic data and privacy of individual's health information are in a time of transition and that amendment of this Agreement may be required in order to ensure compliance with changes in the laws and clarifications of meaning provided by the governmental entities charged with enforcing the laws. The parties specifically agree to take such action as is necessary to implement the requirements of HIPAA and other applicable laws relating to the security and confidentiality of protected health information. In the event that counsel for Baptist determines that any term of this Agreement places Baptist, as a covered entity, at risk of violating such laws, then the applicable term(s) shall be subject to renegotiation and amendment. Upon request by Baptist, Service Provider agrees to enter promptly into negotiations regarding the terms of a written amendment to this Agreement to supplement and/or modify language as is required to comply with all applicable laws.
3. Service Provider acknowledges that Baptist collects confidential and other personal information concerning its patient's medical condition, care and treatment as contemplated in 45 C.F.R. § 160.103 (hereinafter referred to as "Protected Health Information"). Information deemed to be "Protected Health Information" includes information that directly identifies an individual or is of such a type or specificity that there is reasonable basis to believe the information could be used to identify an individual. Examples of Protected Health Information include, but are not limited to, names, addresses, Social Security numbers, telephone numbers, electronic mail addresses, medical record numbers, health

plan beneficiary numbers, account numbers, certificate/license numbers, vehicle identifiers and serial numbers, biometric identifiers, including finger and voice prints, full face photographic images, and any other unique identifying numbers, characteristics, or codes. Service Provider acknowledges that Baptist has a legal obligation to keep Protected Health Information confidential and that the unauthorized use and/or disclosure of Protected Health Information could irreparably damage Baptist and/or its patients. Due to its duties under the Underlying Contract, Service Provider and/or Service Provider's employees, agents, sub-contractors or representatives will or may gain access to Protected Health Information. Additionally, Service Provider acknowledges that it meets the definition of a "Business Associate" as defined in 45 CFR §160.103. Accordingly, Service Provider agrees to abide by the following requirements:

4. Service Provider and/or Service Provider's employees, agents, sub-contractors or representatives agree that they will abide by all applicable provisions of Sections 1173 and 1175 of the Social Security Act and any Rules or Regulations promulgated thereunder, including, but not limited to, 45 CFR Parts 160, 162 and 164, and further modified by the American Recovery and Reinvestment Act of 2009. Service Provider and/or Service Provider's employees, agents, sub-contractors or representatives further agree to comply with any amendments, revisions, and/or alterations of Sections 1173 and 1175 of the Social Security Act and 45 CFR Parts 160, 162 and 164. Additionally, Service Provider agrees to execute additional agreements as necessary to accommodate finalization and/or amendment of the above-cited law, rules or regulations.
5. Service Provider agrees that it will not access Protected Health Information other than as necessary to provide equipment maintenance and support services. Service Provider agrees that it will not otherwise use, disclose, remove, or otherwise alter any Protected Health Information maintained by Baptist without express written consent to do so.
6. Service Provider agrees that it will not use or disclose Protected Health Information other than as permitted by the Underlying Contract, this Agreement, or as required by law. This shall include holding Protected Health Information in strict confidence and not discussing, transmitting, or disclosing such Protected Health Information for any purposes other than as permitted by the contract and only after securing either proper authorization or consent as required by law, if such authorization or consent is necessary. Service Provider further agrees not to use or disclose Protected Health Information that would violate HIPAA regulations if Service Provider were a covered entity, even if the information was placed into Service Provider's possession through authorized means.
7. Service Provider acknowledges that Baptist is the rightful owner of all Protected Health Information provided to Service Provider by Baptist.
8. Baptist and Service Provider mutually acknowledge and agree that the permitted and required disclosures and uses of Protected Health Information under the Underlying Contract are limited to the uses and disclosures which are specifically enumerated in this Agreement.
9. Service Provider may make all uses of Protected Health Information necessary to perform its obligations under the Underlying Contract, provided such use comports with current laws, rules, and regulations. All other uses not authorized by this Agreement are

prohibited.

