

Conditions Governing this RFQ

1.1 Legal Foundation

This process and any Agreement that may result from it shall be governed by the laws of the Government of Puerto Rico, the federal government, the CRF grant rules and regulations. Offerors must comply with federal and Government laws and regulations, as outlined in Attachment 1.

ASES reserves the right to modify requirements stated in this RFQ at any time by either a supplement to this RFQ, or as necessary based on any federal requirements or as may be required by the Grantor of funds, CMS, or any Government of Puerto Rico laws or regulations or any directives of the Financial Oversight and Management Board for Puerto Rico.

1.2 Acceptance of Conditions Governing this Process and Other Factors

Offerors must indicate their acceptance of the conditions governing this process in the Letter of Transmittal Form (see Appendix B). Submission of a Bid constitutes acceptance of the evaluation process contained in Section 5 of this RFQ.

ASES assumes no liability for any work performed by the selected Offeror in anticipation of a binding Contract prior to the approval date and the Implementation Date of the Contract. Any costs or expenses incurred by the Offeror in preparing, transmitting, or presenting any Bid or other material submitted in response to this RFQ shall be borne solely by the Offeror. Costs associated with the preparation for Contract implementation, except as otherwise specifically permitted and considered under this RFQ, shall be borne solely by the selected Offeror.

1.2.1 Contractor Responsibility

Any Contract that may result from this RFQ shall specify that the successful Offeror is solely responsible for fulfillment of the Contract with ASES. ASES will make Payments only to the Contractor.

1.2.2 Quote Offer Firm

All responses to this RFQ, including Quote prices, will be considered firm for ninety (90) **Calendar Days**, notwithstanding whether or not a particular Quote was selected and awarded a Contract.

1.3 Legal or Regulatory Warnings and Restrictions

The following legal warnings or regulatory restrictions are applicable to and Mandatory for this process. Failure to comply with any of these could result in the Offeror's disqualification from this process.

1.3.1 Statements by the Offeror

A Offeror's Quote constitutes the instrument through which the Offeror manifests its interest, offers, commitments and representations and agrees to be legally bound by the contents thereof.

Statements included in the Offeror's Quote will be accepted in good faith by ASES' officials during the evaluation and selection process. The Offeror's Quote constitutes material evidence of the Offeror's commitments and representations and will be incorporated into the eventual Contract to the extent ASES is awarded the CRF grant and the Offeror is awarded such Contract.

1.3.2 Prohibition Regarding Interference in the Evaluation and Selection Process

During this process, Offerors shall not be allowed to obtain information, interfere, influence, exert pressure or communicate with individuals named to this RFQ evaluation committee nor any other employee, consultant or Agent of ASES. One exception is for instances in which such communication is unrelated to this process and limited to the normal operations of current Contracts with ASES. Therefore, on matters related to this process, Offerors may only communicate directly with the Procurement Contact.

FAILURE TO STRICTLY ABIDE BY THESE RULES WILL CAUSE THE DISQUALIFICATION OF THE OFFEROR FROM THIS PROCESS.

1.3.3 Delegation of Authority

Offerors acknowledge that Government and federal laws generally limit ASES' capacity to delegate certain decisions to a Contractor, such as the formulation of public policy and determination of program eligibility.

The Offeror awarded the Contract accepts this condition and commits to comply with any new requirement or applicable law after contract execution, in the event that ASES is granted the grant.

1.3.4 Conflicts of Interests

ASES is required by federal and Government of Puerto Rico law to assure the integrity and equal, fair and impartial treatment of the Offerors who elect to participate in this RFQ process. This duty and principle apply throughout this process, including the evaluation, selection, negotiation, adjudication and execution of an eventual Contract, in the event ASES is granted the CRF grant. To maintain among the Offerors in this RFQ open and free competition, ASES maintains an aggressive policy towards actual or potential conflicting interests.

FOR PURPOSES OF THIS RFQ, ASES RESERVES THE RIGHT TO DISQUALIFY ANY OFFEROR WITH A CONFLICT OF INTEREST. ASES will investigate any charge or allegation to this effect, prior to the disqualification, if any. Likewise, ASES reserves the right, during the Term of the Contract, at any time after concluding the due process of law required, to amend, cancel, rescind, or terminate the Contract, if ASES becomes aware of the existence of a Conflict of Interest or any situation which may affect the Offeror's independence.

