

NEW YORK STATE DEPARTMENT OF HEALTH

A Request for Proposal (RFP) for HCRA Compliance Audits

Office of Health Systems Management

RFP No. 0608040357

Bid Opening: January 03, 2007

DESIGNATED CONTACTS:

Pursuant to State Finance Law §§ 139-j and 139-k, the Department of Health identifies the following designated contacts to whom all communications attempting to influence this procurement must be made:

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Permissible Subject Matter Contacts:

Pursuant to State Finance Law § 139-j (3)(a), the Department of Health also identifies the following allowable contacts for communications related to the following subjects:

Submission of written proposals or bids: Timothy Miles

Submission of Written Questions: Timothy Miles

Participation in the Pre-Bid Conference: Timothy Miles

Debriefings: Kevin Ray

Negotiation of Contract Terms after Award: Timothy Miles

For further information regarding this legislation, see the Lobbying Statute summary in Section D (2)(e)(vi) of this solicitation.

**New York State Department of Health
HCRA Compliance Audits RFP**

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A. INTRODUCTION

This RFP invites bids from eligible organizations interested in conducting audits to determine payor and provider compliance with requirements of the Health Care Reform Act as set forth in sections 2807-c, 2807-j, 2807-s and 2807-t of the New York State Public Health Law (PHL). The selected contractor will be required to perform all of the activities described in this RFP, the contractor's proposal, and the resultant contract. Such activities shall include, but are not limited to, conducting onsite compliance audits, summarizing findings, conducting exit conferences, audit reports, and testifying to fact at judicial proceedings.

The selected contractor will be required to perform compliance audit services in organizations located throughout the United States. The contractor must however, have an audit presence in New York State from which to coordinate the audit activities described in this RFP. Approximately 44,000 health services payors and 1,000 health care providers are potentially subject to such audits. Affected payors include third party insurers, health benefit plans, and third party administrators of health benefit payments which have elected to pay statutorily authorized surcharges and assessments directly to the Department of Health's ("the Department") pool administrator. Affected providers include New York State certified general hospitals, diagnostic and treatment centers (D&TCs) providing a comprehensive range of primary health care services and/or ambulatory surgical services.

The sixty (60) month contract term is expected to extend from February 1, 2007 through January 1, 2012, subject to the availability of sufficient funding, successful contractor performance, and approvals from the New York State Attorney General and the Office of the State Comptroller.

Certified public accountants that have a valid New York license and current registration certification may submit a proposal in response to this RFP. The proposal must describe the current obligations or contractual relationships of the bidder, or any subcontractor, which may be interpreted as a conflict of interest with respect to the contract arising out of this RFP. The proposal must describe existing and proposed corporate policies and procedures for managing such conflicts of interests and their effect on successful performance of contracted duties.

B. BACKGROUND

New York State's enactment of Chapter 639 of the Laws of 1996, otherwise known as the New York Health Care Reform Act of 1996 (HCRA), substantially deregulated the State's inpatient hospital reimbursement system. It also authorized a series of payor and provider surcharges and assessments which fund a broad array of health care initiatives.

Effective January 1, 1997, previously regulated non-Medicare inpatient hospital payors (including corporations organized and operating in accordance with Article 43 of the

Insurance Law, organizations operating in accordance with the provisions of Article 44 of the Public Health Law, self funded health benefit plans and licensed commercial health insurers) were authorized to negotiate inpatient reimbursement rates for payment of services rendered by New York State certified general hospitals. This law also maintained regulated hospital inpatient rates for payments made by the New York State Medicaid program and other State governmental units (including local government payments made for correctional inmates), and those made under the State's workers' compensation law, comprehensive motor vehicle insurance reparations act ("no-fault"), volunteer fire-fighters' benefit law and ambulance workers' benefit law.

HCRA further required that non-Medicare payments made for certain specified health care services be subject to surcharges which are collected and distributed by the State to subsidize indigent care and other health care related initiatives. Known as the Medically Indigent/Health Care Initiatives surcharge, the actual percentage amount varies by payor. Affected health services payments made for State Medicaid beneficiaries and other clients of State operated governmental units are subject to a surcharge of 5.98% from January 1, 1997 through June 30, 2003. This surcharge increased to 6.47%, effective July 1, 2003, and to 6.54%, effective January 1, 2006. The remaining affected third party payors either pay an 8.18% (elector) or 32.18% (non-elector) surcharge. Effective July 1, 2003, these percentages increased to 8.85% and 34.82%, and effective January 1, 2006, these percentages increased to 8.95% and 35.21%, respectively.

The surcharges apply to payments for affected patient services rendered by New York State certified general hospitals and diagnostic and treatment centers which provide a comprehensive range of health care services and/or ambulatory surgical services.

In addition to this obligation, affected non-electing payors are required to fund a Professional Education Pool (PEP) through additional surcharges applicable to payments made for general hospital inpatient services. Affected electing payors fund the PEP through payment of covered-lives assessments on their New York State resident subscribers/plan participants, which are directly remitted to the Department's pool administrator on a monthly basis. This latter approach is required for affected payors which elect to pay the Medically Indigent/Health Care Initiatives surcharge directly to the State upon adjudication of affected claims.

Affected providers are also required to remit surcharge payments to the State. Surcharges are due on receipts from third party payors that did not voluntarily elect to make direct pool payments, beneficiary co-insurance and deductible payments, and self-pay collections. HCRA also requires that general hospitals pay an additional one-percent assessment on net inpatient service revenues received for discharges occurring on January 1, 1997 and thereafter. Collections from this assessment are deposited into the Medically Indigent/Health Care Initiatives Pool.

Subsequent amendments to this law also authorizes a designated share of collected funds be used to audit affected payor and provider compliance with the surcharge and

assessment requirements set forth in sections 2807-c, 2807-j, 2807-s and 2807-t of the New York State Public Health Law. This was an important step for ensuring the financial integrity of health programs funded through these proceeds and affected organization uniformity in complying with their funding obligations established by law.

1. Overview of Electing Third Party Payor Obligations

Third party payors are required to file an election application with the Department's pool administrator if they choose to voluntarily elect to meet their Medically Indigent/Health Care Initiatives and Professional Education Pool obligations through direct payments to the pool administrator. A third party administrator (TPA), acting in an administrative services capacity for claims processing and payment of an affected insurer or self funded health benefits plan, may also elect to make direct payments to the Department's pool administrator on behalf of their electing clients.

An electing payor's monthly Medically Indigent/Health Care Initiatives surcharge obligation is calculated by applying the appropriate payor specific surcharge percentage to all non-exempt patient care services payments made to designated providers of services. The surcharge applies to all monies paid to designated providers of services, including capitated payments allocable to the particular services, less refunds, for or on account of discharges occurring, visits made, or services performed on or after January 1, 1997, or contracted service obligations for periods on or after January 1, 1997. Such surcharge payments must be segregated by service year and provider classification.

Certain electing payors are also obligated to make assessment payments into the Professional Education Pool for every beneficiary or plan participant which resides in New York State. A payor's monthly Professional Education Pool covered lives assessment is calculated by applying the appropriate regional covered lives assessment rate to the number of individual and family unit covered lives included on the payor's membership rolls for all or any part of the reporting month. Regional covered lives assessment rates are assigned based on the type of coverage (i.e., individual or family unit) and the contract holder's county of residence. Covered lives assessment costs may be apportioned between two or more electing payors providing coverage of separate components of the contract holder's inpatient care benefits for the covered lives unit being apportioned. Such payors must maintain a copy of their written apportionment agreement(s) on file for verification upon audit.

Copies of the monthly and annual reports filed by electing payors (and electing third party administrators submitting reports on behalf of such payors) are available on the Department's Web site under the menu selection entitled "Public Goods Pool Reporting Forms and Instructions", at www.health.state.ny.us/nysdoh/hcra/hcrahome.