10. Service Provider may disclose Protected Health Information for the purposes authorized by this Agreement:
  - a. to its employees, subcontractors and agents, in accordance with the remaining terms of this Agreement, or
  - b. as directed by Baptist, or
  - c. as otherwise permitted by the terms of this Agreement including for its own proper management and administration, provided such disclosure comports with current laws, rules, regulations and advice and to fulfill any present or future legal responsibilities of Service Provider, provided that such uses are permitted under state and federal laws.
11. Service Provider may disclose the Protected Health Information in its possession to third parties for the purpose of its proper management and administration or to fulfill Service Provider's present or future legal responsibilities, provided that Service Provider represents to Baptist, in writing, that:
  - a. the disclosures are required by law, as provided for in 45 C.F.R. § 164.502, or
  - b. Service Provider has received from the third party written assurances regarding its confidential handling of such Protected Health Information as required under 45 C.F.R. § 164.504(e)(4).
12. Service Provider warrants and represents that any Protected Health Information requested pursuant to the Underlying Contract by Service Provider or Service Provider's employees, agents, sub-contractors or representatives shall be only the minimum information necessary to serve the intended purpose(s) of the Underlying Contract.
13. If Service Provider maintains patient information in a designated record set, Service Provider agrees to provide a patient the right to access, inspect, and copy their Protected Health Information in accordance with all provisions of 45 CFR §164.524.
14. If Service Provider maintains patient information in a designated record set, Service Provider agrees to provide a patient the right to amend their Protected Health Information in accordance with all provisions of 45 CFR §164.526.
15. Service Provider agrees to provide Baptist with an accounting of all disclosures of Protected Health Information in accordance with all provisions of 45 CFR §164.528. To the extent that Service Provider makes disclosures of Protected Health Information through an Electronic Health Record, Service Provider shall also record all disclosures for the purposes of treatment, payment or health care operations, effective upon the compliance date applicable to Baptist for the recording of such disclosures.

16. Service Provider agrees to use appropriate safeguards to prevent the use or disclosure of Protected Health Information in any manner other than as provided for in this Agreement. Service Provider further agrees to take appropriate actions with each of Service Provider's employees, agents, contractors, sub-contractors and representatives who may have access to Protected Health Information to keep such information confidential and abide by the same restrictions, conditions and covenants contained in this agreement and further abide by all applicable laws, rules, regulations and advice.
17. Service Provider agrees to make its internal practices, books and records related to Protected Health Information available to the United States Department of Health and Human Services or its agents or designees as necessary for enforcement of the HIPAA regulations.
18. Service Provider agrees to provide Baptist access to all Protected Health Information in Service Provider's possession that was originally submitted to Service Provider by Baptist.
19. Service Provider agrees to maintain such policies, procedures and systems as may be necessary to prevent unauthorized parties from having access to, using, disclosing, processing, copying, modifying, corrupting, rendering unavailable, introducing computer code into or otherwise performing activities or operations upon or harmful to the privacy, availability, accessibility, integrity, structure, format or content of information maintained by Baptist resulting from Service Provider's access to such information. If Service Provider is allowed access to any Baptist computer system, Service Provider agrees to fully cooperate with Baptist to coordinate secure communications access to the computer system.
20. Service Provider agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected Health Information that Service Provider creates, receives, maintains, or transmits on behalf of Baptist.
21. Service Provider agrees to maintain as secret any computer passwords or access codes, if applicable, that are assigned by Baptist. This includes not sharing passwords or other computer access codes with employees, agents, contractors, sub-contractors, representatives, associates and partners unless such employees, agents, contractors, sub-contractors, representatives, associates and partners have a specific need and right to know the computer passwords or access codes.
22. Service Provider agrees to report, in writing, to Baptist's designated Privacy Officer any use or disclosure of Protected Health Information that is not provided for in this Agreement, or any Security Incident, within five (5) days of the Service Provider's discovery of such unauthorized use and/or disclosure or Security Incident. Service Provider agrees to take all reasonable steps necessary to mitigate, to the greatest extent possible, any deleterious effects from any improper use and/or disclosure of Protected Health Information or any Security Incident.
23. When patient-related information is in its possession, Service Provider agrees to comply with all applicable state laws and regulations relating to the confidentiality of such patient-related information including, without limitation, all such laws and regulations that impose

