

**NEW YORK STATE DEPARTMENT of HEALTH
OFFICE of HEALTH SYSTEMS MANAGEMENT
DIVISION of CERTIFICATION & SURVEILLANCE**

A Request for Proposals

**State Surveillance Activities for
Hospitals and Diagnostic & Treatment Centers**

RFP Number: 1005101128

Schedule of Key Events

RFP Release Date:..... August 16, 2010

Written Questions Due: August 27, 2010

Letter of Intent Due (optional): August 30, 2010

Response to Written Questions:..... September 13, 2010

Proposal Due Date: October 4, 2010

Contacts Pursuant to State Finance Law Sections 139-j and 139-k

Designated Contact:

Pursuant to State Finance Law Sections 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 Contact:

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

- RFP Release Date
- Submission of Written Proposals or Bids
- Submission of Written Questions
- Debriefings
- Negotiation of Contract Terms after Award

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For further information regarding these statutory provisions, see the Lobbying Statute summary in Section 10 of this solicitation.

TABLE of CONTENTS

RFP SUMMARY	1
SECTION 1: INTRODUCTION and BACKGROUND	2
SECTION 2: DETAILED SPECIFICATIONS	4
SECTION 3: WORKLOAD PROJECTIONS and DEFINITION of COMPLETED SURVEILLANCE UNITS	8
SECTION 4: STAFFING REQUIREMENTS and TRAINING	11
SECTION 5: NYSDOH RESPONSIBILITIES.....	11
SECTION 6: CONTRACTOR RESPONSIBILITIES.....	12
SECTION 7: PROPOSAL REQUIREMENTS	13
SECTION 8: METHOD of AWARD	16
SECTION 9: SUBMISSION and PROPOSAL FORMATTING REQUIREMENTS	17
SECTION 10: ADMINISTRATIVE	23
SECTION 11: CONTRACT APPENDICES	30
SECTION 12: ATTACHMENTS	31

RFP SUMMARY

The RFP is a request by the Department of Health for proposals from qualified organizations* to conduct, under the Department's oversight and direction, some ongoing State surveillance activities for hospitals and diagnostic & treatment centers in New York State. The contract is expected to be for a **five year period**.

In accordance with the provisions of the RFP, the following activities are included:

- Receipt, review, and referral of consumer complaints and facility-reported incidents related to Article 28 hospitals and diagnostic & treatment centers; approximately 4,100 complaints/incidents per year in Central Office.
- Onsite routine surveys at Article 28 diagnostic & treatment centers; approximately 45 surveys per year predominantly in the New York City metropolitan region.
- Onsite consumer complaint and facility-reported incident investigations of Article 28 hospitals and diagnostic & treatment centers; approximately 165 surveys per year statewide.
- Offsite consumer complaint and facility-reported incident investigations of Article 28 hospitals and diagnostic & treatment centers; approximately 450 surveys per year statewide.
- Review Root Cause Analysis reports generated from specific facility-reported incidents at Article 28 hospitals and diagnostic & treatment centers; approximately 600 reviews per year statewide.

In order to qualify for this RFP, an organization must be composed of or commit to the availability of sufficient staff to carry out a statewide surveillance program as outlined. To support a statewide program the contractor must maintain staff and resources sufficient to conduct statewide surveillance surveys/investigations, evaluate/review findings, operate a centralized intake program, and maintain tracking systems and data resources to support a statewide operation. **One and only one contractor** will be selected for this contract. Any proposal that fails to provide for a statewide surveillance program may be found to be non-responsive.

Any potential contractor must confirm to the Department that it is a qualified organization and that the contractor has no real or perceived conflict of interest with respect to conducting the duties and responsibilities in this RFP. The Department reserves the right to disqualify any organization that is not able to sufficiently demonstrate that it is free of any conflict of interest.

* **Qualified Organization:** The Department will accept proposals only from public or private organizations, companies, partnerships, or corporations that are authorized to operate in New York State. Such organization and its subsidiaries may not be a provider of health care services, a health care facility accrediting body or any organization or trade association whose primary business includes representing any Article 28 licensed provider.

SECTION 1: INTRODUCTION and BACKGROUND

In conjunction with the Department's oversight responsibilities, the New York State Department of Health (the Department or NYSDOH) is requesting proposals from qualified entities to assist the Division of Certification & Surveillance with carrying out ongoing State surveillance activities of hospitals and diagnostic & treatment centers (DTCs).

State laws and state regulations impose a variety of standards on how the State assures quality care and outcomes for patients of hospitals and DTCs. The contractor will assist the Department in assessing facilities' compliance with such standards.

Types of Facilities

A hospital is a facility engaged in providing medical or medical and surgical services primarily to in-patients by or under the supervision of a physician on a twenty-four hour basis with provisions for admission or treatment of persons in need of emergency care and with an organized medical staff and nursing service, including facilities providing services relating to particular diseases, injuries, conditions or deformities. There are currently 235 acute care and critical access hospitals in New York licensed by NYSDOH. The governing statutory and regulatory authority for hospitals is Public Health Law Article 28 and 10 NYCRR Part 405.

A diagnostic and treatment center (DTC) is a medical facility with one or more organized health services, not part of an inpatient hospital facility or vocational rehabilitation center, primarily engaged in providing services to out-of-hospital or ambulatory patients by or under the supervision of a physician for the prevention, diagnosis and treatment of human disease, pain, injury, deformity or physical condition. DTC providers may include primary medical care clinics as well as Ambulatory Surgery Centers (ASC), End Stage Renal Disease (ESRD) dialysis facilities, Comprehensive Outpatient Rehabilitation Facilities (CORFs), Rural Health Clinics (RHCs) and Outpatient Physical Therapy Facilities (OPT). There are currently about 520 DTC operators with approximately 1,230 sites. The governing regulatory authority for DTCs is NYCRR Parts 750 and 751.

Types of Surveillance

The Department conducts surveillance activities in several categories including periodic surveys, complaint-initiated investigations, and facility-reported incident investigations.

The Department conducts routine, periodic surveys at DTCs and hospitals. These on-site surveys are unannounced but typically occur on a cyclical basis and are spread out over the year-long period. The purpose of the unannounced surveys is to ensure ongoing compliance with state regulations and standards. The surveys look at the operation of the facility in whole including patient care and physical environment. The contractor will assist the Department with periodic surveys conducted at DTCs.

The Department is also responsible for complaint-initiated investigations at DTCs and hospitals. Complaint allegations are received by the Department in a variety of ways including directly via the Departments centralized hospital and DTC complaint intake unit, via the Centers for Medicare and Medicaid Services (CMS), and via media reports. All complaints, regardless of the source, pass through the centralized complaint unit. The unit is charged with receiving, reviewing and triaging the complaints. All complaints accepted for investigation are categorized by severity and needed actions. Some complaints are resolved by the centralized complaint unit directly. The majority of complaints are referred to surveyors for either off-site or on-site investigations. These investigations are focused in nature and can include, but are not limited to, on-site observation, interviews, review of medical records, facility policy and procedure reviews and review of facility internal investigations,

Additionally, the Department is charged with the review, triage, and quality assessment of facility-reported incidents received through the New York Patient Occurrence Reporting and Tracking System (NYPORTS). Both hospitals and DTCs are statutorily mandated to report specific categories of adverse events. Based on the review and triage of a NYPORTS incident, the Department may close the incident, review facility-prepared Root Cause Analysis (RCA) reports, or conduct an investigation for compliance with applicable state standards. Investigations are similar to complaint-initiated investigations, encompassing comparable actions, and may occur on-site or off-site.

Program Overview

NYSDOH operates its hospital and DTC surveillance program with a regionalized approach. The state is divided into four regions with some of the regions subdivided for a total of seven offices. Each region is responsible for conducting the surveillance activities related to the health care facilities located within that region. Coordination, oversight, and tracking are performed in what is referred to as Central Office, located in Troy, New York, as is the centralized complaint unit.

The four regions are:

1. Metropolitan Area Regional Office (MARO) with three office locations
MARO: New York City
MARO: Long Island (West Islip)
MARO: New Rochelle
2. Capital District Regional Office (CDRO) with one office located in Troy
3. Central New York Regional Office (CNYRO) with one office located in Syracuse
4. Western Regional Office with two office locations
WRO: Rochester
WRO: Buffalo

And as stated above, Central Office is located in Troy. See Appendix # for a map depicting the regions and their affiliated offices.

Surveillance activities, in each region, are overseen by the Hospital Program Directors (HPDs). The HPDs, in conjunction with Central Office, determine activity priorities,

resources, and responsibilities. Contract staff conducting surveillance activities within the regions will work under the direction of the Regional HPD.

SECTION 2: DETAILED SPECIFICATIONS

The contractor is required to recruit, organize and train sufficient staff to carry out surveillance activities pursuant to this RFP across New York State as detailed below. The contractor selected as a result of this RFP process will be required to perform all of the following activities under the oversight and direction of the Department of Health.

- ✓ Receipt, Review, and Referral of Complaints and Incidents for Hospitals and Diagnostic & Treatment Centers (Receipt, Review, Referral)
- ✓ On-site routine surveys of Diagnostic & Treatment Centers (DTC Surveys)
- ✓ On-site complaint/incident investigations of Hospitals and Diagnostic & Treatment Centers (On-site Investigations)
- ✓ Off-site complaint/incident investigations of Hospitals and Diagnostic & Treatment Centers (Off-site Investigations)
- ✓ NYPORTS Root Cause Analysis report reviews from Hospitals and Diagnostic & Treatment Centers (RCA Reviews)

Bidders should submit a bid which encompasses the entirety of all activities. Activities will be bid on a per unit price basis for the five units of activity as described above. The details of what comprise the five units are listed below. These detailed lists include the major components of the units, but are not meant to be all inclusive.

2.1 Receipt, Review and Referral of Complaints and Incidents for Hospitals and Diagnostic & Treatment Centers (Receipt, Review, Referral)

- 2.1.1 Interact with possible complainants, mainly via calls to the toll-free hospital and DTC complaint hotline; explain the complaint process, and forward complaint forms as needed.
- 2.1.2 Maintain log of all contacts with possible complainants.
- 2.1.3 Receive and review patient care, environmental, and access complaint allegations against Article 28 hospitals and DTCs received by telephone, mail, email, or by any other means accepted by NYSDOH.
- 2.1.4 Contact possible complainants if additional information is needed.
- 2.1.5 Determine if complaint will be accepted for investigation.
- 2.1.6 Record all accepted complaints in ASPEN Complaint Tracking System (ACTS) or other system designated by the Department and complete all appropriate database activities associated with the complaint process.