2. Overview of Provider Obligations

Designated providers are responsible for remitting their Medically Indigent/Health Care Initiatives surcharge obligations to the Department's pool administrator on a monthly basis. Such payments must be segregated and reported by service year.

A provider's monthly surcharge obligation amount is calculated by applying payor specific surcharge percentages to revenue received for surchargable patient care services. Excluded from the calculation are revenues received from payors electing to make public goods payments directly to the pool administrator, certain exempt payors (i.e., Medicare, FEHBA, etc.), and payments made directly from the State Medicaid program, including related beneficiary copayments. The referenced Medicaid payments may only be excluded if the provider has authorized the State, in writing, to withhold reimbursement for this surcharge so it can be directly remitted to the pool. If this does not occur, the provider must remit reimbursed surcharges included in their affected State Medicaid payments to the Department's pool administrator within five (5) days of receipt. Copies of the reports filed by providers making such payments are available on the Department's Web site under the menu selection entitled " Medicaid Withholding Reports and Payment Requirements of Non-electing Provider", at www.health.state.ny.us/nysdoh/hcra/hcrahome.

State certified general hospitals are also responsible for remitting their Professional Education Pool funding obligations to the Department's pool administrator on a monthly basis. A general hospital's obligation amount is calculated by applying its region's professional education pool surcharge against revenue received from "certain" specified third party payors of inpatient services. Excluded from this calculation is revenue received from: electing specified third party payors, non-electing State licensed capitated insurance plans for payments made for inpatient services rendered to State Medicaid enrollees, insurers (i.e., commercial insurers, Blue Cross Plans and HMOs) not licensed or authorized under New York State statutes.

These described obligations are due from providers on all affected monies received, less refunds, for or on account of discharges occurring, visits made, and services performed on or after January 1, 1997, as well as capitation payments allocable to affected services for contracted service obligations for periods on or after January 1, 1997.

Pursuant to PHL Section 2807-j (5-a)(a), Medically Indigent/Health Care Initiative surcharges due from providers for service payments received on account of non-electing payors shall be reduced by two percentage points. In these cases, the provider remits 30.18 percent of the 32.18 (effective July 1, 2003 these percentages increased to 32.82% of the 34.82%, and effective January 1, 2006 these percentages increased to 33.21% of the 35.21%) percent surcharge applicable to receipts from non-electors and retains the remainder for compensation of related

administrative costs associated with the collection of such surcharges.

Copies of the monthly reports filed by New York State certified general hospitals and diagnostic and treatment centers (D&TCs) providing a comprehensive range of primary health care services and/or ambulatory surgical services are available on the Department's Web site under the menu selection entitled "Public Goods Pool Reporting Forms and Instructions", at www.health.state.ny.us/nysdoh/hcra/hcrahome.

HCRA also requires general hospitals to pay an additional one-percent assessment on net inpatient services revenues received for all discharges occurring on January 1, 1997 and thereafter in accordance with Section 2807-c (18) of the PHL. The accuracy of the provider's calculation of assessments paid will also be verified as part of the provider reviews described in this RFP.

Copies of the monthly reports that New York State certified general hospitals use when calculating and paying their Statewide Assessment obligation are available on the Department's Web site under the menu selection entitled "1% Statewide Assessment Reporting Forms and Instructions", at www.health.state.ny.us/nysdoh/hcra/hcrahome.

3. Enforcement of Electing Payor and Provider Obligations

HCRA established a process by which the Department shall determine and impose interest and penalty provisions on providers and payors whose payments to the pool are untimely or deficient. The Department is also authorized to withhold and/or intercept Medicaid and other payments to providers in satisfaction of their public goods pool financing obligations. In the case of payor delinquencies, the Department is further authorized to rescind a payor's election to make payments directly to the pool administrator which would subject them to higher surcharges. The law also authorizes the Department to assess civil penalties on electing payors and providers that fail to file reports within specified time frames or fail to produce data or documentation requested in the course of an audit. If an electing payor or provider fails to produce data or documentation requested in furtherance of an audit, for a month to which an allowance applies, the Commissioner may estimate, based on available financial and statistical data as determined by the Commissioner, the amount due for such month.

4. HCRA Correspondence and Supported Listings

The Department's Web site is a valuable resource for additional information concerning HCRA. Available on the site are correspondence concerning HCRA policies and procedures, interpretations of assessable payments, billing examples, applications for direct pool payment election, payor and provider monthly pool reporting forms, and lists of electing payors and affected designated providers of services. It is important to note that although the provider list may be one of the

tools that electing payors utilize to identify claims from HCRA designated providers, the Department has advised payors and providers that they should consider communicating their respective HCRA status through their billing and remittances processes because: 1) the provider lists do not distinguish surchargeable services from non-surchargeable services; 2) the lists may not include all designated provider satellite branches and subsidiaries; and 3) the lists do not identify designated provider billing arrangements with non-designated providers billing services. The Web site address for HCRA information is www.health.state.ny.us/nysdoh/hcra/hcrahome.

C. DETAILED SPECIFICATIONS

This section of the RFP delineates and defines all the duties of the contractor regarding compliance audits of surcharge and/or assessment payments to the HCRA pools. Each bidder must include a plan to carry out all noted required functions. The audit activities are considered minimum requirements and the bidder may propose additional or alternative activities as long as they are consistent with the Department's stated goals and objectives.

1. Project Goals and Objectives

The Department's overall goal is to ensure that affected organizations comply with their surcharge and assessment obligations established by law. Objectives to achieve this goal include: a) having an independent capability to determine an affected payor's and provider's actual surcharge and assessment obligations as set forth in sections 2807-c, 2807-j, 2807-s and 2807-t of the New York State Public Health Law, and b) an ability to quantify any potential payor and provider surcharge and assessment underpayments which remain due to the State.

2. Scope of Work

a. Staffing Requirements

The contractor will assume responsibility for organizing and training sufficient staff to conduct assigned compliance audits. The contractor will also be responsible for coordinating and managing the on-going audits. To accomplish this, the contractor shall:

- i. Assign a project coordinator who possesses strong management skills necessary to coordinate audit activities, analyze data, prepare reports and respond to the Department's management information needs.

The project coordinator should be the sole liaison between the Department and the contractor. The Department should be able to direct all questions, audit targets and other

correspondence to one individual. This individual is expected to be available to respond to the Department's management information needs on a daily basis via telephone and/or E-mail and to coordinate bi-weekly audit status meetings to apprise the Department of audit issues and status.

- ii. Assign audit teams, consisting of a minimum of two staff each, who possess strong accounting and auditing experience. Additionally, at least one of the team members shall have training and experience in the review of electronic claims payment/remittance processing systems.
- iii. Provide sufficient additional management and administrative support staff necessary to organize, prepare and carry out all administrative tasks associated with conducting the above-described audits and submitting resultant audit reports.

b. Audit Protocols

Using protocols set forth by the Department for this purpose (Attachments 1 and 2), the contractor will conduct audits of selected electing payors and designated providers to establish compliance with HCRA pool surcharge and assessment payment requirements and to determine the amount that HCRA pools were underpaid due to noted compliance deficiencies. The contractor may propose alternate schedules/protocols that are consistent with the stated goals and objectives for these audits.

c. Audit Schedule/Tasks/Deliverables

- i. The contractor shall complete approximately thirty (30) audits annually, and the contractor and the Department agree that payor and provider audit assignments shall not be limited to any specific ratio of payor versus provider audits or category.
- ii. The contractor will be responsible for following the steps and completing the tasks and deliverables specified in the audit schedule provided in Attachment 3.
- iii. The contractor will be responsible for providing the Department with draft and final audit reports. Each report must contain the original signature of the Partner in Charge or other duly authorized person who is a New York State Certified Public Accountant. Company stamps are not acceptable. The content and format of such reports will be

prescribed by the Department and examples are included as Attachment 4 and 5.