more stringent requirements on Baptist and/or Service Provider than HIPAA.

24. With respect to electronic Protected Health Information, Service Provider agrees to take the following actions and be in compliance with the following requirements no later than February 17, 2010:
  - a. Services Provider agrees that it will implement policies and procedures to prevent, detect, contain, and correct security violations. Service Provider will perform and document in writing a risk analysis no less than every three (3) years to conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of electronic Protected Health Information held by Baptist. Service Provider will conduct a risk analysis more frequently than every three (3) years if there is a significant change in the environment, including but not limited to: (a) introduction of new systems; (b) significant upgrades to existing systems; (c) retirement or disposal of systems; (d) physical relocation of IT assets; (e) introduction of new lines of business; and (f) reorganization of the Service Provider's management or business structure. The risk analysis must identify the systems which store, process, or transmit electronic Protected Health Information and identify the components of Service Provider's organization that handle electronic Protected Health Information, including the physical location of IT assets that contain electronic Protected Health Information. Service Provider must identify threats to the system as well as the probability that vulnerability will be exploited and an analysis of the controls that have been implemented or are planned for implementation. Service Provider shall identify corrective actions for any weaknesses identified by the risk analysis. The management of Service Provider shall be responsible for reviewing the risk analysis and approving the corrective action plan.
  - b. Service Provider will implement security measures sufficient to reduce risks and vulnerabilities to a reasonable and appropriate level.
  - c. Service Provider will apply appropriate sanctions against its workforce members who fail to comply with the security policies and procedures of Baptist and/or Service Provider.
  - d. Service Provider will implement procedures to regularly review records of information system activity, such as audit logs, access reports, and security incident tracking reports.
  - e. Service Provider will assign a member of its workforce to be responsible for the development and implementation of the security policies and procedures referenced herein.
  - f. Service Provider will implement policies and procedures to ensure that the members of its workforce are provided with appropriate levels of access to electronic Protected Health Information, including preventing those workforce members who do not need access to electronic Protected Health Information

from gaining access to electronic Protected Health Information. Service Provider's procedures for developing appropriate access for workforce members will include background investigations on personnel who have on-site and remote access to electronic Protected Health Information. Background investigations will be completed prior to personnel being allowed access to electronic Protected Health Information. Service Provider will identify and document which of its workforce positions it considers "high risk" and individuals in those "high risk" positions will be subject to a background check on a periodic basis. Service Provider will periodically review its list of "high risk" positions and modify the list as needed based on organizational and/or environmental changes.

- g. Taking into consideration the specific needs and vulnerabilities of electronic Protected Health Information in Service Provider's possession, Service Provider will implement procedures regarding the approval process and/or supervision of those workforce members with access to electronic Protected Health Information. This will include implementing procedures to determine the appropriate level of access for the workforce member and procedures for terminating the workforce member's access.
- h. Service Provider will conduct annual HIPAA (privacy and security) refresher training for its workforce members.
- i. Service Provider will implement policies and procedures for authorizing access to electronic Protected Health Information that are consistent with the requirements of HIPAA.
- j. If Service Provider is a health care clearinghouse and is also part of a larger organization, Service Provider will implement policies and procedures to protect electronic Protected Health Information of the clearinghouse from unauthorized access by the larger organization, including policies and procedures for granting, establishing, documenting, reviewing, and modifying access to electronic Protected Health Information.
- k. Service Provider will implement a security awareness and training program for all members of its workforce (including management). The program will include, to a degree appropriate for Service Provider, periodic security updates; procedures for guarding against, detecting, and reporting malicious software; monitoring log-in attempts and reporting discrepancies; and creating, changing, and safeguarding passwords.
- l. Service Provider will implement policies and procedures to address security incidents, including policies and procedures for identifying and responding to suspected or known security incidents, mitigating to the extent practicable, harmful effects of the security incidents, and documenting security incidents and their outcomes.
- m. Service Provider will establish and implement as necessary policies and procedures for responding to an emergency or other occurrence (for example,