- 2.1.7 Record all allegations received, which were determined to not rise to the level of an investigable complaint (“non-complaints”), in a Microsoft Access database.
- 2.1.8 Send correspondence to complainants.
- 2.1.9 Determine the priority of complaints.
- 2.1.10 Mediate those complaints simply requiring telephone contact(s) with the facility or complainant for resolution.
- 2.1.11 Per DOH policies and procedures refer to Regional Offices those complaints requiring on-site or off-site investigations.
- 2.1.12 Conduct tracking and trending of non-complaints for quality assurance purposes.
- 2.1.13 Review all adverse events submitted through the New York Patient Occurrence Reporting and Tracking System (NYPORTS).
- 2.1.14 Close all NYPORTS incidents not requiring any additional review.
- 2.1.15 Interact with facility NYPORTS coordinators to acquire additional information as necessary.
- 2.1.16 Determine the level of investigation required (e.g., RCA review, off-site investigation, on-site investigation) and refer to appropriate Regional Office.
- 2.1.17 On a monthly basis, monitor facility reporting compliance to determine which facilities are out of compliance, draft Statements of Deficiencies to facilities in violation, review facility Plans of Correction (POC), follow up with facilities as needed, and draft POC acceptable letters.
- 2.1.18 Interact with Regional Office staff as needed.
- 2.1.19 As appropriate, make a referral to another Bureau within the Department, or other State agency, according to NYSDOH policies and procedures (e.g., Office of Professional Medical Conduct, State Education Department, Centers for Medicare and Medicaid Services).
- 2.1.20 Complete all appropriate database entry activities using relevant computer systems.
- 2.1.21 Assist with the production, updating, and editing of Policy and Procedure manuals related to centralized complaint unit activities.
- 2.1.22 Assist with the compilation of data in response to public and Departmental requests regarding complaint/incident activities.
- 2.1.23 Assist the Department with the completion of tasks, as needed, to meet the requirements of a comprehensive complaint and incident reporting program.
- 2.1.24 Provide management reports as needed by the Department including, at a minimum, monthly and annual reports for informational needs.
- 2.1.25 Conduct internal quality improvement reviews to monitor program performance, assure proficiency and promote efficiency.

2.2 On-site routine surveys of Diagnostic & Treatment Centers (DTC Surveys)

- 2.2.1 In coordination with Regional Hospital Program Directors, prioritize and schedule surveys of assigned facilities.
- 2.2.2 Conduct on-site investigations as described in the RFP and as directed by Regional Office Hospital Program Directors. These surveys include, but are not limited to: review of administration and governing body, review of personnel issues including required training, credentialing, and health assessments, review of facility policy and procedures including disaster preparedness (emergency protocols) and quality assurance activities, observation of patient care, tour of the physical plant to ensure services are being provided in a safe environment and the setting is appropriate for services being provided, review a sample medical records, and interact with staff.
- 2.2.3 Analyze survey findings and determine if the facility is in compliance with applicable laws, rules and regulations.
- 2.2.4 If applicable, write a deficient practice statement which demonstrates specific areas where the facility has failed to meet the requirements. Deficient practice statements must be written using Principals of Documentation.
- 2.2.5 Follow prescribed protocols for follow-up and monitoring of deficiencies.
- 2.2.6 Complete all appropriate database entry activities associated with each of the survey activities using relevant computer systems.
- 2.2.7 Conduct internal quality improvement reviews to monitor program performance, assure proficiency and promote efficiency.

2.2 On-site investigations of Hospitals and Diagnostic & Treatment Centers (On-site Investigations)

- 2.2.1 In coordination with Regional Hospital Program Directors, prioritize and schedule investigations.
- 2.2.2 Conduct on-site focused investigations as described in the RFP and as directed by Regional Office Hospital Program Directors. This may include, but not be limited to: medical record review, interview of key staff, observation, review of facility internal investigation and quality assurance reviews, and/or facility policy and procedure review.
- 2.2.3 Interact with complainants and/or facility NYPORTS coordinators to acquire additional information as necessary;
- 2.2.4 Analyze findings of investigation and determine if the facility is in compliance with applicable laws, rules and regulations.
- 2.2.5 If applicable, write a deficient practice statement which demonstrates specific areas where the facility has failed to meet the requirements. Deficient practice statements must be written using Principals of Documentation.

- 2.2.6 Follow prescribed protocols for follow-up and monitoring of deficiencies.
- 2.2.7 Complete all appropriate database entry activities associated with each of the investigation activities using relevant computer systems.
- 2.2.8 Conduct internal quality improvement reviews to monitor program performance, assure proficiency and promote efficiency.

2.3 Off-site investigations of Hospitals and Diagnostic & Treatment Centers (Off-site Investigations)

- 2.3.1 In coordination with Central Office management or Regional Hospital Program Directors, prioritize investigations.
- 2.3.2 Conduct off-site focused investigations as described in the RFP and as directed by Regional Office Hospital Program Directors. This may include, but not be limited to: medical record review, interview of key staff, review of facility internal investigation and quality assurance reviews, and/or facility policy and procedure review.
- 2.3.3 Interact with complainants and/or facility NYPORTS coordinators to acquire additional information as necessary;
- 2.3.4 Analyze findings of investigation and determine if the facility is in compliance with applicable laws, rules and regulations.
- 2.3.5 If applicable, write a deficient practice statement which demonstrates specific areas where the facility has failed to meet the requirements. Deficient practice statements must be written using Principals of Documentation.
- 2.3.6 Follow prescribed protocol for follow-up and monitoring of deficiencies.
- 2.3.7 Complete all appropriate database entry activities associated with each of the investigation activities using relevant computer systems.
- 2.3.8 Conduct internal quality improvement reviews to monitor program performance, assure proficiency and promote efficiency.

2.4 NYPORTS Root Cause Analysis report reviews from Hospitals and Diagnostic & Treatment Centers (RCA Reviews)

- 2.4.1 Read and assess facility-generated Root Cause Analysis (RCA) reports to determine if the facility self-investigation was thorough and credible.
- 2.4.2 Interact with facility NYPORTS coordinators as necessary to ensure RCA is thorough and credible.
- 2.4.3 Complete all appropriate database entry activities using relevant computer systems.
- 2.4.4 Conduct internal quality improvement reviews to monitor program performance, assure proficiency and promote efficiency.

SECTION 3: WORKLOAD PROJECTIONS and DEFINITION of COMPLETED SURVEILLANCE UNITS

An estimate of the number of, average hours required for, and region of the state for the five defined units that must be completed annually over the five year contract period is provided below. The anticipated workload is set forth under the following units:

1. Receipt, Review, Referral of Complaints and Incidents for Hospitals and DTCs
2. On-site routine surveys of DTCs
3. On-site complaint and incident investigations of Hospitals and DTCs
4. Off-site complaint and incident investigations of Hospitals and DTCs
5. NYPORTS Root Cause Analysis report reviews from Hospitals and Diagnostic & Treatment Centers

These workload projections are based upon information available at the time of the RFP issuance. These may change based upon review findings; changes in priorities; changes in funding availability, etc. The workload estimates are being provided to assist the bidder in the development of its Technical and Cost Proposal and should be used by the bidder to:

- o Estimate the personnel resources necessary to meet the State activity requirements;
- o Set a price for each defined unit and complete the cost proposal form as requested in the cost section of the RFP (see Attachment 8: Cost Proposal Form).

In estimating average hours to completion, the data takes into account historical and anticipated variations including the possible need for multiple on-site visits, as well as travel from the responsible regional office and administrative task time. A map and listing of counties within each region and the office locations is provided to assist with planning and bid preparation (Attachment 1).

1. **Receipt, Review, and Referral of consumer complaints and facility-reported incidents** related to Article 28 hospitals and diagnostic & treatment centers; approximately 4,100 complaints/incidents per year, 2 hours per complaint/incident, Central Office in Troy, NY.

Central Office	4,100 complaints/incidents
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Completed unit: Referral to Regional Office or Closure of complaint/incident in ASPEN, NYPORTS, and/or other system designated by the Department

NOTE: While the billable unit is the closure or referral of the complaint or incident in ASPEN or NYPORTS, it should be noted that the toll-free line receives over 900 contacts per month. The time necessary to effectively handle all 11,000 contacts and the other activities the centralized unit undertakes (see *Section 2.1, Receipt, Review and Referral of Complaints and Incidents for Hospitals and Diagnostic & Treatment Centers*) is included in the average number of hours per complaint/incident.

Additional work to be accomplished, which must be included in the unit bid price is the monthly monitoring of NYPORTS reporting timeframe compliance, including the issuance of Statements of Deficiencies (SODs) and review of Plans of Correction. There are approximate 17 SODs per month (200 per year) averaging 0.5 hours per SOD.

- 2. On-site routine surveys of Article 28 diagnostic & treatment centers;** approximately 45 surveys per year (at 73 sites), 50 hours per survey, predominantly in the MARO region.

MARO: New York City	39 surveys (63 sites)
CDRO	2 surveys (3 sites)
WRO: Rochester	2 surveys (4 sites)
WRO: Buffalo	2 surveys (3 sites)

Completed unit: Closure of survey in ASPEN and/or other system designated by the Department

- 3. On-site complaint and/or incident investigations** of Article 28 hospitals and diagnostic & treatment centers; approximately 165 surveys per year, 22.75 hours per survey, statewide.

MARO: New York City	50 surveys
MARO: New Rochelle	15 surveys
MARO: Long Island	15 surveys
CDRO	28 surveys
WRO: Rochester	28 surveys
WRO: Buffalo	28 surveys

Completed unit: Closure of survey in ASPEN, NYPORTS, and/or other system designated by the Department

- 4. Off-site complaint and/or incident investigations** of Article 28 hospitals and diagnostic & treatment centers; approximately 450 surveys per year, 14.25 hours per survey, statewide.

MARO: New York City	175 surveys
MARO: New Rochelle	29 surveys
MARO: Long Island	29 surveys
CDRO	50 surveys
WRO: Rochester	50 surveys
WRO: Buffalo	50 surveys
Central Office	75 surveys

Completed unit: Closure of survey in ASPEN, NYPORTS, and/or other system designated by the Department

5. **NYPORTS Root Cause Analysis report reviews** from Article 28 hospitals and diagnostic & treatment centers; approximately 600 RCAs per year, 4 hours per RCA, statewide.