- iv. The contractor will be responsible for providing the Department with reports of audit status as prescribed by the Department.
- v. The contractor shall maintain work papers and evidence containing sufficient information to enable an experienced auditor, having no previous connection with the audit, to validate the auditor's significant conclusions and judgments. Such evidence shall include, but not be limited to, documentation, analyses, and data either received from the auditee and/or generated by the contractor.
- vi. The contractor shall assume responsibility for providing and ensuring the compatibility of all electronic equipment and resource needs.
- vii. The contractor may be required to testify as to the audit process and the basis for audit findings in hearings, if necessary, and in legal proceedings which could include other administrative, civil, or criminal proceedings related to work performed pursuant to this agreement.

d. Conflicts of Interest

The contractor will be precluded from performing HCRA compliance testing involving an organization that constitutes a conflict of interest under the firm's corporate policies and applicable professional standards. The prospective bidders are to delineate how they plan on dealing with such situations in their proposal.

D. PROPOSAL REQUIREMENTS

1. Proposal Format/Content

Each bidder's proposal must be submitted as two separately sealed volumes. Volume I must contain the bidder's technical proposal and Volume II must contain the bidder's cost proposal. No financial information should be in the technical proposal.

2. Technical Proposal

To promote uniformity of preparation and to facilitate review, the Department

requires that technical proposals include the following information, in the order prescribed below, and comply with noted page limitations.

a. Transmittal Letter

A letter of transmittal on company letterhead must be submitted, addressed to the New York State Department of Health. The letter is to be signed by a company official who is authorized to bind the bidding organization to the requirements of this RFP. Company stamps are not acceptable. The letter must affirm that the proposal and all provisions of the offer price are to remain in effect for a minimum of one hundred eighty (180) calendar days and provide a statement affirming the bidder's ability to meet all contract requirements specified in this RFP, including the appendices, or specifically address each for which alternative terms and conditions are proposed. Note that the terms and conditions specified in the Appendix A Standard Clauses for All New York State Contracts (Attachment 6) and the Appendix D General Specifications (Attachment 7) are mandatory for all New York State contracts and may not be revised. Failure to include a letter of transmittal binding the bidder to the requirements of this RFP will result in disqualification of the bid.

b. Table of Contents

c. Organization and Personnel

- i. A description of the bidder's organizational structure and the background (2 page maximum).
- ii. Proof of incorporation and financial viability. This information shall include a Department of State Registration Certificate of Article of Incorporation and a minimum of three (3) years of audited financial statements or, if unavailable, equivalent financial data (e.g., Dunn & Bradstreet Reports).
- iii. An organizational chart.
- iv. A description of the bidder's experience in conducting health care payor and provider claims and financial compliance audits similar in nature to the audits required by this RFP. Experience related to audits of health care payor and provider activities, health care payor and provider auditing, auditing electronic claims processing and remittance systems, data management initiatives, and other relevant activities should also be provided. The bidder's experience shall be evaluated based on how relevant this experience is to the scope of work to be performed in accordance with this RFP. Experience

gained within the last five years should be included (3 page maximum). Letters of endorsement for relevant work experience required by this proposal should also be provided.

- v. A description of the bidding organization's capacity to carry out the required audit activities on a timely basis and in a manner that allows for onsite activities to be carried out simultaneously, as necessary, to accommodate payors/providers and in accordance with the time frames set forth in the RFP (3 page maximum).
- vi. A description of the bidding organization's data processing and analytical capabilities including any technologies, special techniques, skills or abilities that the organization considers necessary to accomplish the goal and objectives of the HCRA compliance audits (2 page maximum).
- vii. List three largest (e.g., largest in claiming activity) audit projects the bidder has performed, within the past five (5) years, for a government, health care payor or provider organization, which are similar to the audits required by this RFP (4 page maximum). For each of these projects:
 - a. Name of government entity/company.
 - b. Contract start/completion dates.
 - c. Name, title and telephone number of the customer to contact for confirmation of the project performed, its scope and the bidder's quality of work.
 - d. Describe the project (e.g., audit type, project size, goals, scope, level of effort) and any special technologies, techniques, skills or abilities that the bidding organization required to accomplish the project requirements.
 - e. Describe the educational background, specialized training, professional experience, and special qualifications of the project coordinator, team leaders, onsite audit team and analytical staff assigned to the project.
- viii. A list of offices or locations that will be used to coordinate and carry out audit activities, conduct analysis and prepare data and management information reports (one page maximum).
- ix. A listing of personnel who will conduct the audit programs (i.e., credentials, title, affiliation with contractor, etc.) Specify how the personnel will be utilized and the percentage of time they

will devote to this contract (3 page maximum).

- x. Description of the educational background, specialized training, professional experience, and special qualifications of the project coordinator, the project directors, team leaders and onsite audit/surveillance team and analytical staff assigned to the project (one page maximum per person). Include a resume and two references for each staff person proposed for the project.

- xi. Description of the educational background, experience and special qualifications of consultants to be involved in the contract as well as those of any proposed subcontractor. The following information should be provided for each subcontractor:
 - A complete description of specific responsibilities to be undertaken by the subcontractor under this contract. Include the percentage of work and effort to be completed by the subcontractor under this contract.
 - A description of the subcontractor's experience performing the specific HCRA compliance audit functions that they will be completing.
 - Three (3) business references that can demonstrate the subcontractor's experience in performing the specific HCRA compliance audit functions that they will be completing.
 - A letter of commitment to undertake the specific functions required in this RFP which the subcontractor will be completing, signed by an authorized representative of the proposed subcontractor.
 - A completed "Bid Form" form (Attachment 8) completed by the subcontractor.
 - A completed "Responsibility Questionnaire" if the subcontract equals or exceeds \$100,000 over the life of the contract.

- xii. A summary of training initiatives to ensure that all staff are appropriately trained and that training protocols provide for consistency among audit staff and the analysis of findings (two page maximum).

- xiii. Conflict of Interest: Describe the current obligations or contractual relationships of the bidder or any of its subcontractors which may be interpreted as a conflict of interest with respect to the contract arising out of this RFP.

Describe existing and proposed corporate policies and procedures for managing such conflicts of interests and their effects on successful performance of contracted duties. The contractor will be precluded from performing HCRA compliance audits of their clients. Therefore, prospective bidders are to delineate how they plan on dealing with such situations in their proposal and include a statement confirming their commitment to have the plan operational within two months of the New York State Office of the State Comptroller's approval of the contract.

- d. Work Plan: Bidders are to develop and include in their proposal, a plan for implementing the audit activities and data responsibilities set forth in Section C "Detailed Specifications" of this RFP, and referenced attachments. The proposal should include at a minimum:
- Descriptions outlining the offeror's understanding of the HCRA compliance audit project;
 - Timeframes and tasks to be completed to ensure timely implementation of the HCRA compliance audit project;
 - Descriptions of the methods and procedures the bidder will implement to achieve the Department's stated goals and objectives;
 - Descriptions of statistical sampling methods to be utilized;
 - Descriptions of electronic data processing equipment to be utilized;
 - Descriptions of all computer software to be utilized;
 - Summary of existing audit plans currently being used by the offeror to test claims processing and remittance systems;
 - Descriptions of alternative procedures to be utilized to determine compliance and calculate surcharge and assessment underpayments when an auditee fails to provide source data/documentation;
 - Descriptions of the methods to be utilized to maintain the level of liaison and cooperation with the Department necessary for proper performance of all contractual responsibilities and to apprise the Department of audit issues and status;
 - Schedule of deliverables based upon the projected workload outlined in Section C and referenced attachments, which detail the scope of work and number of audits to be conducted on an annual basis.
- e. Mandatory Requirements
- i. Bid Form: A completed Bid Form (Attachment 8) must be included in each bidder's proposal. The Bid Form must be endorsed by a person authorized to bind the bidding organization to the provisions of Paragraph A of the Appendix

D General Specifications.