Offerors shall not have any interest that may or could represent an actual, potential or future Conflict of Interest, in relation to the award, execution and

performance of the Contract to be signed with ASES, nor with the grantors, personnel and ASES' public service officials, its Board of Directors, or any other personnel responsible for the evaluation or adjudication of any ensuing Contract, their family members or persons with whom they live, up to a fourth-degree of consanguinity or a second-degree of affinity. Neither can the Offeror be awarded a Contract that, in ASES' sole discretion, creates the appearance of impropriety.

1.3.5 Criminal Background Check

ASES is prohibited by law to enter into contracts with any Offeror that has been convicted or pleaded guilty in Puerto Rico, the United States of America, or any other country, of criminal acts or constituting corruption, Fraud, embezzlement, or unlawful appropriation of public funds, pursuant to Act 2 of 2018, as amended.

Likewise, ASES is prohibited by law to grant a contract to a Offeror, if its affiliated or subsidiary companies, or if any of its officers, directors, agents, members, partners, ruling bodies or other persons that perform equivalent functions for the Offeror, have been convicted or pleaded guilty at a state or federal court in any jurisdiction of the United States of America of any crime involving corruption, fraud, embezzlement, unlawful appropriation of public funds, pursuant to Act 2 of January 4, 2018, as amended, and crimes stated in Articles 4.2, 4.3 or 5.7 of Act No. 1-2012, as amended; Articles 250-266 of Act No. 146-2012 as amended; or any of the crimes stated in Article 6.8 of Act No. 8-2017 as amended.

In addition, ASES may refuse to contract with any Offeror if any person who has an ownership or Control interest in the entity, or is an agent or managing employee of the Offeror, has been convicted of a criminal offense related to the person's involvement in any program established under Medicare, Medicaid, or the Title XX services programs.

Taking into consideration the public policy for careful oversight in the adequate use of public funds, as well as the rules for proper public administration in Government contracts, ASES is required to adopt, in all of their contracts and amendments, the following safeguards:

- In the case of a legal person, to require a certification to the effect that neither it nor any of its shareholders, members, partners, Agents, officers, principals, employees, subsidiaries, or Parent Companies has been convicted or pleaded guilty for any crimes involving corruption, Fraud, embezzlement, or unlawful appropriation of public funds or property, in the Government of Puerto Rico or federal jurisdictions.
- To include a contractual clause to the effect that the Contract will be terminated and rescinded if the Contractor is convicted for the commission of any crimes involving corruption, Fraud, embezzlement, or unlawful appropriation of public funds or property, in the Government of Puerto Rico or federal jurisdictions.
- To require that the Contractor recognize its obligation to report, in a continuous manner, during the Term of the Contract, any fact or event related to the conviction for crimes involving corruption, Fraud, embezzlement, or unlawful appropriation of public funds or property, in the Government of Puerto Rico or federal jurisdictions. This duty shall be of a

continuous nature during all the stages of this process and term of the Contract.

- To require the Contractor that in the event it knows that it or one of its Subcontractors is under investigation for, or accused of, in Puerto Rico or any other jurisdiction, a crime involving corruption, fraud, embezzlement, or unlawful appropriation of public funds, pursuant to Act No. 2 of 2018, it must affirmatively disclose this information to ASES in writing immediately upon acquiring such knowledge.
- To require a certification to the effect that, during the ten (10) years prior to the formalization of the Contract, the entity entering into the Contract has not committed any crimes involving corruption, fraud, embezzlement, unlawful appropriation of public funds or property, in the Government of Puerto Rico or federal jurisdictions.
- To include a contractual clause to the effect that before the Effective Date of the Contract, pursuant to 42 CFR 455.104, the Contractor shall disclose to ASES the identity of any person who has an ownership or control interest in the entity, or is an agent or managing employee of the entity, who has been convicted of a criminal offense related to the Medicare, Medicaid, or Title XX services programs.

1.3.6 Lobbying

No federally appropriated funds can be paid at any time by or on behalf of a Offeror or selected Contractor or any other person, for influencing or attempting to influence an officer or employee of any agency, a Member of the Puerto Rico Legislature or an employee of a Member of the Puerto Rico Legislature, 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, or the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or modification of any federal contract, grant, loan, or cooperative agreement. If any funds other than federally appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of a Member of Congress in connection with this federal 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.

1.3.7 Ownership of Information

ASES is the sole and exclusive owner of all the Information related to, or generated, or in connection to this RFQ, including, but not limited to, the use and costs of the services provided, health Information, etc. ASES is the sole and exclusive owner of the property rights over all the Data and Information related to the Contract, including this RFQ and the Quotes not otherwise withdrawn.