fire, vandalism, system failure, and natural disaster) that damages systems that contain electronic Protected Health Information, including procedures to create and maintain retrievable exact copies of electronic Protected Health Information, procedures to restore any loss of data, and procedures to enable continuation of critical business processes for the protections of the security of electronic Protected Health Information while operating in emergency mode. This will include implementing procedures for periodic testing and revision of contingency plans and assessing the relative criticality of specific applications and data in support of other contingency plan components.

- n. Service Provider will perform a periodic technical and nontechnical evaluation to establish the extent to which the Service Provider's security policies and procedures meet the requirements of HIPAA.
- o. Service Provider will implement policies and procedures to limit physical access to its electronic information systems and the facility or facilities in which they are housed, while ensuring properly authorized access is allowed. This may include establishing and implementing, as needed, procedures that allow facility access in support of restoration of lost data under the disaster recovery plan and an emergency mode operations plan in the event of an emergency. It may also include implementing procedures to control and validate a person's access to facilities based on their role or function, including visitor control, and control of access to software programs for testing. Service Provider will maintain records as appropriate to document repairs and modifications to the physical component of a facility which are related to security (for example, hardware, doors, and locks.)
- p. Service Provider will implement policies and procedures that specify the proper functions to be performed, the manner in which those functions are to be performed, and the physical attributes of the surroundings of a specific workstation or class of workstations that can access electronic Protected Health Information.
- q. Service Provider will implement physical safeguards for all workstations that access electronic Protected Health Information to restrict access to only those users who are authorized users.
- r. Service Provider will implement policies and procedures that govern the receipt and removal of hardware and electronic media that contain electronic Protected Health Information into and out of a facility and the movement of these items within the facility, including, as appropriate, maintenance of a record of the movements of any hardware and media and the person responsible for the movement.
- s. Service Provider will implement policies and procedures to address the final disposition of electronic Protected Health Information, and/or the hardware or electronic media on which it is stored, including, if needed, creating a retrievable copy of the electronic Protected Health Information prior to moving it.



- t. Service Provider will implement procedures for the removal of electronic Protected Health Information from electronic media before the media is made available for re-use.
- u. Service Provider will evaluate the need for electronic procedures that terminate an electronic session after a predetermined time of inactivity and will implement such procedures if appropriate.
- v. Service Provider will evaluate the need for a mechanism to encrypt and decrypt electronic Protected Health Information and will implement such procedures if appropriate.
- w. Service Provider will implement technical policies and procedures for electronic information systems that maintain electronic Protected Health Information to allow access only those persons or software programs that have been granted access rights.
- x. Service Provider will assign a unique name and/or number for identifying and tracking user identity.
- y. Service Provider will establish and implement procedures necessary for obtaining needed electronic Protected Health Information during an emergency.
- z. Service Provider will implement hardware, software, and/or procedural mechanisms that record and examine activity in information systems that contain or use electronic Protected Health Information.
- aa. Service Provider will implement policies and procedures to protect electronic Protected Health Information from improper alteration or destruction. Service Provider will evaluate the need for an electronic mechanism to corroborate whether improper alteration or destruction of electronic Protected Health Information has occurred and will implement such mechanism if appropriate.
- bb. Service Provider will implement procedures to verify that a person or entity seeking access to electronic Protected Health Information is the person or entity that they claim to be.
- cc. Service Provider will implement technical security measures to guard against unauthorized access to electronic Protected Health Information that is being transmitted over an electronic communications network. Service Provider will evaluate the need for integrity controls and encryption and will implement such if appropriate.
- dd. Service Provider will implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications, or other requirements of the HIPAA Security Rule. Service Provider will maintain the