- ii. Non-Collusive Bidding Requirement: A completed Non-Collusive Bidding Certification (Attachment 9) form must be included in each bidder's proposal.
- iii. Business Agreement: A completed Business Agreement (Attachment 10) must be included in each bidder's proposal. Further, all contractor staff assigned to the HCRA Compliance Audit project shall be required to read and sign an employee privacy agreement, which the contractor shall provide to the Department.
- iv. Vendor Responsibility Questionnaire

New York State Procurement Law requires that state agencies award contracts only to responsible vendors.

Attachment 11 contains the "Vendor Responsibility Questionnaire" that all bidders must complete and submit with their proposal.

In addition to the questionnaire, bidders are required to provide the following with their proposal:

- Proof of financial stability in the form of audited financial statements or a Dunn & Bradstreet Report.
 - Department of State Registration.
 - Certificate of Incorporation, together with any and all amendments thereto; Partnership Agreement; or other relevant business organizational documents, as applicable.
 - N.Y.S. Dept of Taxation and Finance's Contractor Certification Form ST-220 (Attachment 12).
- v. State Consultant Services Reporting

Chapter 10 of the Laws of 2006 amended certain sections of State Finance Law and Civil Service Law to require disclosure of information regarding contracts for consulting services in New York State.

Winning bidders for procurements involving consultant services must complete a "State Consultant Services Form A, Contractor's Planned Employment From Contract Start Date through End of Contract Term" in order to be eligible for a contract.

Winning bidders must also agree to complete a “State Consultant Services Form B, Contractor’s Annual Employment Report” for each state fiscal year included in the resulting contract. This report must be submitted annually to the Department of Health, the Office of the State Comptroller, and Department of Civil Service.

Both of these forms are included as attachments to this document.

vi. Lobbying Statute

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, establishes significant changes to the development of procurement contracts with governmental entities.

In 2003, Governor Pataki issued Executive Order Number 127 *Providing for Additional State Procurement Disclosure* (“EO 127”), to increase disclosure requirements for persons and organizations contacting State government about procurement contracts and real estate transactions. It requires state agencies and certain public authorities to collect and record information from contractors seeking a procurement contract, and those who advocate on behalf of the contractors to influence procurement contracts. The goal of EO 127 is to enhance public confidence in the State’s procurement process by making available to the public information pertaining to the lobbying efforts of those seeking state contracts from state agencies and certain public authorities.

Chapter 1 of the Laws of 2005 expands upon EO 127 and the former lobbying statute. Among other things, the new law:

- a. makes the lobbying law applicable to attempts to influence procurement contracts once the procurement process has been commenced by a state agency, unified court system, state legislature, public authority, certain industrial development agencies and local benefit corporations;
- b. requires the above mentioned governmental entities to record all contacts made by lobbyists and contractors

about a governmental procurement so that the public knows who is contacting governmental entities about procurements;

- c. requires governmental entities to designate persons who generally may be the only staff contacted relative to the governmental procurement by that entity in a restricted period;
- d. authorizes the Temporary State Commission on Lobbying to impose fines and penalties against persons/organizations engaging in impermissible contacts about a governmental procurement and provides for the debarment of repeat violators;
- e. directs the Office of General Services to disclose and maintain a list of non-responsible bidders pursuant to this new law and those who have been debarred and publish such list on its website;
- f. requires the timely disclosure of accurate and complete information from offerers with respect to determinations of non-responsibility and debarment;
- g. expands the definition of lobbying to include attempts to influence gubernatorial or local Executive Orders, Tribal–State Agreements, and procurement contracts;
- h. modifies the governance of the Temporary State Commission on lobbying;
- i. provides that opinions of the Commission shall be binding only on the person to whom such opinion is rendered;
- j. increases the monetary threshold which triggers a lobbyist's obligations under the Lobbying Act from \$2,000 to \$5,000; and
- k. establishes the Advisory Council on Procurement Lobbying.

Generally speaking, two related aspects of procurements were amended: (i) activities by the business and lobbying community seeking procurement contracts (through amendments to the Legislative Law) and (ii) activities involving governmental agencies establishing procurement contracts (through amendments to the State Finance Law).

Additionally, a new section 1-t was added to the Legislative Law establishing an Advisory Council on Procurement Lobbying (Advisory Council). This Advisory Council is authorized to establish the following model guidelines regarding the restrictions on contacts during the procurement process for use by governmental entities (see Legislative Law §1-t (e) and State Finance Law §139-j). In an effort to facilitate compliance by governmental entities, the Advisory Council has prepared model forms and language that can be used to meet the obligations imposed by State Finance Law §139-k, Disclosure of Contacts and Responsibility of Offerers. Sections 139-j and 139-k are collectively referred to as “new State Finance Law.”

It should be noted that while this Advisory Council is charged with the responsibility of providing advice to the New York Temporary State Commission on Lobbying (Lobbying Commission) regarding procurement lobbying, the Lobbying Commission retains full responsibility for the interpretation, administration and enforcement of the Lobbying Act established by Article 1-A of the Legislative Law (see Legislative Law §1-t (c) and §1-d). Accordingly, questions regarding the registration and operation of the Lobbying Act should be directed to the Lobbying Commission.

vii. Workers Compensation and Disability Benefits Coverage

Unless the CONTRACTOR is a political sub-division of New York State, the CONTRACTOR shall provide proof, completed by the Contractor's insurance carrier and/or the Workers' Compensation Board, of coverage for:

- Workers' Compensation, for which one of the following is incorporated into this contract as **Appendix E-1**:
 - **WC/DB-100**, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
 - **WC/DB-101**, Affidavit That An OUT-OF-STATE Or FOREIGN EMPLOYER Working In New York State Does Not Require Specific New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage; OR

- **C-105.2** – Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the **U-26.3**; OR
- **SI-12** – Certificate of Workers' Compensation Self-Insurance, OR **GSI-105.2** – Certificate of Participation in Workers' Compensation Group Self-Insurance.
- Disability Benefits coverage, for which one of the following is incorporated into this contract as **Appendix E-2**:
 - **WC/DB-100**, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
 - **WC/DB-101**, Affidavit That An OUT-OF-STATE Or FOREIGN EMPLOYER Working In New York State Does Not Require Specific New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage; OR
 - **DB-120.1** – Certificate of Disability Benefits Insurance OR the **DB-820/829** Certificate/Cancellation of Insurance; OR
 - **DB-155** – Certificate of Disability Benefits Self-Insurance.

3. Cost Proposal

The bidder must submit a cost proposal separate from the technical proposal. The cost proposal form (Attachment 13) must be used for this purpose and must be signed by a person authorized to bind the bidding organization to the per audit bid amounts specified by the bidder and affirm that the proposal and all provisions of the offer price are to remain in effect for a minimum of one hundred eighty (180) days from the October 27, 2006 proposal due date. **Company stamps are not acceptable.**

4. Method of Award

a. Vendor Selection

This section of the RFP sets forth the criteria to be used by the State for evaluation of the proposals submitted in response to this RFP. The

objective of the evaluation is to select the bidder proposing the best value solution, which optimizes quality, cost and efficiency.

As stated previously, proposals must be submitted as two separately sealed volumes. Volume I must contain the bidder's technical proposal (70%) and Volume II must contain the bidder's cost proposal (30%).

The technical proposals and cost proposals will be evaluated separately. Each proposal will receive a numerical score based on the values associated with the criteria used below. Points will be totaled for a final score. The proposal awarded the most points will be awarded the contract.