MARO: New York City	375 RCAs
MARO: New Rochelle	15 RCAs
MARO: Long Island	15 RCAs
CDRO	50 RCAs
WRO: Rochester	50 RCAs
WRO: Buffalo	50 RCAs
Central Office	50 RCAs

Completed unit: Closure of incident in NYPORTS and/or other system designated by the Department

Below is a table showing the projected workload by type of surveillance activity and Regional Office location.

Office Location	Receipt, Review, Referral	DTC Onsite	Onsite Investigation	Offsite Investigation	RCA Review
MARO: New York City	0	39	50	175	375
MARO: New Rochelle	0	0	15	29	15
MARO: Long Island	0	0	15	29	15
CDRO	0	2	28	50	50
WRO: Rochester	0	2	28	50	50
WRO: Buffalo	0	2	28	50	50
Central Office	4100	0	0	75	50
Estimated volume of activity	4100	45	164	458	605

SECTION 4: STAFFING REQUIREMENTS and TRAINING

The contractor shall assure that sufficient personnel are hired and on staff to perform the activities as described in this document and consistent with the cost proposal for this contract.

At a minimum Registered Professional Nurses are required to perform the complaint/incident reviews and referrals, the on-site and off-site surveys/investigations, RCA reviews, and supervise the intake unit. All Contractor staff conducting on-site and off-site surveys/investigations must provide proof of having completed, or complete within three months of hire, Web-based Principles of Documentation (12 hours);

Survey Nurses

Mandatory Requirements

- Registered Professional Nurse currently licensed in New York;
- Excellent telephone and written communication skills;
- Basic computer skills;

Supervisor Nurse

A supervising nurse is **required** to oversee the day-to-day operations of the contractor staff performing functions assigned to Central Office, train this staff as needed, and participate in regularly scheduled and unscheduled Central Office meetings.

Mandatory Requirements

- Registered Professional Nurse currently licensed in New York;
- 3-5 years management experience in a health care setting;
- Excellent telephone and written communication skills;
- Basic computer skills;

Support Staff

One support staff person is **required** in the Central Office contractor staff unit and one support staff person is **required** in the New York City Metropolitan Area Office. All support staff must be included in the bid price(s) and such staff should meet the following requirements:

Mandatory Requirement

- Working knowledge of all Microsoft Office products.

SECTION 5: NYSDOH RESPONSIBILITIES

- Office space for Contractor staff at the Department's appropriate Regional Offices and in Central Office;
- Office furniture;
- Office supplies;

- In-office communication equipment and services, including telephones, fax machines, personal computers and printers;
- Computer support services;
- Telephone support services in the Regional Offices only.
- Training of contract staff on appropriate computer/data systems at start-up and as needed to facilitate contractor training initiatives;
- Training of contract staff in internal processes;
- Providing an overview of relevant regulations and interpretation of such;
- Sign-off on completed units;
- Evaluation and monitoring of contractor to determine contractor's success in the performance of the activities set forth in this RFP. This evaluation will include:
 - Ability to work cooperatively with the Department including responsiveness and flexibility;
 - The timely and effective performance of the activities required in the RFP including the accuracy of its survey/investigation findings;
 - The accurate and timely reporting of findings to the Department.
- NYSDOH reserves the right to terminate the project at any given time, either prior to award or after, based on conditions/situations including but not limited to:
 - Budgetary constraints
 - Change in agency priorities
 - Contractor's failure to provide satisfactory performance by its consultants as determined by the NYSDOH project manager
 - The acquisition of additional in-house resources
- Work performed beyond the scope of this contract without prior written approval will not be compensated.

SECTION 6: CONTRACTOR RESPONSIBILITIES

- The Contractor must include in its Unit prices for each of the five activities all costs including:
 - All staff performing functions related to the units;
 - Travel, including travel to facilities for the purpose of on-site surveys/investigations, routine commuting costs if the Bidder reimburses its staff for such expenses, travel for training and/or off-site meetings required by the Department, or other travel required by the terms of any contract awarded;
 - Training costs other than training provided directly by NYSDOH staff;
 - Creating a claim or voucher under the contract;
 - Attending meetings with the Department related to the contract;
- All Contractor staff conducting on-site and off-site surveys/investigations must provide proof of having completed, or complete within three months of hire Web-based Principles of Documentation (12 hours);
- As appropriate, Contractor staff must participate in:
 - Department training, if available (up to 15 hours annually, plus travel time if any);

- Department and any federal training related to Health Insurance Portability and Accountability Act (HIPAA) confidentiality and compliance;
- Department Bureau & Division meetings (approximately 75 hours annually)
- Attend appropriate Surveillance Training Academy sessions (approximately 15 hours, via Webinar);
- The Consultant will maintain appropriate staffing levels throughout the course of the contract. Changes in staff will have to be approved by the NYSDOH. Any replacement staff must have comparable skills;
- The contractor must conduct internal quality improvement reviews to monitor program performance, assure proficiency and promote efficiency.

SECTION 7: PROPOSAL REQUIREMENTS

Proposals will only be accepted from public or private organizations, companies, partnerships, or corporations that are authorized to operate in New York State. Such organization and its subsidiaries may not be a provider of health care services, a health care facility accrediting body or organization or trade association whose primary business includes representing any Article 28 licensed provider. Eligible organizations must have the expertise and capacity to carry out the surveillance activities on a statewide basis, as described in this RFP.

There will be **no** Bidders Conference. All Questions must be submitted in writing by the date specified on the Schedule of Key Events. Question should be emailed to DCSRFP@health.state.ny.us with the subject "Surveillance RFP – FAU# 1005101128". The Department will then post all Questions and Answers on the NYSDOH website (www.nyhealth.gov/funding/). This Q&A document will also be mailed to all potential bidders who have either submitted a Notice of Intent to Submit or have requested in writing such information.

Bidders must not include any contingencies in the proposal. All proposals including contingencies will be rejected. Areas needing clarification must be addressed via the Question and Answer mechanism discussed above.

Proposals submitted should be complete responses to this RFP and be as clear and concise as possible. The bidder bears the sole responsibility for any costs incurred as a result of developing a response to this RFP.

7.1 Technical Proposal Requirements (70%)

The proposal with the highest technical score will receive the maximum point score, and other bidders will receive a normalized score (bidder's points/highest points x 70). The bidder will be evaluated on the quality of the methods/systems proposed to conduct all required activities to assist with a statewide surveillance system. Specific attention will

be given to steps taken to ensure the continuity of functions while carrying out the program among facilities, by region and on a statewide basis.

7.1.1 Project Narrative

The bidder will be expected to have knowledge and understanding of the regulatory and health care environment in which the surveillance activities take place, including issues and obstacles associated with operating such program in New York State. Reference should be made to bidders understanding of HIPAA and Medicare/Medicaid privacy and confidentiality requirements. Bidders should also submit a brief description of bidder's skills, experience and qualifications in assessing the care provided by healthcare providers and providers' compliance with laws and regulations, including the number of years of experience with different types of surveillance activities. The bidder will be judged on the extent to which the proposal reflects such knowledge and experience.

The bidder must set forth in detail how it proposes to implement the responsibilities set forth in *Section 2, Detailed Specifications*, and *Section 3, Workload Projections and Definition of Completed Surveillance Units*, and shall confirm that the proposal submitted will fulfill all statewide requirements as described in the RFP. The proposal is expected to include a clear, concise narrative for describing how the bidder will carry out the overall project. This should include reference to any experience carrying out the delineated activities in New York State or elsewhere. The bidder must provide evidence of the organization's ability and capacity to implement the program and carry out the projected workload on a statewide and regionalized basis for each contract year. The proposal must also document the mechanism for monitoring performance of staff, effectiveness of processes, timeliness of processing and the oversight and management of a statewide surveillance operation. Additionally, the narrative should include reference to any experience the bidder may have with Department and/or Federal surveillance reporting systems such as ASPEN (ACO and ACTS) and NYPORTS.

7.1.2 Organization and Staffing

The bidder must describe the recruitment and training efforts that will be put in place to provide for an adequate number of appropriately trained and qualified individuals to carry out the goals and responsibilities of the RFP. See *Section 4, Staffing Requirements and Training* for mandatory staff and credentials. Such efforts must provide for the conduct of a statewide program, operated on a regionalized format and must ensure that the staffing needs of the program are met on an ongoing basis. Each proposal must provide assurance that staffing and resource allocations promote continuity of function in program activities and monitoring responsibilities.

Detailed information and explanations must be provided to document how the proposed work will be carried out. The bidder's proposal will be judged on the staffing plan provided to meet program goals. Describe how staff, including sub-contractor staff if any, will be organized, distributed, and managed to ensure appropriate communication, supervision and authority to complete all work in a timely fashion, as well as ensure that resources are available throughout the State to staff this statewide initiative. The bidder must include a description of the anticipated distribution of staff, by DOH office location, to ensure appropriate coverage of the surveillance activities required, as specified in *Section 3, Workload Projections and Definition of Completed Surveillance Units*. The bidder should also address how variations in workload, by region, throughout the year will be handled. Include brief profiles of key staff that state why each individual's skills and experiences are significant to effective performance and timely deliverables. Any sub-contractors must be listed and are subject to DOH approval. Please include vita, resumes, licenses and certifications as a separate section of the proposal (see *Section 9.1, Technical Proposal Formatting*).

7.2 Cost Proposal Requirements (30%)

Price will be a significant consideration in the selection of qualifying proposals, but the award will not necessarily be made to the bidder with the lowest price.

Information must be provided in detail sufficient to document how the total dollar/cost proposal was determined and how costs are aligned to the five (5) distinct surveillance activities to be performed. Cost must be clearly identified for each contract year.

The total annual cost of implementing and operating this statewide surveillance program will be distributed among the number of units of activity completed each year, in accordance with the estimates provided in this RFP. The volume in each category of surveillance has the potential to vary yearly based upon the needs of the State. Payment will be made for the delineated units only and these **per unit costs will be all-inclusive costs**. These all-inclusive costs must include direct and indirect costs including the administrative cost of organizing, implementing, and carrying out the required activities.

The bidder is expected to submit a firm fixed cost for each delineated unit for each contract year of the five year contract. All costs for implementing this statewide program will be distributed among the billable units only.

- Only activities approved by the Department during each billing cycle will be subject to payment. Department approval is subject to successful completion of each unit as defined in *Section 3, Workload Projections and Definition of Completed Surveillance Units*.