All the documents related to the Contract will be subject to evaluation and Audits, and shall be made available, within a reasonable period of time and without modifications, for evaluation by ASES' personnel and their Authorized Representatives. Additionally, ASES will have the right to request these documents at no cost to ASES.

The selected Offeror who will be subcontracting services under this RFQ shall include a clause in their subcontracts stating that the personal and utilization information or data pertaining to the GHP Enrollees belongs exclusively to ASES. This clause shall also require that the Contractor and its Subcontractor not give access, assign, or sell, the Information and Data to Third Parties, without the prior written consent from ASES, and all private Information be managed in accordance with HIPAA requirements. The selected Offeror is required to include penalty clauses in Subcontractor contracts to discourage this practice. The penalty clauses shall state that related fines will be payable to ASES.

1.3.8 Rights over the Information

The Offeror recognizes and accepts that ASES is the exclusive owner and that ASES has all the ownership rights over any and all Information related to or generated or in connection to the Contract. ASES has exclusive rights over all the Information and Data, including but not limited to, the Enrollees' personal and health information and the Data related to Utilization, costs, and fees.

The Offeror selected, and its Subcontractor, if any, shall not transfer, assign, dispose or sell this Information to Third Parties or use it for commercial purposes or in their own private businesses. Engaging in such a practice constitutes a violation of HIPAA and ASES' property rights and shall result in penalties, fines or the rescission and termination of the Contract.

All documents related to Contract, including, but not limited to: policies, procedures, analysis, protocols, and communications, shall be made available and filed with ASES' representatives, without changes to their original format (no PDF), whenever requested. In the event that ASES requests copies of these, the Contractor shall deliver them without alterations and/or omissions. The Contractor shall not refuse, and if so, it will constitute an obstruction to the efforts of ASES' auditors and a breach of Contract subject to penalties and sanctions.

In addition to the intellectual property ownership rights in the Contract, the following subsection describes the intellectual property ownership requirements that the Contractor shall meet during the term of the Contract in relation to federal financial participation.

1.3.8.1 To facilitate obtaining the desired amount of federal financial participation under 42 CFR 433.112, ASES shall have all ownership rights, not superseded by other licensing restrictions, in all materials, programs, procedures, etc., designed, purchased, or developed by the Contractor and funded by ASES. The Contractor shall use contract funds to develop all necessary materials, programs, products, procedures, etc., and data and software to fulfill its obligations under the Contract. ASES' funding used in the development of these materials, programs, procedures, etc. shall be documented by the Contractor. ASES shall have all ownership rights in Data and software, or modifications thereof and associated documentation and procedures designed and developed to produce any systems, programs report and documentation and all other work products or documents created under the Contract. ASES shall have these ownership rights, regardless of whether the work product was developed by the Contractor or any Subcontractor for work product created in the performance of this Contract. ASES reserves, on behalf of itself, the U.S. Department of Health and Human Services and its contractors, a royalty-free, non-exclusive and irrevocable

license to produce, publish or otherwise use such software, modifications, documentation and procedures. Such resolved data and software include, but is not limited to, the following:

- a. All computer software and programs, which have been designed or developed for ASES, or acquired by the Contractor on behalf of ASES, which are used in the performance of the Contract.
- b. All internal system software and programs developed by the Contractor or Subcontractor(s), including all source codes, which result from the performance of the Contract;
- c. All necessary Data files;
- d. User and operation manuals and other documentation;
- e. System and program documentation in the form specified by ASES;
- f. Training materials developed for ASES' staff, agents or designated representatives in the operation and maintenance of this software and other programs.

1.3.8.2 No deliverable, report, data, procedure or system created by the Contractor for ASES that is necessary to fulfilling the Contractor's responsibilities under the Contract, as determined by ASES, shall be considered proprietary of the Contractor.

1.4 Relations with Government Entities

In the event that ASES is awarded a grant by the CRF for the Vital Telemedicine Pilot Program and the Offeror is awarded a Contract, the Offeror will be required and obligated to establish a close cooperative and working relationship with ASES and the concerned Government of Puerto Rico and applicable federal agencies. The Offeror will also be obligated to work with current GHP Contractors.

1.5 Contractual Clauses* pursuant to Executive Order Memorandum Number 2021-003 from the Governor of Puerto Rico and Circular Letter CC-001-2021 from the Office of Management and Budget of the Government of Puerto Rico.

1.5.1 As applicable, the contracted services under this RFQ can be rendered to any entity of the Executive Branch, with which ASES executes an interagency agreement or by direct disposition of the Governor's Chief of Staff. These services shall be rendered under the same terms and conditions specified on the ensuing contract, as for work hours and compensation. The term "entity of the Executive Branch" includes all agencies of the Government of Puerto Rico, as well as instrumentalities and public corporations, and the Office of the Governor.