At the discretion of the Department of Health, all bids may be rejected. The evaluation of the bids will include, but not be limited to the following considerations:

b. Technical Proposal Scoring Criteria (70 pts.)

Formula: $x/y * z$ – where:

x = raw score of proposal being scored

y = raw score of highest scored proposal

z = total points available

i. Organization and Personnel Qualifications, Experience and Capacity (30 pts.)

Bidders will be evaluated based on the organization's capacity to carry out the required audit activities on a timely basis and their ability to demonstrate prior experience in conducting audits similar in nature to the audits required by this RFP. Experience related to audits of providers of medical services and insurers of such services will also be considered.

Bidders will be evaluated based on the education, prior related experience, specialized training, and professional licenses and activities of the staff to be devoted to the project.

In the Department's evaluation of proposals, preference will be given to those with staffing proposals which include staff who have experience in conducting health care payor and provider claiming and financial compliance audits similar in nature to the audits required by this RFP. Experience related to audits of health care payor and provider activities, health care payor and provider auditing, auditing electronic claims processing and remittance systems, data management initiatives, and other relevant activities will also be considered.

The bidder's proposal will be judged on the staffing plan provided to meet program goals and provide for continuity in staffing to promote consistency in audit activities and analysis of findings. The proposal will also be judged on the training initiatives set forth to ensure that all staff are appropriately trained and that training protocols provide for consistency among audit staff and for the analysis of findings.

ii. Understanding of Department Requirements (10 pts.)

Bidders will be evaluated on how well they demonstrate an understanding of the scope and purpose of the various audits to be performed. The bidder will be expected to demonstrate knowledge of the environment in which the audits will take place including identification of issues and obstacles to implementing an effective and consistent audit program and proposed solutions.

iii. Technical Approaches (30 pts.)

Bidders will be evaluated on how well they translate the audit goals and responsibilities contained in the RFP into an effective and efficient payor and provider audit program. The bidder's approach to data collection, analysis and reporting will be evaluated based on the goals and objectives set forth in the Scope of Work section of the RFP. Particular attention will be paid to the bidder's proposal for implementation of alternative procedures when audit data is not available. This includes related use criteria, methods, plans and procedures.

Bidders will also be evaluated based on their technological capabilities which shall be based on specific descriptions of the audit tools, hardware and software the firm will use for this project.

c. Cost Proposal Scoring Criteria (30 pts.)

Each bidder's cost proposal will be evaluated separately from the technical proposal. The maximum cost proposal score is 30 points. The basis for the cost proposal evaluation rankings will be the total price offer received from each bidder. The total price offers will be ranked with the lowest cost bid of a responsible bidder awarded the weighted maximum total of 30 points. The remaining bids will be assigned scores based on the following formula:

$$(\text{Cost of lowest bid} / \text{cost of bid being scored}) \times 30 \text{ points}$$

E. ADMINISTRATIVE

1. Eligibility

Certified public accountants that have a valid New York license and current registration certification may submit a proposal in response to this RFP. The selected contractor will be required to perform compliance audit services in organizations located throughout the United States. The contractor must however, have an audit presence in New York State from which to coordinate the audit activities described in this RFP.

2. Issuing Agency

This RFP is issued by the NYS Department of Health. The Department is responsible for the requirements specified herein and for the evaluation of all proposals.

3. Inquiries/Project Officer

All questions relating to this RFP must be submitted, in writing, to the Project Officer. Each question raised must cite the particular RFP section and paragraph to which it refers:

HCRA COMPLIANCE AUDIT REQUEST FOR PROPOSALS
Attn: Mr. Richard Pellegrini, Director
Bureau of Financial Management and Information Support
Division of Health Care Financing
New York State Department of Health
Room 984, Corning Tower
Empire State Plaza
Albany, New York 12237-0719
(518) 474-1673
FAX (518) 473-8825

Questions and answers, as well as any updates and/or modifications, will be posted on the Department of Health's website at www.health.state.ny.us/funding/ by October 23, 2006. Bidders wishing to receive these documents via mail must send a request, in writing, to the Department at the above address.

4. Procurement Time Table (Note: There will not be a bidders conference)

| | |
|------------------------------|-------------------|
| Release of RFP | October 23, 2006 |
| Written Questions Due | November 3, 2006 |
| Questions and Answers Posted | December 15, 2006 |
| Proposal Due Date | December 29, 2006 |

| | |
|--------------------------------|-----------------------------|
| Evaluation of Proposals | January 3 – January 9, 2007 |
| Notification of Contract Award | January 22, 2006 |
| Program Implementation | February 1, 2007 |

The State reserves the right, upon notice to bidders, to modify any of the above mentioned dates. Such notice will be posted on the Department's website.

5. Submission of Proposals

An original signed copy and ten (10) additional exact copies of the completed proposal must be received by the Project Officer, no later than 2:00 p.m., December 29, 2006.

It is the bidder's responsibility to see that their proposal is delivered to the Project Officer by 2:00 p.m., December 29, 2006. Late proposals due to delay by the carrier or not received by the Department's mail room in time for transmission to the Project Officer will not be considered. All evidence and documentation requested under Section D, Proposal Requirements must be provided at the time the proposal is submitted. There will be no public bid opening.

IMPORTANT NOTE: Security procedures for the Corning Tower require all visitors to pre-register for admission to the building and then sign in at a registration desk located on the Concourse level. Consequently, if you intend to hand deliver a bid, you must allow extra time to comply with the security procedures. You will be required to contact the Project Director's office two (2) days prior to your arrival to arrange for admission to the building. Bids not received by the Project Officer by the time and date shown on the front page of this RFP will be considered late and disqualified from consideration.

- The Bid Form (Attachment 8) must be filled out in its entirety.
- The responsible corporate officer for contract negotiation must be listed. This document must be signed by the responsible corporate officer.
- All evidence and documentation requested under Section D, Proposal Requirements must be provided at the time the proposal is submitted.

6. Reserved Rights

The Department of Health reserves the right to:

- a. Reject any or all proposals received in response to this RFP.
- b. Waive or modify minor irregularities in proposals received after prior notification to the bidder.

- c. Adjust or correct cost or cost figures with the concurrence of bidder if errors exist and can be documented to the satisfaction of Department of Health and the Office of the State Comptroller.
- d. Negotiate with bidders responding to this RFP within the requirements to serve the best interests of the State.
- e. Modify the detail specifications should no bids be received that meet all the requirements of this RFP.
- f. If the Department of Health is unsuccessful in negotiating a contract with the selected vendor within an acceptable time frame, the Department of Health may begin contract negotiations with the next qualified vendor(s) in order to serve and realize the best interests of the State.

7. Bidder Presentations

The Department of Health may request bidders submitting acceptable proposals to provide oral presentations to clarify, but not modify, major points in their proposal. Oral presentations may be required of the top three bidders and any bidders with a score within three points of the top three bidders. No specific points will be assigned to oral presentations but rather evaluators will be afforded an opportunity to refine their scoring on any portion of the Technical Proposal based on the results of the oral presentation. If presentations are required, they will be held in Albany, New York.

8. Notification of Proposal Acceptance

The Department of Health will notify the successful bidder through a Letter of Commitment. Each bidder whose proposal is rejected will be notified to that effect by the Department.

9. Incurred Costs

The State of New York shall not be obligated for any costs incurred by bidders in proposal preparation or for activities related to proposal submission.

10. Disclosure of Proposal Contents

To the extent permitted by law, bidder's proposals will not be disclosed, except for purposes of evaluation, prior to approval by the Office of the State Comptroller of the resulting contract. All material submitted becomes the property of the State and may be returned at the State's sole discretion.