- Total cost of implementing and operating this program must include staff and resources sufficient to carry out a statewide surveillance system as described in this RFP.

SECTION 8: METHOD of AWARD

This section details criteria to be used for evaluation of proposals submitted in response to the RFP for *State Surveillance Activities for Hospitals and Diagnostic & Treatment Centers*. At the discretion of the Department of Health, all bids may be rejected. The following criteria will serve as the basis of review and each proposal eligible for review will receive a numerical score based upon the values associated with the criteria listed below.

8.1 Conflict of Interest (Pass / Fail)

Bidders must demonstrate to the Department that they have no real or perceived conflict of interest with respect to conducting the duties and responsibilities in this RFP. The Department reserves the right to disqualify any organization that is not able to sufficiently demonstrate that it is free of any real or perceived conflict of interest.

8.2 Scope of Proposal (Pass / Fail)

Proposals that fail to provide for a statewide surveillance system will not be reviewed further and will not receive a numerical score.

8.3 Mandatory Staff (Pass / Fail)

Proposals that fail to provide mandatory staff with mandatory credentials, as described in *Section 4: Staffing requirements and Training* will not be reviewed further and will not receive a numerical score.

8.4 Financial Feasibility (Pass / Fail)

Proposals that fail to demonstrate financial strength and stability sufficient to carry out the requirements of the RFP will not be reviewed further and will not receive a numerical score.

8.5 Technical Proposal (70%)

The proposal with the highest technical score will receive the maximum point score, and other bidders will receive a normalized score (bidder's points/highest points x 70).

The bidder will be evaluated on the quality of the methods/systems proposed to conduct all required activities to assist with a statewide surveillance system.

8.6 Cost Proposal (30%)

The cost proposal of each bidder will be evaluated separately from the technical proposal. The bidder is expected to submit a firm fixed price for each bidding unit of activity for each year of the five year contract.

The proposal with the lowest cost proposal will receive the maximum point score, and the other bidders will receive a normalized score (lowest cost/bidder's cost x 30).

The Cost Proposal Form (Attachment 8) is the sole "scoreable" component of the cost proposal.

SECTION 9: PROPOSAL SUBMISSION and FORMATTING REQUIREMENTS

Responses to this solicitation should be clearly marked as "RFP-Statewide Surveillance Activities for Hospitals and Diagnostic & Treatment Centers – FAU #1005101128" and must be received by **3p.m., on October 4, 2010**, at the following address:

Division of Certification & Surveillance
New York State Department of Health
433 River Street – 6th Floor
Troy, New York 12180
Attention: Barbara DelCogliano

It is the bidders' responsibility to see that bids are delivered to Division of Certification & Surveillance, 6th Floor, prior to the date and time of the bid due date. Late bids due to delay by the carrier or not received in the Department's mail room in time for transmission to Division of Certification & Surveillance, 6th Floor, will not be considered.

The proposal must be submitted in two parts and in two separately sealed envelopes that must then be placed in a third envelope when mailed to avoid separation. The two parts are a Technical Proposal and a Cost Proposal. It is important that no information related to the proposal price be included in the Technical Proposal. Bidders should ensure that their proposal includes all required sections. Failure to submit a complete proposal may result in disqualification. The proposal must be submitted using a font size no smaller than 10 point and no larger than 14 point. All proposal pages should be numbered.

Both hardcopy and electronic versions of the bid must be submitted. **Signed** hardcopies should include one (1) original and five (5) copies of the Technical proposal

and one (1) original and five (5) copies of the Cost proposal. The electronic copy of the bid should be submitted on two CD/DVDs – one for the Technical proposal and one for the Cost proposal.

The original and all copies of the Technical Proposal should be placed in a separate envelope, along with the Technical CD/DVD and clearly marked:

New York State Department of Health
Hospital and DTC Surveillance – Technical Proposal
(Bidder's Name)

The original and all copies of the Cost Proposal should be placed in a separate envelope, along with the Cost CD/DVD and clearly marked:

New York State Department of Health
Hospital and DTC Surveillance – Cost Proposal
(Bidder's Name)

The separately sealed Technical Proposal and the separately sealed Cost Proposal should be submitted together in a third envelope to prevent separation during transit.

The Technical proposal should consist of seven (7) sections, presented in the following order:

1. Proposal Cover Sheet (Attachment 4)
2. Table of Contents
3. Bidder Qualifications
4. Project Narrative
5. Organization and Staffing
6. Vita, Resumes, Licenses and Certifications
7. Bidder's Assurances (Attachment 7)

The Financial Proposal should include seven (7) separate sections, presented in the following order:

1. Bid Form (Attachment 6)
2. Cost Proposal Forms (Attachment 8)
3. Proof of incorporation and financial viability
4. Vendor Responsibility Attestations (Attachment 9)
5. State Consultant Services Forms (Attachment 10)
6. New York State Taxation and Finance Forms – ST-220-TD and ST-220-CA (Attachment 11)
7. Minority and/or Women Owned Business Enterprises (M/WBE) Utilization Plan (Attachment 14)

9.1 Technical Proposal Formatting

9.1.1 Proposal Cover Sheet

Please submit a completed proposal cover sheet shown in Attachment 4

9.1.2 Table of Contents

Include a Table of Contents that delineates all major headings and sub-headings. Number all pages consecutively, including forms and attachments.

9.1.3 Bidder Qualifications

The Department will accept proposals only from public or private organizations, companies, partnerships, or corporations that are authorized to operate in New York State. Such organization and its subsidiaries may not be a provider of health care services, a health care facility accrediting body or any organization or trade association whose primary business includes representing any Article 28 licensed provider. Eligible organizations must have the expertise and capacity to carry out the surveillance activities on a statewide basis, as described in this RFP. Responsibility rests solely with the bidder to demonstrate to the Department that the potential contractor has no real or perceived conflict of interest with respect to conducting the duties and responsibilities of the RFP. The Department reserves the right to disqualify any organization that is not able to sufficiently demonstrate that it is free of any real or perceived conflict of interest.

9.1.4 Project Narrative

Refer to *Section 7.1, Technical Proposal Requirements* for the required elements.

9.1.5 Organization and Staffing

Refer to *Section 7.1, Technical Proposal Requirements* for the required elements.

9.1.6 Vita, Resumes, Licenses and Certifications

Include resumes, licenses and certifications for key project staff in a separately tabbed section of the Technical Proposal.

9.1.7 Bidder's Assurances – Attachment 7

This form must accompany the Technical Bid and be signed on behalf of the bidder by an authorized individual who attests that the assurances are true and accurate.

9.2 Cost Proposal Formatting

9.2.1 Bid Form – Attachment 6

This form must accompany the Cost Proposal. It presents the total bid price and includes questions on prior non-responsibility, procurement terminations or withholds of the bidder and certifies that all information is complete and accurate. **Please note: The total bid is each of the five year's unit bids multiplied by the corresponding estimated annual volumes, summed.**

9.2.2 Cost Proposal Form – Attachment 8

Based upon the projected workload outlined in *Section 3, Workload Projections and Definition of Completed Surveillance Units*, the bidder must complete and supply any narrative explanation considered necessary and appropriate to assist the Department in its understanding and evaluation of the financial data provided in the Cost Proposal Form set forth in Attachment 8. This form is used to present the bidder's fixed price bid for the required deliverables. Unit prices and total dollars requested are to be provided for the activities listed. Since this is a price contract, not a cost contract, indirect costs should be included in the unit prices. This information will be used to score the bidder Cost Proposal. **Please note: The total bid is each of the five year's unit bids multiplied by the corresponding estimated annual volumes, summed.**

9.2.3 Proof of Incorporation and Financial Viability

The financial and cost proposal information must include proof of incorporation and financial viability i.e. independent financial audits; Dunn and Bradstreet reports etc. This information should include if available a minimum of three (3) most recent years of audited financial statements. It is the bidder's responsibility to demonstrate financial capability to the satisfaction of the State. If bidder proposes the use of consultants or subcontractors the proposal must include proof of incorporation and financial viability for any and all consultants/subcontractors as well.

Bidders must pass an evaluation of financial strength in order to be scored. A bidder's financial strength and stability, along with that of any proposed subcontractors, will be examined to ensure sufficient assets are available to perform the magnitude of services required. The State reserves the right to make a judgment regarding the financial viability of an organization to implement and carry out the responsibilities set forth in the RFP.

9.2.4 Vendor Responsibility Questionnaire and Attestation – Attachment 9

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us. Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the Department of Health or the Office of the State Comptroller for a copy of the paper form. Bidders must also complete and submit the Vendor Responsibility Attestation (Attachment 9).

9.2.5 State Consultant Services Forms - Attachment 10

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.

The 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. Form A of the State Consultant Services Forms should be completed as a part of the original bid proposal. The report is submitted only to the soliciting agency who will in turn submit the report to the NYS Office of the State

Comptroller. Form B is completed annually for the period April 1 through March 31 and must be submitted by May 15th of each year of the contract (see Instructions in Attachment 10).

9.2.6 New York State Taxation and Finance Forms - Attachment 11

The bidder's cost proposal should include a copy of both the New York State Taxation and Finance Form ST-220-TD – Contractor Certification (Attachment 9) that was submitted to the New York State Department of Taxation and Finance and State Taxation and Finance Form ST-220-CA – Contractor Certification to Covered Agency (Attachment 11). Both forms will become part of the successful bidder's contract.

9.2.7 M/WBE Utilization Plan for Subcontracting and Purchasing - Attachment 14

The Department of Health (DOH) encourages the use of Minority and/or Women Owned Business Enterprises (M/WBE's) for any subcontracting or purchasing related to this contract. Bidders who are not currently a New York State certified M/WBE must define the portion of all consumable products and personnel required for this proposal that will be sourced from a M/WBE. The amount must be stated in total dollars and as a percent of the total cost necessary to fulfill the RFP requirement. Supportive documentation must include a detail description of work that is required including products and services.

The goal for usage of M/WBE's is at least 10% of monies used for contract activities (Minority-owned – 5%; Women-owned – 5%). In order to assure a good-faith effort to attain this goal, the DOH requires that bidders complete the M/WBE Utilization Plan (Attachment 14) and submit this Plan with their bid documents.

Bidders that are New York State certified MBE's or WBE's are not required to complete this form. Instead, such bidders must simply provide evidence of their certified status.

Failure to submit the above referenced Plan (or evidence of certified M/WBE status) may result in disqualification of the vendor from consideration for award.