policies and procedures in written form, which may be in electronic format. Service Provider will maintain a written record, which may be in electronic format, for any action, activity or assessment that is required by the HIPAA Security Rule to be documented. Service Provider will retain this written documentation for a period of six (6) years from the date of its creation or the date where is last was in effect, whichever is later.

- ee. Service Provider will make the documentation referenced in Section (dd) above available to those individuals who are responsible for implementing the procedures. Service Provider will periodically review the documentation and update as needed to address changes affecting the security of electronic Protected Health Information.
- ff. If Service Provider is an independent contractor of Baptist, it shall notify Baptist of the discovery of a breach, or a suspected breach within the timeframe specified in Section 22 of this Agreement for reporting a Privacy or Security Incident. However, if Service Provider could be considered an agent of Baptist, Service Provider shall notify Baptist within two (2) business days of the discovery of a breach, or a suspected breach. The notification shall include as much information as is reasonably known about the events leading to the breach and shall include the identification of each individual whose unsecured Protected Health Information has been, or is reasonably believed to have been accessed, acquired, used or disclosed as soon as that information can be ascertained.
- gg. Service Provider shall cooperate with Baptist to conduct an analysis of the risk of the potential harm to the individuals whose Protected Health Information has been compromised. This will include an analysis of the storage mechanisms for the Protected Health Information, the data elements that have been compromised, and all details regarding the circumstances by which the Protected Health Information came to be compromised. If Baptist determines that it is necessary to notify those individuals whose Protected Health Information has been compromised, Baptist shall make the decision as to whether it will send the notifications to the individuals or whether it will allow Service Provider to notify the individuals. If Baptist decides to send out the notifications, it will provide documentation of all reasonable costs associated with the notification, including but not limited to printing and postage costs, and Service Provider will promptly reimburse Baptist for the costs. Service Provider will also reimburse Baptist for all reasonable costs associated with operating a toll-free hotline for three (3) months that affected individuals may call with questions. Costs associated with the hotline include, but are not limited to, phone line charges and reasonable wage and benefit costs for individual(s) to answer calls to the hotline. The number of persons assigned to work the hotline will be based on the volume of calls received. If Baptist decides to allow Service Provider to send notifications directly to affected individuals, Service Provider will comply with the requirements put forth in the American Recovery and Reinvestment Act of 2009 for the contents of the letter. Service Provider will provide Baptist with an advance copy of the proposed letter for review and approval prior to sending to the affected individuals. Service Provider will remain responsible for the costs of printing and mailing letters to affected individuals. In the event that Baptist decides to allow

Service Provider to host the required hotline for concerned individuals to call with concerns and questions, Service Provider shall be responsible for all costs associated with the hotline, including but not limited to phone lines and staffing. Service Provider agrees to maintain the availability of the hotline for three (3) months following the mailing of the notification letters to affected individuals.