Submitted proposals may be reviewed and evaluated by any person designated by the State, other than one associated with a competing bidder. Selection or rejection of a proposal does not affect this right. If a bidder believes that any information in its proposal constitutes a trade secret and wishes such information not to be disclosed if requested pursuant to the New York State Freedom of Information Law (i.e., Article 6 of the Public Officers Law) the bidder should submit with its proposal a letter specifically identifying by page number, line or other appropriate designation, any information requested to be treated as a trade secret and explain in detail why such information should be so treated. Failure by a bidder to submit such a letter identifying trade secrets with its proposal shall constitute a waiver by the bidder of any rights it may have under Section 89 (Subdivision 5) of the Public Officers Law relating to the protection of trade secrets.

11. State Use of Proposal Ideas

The State has the right to use any or all ideas presented in any proposal received in response to the RFP which are not the proprietary information of the bidder and so designated in the bidders proposal, or which:

- a. were known to the State before submission of such proposal, or
- b. properly became known to the State thereafter, through other sources or through acceptance of the bidder's proposal.

12. Payment

The State shall pay the Contractor on a monthly basis in accordance with the Contractor's approved cost proposal. Payment shall be based on the number of audits completed per audit category each month and the Contractor's fixed offer price per audit category (Attachment 13). Payment shall be contingent upon full and proper performance, by the Contractor, of the audit activities specified in the RFP and the Contractor's proposal as modified or supplemented by the terms of this Agreement, and the Contractor's submission and the State's acceptance of the deliverables identified in the RFP, the Contractor's proposal, and this Agreement.

For the purpose of paying the Contractor, an audit will be deemed completed upon submission of the Final Audit Report and a New York State Standard Voucher (Form AC 92) by the Contractor and acceptance of such report and voucher by the State.

Payment shall be made on each voucher upon State review and determination that the Contractor has performed in accordance with the performance standards set forth in this Agreement.

In the event the Contractor fails, in the reasonable judgment of the State, to

properly perform in accordance with the performance standards, payment may be withheld by the State until such time as the State reasonably determines that the performance standards are met. If the performance standard in question is subsequently achieved or furnished as determined by the State, payment shall be released to the Contractor.

The Contractor shall submit monthly certified vouchers for audits completed, to the State's designated payment office:

HCRA COMPLIANCE AUDITS
Attn: Mr. Richard Pellegrini, Director
Bureau of Financial Management & Information Support
Office of Health Systems Management
NYS Department of Health
Empire State Plaza, Corning Tower Building, Room 984
Albany, New York 12237
(518) 474-1673

Payment of such vouchers by the State (NYS Department of Health) shall be made in accordance with Article XI-A of the New York State Finance Law.

13. Interim Contract Payments

For each assigned audit, the State shall pay the Contractor up to fifty percent (50%) of the applicable fixed offer price upon the Contractor's completion of the exit conference and the Contractor's submission of the Draft Audit Report and a New York Standard Voucher (Form AC 92) to the State and acceptance of such report and voucher by the State. The State shall pay the remaining balance of the applicable fixed offer price to the Contractor upon the submission of the Final Audit Report and a New York State Standard Voucher by the Contractor and acceptance of such report and voucher by the State. An audit shall be deemed completed upon submission of the Final Audit Report and a New York State Standard Voucher by the Contractor and acceptance of such report and voucher by the State.

All contract payments to the Contractor shall cease, at the State's sole discretion, if the Contractor fails to submit to the State any Final Audit Report within thirty (30) calendar days of receipt of the State's comments on the associated Draft Audit Report, unless an extension is requested in writing by the Contractor and approved in writing by the State. All contract payments to the Contractor shall cease, at the State's sole discretion, if the Contractor fails to present testimony and/or evidence in hearings and other legal proceedings required under this agreement within the State established timeframes. Contract payments to the Contractor may resume, at the State's sole discretion, upon the Contractor's resolution of all report deficiencies and all deficiencies related to legal proceedings.

14. Out-of-State Travel

Costs for (i) travel to and from audit assignment destinations located outside New York State, and in association with such travel (ii) meals and (iii) lodging, for those assignments that require such, shall be subject to the same limitations which apply to New York State Management/Confidential (M/C) employees. These limitations including the current available rates may be found by accessing the following New York State Office of the State Comptroller's web site at <http://nysosc3.osc.state.ny.us/agencies/travel/travel.htm>. The contractor will be required to provide the same level of detail to support travel, meal and lodging expenses that a State employee is required to provide when seeking reimbursement for such expenses. These travel expenses shall be separately vouchered and submitted with the voucher for payment upon acceptance of the final audit report by the Department.

15. Hearings

The Contractor may be required to present testimony or evidence as to the audit process and the basis for audit findings in hearings, if necessary, and in legal proceedings which could include other administrative, civil, or criminal proceedings.

The State shall pay the Contractor on a monthly basis in accordance with the Contractor's approved cost proposal. Payment shall be based on the number of audits per audit category for which the Contractor testified each month and the Contractor's fixed offer price per hearing category (Attachment 14). For the purpose of paying the Contractor, a hearing or other administrative proceeding will be deemed completed upon issuance of the hearing officer's decision.

16. Review of Deliverables

The State will attempt to review deliverables submitted by the Contractor to the State, accept or reject those deliverables, and provide written comments and notice of deficiencies, if any, to the Contractor, within fifteen (15) working days of receipt and will use all reasonable efforts to complete the review in less than the allotted time. The Contractor shall correct the deficiencies cited by the State and resubmit the deliverable for approval within ten (10) working days of receipt of the State's comments, unless an extension is requested in writing by the Contractor and approved in writing by the State. The Contractor shall respond to all State comments and incorporate such response into its resubmission of the deliverable. Full response by the Contractor to the State's comments within ten (10) working days will constitute fulfillment of that deliverable unless the States provides, within ten (10) working days of receipt of the resubmitted deliverable, notice of a continuing deficiency. If notice of a continuing deficiency is given, the State will provide to the Contractor a detailed description of the deficiencies that continue. If the Contractor fails to meet all criteria within the timeframes mentioned above, the State reserves the right to withhold payment until the State is satisfied that all the deliverables have been achieved as set forth in this Agreement.

As used in this section, the term “continuing deficiency” shall be limited to:

- a. Inadequate resolution, in the reasonable judgment of the State, of the items raised during the previous State review;
- b. Related issues which were tied to or created by the method of resolving the previous State comments;
- c. Items which could not be thoroughly tested or reviewed by the State because of an inadequate, incorrect or incomplete deliverable, previously submitted, which was identified as inadequate, incorrect or incomplete by the State’s previous written comments; and
- d. Omissions of parts of a deliverable.

The intent of the above paragraph is to preclude the introduction of new and unrelated items during subsequent reviews, which could have been identified by a thorough review of a previously submitted deliverable. Such reviews and resubmissions shall not be construed as a waiver of any deliverable or obligation to be performed under this Agreement, nor of any scheduled deliverable date, nor any rights or remedies provided by law or under this Agreement, nor State comment on any deliverable, relieve the Contractor from any obligation or requirement of this Agreement.

In the event the State fails to review and accept or reject a deliverable within fifteen (15) working days of receipt, the Contractor shall notify the State of the late response and proceed with performance as if acceptance had been received from the State. However, such failure by the State to respond shall not constitute acceptance of the deliverable by the State. If, in such circumstances, the State subsequently requires material changes to the deliverable, the parties shall fairly consider and mutually agree as to the effect of the untimely rejection or acceptance on the delivery or implementation schedules. In no event shall the Contractor be entitled to any price increase due to the need to correct deficient deliverables.

The Contractor will deliver drafts of deliverables to the State to facilitate the State’s review process. Nothing set forth herein with regard to the formal review process for deliverables shall preclude verbal comments by the State to the Contractor or its representatives during that process, and those verbal comments may be provided in addition to the formal process set forth herein.