9.3 Formatting Deductions

Each proposal must comply with the following format requirements. Failure to do so will result in the deduction of points for formatting irregularities. A total of four (4) points may be deducted for this reason. Formatting requirements include:

1. Each proposal submitted must include two separate and separately sealed components: a Technical Proposal and a Cost Proposal,
2. An original and five (5) signed copies of the Technical Proposal as well as an original and five (5) signed copies of the Cost Proposal should be submitted,
3. Electronic submission of bid should be submitted on two CDs or DVDs – one for the Technical Proposal and one for the Financial Proposal,
4. The “Vendor Responsibility Attestation” (Attachment 9) must be fully completed by the bidder and submitted as part of the Cost Proposal.
5. All copies of the Technical Proposal must be organized and submitted with tab dividers identifying each section of the proposal,
6. The pages of the Technical Proposal must be clearly numbered and identified in a Table of Contents,
7. Technical and Cost Proposals must be prepared and submitted with letter size (8.5x11) paper, and
8. The Technical Proposal and the Cost Proposal must be prepared with appropriate type size (no smaller than 10 point and no larger than 14 point).

SECTION 10: ADMINISTRATIVE

10.1 Issuing Agency

This Request for Proposal (RFP) is a solicitation issued by the New York State Department of Health. The Department is responsible for the requirements specified herein and for the evaluation of all proposals. Only those bidders who furnish a complete proposal will be considered for evaluation. A contract will be awarded to a **single contractor** selected by the Department.

10.2 Bidders' Conference / Inquiries

There will be no Bidders Conference. Any and all Questions regarding this RFP must be submitted in writing and must be received by **3:00 pm** on the date specified on the Schedule of Key Events. Question should be emailed to DCSRFP@health.state.ny.us with the subject “Surveillance RFP – FAU #1005101128”. Questions may also be mailed to:

Barbara DelCogliano
Division of Certification & Surveillance

New York State Department of Health
433 River Street – 6th Floor
Troy, New York 12180

The Department will then post all responses to all questions received by the due date on the NYSDOH website (www.nyhealth.gov/funding/). This document will also be emailed or mailed to all potential bidders who have either submitted a Notice of Intent to Submit or have requested in writing such information.

10.3 THE DEPARTMENT OF HEALTH RESERVES THE RIGHT TO:

1. Reject any or all proposals received in response to the RFP;
2. Withdraw the RFP at any time, at the agency's sole discretion;
3. Make an award under the RFP in whole or in part;
4. Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP;
5. Seek clarifications and revisions of proposals;
6. Use proposal information obtained through site visits, management interviews and the state's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP;
7. Prior to the **bid opening**, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
8. Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments;
9. Change any of the scheduled dates;
10. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
11. Waive any requirements that are not material;
12. Negotiate with the successful bidder within the scope of the RFP in the best interests of the state;
13. Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
14. Utilize any and all ideas submitted in the proposals received;
15. Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 60 days from the bid opening; and,
16. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of

assuring a full and complete understanding of an bidder's proposal and/or to determine an bidder's compliance with the requirements of the solicitation.

10.4 Payment

If awarded a contract, the contractor shall submit invoices to the State's designated payment office:

Division of Certification & Surveillance
New York State Department of Health
433 River Street – 6th Floor
Troy, New York 12180

Payment for invoices and/or vouchers submitted by the CONTRACTOR shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONTRACTOR shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us or by telephone at 518-474-6019. CONTRACTOR acknowledges that it will not receive payment on any invoices and/or vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

In addition to the Electronic Payment Authorization Form, a Substitute Form W-9 must be on file with the Office of the State Comptroller, Bureau of Accounting Operations. Additional information and procedures for enrollment can be found at <http://www.osc.state.ny.us/epay>.

Completed W-9 forms should be submitted to the following address:

NYS Office of the State Comptroller
Bureau of Accounting Operations
Warrant & Payment Control Unit
110 State Street, 9th Floor
Albany, NY 12236

Payment of such invoices and/or vouchers by the State (NYS Department of Health) shall be made in accordance with Article XI-A of the New York State Finance Law. Payment terms will be:

Payment will be made based upon vouchers submitted each month documenting the number of completed units conducted. A completed unit is defined in *Section 3, Workload Projections and Definition of Completed Surveillance Units* and approval by Department staff.

10.5 Term of Contract

This agreement shall be effective upon approval of the NYS Office of the State Comptroller. The contract resulting from this RFP is expected to be for the period January 1, 2011 to December 31, 2015.

This agreement may be canceled at any time by the Department of Health giving to 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.

10.6 Debriefing

Once an award has been made, bidders may request a debriefing of their proposal. 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 proposals. Requests must be received no later than three months from date of award announcement.

10.7 Protest Procedures

In the event unsuccessful bidders wish to protest the award resulting from this RFP, bidders should follow the protest procedures established by the Office of the State Comptroller (OSC). These procedures can be found on the OSC website at: http://www.osc.state.ny.us/agencies/gbull/g_232.htm.

10.8 Lobbying Statute

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, provides, among other things, the following as pertains to development of procurement contracts with governmental entities:

- 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 New York State Commission on Public Integrity 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 New York State Commission on Public Integrity
 - 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 State Commission on Public Integrity regarding procurement lobbying, the 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 New York State Commission on Public Integrity.

10.9 Accessibility of State Agency Web-based Intranet and Internet Information and Applications

Any web-based intranet and internet information and applications development, or programming delivered pursuant to the contract or procurement will comply with New York State Enterprise IT Policy NYS-P08-005, "Accessibility Web-based Information and Applications", and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that state agency web-based intranet and internet information and applications are accessible to persons with disabilities. Web content must conform to New York State Enterprise IT Standard NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing will be conducted by Department of Health, contractor or other, and the results of such testing must be satisfactory to the Department of Health before web content will be considered a qualified deliverable under the contract or procurement.

10.11 Information Security Breach and Notification Act

Section 208 of the State Technology Law (STL) and Section 899-aa of the General Business Law (GBL) require that State entities and persons or businesses conducting business in New York who own or license computerized data which includes private information including an individual's unencrypted personal information plus one or more of the following: social security number, driver's license number or non-driver ID, account number, credit or debit card number plus security code, access code or password which permits access to an individual's financial account, must disclose to a New York resident when their private information was, or is reasonably believed to have been, acquired by a person without valid authorization. Notification of breach of that private information to all individuals affected or potentially affected must occur in the most expedient time possible without unreasonable delay, after measures are taken to determine the scope of the breach and to restore integrity; provided, however, that notification may be delayed if law enforcement determines that expedient notification would impede a criminal investigation. When notification is necessary, the State entity or person or business conducting business in New York must also notify the following

New York State agencies: the Attorney General, the Office of Cyber Security & Critical Infrastructure Coordination (CSCIC) and the Consumer Protection Board (CPB). Information relative to the law and the notification process is available at: <http://www.cscic.state.ny.us/security/securitybreach/>

10.12 New York State Tax Law Section 5-a

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to the Department of Tax and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agencies, from approving a contract awarded to an offerer meeting the registration requirements but who is not so registered in accordance with the law.

Contractor must complete and submit directly to the New York State Taxation and Finance, Contractor Certification Form ST-220-TD attached hereto. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new form (ST-220-TD) must be filed with DTF.

Contractor must complete and submit to the Department of Health the form ST-220-CA attached hereto, certifying that the contractor filed the ST-220-TD with DTF. Failure to make either of these filings may render an offerer non-responsive and non-responsible. Offerers shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

10.13 Piggybacking

New York State Finance Law section 163(10)(e) (see also <http://www.ogs.state.ny.us/procurecounc/pgbguidelines.asp>) allows the

Commissioner of the NYS Office of General Services to consent to the use of this contract by other New York State Agencies, and other authorized purchasers, subject to conditions and the Contractor's consent.

SECTION 11: 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 - Request for Proposal
- APPENDIX C - Proposal
The bidder's proposal (if selected for award), including any Bid Forms and all proposal requirements.
- APPENDIX D - General Specifications
- APPENDIX E
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**:
 - **CE-200**, 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
 - **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**:
 - **CE-200**, 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

- **DB-120.1** – Certificate of Disability Benefits Insurance
- **DB-155** – Certificate of Disability Benefits Self-Insurance
- Appendix G - Notices
- Appendix H - Health Insurance Portability and Accountability Act (HIPAA) (if applicable)
- Appendix X – Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)

SECTION 12: ATTACHMENTS

1. NYSDOH Regional Office Locations
2. Letter of Intent to Bid
3. No Bid Form
4. Proposal Coversheet
5. Proposal Checklist
6. Bid Form
7. Bidder's Assurances
8. Cost Proposal Form
9. NYS Office of the State Comptroller Vendor Responsibility Questionnaire and Attestation
10. State Consultant Services Form A, Contractor's Planned Employment From Contract Start Date through End of Contract Term and State Consultant Services Form B, Contractor's Annual Employment Report
11. N.Y.S. Taxation and Finance Contractor Certification Form ST-220-TD and N.Y.S. Taxation and Finance Contractor Certification Form ST-220-CA
12. Appendix A – Standard Clauses for All New York State Contracts
13. Appendix D – General Specifications
14. M/WBE Procurement Forms

DOH Regions and Regional Offices

Capital District Regional Office (CDRO)

*1 Fulton Street
Troy, NY 12180-3281*

Counties Served: Albany, Clinton, Columbia, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren and Washington.

Central New York Regional Office (CNYRO)

*217 South Salina Street
Syracuse, NY 13202-1380*

Counties Served: Broome, Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga and Tompkins.

Western Region (WRO)

Western - Buffalo Office

*584 Delaware Avenue
Buffalo, NY 14202-1295*

Counties Served: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming.

Western - Rochester Office

*Triangle Building
335 East Main Street
Rochester, NY 14604-2127*

Counties Served: Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne and Yates.

Metropolitan Area Regional Office (MARO)

MARO - NYC Office

*90 Church Street - 15th Floor
Between Barclay and Vesey Streets
New York, NY 10007-2919*

Counties Served: Bronx, Kings, New York, Queens and Richmond.

MARO - Long Island Office

*Court House Corporate Center
320 Carlton Avenue
Suite 500 - 5th Floor
Central Islip, NY 11722*

Counties Served: Nassau and Suffolk.