25. Service Provider acknowledges that actual or threatened breach of this Agreement by Service Provider would cause serious and irreparable injury to Baptist and its patients. Therefore, in addition to any other remedies at law or in equity it may have, Baptist shall be entitled to equitable relief including without limitation, injunctive relief and specific performance. At any hearing for injunctive relief, Service Provider agrees that Baptist's burden of proof shall be by a preponderance of the evidence. As provided for under 45 CFR § 164.504(e)(2)(iii), Baptist may also immediately terminate the Underlying Contract and any other agreements existing between Service Provider and Baptist if Baptist makes the determination that Service Provider has breached a material term of this Agreement. Alternatively, Baptist may choose to provide Service Provider with notice of the existence of an alleged material breach and afford Service Provider an opportunity to cure said alleged material breach. In the event Service Provider fails to cure said breach to the satisfaction of Baptist within five (5) days, Baptist may immediately thereafter terminate the Underlying Contract any other agreements existing between Service Provider and Baptist. Service Provider acknowledges that it shall be solely Baptist's option to seek injunctive relief, immediately terminate the Underlying Contract or any other agreements, or provide Service Provider an opportunity to cure an alleged material breach. The failure of Baptist to require performance by Service Provider of any provision of this Agreement shall in no way affect Baptist's right to enforce such provision, nor shall the waiver by Baptist of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision or any other provision.
  
26. Upon the termination of the Underlying Contract, Service Provider agrees to return or destroy all Protected Health Information pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I), if it is feasible to do so. Before doing so, Service Provider further agrees to recover any Protected Health Information in the possession of its subcontractors or agents. If it is not feasible for Service Provider to return or destroy said Protected Health Information, Service Provider will notify Baptist in writing. Said notification shall include a statement that Service Provider has determined that it is not feasible to return or destroy the Protected Health Information in its possession, and the specific reasons for such determination. Service Provider further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to Service Provider's use and/or disclosure of any Protected Health Information retained after the termination of the Underlying Contract, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the Protected Health Information infeasible. If it is infeasible for Service Provider to obtain from a subcontractor or agent any Protected Health Information in the possession of the subcontractor or agent, Service Provider will provide a written explanation to Baptist and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents' use and/or disclosure of any Protected Health Information retained after the termination of the Underlying Contract, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the Protected Health Information infeasible.

27. Service Provider agrees to indemnify, hold harmless, and defend Baptist and each of its employees, agents, attorneys, and officers from and against any and all claims, losses, damages, liabilities, costs, expenses, (including attorneys' fees) arising out of any claims, suits or demands resulting from Service Provider's use, misuse or disclosure of any Protected Health Information, be it related to the security, privacy or access of the Protected Health Information.
28. Service Provider agrees to maintain insurance coverage to support its indemnification obligation outlined in Section 27.
29. Service Provider represents and warrants to Baptist that it will not enter into any agreement the execution and/or performance of which would violate or interfere with this Agreement.
30. This Agreement shall not be construed against the party or parties preparing it. It shall be construed as if all the parties and each of them jointly prepared this Agreement, and resolved in favor of a meaning that permits Baptist to comply with HIPAA and the regulations promulgated pursuant thereto.
31. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

### **Attachment C**

#### ADDENDUM TO PURCHASE ORDER BETWEEN OWNER AND CONTRACTOR

This Addendum modifies the Purchase Order by and between Baptist Memorial Hospital, Inc., a Tennessee non-profit corporation, d/b/a Baptist Memorial Hospital – Collierville (“Owner”) and \_\_\_\_\_, (“Contractor”).

WHEREAS, Owner and Contractor desire to set forth in this Addendum certain terms and to incorporate those terms into the Purchase Order between the parties,

NOW, THEREFORE, Owner and Contractor agree as follows:

1. TERMINATION FOR CONVENIENCE: Owner and/or the Government reserve the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and/or sub-contractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

2. **TERMINATION FOR CAUSE:** The Owner and/or the Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.
  
3. **EQUAL EMPLOYMENT OPPORTUNITY:** During the performance of this Agreement, the Contractor agrees as follows: (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. (3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information. (4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. (5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, 34 and of the rules, regulations, and relevant orders of the Secretary of Labor. (6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the



administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders. (7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law. (8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States. Owner further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if Owner so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement. Owner agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. Owner further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and 35 federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, Owner agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to Owner under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from Owner; and refer the case to the Department of

Justice for appropriate legal proceedings.