17. Term of Contract

This agreement shall be effective upon approval of the New York State Office of the State Comptroller. The contract term shall be sixty (60) months commencing approximately February 1, 2007 through January 31, 2012. The State shall have the right to terminate this contract early for: (i) unavailability of funds; (ii) cause; or (iii) convenience. The State may only invoke its right to terminate for convenience on March 31st of each year of the contract term, provided that the

State has given written notice to the contractor no later than 30 days or more prior to the date of termination, except with respect to contracts that gives the State a general right to terminate at any time.

This agreement may be canceled at any time by the Department of Health after giving the contractor not less than thirty (30) days written notice that on or after a date therein specified this agreement shall be deemed terminated and canceled.

18. Price Escalation

Each fixed offer price per audit category and each fixed offer price per hearing category (Attachment 13) will be increased on April 1 of each year by the lower of the gain in the consumer price index from April 1 of the previous year, or five percent (5%) for audits commencing on or after April 1st of that year. If the consumer price index falls below the level of the previous year or remains the same, then there would be no cost of living adjustment for that particular year of this AGREEMENT. The consumer price index that will be used for all calculations for this AGREEMENT will be for All Urban Consumers, Series ID# CUURA101SA0 for New York – Northern New Jersey – Long Island, NY-NJ-CT-PA. The base used will be January 2007. An audit shall be deemed commenced upon STATE issuance of an audit notification letter to the auditee.

19. Debriefing

Once an award has been made, bidders may request a debriefing of their proposal for up to six months from date of contract award. Please note the debriefing will be limited only to the strengths and weaknesses of the bidder's proposal, and will not include any discussion of other bidders' proposals.

F. CONTRACT APPENDICES

The following will be incorporated as appendices into any contract resulting from this Request for Proposal. This Request for Proposal will, itself, be referenced as an appendix of the contract.

| | |
|--------------|---|
| Appendix A | Standard Clauses for All New York State Contracts |
| Appendix B | HCRA Compliance Audits Request for Proposal |
| Appendix C | Proposal - The bidder's proposal (if selected for award), including the Bid Form and all proposal requirements. |
| Appendix D | General Specifications |
| Appendix E-1 | Worker's Compensation Coverage |
| Appendix E-2 | Disability Benefits Coverage |
| Appendix F | Business Agreement |

G. ADDITIONAL CONTRACTUAL REQUIREMENTS

1. General

Following selection of the successful bidder, the Department of Health and the bidder will enter into a contractual agreement. The contract will include the HCRA Compliance Audit Request for Proposals, RFP Questions and Answers Document, and Contractor's Proposal.

As required by State legislation, any contract entered into pursuant to an award of this RFP shall contain a provision which extends the terms and conditions of such contract to any other State agency in New York. Incorporation of this RFP into the resulting contract also incorporates this provision of the contract.

2. Documentation Incorporation and Order of Precedence

In the event of any inconsistency in or conflict among the document elements identified herein, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order:

- a. First, Appendix A Standard Clauses for all New York State Contracts;
- b. Second, Appendix D General Specifications;
- c. Third, the HCRA Compliance Audit Request for Proposals (other than Standard Clauses for all New York State contracts and General Specifications) as amended by the RFP Questions and Answers document; and
- d. Fourth, the Contractor's Proposal.

3. Performance Standards

- a. Audits

The Contractor shall conduct, in the reasonable judgment of the State, complete, accurate and timely audits.

The Contractor shall conduct audits in accordance with the audit protocols and audit schedule set forth in the RFP and the contractor's proposal as modified or supplemented by the terms of this Agreement.

- b. Reporting Requirements

The Contractor shall timely submit all required reports (Status Reports and Draft and Final Audit Reports) in accordance with the schedule to be determined by the State. Audit Reports should contain all deliverables set forth by the State in accordance with Attachments 1, 2, 3 and Attachment 4 or 5, as appropriate, of this Agreement.

Draft and Final audit reports must contain the original signature of the Partner in Charge or other duly authorized person who is a New York State Certified Public Accountant. The Department will prescribe the content and format of such reports.

The Contractor shall submit reports, which in the reasonable judgment of the State, are fully supported by work papers, which are neat, organized, accurate and signed and dated by both the preparer and the preparer's supervisor.

The Contractor shall maintain work papers that, in the reasonable judgment of the State, contain sufficient detail so as to allow a conclusion to be drawn without oral explanation and/or clarification being required by the preparer.

The contractor shall maintain work papers and evidence containing sufficient information to enable an experienced auditor having no previous connection with the audit to validate the auditor's significant conclusions and judgments. Such evidence shall include, but not be limited to, documentation, analyses, and data received from the auditee, generated by the contractor and/or obtained from other sources.

The Department shall be the owner of the work papers/evidence. The Contractor will retain the work papers/evidence for the balance of the calendar year in which they were generated/acquired and for six (6) additional years thereafter, and will provide the Department timely access to the work papers/evidence as requested.

The Contractor shall timely submit status reports apprising the State of the Contractor's audit progress, in accordance with the schedule to be determine by the State.

c. Staff Requirements

The Contractor shall maintain the staffing levels and personnel as provided in the Contractor's proposal, except as approved by the State or caused by resignations or other situations which, in the State's judgment, are beyond the Contractor's control.

d. Hearings

The contractor shall timely provide sufficient qualified personnel to present testimony and/or evidence, if necessary, in hearings and other legal proceedings related to work performed under this agreement. The contractor shall present testimony and/or evidence within State established timeframes.

4. Additional Termination Provisions

- a. In the event that the Contractor, through any cause, fails to perform any of the terms, covenants or promises of this Agreement, the Department acting for and on behalf of the State, shall thereupon have the right to terminate this Agreement by giving notice in writing of the fact and date of such termination to the Contractor. The criteria for Termination for Cause includes but is not limited to the following standards:
 - i. Failure of the Contractor to complete audits within the timeframes established by the Department.
 - ii. Failure of the Contractor to provide the Department with interim progress/findings reports as required.
 - iii. Failure of the Contractor to perform all required steps of the audit program.
 - iv. Contractor reporting incomplete or inaccurate findings to the Department.
 - v. Failure of the Contractor to provide qualified personnel.
 - vi. Failure of the Contractor to maintain all required insurances.
 - vii. Failure of the Contractor to disclose conflicts of interest.
 - viii. Submission by the Contractor of inaccurate, incomplete or false request for payments under this contract.
 - ix. Failure of the Contractor to maintain the security and confidentiality of information as prescribed in Section G (5) (g) of this RFP.
 - x. Failure of the Contractor to notify the Department of any sub-contract arrangements pertinent to services to be provided under this contract.
 - xi. In the judgment of the Department of Health, the Contractor acts in such a way which is likely to or does impair or prejudice the interests of the State.
- b. Written notice of termination or any other notice required by this Agreement between the Contractor and the State shall be sent to the State's designated Project Officer or the Contractor's

designated Project Director by personal messenger service or by certified mail, return receipt requested.

- c. In the event this Agreement is terminated or is not renewed for any reason; the Contractor shall execute a turnover of all components of the audit function to the State or a successor contractor, with no adverse effect on the project. The Contractor will provide the work papers, files, data bases, records, status reports or work in progress, management reports and any other project related information to the State and, as directed by the State, to the successor contractor.
- d. The State shall be responsible for payment for services provided pursuant to terms of this Agreement. In no event shall the State be liable for expenses and obligations arriving from services performed after the Agreement termination date.

5. Additional Contractor Responsibilities

a. General Contractor Duties

It shall be the obligation of the Contractor to:

- i. Assume primary responsibility for all services offered in the Contractor's proposal, whether or not the Contractor directly provides them. Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters.
- ii. Assume complete responsibility for the cost and timely completion of all activities and duties required of the Contractor by this Agreement and carrying out those activities and duties in a competent and timely manner.
- iii. Notify the State in writing of any changes in the persons designated to bind the Contractor.
- iv. Maintain the level of liaison and cooperation with the State necessary for proper performance of all contractual responsibilities.
- v. Maintain senior management as identified in the proposal unless granted specific written permission to change senior management by the State, which permission shall not be unreasonably withheld.