MARO - New Rochelle Office

*145 Huguenot Street, 6th floor
New Rochelle, NY 10801-5291*

Counties Served: Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster and Westchester

ATTACHMENT 2

NOTICE of INTENT to DEVELOP a PROPOSAL in RESPONSE to RFP

This is to notify the New York State Department of Health of this bidder's intention to develop/submit a proposal in response to the RFP "State Surveillance Activities for Hospitals and Diagnostic & Treatment Centers" (RFP Number: #1005101128) It is understood that this Notice of Intent is not binding on either party and simply alerts the Department of Health of the bidder's intentions and assures that the bidder will receive all further correspondence on this RFP

This notice is due to the Department by close of business on August 30, 2010, and should be mailed, faxed, or emailed to:

Barbara DelCogliano
New York State Department of Health
Division of Certification & Surveillance
433 River Street – 6th Floor
Troy, New York 12180
FAX #: (518) 402-1010
PHONE #: (518) 402-1003
EMAIL: DCSRFP@health.state.ny.us

Name of Organization: _____

Organization Address: _____

City: _____ State: _____ ZIP _____

E- Mail Address: _____

Telephone: _____ FAX: _____

Authorized Signature: _____

Print Name: _____

DATE: _____

ATTACHMENT 3
NEW YORK STATE
DEPARTMENT OF HEALTH

NO-BID FORM

State Surveillance Activities for Hospitals and Diagnostic & Treatment Centers

FAU #1005101128

Bidders choosing not to bid are requested to complete the portion of the form below:

We do not provide the requested services. Please remove our firm from your mailing list

We are unable to bid at this time because:

Please retain our firm on your mailing list.

(Firm Name)

(Officer Signature)

(Date)

(Officer Title)

(Telephone)

(e-mail Address)

FAILURE TO RESPOND TO BID INVITATIONS MAY RESULT IN YOUR FIRM BEING REMOVED FROM OUR MAILING LIST FOR THIS SERVICE.

ATTACHMENT 4

State Surveillance Activities for Hospitals and Diagnostic & Treatment Centers FAU# 1005101128

PROPOSAL COVER SHEET

Name of Bidder (Legal name as it would appear on a contract)	
Mailing Address (Street address, P.O. Box, City, State, ZIP code)	
Federal Employee Identification Number	NYS Charity Registration Number
Person Authorized to act as the contact for this firm in matters regarding this proposal:	
Printed Name (First Last)	Title:
Telephone number:	E-mail:
Person authorized to obligate this firm in matters regarding this proposal or the resulting contract:	
Printed Name (First Last)	Title:
Telephone number:	E-mail:
(CORPORATIONS) Name/Title of person authorized by the Board of Directors to sign this proposal on behalf of the Board:	
Printed Name (First Last)	Title:
Signature of Bidder or Authorized Representative	Date:

ATTACHMENT 5

PROPOSAL CHECKLIST

State Surveillance Activities for Hospitals and Diagnostic & Treatment Centers FAU# 1005101128

This checklist is for the bidder's use only and should not be included in the proposal. The checklist is to assist the bidder in preparing their submission; however it is incumbent on the bidder to read the entire RFP to insure all required documents are included.

General Requirements

- The Technical and Cost proposals are packaged in separate and separately sealed marked envelopes.
- Signed original plus five (5) paper copies and one (1) CD/DVD of both the Technical proposal and the Cost proposal.

Technical Proposal Requirements

- Proposal Cover sheet (Attachment 4)
- Bidder's Assurances (Attachment 7)
- Vitae/Resumes of Key Personnel

Cost Proposal Requirements

- Bid Form (Attachment 6)
- Cost Proposal Form (Attachment 8)
- Proof of incorporation and financial viability
- Vendor Responsibility Attestation (Attachment 9)
- State Consultant Forms (Attachment 10)
- NYS Tax and Finance Forms ST-220-TD and ST-220-CA (Attachment 11)
- MWBE forms (Attachment 14)

ATTACHMENT 6

NEW YORK STATE
DEPARTMENT OF HEALTH

BID FORM

**State Surveillance Activities for
Hospitals and Diagnostic & Treatment Centers
FAU# 1005101128**

Bidder Name:
Bidder Address:

Bidder Fed ID No:

A. _____ bids a total price of \$ _____
(Name of Offerer/Bidder)

B. Affirmations & Disclosures related to State Finance Law §§ 139-j & 139-k:

Offerer/Bidder affirms that it understands and agrees to comply with the procedures of the Department of Health relative to permissible contacts (provided below) as required by State Finance Law §139-j (3) and §139-j (6) (b).

Pursuant to State Finance Law §§139-j and 139-k, this *Invitation for Bid or Request for Proposal* includes and imposes certain restrictions on communications between the Department of Health (DOH) and an Offerer during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit *bids/proposals* through final award and approval of the Procurement Contract by the DOH and, if applicable, Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is/are identified on the first page of this *Invitation for Bid, Request for Proposal, or other solicitation document*. DOH employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the Office of General Services Website at: <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No Yes

If yes, please answer the next questions:

1a. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):

No Yes

1b. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity?
(Please circle):

No

Yes

1c. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility:

(Add additional pages as necessary)

2a. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No

Yes

2b. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding:

(Add additional pages as necessary)

C. Offerer/Bidder certifies that all information provided to the Department of Health with respect to State Finance Law §139-k is complete, true and accurate.

D. Offerer/Bidder agrees to provide the following documentation either *with their submitted bid/proposal or upon award* as indicated below:

With Bid Upon Award

1. A completed N.Y.S Taxation and Finance Contractor Certification Form ST-220.

2. A completed N.Y.S. Office of the State Comptroller Vendor Responsibility Questionnaire (for procurements greater than or equal to \$100,000)

3. A completed State Consultant Services Form A, Contractor's Planned Employment From Contract Start Date through End of Contract Term

(Officer Signature)

(Date)

(Officer Title)

(Telephone)

(e-mail Address)

ATTACHMENT 7

BIDDER'S ASSURANCES

State Surveillance Activities for Hospitals and Diagnostic & Treatment Centers FAU# 1005101128

The Bidder's Assurances form **MUST** be signed in ink by an official authorized to bind the organization to the provisions of the RFP and Proposal. **Proposals which do not include this signed form will be considered non-responsive, resulting in rejection of the Proposal.**

- The bidder is a public or private organization, company, partnership, or corporation that is authorized to operate in New York State.
- The bidder and its subsidiaries are not providers of health care services, a health care facility accrediting body or any organization or trade association whose primary business includes representing any Article 28 licensed provider.
- The bidder accepts the terms and conditions as stated in the RFP.
- The bid is valid for a period of three hundred sixty-five (365) calendar days from the date of submission of the proposal.
- The bidder agrees to be responsible to the Department for performance of all work specified in the RFP, including work assigned to subcontractors.
- The bidder assures that the detailed work plan and schedule of deliverables set forth by the organization as its Technical Proposal will fulfill all statewide requirements as described in the RFP and will provide for the dedicated qualified staff, expertise and capacity to fulfill contract deliverables.
- The bidder assures that the organization and its employees, subcontractors, consultants, volunteers, and subsidiaries, are not and will not be directly or indirectly involved with any provider or parties whose activities would represent a conflict of interest with respect to conducting the duties and responsibilities outlined in this RFP.
- The bidder assures the organization and its employees, subcontractors, consultants and volunteers will implement and maintain policies and procedures to assure the confidentiality of personally identifiable data and information or records pertaining to patient care including compliance with all pertinent Health Insurance Portability and Accountability Act (HIPAA) requirements and Article 27F of the Public Health Law.
- The bidder assures its ability to secure an indemnity to protect the organization and, in turn, the State against any loss of claim incurred as a result of carrying out the duties and responsibilities of this program.
- The bidder assures that no funds were paid or will be paid, by or on behalf of the bidder, to any person for the purpose of influencing or attempting to influence any officer or employee of the federal or state government with regard to obtaining a contract.

Signature of Authorized Official

Date

Printed Name of Authorized Official

ATTACHMENT 8

**State Surveillance Activities for Hospitals and Diagnostic & Treatment Centers
FAU# 1005101128**

COST PROPOSAL FORM

SERVICE UNITS	ESTIMATED ANNUAL VOLUME (a)	YEAR 1 UNIT BID PRICE (b)	YEAR 2 UNIT BID PRICE (c)	YEAR 3 UNIT BID PRICE (d)	YEAR 4 UNIT BID PRICE (e)	YEAR 5 UNIT BID PRICE (f)	BID AMOUNT
Receipt, Review, Referral	4,100						
DTC Surveys	45						
On-site Investigations	164						
Off-site Investigations	458						
RCA Reviews	605						
TOTAL BID AMOUNT**							

****The total bid is each of the five year's unit bids multiplied by the corresponding estimated annual volumes, summed.**

ATTACHMENT 9

Vendor Responsibility Attestation

To comply with the Vendor Responsibility Requirements outlined in Section E, Administrative, 8. Vendor Responsibility Questionnaire, I hereby certify:

Choose one:

- An on-line Vendor Responsibility Questionnaire has been updated or created at OSC's website: <https://portal.osc.state.ny.us> within the last six months.

- A hard copy Vendor Responsibility Questionnaire is included with this proposal/bid and is dated within the last six months.

- A Vendor Responsibility Questionnaire is not required due to an exempt status. Exemptions include governmental entities, public authorities, public colleges and universities, public benefit corporations, and Indian Nations.

Signature of Organization Official: _____

Print/type Name: _____

Title: _____

Organization: _____

Date Signed: _____

ATTACHMENT 10

State Consultant Services FORM A
--

<u>OSC Use Only</u> Reporting Code: Category Code: Date Contract Approved:

Contractor's Planned Employment
From Contract Start Date through End of Contract Term

New York State Department of Health Contractor Name:	Agency Code 12000 Contract Number:
Contract Start Date: / /	Contract End Date: / /

Employment Category	Number of Employees	Number of Hours to be Worked	Amount Payable Under the Contract
Totals this page:	0	0	\$ 0.00
Grand Total:	0	0	\$ 0.00

Name of person who prepared this report:

Title:

Phone #:

Preparer's signature:

Date Prepared: / /

Page of
(use additional pages if necessary)

State Consultant Services
FORM B

OSC Use Only
 Reporting Code:
 Category Code:

Contractor's Annual Employment Report
 Report Period: April 1, ____ to March 31, ____

New York State Department of Health	Agency Code 12000
Contract Number:	
Contract Start Date: / /	Contract End Date: / /
Contractor Name:	
Contractor Address:	
Description of Services Being Provided:	

Scope of Contract (Chose one that best fits):

Analysis	Evaluation	Research
Training	Data Processing	Computer Programming
Other IT Consulting	Engineering	Architect Services
Surveying	Environmental Services	Health Services
Mental Health Services	Accounting	Auditing
Paralegal	Legal	Other Consulting

Employment Category	Number of Employees	Number of Hours to be Worked	Amount Payable Under the Contract
Totals this page:	0	0	\$ 0.00
Grand Total:	0	0	\$ 0.00

Name of person who prepared this report:
 Title:

Phone #:

Preparer's signature:
 Date Prepared: / /

Page of
 (use additional pages if necessary)

Instructions
State Consultant Services
Form A: Contractor's Planned Employment
And
Form B: Contractor's Annual Employment Report

Form A: This report must be completed before work begins on a contract. Typically it is completed as a part of the original bid proposal. The report is submitted only to the soliciting agency who will in turn submit the report to the NYS Office of the State Comptroller.