1.5.2 The Governor's Chief of Staff has the power to cancel the ensuing contract under this RFQ at any moment.

1.5.3 Contract Review Policy of the Financial Oversight and Management Board for Puerto Rico: The Parties shall acknowledge that the Contractor will submit the certification entitled "Contractor Certification Requirement" required in accordance with the Contract Review Policy of the Financial Oversight and Management Board for Puerto Rico and in force as of November 6, 2017 and as amended on October 30, 2020, signed by the Contractor's Executive Director (or other official with a position or authority equivalent to issue such certifications). A signed copy of the Contractor Certification Requirement shall be included as an annex to the ensuing contract.

*ASES understands that clauses in subsections 1.5.1 and 1.5.2 are not applicable to the Contract resulting from this RFQ but includes the same in the abundance of caution as any contract for professional services without these clauses will be deemed to be null and void from its inception.

1.6 Prohibition against Discrimination

The Offeror cannot discriminate on account of race, nationality, economic condition, social condition, sex, sexual orientation, gender identity, age, origin, religion, political ideology, health condition, veteran status, or physical and/or mental disability or as otherwise provided under applicable Government of Puerto Rico and federal law.

1.7 Single Registry of Professional Services Provider

For the contracting of professional services in the Government of Puerto Rico, it is a mandatory requirement that the professional service provider be registered in the Single Registry of Professional Service Providers (RUP for its Spanish acronym), under the corresponding category and that it has the corresponding certification of registry issued by the Puerto Rico General Services Administration ("Administración de Servicios Generales" or "ASG" for its Spanish acronym). **See Attachment C, ASG Informative Bulletin #2021-003 RUP.**

1.8 Outstanding debts with the Government

Any Offeror with any outstanding debts that are owed to any state governmental agency/facility shall be prohibited from executing a Contract. Offerors with outstanding debts are not prohibited from participating in this process but must settle such outstanding debts or have a reconciliation plan prior to Contract Execution. Likewise, the health service provider or contracting insurer may not be eligible for contracting if it has any overdue debt for a term greater than sixty (60) days, as certified by the Puerto Rico Medical Services Administration (ASEM for its Spanish acronym). For the purposes of this Section, any debt that is the object of a payment plan with which the Offeror is in compliance, in an active process of reconciliation of invoices and payments with which the Offeror is in compliance, or pending administrative review under applicable law or regulations, will not be considered outstanding. In such case, the selected Offeror must submit recent evidence of said payment plan, debt reconciliation agreement or pending administrative review prior to the execution of the Contract.

1.9 Disclosure of Quote Contents

Quotes will be kept confidential until the Offeror is selected. At that time, all Quotes and documents will be open to the public, except for the material that has been conspicuously marked as proprietary or confidential by the Offerors. **Blanket labeling of the entire document as “confidential” or “proprietary,” however, shall result in the bid not being evaluated.**

The price of products offered, or the cost of services proposed shall not be designated nor considered as proprietary or confidential information. Hence, it will be fully disclosed to the public.

The Government of Puerto Rico maintains the right to use all ideas, or adaptations of those ideas, contained in any Quote received in response to this RFQ. Selection or rejection of the Quote shall not affect this right.

1.10 No Obligation

This process in no manner obligates the Government of Puerto Rico or any of its agencies to use any proposed professional services until a valid written Contract is executed and approved by the appropriate authorities.

If within a reasonable time after the Notice of Intent to Award is issued and the Contract is finally approved by all applicable governmental agencies, a Contract is not finally executed between ASES and the selected Offeror, ASES reserves the right to cancel said award and award the contract to the next best Offeror.

Upon submitting its Quote, the Offeror acknowledges and accepts that even if it is selected, if there is a breakdown in the Contract negotiation that prevents its execution, ASES may proceed as herein stated.

1.11 Termination

This RFQ may be terminated at any time, and any and all Quotes may be rejected, in whole or in part, when ASES determines in its sole discretion such action to be in the best interest of the Government of Puerto Rico or if ASES is not awarded the CRF Grant.

1.12 Sufficient Appropriation

Any Contract awarded as a result of this RFQ process may be terminated if sufficient Government of Puerto Rico and/or federal appropriations or authorizations, including from the Financial Oversight and Management Board for Puerto Rico, do not exist. Such termination will be effected by written notice to the Contractor. ASES' decision as to whether sufficient appropriations and authorizations are available will be accepted by the Contractor as final.