- vi. Maintain the levels of staffing and personnel expertise as provided in the Contractor's proposal, except as approved by the State or caused by resignations or other situations beyond the control of the Contractor.
- vii. Agree that no aspect of Contractor's performance under this Agreement will be contingent upon State personnel or the availability of State resources with the exception of such proposed actions of the Contractor which are specifically identified in this Agreement as requiring State approval, policy decisions, policy approvals, exceptions stated in this Agreement or which require the normal cooperation which would be expected in such a contractual relationship.
- viii. Submit in writing to the State, within three (3) days of learning of any situation which can reasonably be expected to adversely affect the operation of the compliance audit function, a description of the situation including a recommendation for resolution whenever possible.
- ix. Perform the responsibilities and meet the milestones, deliverables and reporting requirements specified in this Agreement.
- x. Furnish, or make available, accounts, records, or other information pertaining solely to this Agreement as required to substantiate any estimate, expenditures or reports as requested by the State or the Office of the State Comptroller, as may be necessary for auditing purposes regarding this Agreement, or to verify that expenditures were made only for the purposes authorized by this Agreement.
- xi. Accept responsibility for compensating the State for any exceptions, for payments made under this Agreement, which are revealed on audit by the Office of the State Comptroller or another State agency, after due process and an opportunity to be heard has been afforded.
- xii. Provide copy of audit work papers and related material request by the State within 10 business days of written request. If audit work papers are requested for more than two audits, within 10 business days, then the State and Contractor will mutually agree upon a delivery timeframe, not greater than 60 business days.

b. Conflict of Interest

The Contractor shall immediately notify the State in writing if, during the term of this Agreement and any extension thereof, the Contractor becomes aware of an actual or potential relationship which may be considered a conflict of interest. The State reserves the right to make the final determination regarding actual or potential conflicts of interest.

c. Scope Of Work

- i. The Contractor shall recognize and agree that the State may require the Contractor to perform compliance audit related tasks, which although within the general scope of work required by this Agreement, are not specifically listed in this Agreement.
- ii. The Contractor shall implement changes within the scope of work of this Agreement, in accordance with a State approved schedule, including changes in policy, regulation, statute, or judicial interpretation.
- iii. The Contractor shall recognize and agree that any and all work performed outside the scope of this Agreement or without consent of the State shall be deemed by the State to be gratuitous and not subject to charge by the Contractor.
- iv. The Contractor and the State shall work together to refine the scope of the work for the audit process. The Contractor will still be required to provide recommendations to the auditee as to what needs to be done to become compliant with the State requirements set forth in the HCRA regulation.

d. Records Retention

The Contractor shall agree to preserve all agreement-related records and data, for the balance of the calendar year in which they were generated/acquired and for six (6) additional years thereafter. Disposal by the Contractor of any records or data may be permitted only upon prior written approval by the State. Agreement-related records and data shall include, but not be limited to, data/documentation/information/analyses generated by the auditee, the Contractor and/or other sources, which supports the auditor's conclusions and judgments.

e. Access to Agreement Records

At all times during the period that this Agreement is in force and for a period of six (6) years thereafter, the Contractor shall provide all

authorized representatives of the State with full access to all its financial records that pertain to services performed and determination amounts payable under this Agreement, including access to appropriate individuals with knowledge of financial records (including the Contractor's independent public auditors) and full access to all additional records that pertain to services performed and determination of amounts payable under this Agreement, permitting such representatives to examine, and copy such records at the site at which they are located. Such access will not unduly disrupt the Contractor's operations or performance under this Agreement. Such access shall be consistent with Item 10 of the Appendix A Standard Clauses for All New York State Contracts.

All records and information obtained by, or on behalf of, the State pursuant to the provisions of this Agreement, whether by audit or otherwise, shall be usable by the State in any manner, in its sole discretion, it deems appropriate and the Contractor shall have no right of confidentiality or proprietary interest in such records or information.

f. Release of Information

The parties shall hereto agree that prior written approval of the State is necessary before releasing or presenting any report, statistics, analysis, or other material relating to information obtained through this Agreement. No report, document or other data produced in whole or in part in connection with this Agreement may be copyrighted by the Contractor, nor shall any notice of copyright be registered by the Contractor in connection with any report, document or other data developed under this Agreement. All information, audit findings, deliverable items, work papers, reports, data and computer models developed under this Agreement shall be the sole property of the State. At any phase of the project, or up to six years following the project's conclusion, the Contractor, if so requested by the Department, must deliver to the Department any material, system, or other items developed, refined or enhanced in the course of activities conducted under this Agreement. The Contractor agrees that the State shall have royalty-free, nonexclusive and irrevocable rights to reproduce, publish or otherwise use, or authorize others to use, these items.

g. Security and Confidentiality

The Contractor, its officers, agents and employees and subcontractors, shall restrict access to all information related to or obtained through this Agreement to only those persons requiring access to fulfill the terms of this Agreement.

The Contractor, its officers, agents, employees and subcontractors, shall treat all information which is related to or obtained through performance

under this Agreement, as trade secret confidential information which shall not be disclosed by the Contractor, its officers, agents, employees, and subcontractors, to any other person or entity, without the express written consent of the State.

The Contractor shall ensure that all information relating to or obtained through performance under this Agreement shall be maintained and used exclusively for purposes directly connected with the performance of duties required under this Agreement.

The Contractor shall maintain the confidentiality of all information relating to and obtained through performance under this Agreement through secure facilities, software and documentation.

The Contractor shall be responsible for assuring that any agreements between the Contractor and any of its officers, agents, employees, or subcontractors contains provisions which strictly conform to the provisions of this section.

h. Subcontracting

The Contractor shall not enter into any agreements with third party organizations for the performance of its obligations, in whole or in part, under this Agreement without the State's prior written approval.

If the Contractor enters into subcontracts for the performance of work pursuant to this Agreement, the Contractor shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the State under this Agreement. No contractual relationship shall be deemed to exist between the subcontractor and the State.

The Contractor shall provide the State with a copy of all agreements with third party organizations for the performance of its obligations under this Agreement.

The Contractor will voucher for payments related to subcontractor audit assignments in accordance with the provisions provided in Subsections 13, 14, 15 and 16 of Section E of this RFP, upon notification of audit report acceptance from the State or, in the event of a hearing or other legal proceeding, upon issuance of the hearing officer's or court decision.

i. Fiscal Safeguards

The Contractor shall be solely responsible and answerable to any claims of damages for any and all accidents and/or injuries to persons (including death), or property, arising from or related to the services rendered by the Contractor, or its subcontractors, pursuant to this Agreement.

j. Indemnification of the State

The Contractor shall indemnify and hold harmless the State and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this Agreement.

k. Independent Capacity of the Contractor

The Contractor is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the State nor make any claim, demand or application to or for any right based upon any different status.

6. State Responsibilities

- a. Monitor and evaluate the Contractor's performance and compliance with this Agreement.
- b. Provide direction regarding the intent of Department requirements to allow the Contractor to carry out the compliance audit responsibilities provided in this RFP and the Contractor's proposal.
- c. Approve all subcontract arrangements.
- d. Establish and control the priority ranking of compliance audits performed by the Contractor.
- e. Review and approve all contract deliverables, to ensure that all deliverables required by this Agreement are received from the Contractor and that the terms of this Agreement are fulfilled.
- f. Coordinate periodic project review meetings which will be held with representatives of the State and the Contractor. The meetings will be held in Albany, New York. In the event that all representatives are unable to make the scheduled project review meetings, a conference call between the parties will be a viable option in its place.