Form B: This report must be completed annually for the period April 1 through March 31. The report must be submitted by May 15th of each year to the following three addresses:

1. The designated payment office (DPO) outlined in the consulting contract.
2. NYS Office of the State Comptroller
Bureau of Contracts
110 State Street, 11th Floor
Albany, NY 12236
Attn: Consultant Reporting
or via fax to –
(518) 474-8030 or (518) 473-8808
3. NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, NY 12239
Attn: Consultant Reporting

Completing the Reports:

Scope of Contract (Form B only): a general classification of the single category that best fits the predominate nature of the services provided under the contract.

Employment Category: the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees providing services under the contract. Access the O*NET database, which is available through the US Department of Labor's Employment and Training Administration, on-line at online.onetcenter.org to find a list of occupations.)

Number of Employees: the total number of employees in the employment category employed to provide services under the contract during the Report Period, including part time employees and employees of subcontractors.

Number of hours (to be) worked: for Form A, the total number of hours to be worked, and for Form B, the total number of hours worked during the Report Period by the employees in the employment category.

Amount Payable under the Contract: the total amount paid or payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the Report Period.

ATTACHMENT 11

NYS Taxation and Finance Form ST-220-TD

This form may be accessed electronically at:

http://www.tax.state.ny.us/pdf/2007/fillin/st/st220td_507_fill_in.pdf

NYS Taxation and Finance Form ST-220-CA

This form may be accessed electronically at:

http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca_606_fill_in.pdf

ATTACHMENT 12

APPENDIX A - STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired

for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of setoff any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend

or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be

submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts. Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

ATTACHMENT 13

APPENDIX D GENERAL SPECIFICATIONS

- A. By signing the "Bid Form" each bidder attests to its express authority to sign on behalf of this company or other entity and acknowledges and accepts that:

All specifications, general and specific appendices, including Appendix-A, the Standard Clauses for all New York State contracts, and all schedules and forms contained herein will become part of any contract entered, resulting from the Request for Proposal. Anything which is not expressly set forth in the specification, appendices and forms and resultant contract, but which is reasonable to be implied, shall be furnished and provided in the same manner as if specifically expressed.

- B. The work shall be commenced and shall be actually undertaken within such time as the Department of Health may direct by notice, whether by mail, telegram, or other writing, whereupon the undersigned will give continuous attention to the work as directed, to the end and with the intent that the work shall be completed within such reasonable time or times, as the case may be, as the Department may prescribe.
- C. The Department reserves the right to stop the work covered by this proposal and the contract at any time that the Department deems the successful bidder to be unable or incapable of performing the work to the satisfaction of the Department and in the event of such cessation of work, the Department shall have the right to arrange for the completion of the work in such manner as the Department may deem advisable and if the cost thereof exceeds the amount of the bid, the successful bidder and its surety be liable to the State of New York for any excess cost on account thereof.
- D. Each bidder is under an affirmative duty to be informed by personal examination of the specifications and location of the proposed work and by such other means as it may select, of character, quality, and extent of work to be performed and the conditions under which the contract is to be executed.
- E. The Department of Health will make no allowances or concession to a bidder for any alleged misunderstanding or deception because of quantity, quality, character, location or other conditions.
- F. The bid price is to cover the cost of furnishing all of the said services, materials, equipment, and labor to the satisfaction of the Department of Health and the performance of all work set forth in said specifications.
- G. The successful bidder will be required to complete the entire work, or any part thereof as the case may be, to the satisfaction of the Department of Health in strict accordance with the specifications and pursuant to a contract therefore.
- H. Contractor will possess, at no cost to the State, all qualifications, licenses and permits to engage in the required business as may be required within the jurisdiction where the work specified is to be performed. Workers to be employed in the performance of this contract will possess the qualifications, training, licenses and permits as may be required within such jurisdiction.
- I. **Non-Collusive Bidding**
By submission of this proposal, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:

- a. The prices of this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- b. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly to any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
- c. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

NOTE: Chapter 675 of the Laws of New York for 1966 provides that every bid made to the state or any public department, agency or official thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the foregoing statement subscribed by the bidder and affirmed by such bidder as true under penalties of perjury.

A bid shall not be considered for award nor shall any award be made where (a), (b) and (c) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a), (b) and (c) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department or agency to which the bid is made or its designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder has published price lists, rates, or tariffs covering items being procured, has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same price being bid, does not constitute, without more, a disclosure within the meaning of the above quoted certification.

Any bid made to the State or any public department, agency or official thereof by a corporate bidder for work or services performed or to be performed or goods, sold or to be sold, where competitive bidding is required by statute, rule or regulation and where such bid contains the certification set forth above shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

- J. A bidder may be disqualified from receiving awards if such bidder or any subsidiary, affiliate, partner, officer, agent or principal thereof, or anyone in its or its employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
- K. The Department reserves the right to make awards within ninety (90) days after the date of the bid opening, during which period bids shall not be withdrawn unless the bidder distinctly states in the bid that acceptance thereof must be made within a shorter specified time.
- L. **Work for Hire Contract**
Any contract entered into resultant from this request for proposal will be considered a "Work for Hire Contract." The Department will be the sole owner of all source code and any software which is developed or included in the application software provided to the Department as a part of this contract.
- M. **Technology Purchases Notification --** The following provisions apply if this Request for Proposal (RFP) seeks proposals for "Technology"

1. For the purposes of this policy, "technology" applies to all services and commodities, voice/data/video and/or any related requirement, major software acquisitions, systems modifications or upgrades, etc., that result in a technical method of achieving a practical purpose or in improvements of productivity. The purchase can be as simple as an order for new or replacement personal computers, or for a consultant to design a new system, or as complex as a major systems improvement or innovation that changes how an agency conducts its business practices.
2. If this RFP results in procurement of software over \$20,000, or of other technology over \$50,000, or where the department determines that the potential exists for coordinating purchases among State agencies and/or the purchase may be of interest to one or more other State agencies, PRIOR TO AWARD SELECTION, this RFP and all responses thereto are subject to review by the New York State Office for Technology.
3. 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 in the contract.
4. The responses to this RFP must include a solution to effectively handle the turn of the century issues related to the change from the year 1999 to 2000.

N. YEAR 2000 WARRANTY

1. Definitions

For purposes of this warranty, the following definitions shall apply:

- a. Product shall include, without limitation: any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition function, calculation, comparing or sequencing. Where services are being furnished, e.g. consulting, systems integration, code or data conversion or data entry, the term Product shall include resulting deliverables.
- b. Vendor's Product shall include all Product delivered under this Agreement by Vendor other than Third Party Product.
- c. Third Party Product shall include products manufactured or developed by a corporate entity independent from Vendor and provided by Vendor on a non-exclusive licensing or other distribution Agreement with the third party manufacturer. Third Party Product does not include product where Vendor is: a) corporate subsidiary or affiliate of the third party manufacturer/developer; and/or b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.

2. Warranty Disclosure

At the time of bid, Product order or Product quote, Vendor is required to disclose the following information in writing to Authorized User:

- a. For Vendor Product and for Products (including, but not limited to, Vendor and/or Third Party Products and/or Authorized User's Installed Product) which have been specified to perform as a system: Compliance or non-compliance of the Products individually or as a system with the Warranty Statement set forth below; and

- b. For Third Party Product Not Specified as Part of a System: Third Party Manufacturer's statement of compliance or non-compliance of any Third Party Product being delivered with Third Party Manufacturer/Developer's Year 2000 warranty. If such Third Party Product is represented by Third Party Manufacturer/Developer as compliant with Third Party Manufacturer/Developer's Year 2000 Warranty, Vendor shall pass through said third party warranty from the third party manufacturer to the Authorized User but shall not be liable for the testing or verification of Third Party's compliance statement. .

An absence or failure to furnish the required written warranty disclosure shall be deemed a statement of compliance of the product(s) or system(s) in question with the year 2000 warranty statement set forth below.

3. Warranty Statement

Year 2000 warranty compliance shall be defined in accordance with the following warranty statement:

Vendor warrants that Product(s) furnished pursuant to this Agreement shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, including leap year calculations. Where a purchase requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

In the event of any breach of this warranty, Vendor shall restore the Product to the same level of performance as warranted herein, or repair or replace the Product with conforming Product so as to minimize interruption to Authorized User's ongoing business processes, time being of the essence, at Vendor's sole cost and expense. This warranty does not extend to correction of Authorized User's errors in data entry or data conversion.

This warranty shall survive beyond termination or expiration of the Agreement.

Nothing in this warranty shall be construed to limit any rights or remedies otherwise available under this Agreement.

- O. No Subcontracting
Subcontracting by the contractor shall not be permitted except by prior written approval and knowledge of the Department of Health.
- P. Superintendence by Contractor
The Contractor shall have a representative to provide supervision of the work which Contractor employees are performing to ensure complete and satisfactory performance with the terms of the Contract. This representative shall also be authorized to receive and put into effect promptly all orders, directions and instructions from the Department of Health. A confirmation in writing of such orders or directions will be given by the Department when so requested from the Contractor.
- Q. Sufficiency of Personnel and Equipment
If the Department of Health is of the opinion that the services required by the specifications cannot satisfactorily be performed because of insufficiency of personnel, the Department shall have the authority to require the Contractor to use such additional personnel, to take such steps necessary to perform the services satisfactorily at no additional cost to the State.
- R. Experience Requirements
The Contractor shall submit evidence to the satisfaction of the Department that it possesses the necessary experience and qualifications to perform the type of services required under this contract

and must show that it is currently performing similar services. The Contractor shall submit at least two references to substantiate these qualifications.