1.13 Subcontracts/Subcontractor

The services to be provided under this RFQ and subsequent Contract, may not be assigned or Subcontracted without the prior written approval of ASES, in its sole

discretion, prior to Subcontract execution. The request to contract a Third Party must specify the matters in which he/she will intervene and must be submitted in writing and include the same documents and certifications required for government contracting that are required from the Contractor.

1.13.1 If Subcontractor is to be used, for functions and responsibilities under the scope of work of this RFQ, the Offeror must clearly identify and explain in the Quote their participation. Hence, all Subcontractors must be identified by name. Offeror/Contractor must also disclose the remuneration that the subcontractor will receive for the work to be carried out, and the profit margin, if any, that the Offeror will have in relation to the subcontractor's paid fees. **Failure to comply with this requirement may be sufficient cause to disqualify the Offeror or may be held as a breach of the Contract as applicable.**

1.13.2 The Contractor shall be wholly responsible for the entire performance under the terms of the Contract, whether or not Subcontractors are used.

1.13.3 If Subcontractors are used, they must abide by all terms and conditions of the Contract and the Contractor must guarantee that the Subcontractor complies with all the requirements of this RFQ, including all the documentation required for contracts with the Government.

1.13.4 ASES reserves the right to Audit Subcontractor at the Contractor's expense.

1.13.5 All Subcontractors are required to have a Business Associates Agreement (BAA) agreement with the Contractor.

1.14 Basis for Quote

Only Information included in this RFQ, and the information supplied by ASES in writing through the Procurement Contact in the form of questions and answers should be used as the basis for the preparation of Offeror's Quote.

1.15 Notice

Offerors are advised that any violation of federal or Puerto Rico law and regulation regarding attempts to improperly influence this process may result in criminal and/or civil penalties.

1.16 Ownership of Quotes

All documents submitted in response to this RFQ shall become the property of ASES and the Government of Puerto Rico.

1.17 Reconsideration/Request for Administrative and Judicial Review

1.17.1 Any reconsideration request by an Offeror must be made in accordance with applicable Puerto Rico law; see Articles 3.19 & 4.2 of Act 38 of 2017, as amended.

1.17.2 Any Offeror who understands that it has been affected by the final determination of ASES in the adjudication of this RFQ may submit a written

Petition for Reconsideration within twenty (20) Calendar Days from the date of the mailing of the Notice of Award of this RFQ. This is a jurisdictional term, that is, it is not subject to extension of time. Failure to timely present the petition will preclude ASES from considering the same.

1.17.3 The petition must be addressed to the attention of ASES and filed at the following addresses:

Urb. Caribe Sector El Cinco
1549 Calle Alda
San Juan, PR 00926-2712
Tel. (787) 474-3300 ext. 3006

mavelez@asespr.org

The envelop must clearly and prominently state the name and number of this RFP and be titled “PETITION FOR RECONSIDERATION”. The email must include in the subject “Petition for Reconsideration”.

1.17.4 The petitioner must notify all other Offerors who participated in this RFQ with a copy of the Petition of Reconsideration within the same term mentioned in Section 1.17.2 of this RFP. This is a requirement of strict compliance.

1.17.5 The petition must contain the following requirements which are essential to perfect the petition. Failure to duly comply with these requirements may be sufficient cause to dismiss the petition.

1.17.5.1 Be signed by a duly Authorized Representative of the petitioner;

1.17.5.2 Clearly establish the relevant facts, reasons and arguments on which it is based;

1.17.5.3 Include the necessary documentary evidence to sustain the veracity of the facts alleged;

1.17.5.4 Clearly state the remedy(ies) sought;

1.17.5.5 Certify that all parties have been duly notified of the petition, as stated in Section 1.17.4 of this RFP.

1.17.6 ASES shall consider the request for reconsideration within thirty (30) Calendar Days of the filing of the petition. ASES may extend said Term only once, for an additional Term of fifteen (15) Calendar Days. Failure to do so shall be deemed as an outright rejection of the petition and thereafter, shall run the twenty (20) Calendar Day’s term to request a judicial review before the Court of Appeals.

1.17.7 If a determination is made in its consideration, the Term for requesting judicial review will begin from the date on which a copy of the notification of the decision of ASES was deposited in the mail, resolving the request.

1.17.8 Likewise, the party adversely affected by a decision on reconsideration filed before ASES, may request judicial review before the Court of Appeals within a jurisdictional period of twenty (20) Calendar Days from the date of the mailing of notice of the final order or resolution.