4. CONSTRUCTION WAGE RATE REQUIREMENT (DAVIS - BACON ACT): All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Construction Wage Rate Requirements statute on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Construction Wage Rate Requirements (Davis-Bacon Act) poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
5. COPELAND ANTI-KICKBACK: 18 U.S.C. §874 and 40 U.S.C. §3145 make it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed



in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Contractor and any subcontractor shall furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week. Contractor and any subcontractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference into this contract. A breach of this provision may be grounds for termination of the contract, and for debarment as a contractor or subcontractor as provided in 29 CFR §5.12.

6. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT: (1) *Overtime requirements*. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. (2) *Violation; liability for unpaid wages; liquidated damages*. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section. (3) *Withholding for unpaid wages and liquidated damages*. The Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section. (4) *Payrolls and Basic Records*. The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Owner/ Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR [5.5\(a\)\(3\)](#) implementing the Construction Wage Rate Requirements statute. The Contractor and its subcontractors shall allow authorized representatives of the Contractor or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working

hours. (5) *Subcontracts*. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section. A breach of this provision may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

7. RIGHTS TO INVENTIONS MADE UNDER CONTRACT OR AGREEMENT: The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of 37 CFR §401 and 35 U.S.C. §203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.
8. COMPLIANCE WITH CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT: (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. and the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251, et seq. (2) The Contractor agrees to report each violation to Owner and understands and agrees that Owner will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency and the appropriate Environmental Protection Agency Regional Office. (3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by the Federal Government.
9. DOMESTIC PREFERENCE FOR PROCUREMENT. As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.”
10. SUSPENSION AND DEBARMENT: Federal regulations restrict Owner from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. The Contractor can verify its status and the status of its principals,

affiliates, and subcontractors at [www.SAM.gov](http://www.SAM.gov). This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, Vendor is required to verify that none of the Vendor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). Vendor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by Owner. If it is later determined that Vendor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Owner, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. For any sub-contract exceeding thirty-five thousand dollars (\$35,000), Vendor shall not enter into any subcontract, other than a subcontract for a commercially available off-the-shelf item, with a contractor that is debarred, suspended, or proposed for debarment by any federal executive agency unless there is a compelling reason to do so. Vendor shall require each proposed subcontractor, who exceeds the threshold identified above, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to Vendor and Owner, in writing, whether as of the time of award of the subcontract, whether the subcontractor, or its principals, is debarred, suspended, or proposed for debarment by the Federal Government. FAR 52.209-6.

11. **BYRD ANTI-LOBBYING AMENDMENT:** Contractors who apply or bid for an award of \$100,000 or more shall file the required certification found at APPENDIX A, 44 C.F.R. PART 18. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency. Contractors shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at [52.203-11](#), Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract under this contract that exceeds the threshold specified in FAR [3.808](#) on the date of subcontract award. The Contractor or subcontractor that awards the subcontract shall retain the declaration. A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor. Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form. Any person who makes an expenditure prohibited in this clause or who fails to file or amend the disclosure to be filed or amended by this clause shall be subject to civil penalties as provided for by [31 U.S.C. 1352](#). An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.



12. COMPLIANCE WITH FEDERAL LAW: This is an acknowledgement that Treasury ARP SLFRF financial assistance will be used to fund all or a portion of the contract. Contractor will comply with all applicable Federal law, regulations, executive orders, Treasury policies, procedures, and directives.

13. This Addendum is effective November 17, 2023.

14. Except as modified by this Addendum, the Agreement Between Owner and Contractor shall remain in effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have hereunto executed and delivered this Addendum as of the effective date set forth above.

BAPTIST MEMORIAL HOSPITAL, INC.

CONTRACTOR

By: \_\_\_\_\_  
Paul Cade

By: \_\_\_\_\_  
(Print Name)

**Attachment D**

**ESA CONTRACT DOCUMENTS**

Dated May 17, 2024