S. Contract Amendments

This agreement may be amended by written agreement signed by the parties and subject to the laws and regulations of the State pertaining to contract amendments. This agreement may not be amended orally. The contractor shall not make any changes in the scope of work as outlined herein at any time without prior authorization in writing from the Department of Health and without prior approval in writing of the amount of compensation for such changes.

T. Provisions Upon Default

1. 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
2. If, in the judgement 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, the Department acting 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. In such case the Contractor shall receive equitable compensation for such services as shall, in the judgement of the State Comptroller, have been satisfactorily performed by the Contractor up to the date of the termination of this agreement, which such compensation shall not exceed the total cost incurred for the work which the Contractor was engaged in at the time of such termination, subject to audit by the State Comptroller.

U. Termination Provision

Upon termination of this agreement, the following shall occur:

1. Contractor shall make available to the State for examination all data, records and reports relating to this Contract; and
2. Except as otherwise provided in the Contract, the liability of the State for payments to the Contractor and the liability of the Contractor for services hereunder shall cease.

V. Conflicts

If, in the opinion of the Department of Health, (1) the specifications conflict, or (2) if the specifications are not clear as to (a) the method of performing any part of the work, or as to (b) the types of materials or equipment necessary, or as to (c) the work required to be done in every such situation, the Contractor shall be deemed to have based his bid upon performing the work and furnishing materials or equipment in the most inexpensive and efficient manner. If such conflicts and/or ambiguities arise, the Department of Health will furnish the Contractor supplementary information showing the manner in which the work is to be performed and the type or types of material or equipment that shall be used.

W. MINORITY AND WOMEN OWNED BUSINESS POLICY STATEMENT

The New York State Department of Health recognizes the need to take affirmative action to ensure that Minority and Women Owned Business Enterprises are given the opportunity to participate in the performance of the Department of Health's contracting program. This opportunity for full participation in our free enterprise system by traditionally, socially and economically disadvantaged persons is essential to obtain social and economic equality and improve the functioning of the State economy.

It is the intention of the New York State Department of Health to fully execute the mandate of Executive Law, Article 15-A and provide Minority and Women Owned Business Enterprises with

equal opportunity to bid on contracts awarded by this agency in accordance with the State Finance Law.

To implement this affirmative action policy statement, the contractor agrees to file with the Department of Health within 10 days of notice of award, a staffing plan of the anticipated work force to be utilized on this contract or, where required, information on the contractor's total work force, including apprentices, broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the Department. The form of the staffing plan shall be supplied by the Department.

After an award of this contract, the contractor agrees to submit to the Department a work force utilization report, in a form and manner required by the Department, of the work force actually utilized on this contract, broken down by specified ethnic background, gender and Federal occupational categories or other appropriate categories specified by the Department.

X. Contract Insurance Requirements

1. The successful bidder must without expense to the State procure and maintain, until final acceptance by the Department of Health of the work covered by this proposal and the contract, insurance of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the State of New York covering all operations under this proposal and the contract, whether performed by it or by subcontractors. Before commencing the work, the successful bidder shall furnish to the Department of Health a certificate or certificates, in a form satisfactory to the Department, showing that it has complied with the requirements of this section, which certificate or certificates shall state that the policies shall not be changed or canceled until thirty days written notice has been given to the Department. The kinds and amounts of required insurance are:
 - a. A policy covering the obligations of the successful bidder in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Workers' Compensation Law, and the contract shall be void and of no effect unless the successful bidder procures such policy and maintains it until acceptance of the work (reference Appendix E).
 - b. Policies of Bodily Injury Liability and Property Damage Liability Insurance of the types hereinafter specified, each within limits of not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one person in any one occurrence, and subject to that limit for that person, not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by two or more persons in any one occurrence, and not less than \$500,000 for damages arising out of damage to or destruction of property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.
 - i. Contractor's Liability Insurance issued to and covering the liability of the successful bidder with respect to all work performed by it under this proposal and the contract.
 - ii. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.
 - iii. Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.

Y. Certification Regarding Debarment and Suspension

Regulations of the Department of Health and Human Services, located at Part 76 of Title 45 of the Code of Federal Regulations (CFR), implement Executive Orders 12549 and 12689 concerning debarment and suspension of participants in federal programs and activities. Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a government-wide system for nonprocurement debarment and suspension. Executive Order 12689 extends the debarment and suspension policy to procurement activities of the federal government. A person who is debarred or suspended by a federal agency is excluded from federal financial and non-financial assistance and benefits under federal programs and activities, both directly (primary covered transaction) and indirectly (lower tier covered transactions). Debarment or suspension by one federal agency has government-wide effect.

Pursuant to the above-cited regulations, the New York State Department of Health (as a participant in a primary covered transaction) may not knowingly do business with a person who is debarred, suspended, proposed for debarment, or subject to other government-wide exclusion (including any exclusion from Medicare and State health care program participation on or after August 25, 1995), and the Department of Health must require its prospective contractors, as prospective lower tier participants, to provide the certification in Appendix B to Part 76 of Title 45 CFR, as set forth below:

1. APPENDIX B TO PART 76-CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

- a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered and erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- d. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered Transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions.
 - g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of parties Excluded from Federal Procurement and Nonprocurement Programs.
 - h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 - i. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions
- a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily exclude from participation in this transaction by any Federal department agency.
 - b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Z. Confidentiality Clauses

- 1. Any materials, articles, papers, etc., developed by the CONTRACTOR under or in the course of performing this AGREEMENT shall contain the following, or similar acknowledgment: "Funded by the New York State Department of Health". Any such materials must be reviewed and approved by the STATE for conformity with the policies and guidelines for the New York State Department of Health prior to dissemination and/or publication. It is agreed that such review will be conducted in an expeditious manner. Should the review result in any unresolved disagreements regarding content, the CONTRACTOR shall be free to publish in scholarly journals along with a disclaimer that the views within the Article or the policies reflected are not necessarily those of the New York State Department of Health. The Department reserves the right to disallow funding for any educational materials not approved through its review process.
- 2. Any publishable or otherwise reproducible material developed under or in the course of performing this AGREEMENT, dealing with any aspect of performance under this AGREEMENT, or of the results and accomplishments attained in such performance, shall be the sole and exclusive property of the STATE, and shall not be published or otherwise disseminated by the CONTRACTOR to any other party unless prior written approval is secured

from the STATE or under circumstances as indicated in paragraph 1 above. Any and all net proceeds obtained by the CONTRACTOR resulting from any such publication shall belong to and be paid over to the STATE. The STATE shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any such material for governmental purposes.

3. No report, document or other data produced in whole or in part with the funds provided under this AGREEMENT may be copyrighted by the CONTRACTOR or any of its employees, nor shall any notice of copyright be registered by the CONTRACTOR or any of its employees in connection with any report, document or other data developed pursuant to this AGREEMENT.
4. All reports, data sheets, documents, etc. generated under this contract shall be the sole and exclusive property of the Department of Health. Upon completion or termination of this AGREEMENT the CONTRACTOR shall deliver to the Department of Health upon its demand all copies of materials relating to or pertaining to this AGREEMENT. The CONTRACTOR shall have no right to disclose or use any of such material and documentation for any purpose whatsoever, without the prior written approval of the Department of Health or its authorized agents.
5. The CONTRACTOR, its officers, agents and employees and subcontractors shall treat all information, which is obtained by it through its performance under this AGREEMENT, as confidential information to the extent required by the laws and regulations of the United States and laws and regulations of the State of New York.
6. All subcontracts shall contain provisions specifying:
 - a. that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT, and
 - b. that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the AGREEMENT between the STATE and the CONTRACTOR.

AA. Provision Related to Consultant Disclosure Legislation

1. If this contract is for the provision of consulting services as defined in Subdivision 17 of Section 8 of the State Finance Law, the CONTRACTOR shall submit a "State Consultant Services Form B, Contractor's Annual Employment Report" no later than May 15th following the end of each state fiscal year included in this contract term. This report must be submitted to:
 - a. The NYS Department of Health, at the STATE's designated payment office address included in this AGREEMENT; and
 - b. The NYS Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th Floor, Albany NY 12236 ATTN: Consultant Reporting - or via fax at (518) 474-8030 or (518) 473-8808; and
 - c. The NYS Department of Civil Service, Alfred E. Smith Office Building, Albany NY 12239, ATTN: Consultant Reporting.

BB. Provisions Related to New York State Procurement Lobbying Law

1. The STATE reserves the right to terminate this AGREEMENT in the event it is found that the certification filed by the CONTRACTOR in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the STATE may exercise its termination right by providing written notification to the CONTRACTOR in accordance with the written notification terms of this AGREEMENT.

CC. Provisions Related to New York State Information Security Breach and Notification Act

1. CONTRACTOR shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). CONTRACTOR shall be liable for the costs associated with such breach if caused by CONTRACTOR'S negligent or willful acts or omissions, or the negligent or willful acts or omissions of CONTRACTOR'S agents, officers, employees or subcontractors.

ATTACHEMENT 14

New York State Department of Health M/WBE Procurement Forms

The following forms are required to maintain maximum participation in M/WBE procurement and contracting:

1. Bidders Proposed M/WBE Utilization Form
2. Minority Owned Business Enterprise Information
3. Women Owned Business Enterprise Information
4. M/WBE Utilization Plan
5. M/WBE Letter of Intent to Participate
6. M/WBE Staffing Plan

New York State Department of Health

BIDDERS PROPOSED M/WBE UTILIZATION PLAN

Bidder Name:	
RFP Title:	RFP Number

Description of Plan to Meet M/WBE Goals

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PROJECTED M/WBE USAGE

	%	Amount
1. Total Dollar Value of Proposal Bid	100	\$
2. MBE Goal Applied to the Contract		\$
3. WBE Goal Applied to the Contract		\$
4. M/WBE Combined Totals		\$

New York State Department of Health

**MINORITY OWNED BUSINESS ENTERPRISE (MBE)
INFORMATION**

In order to achieve the MBE Goals, bidder expects to subcontract with New York State certified MINORITY-OWNED entities as follows:

MBE Firm (Exactly as Registered)	Description of Work (Products/Services) [MBE]	Projected MBE Dollar Amount
Name Address City, State, ZIP Employer I.D. Telephone Number () -		\$ _____
Name Address City, State, ZIP Employer I.D. Telephone Number () -		\$ _____
Name Address City, State, ZIP Employer I.D. Telephone Number () -		\$ _____

New York State Department of Health

WOMEN OWNED BUSINESS ENTERPRISE (WBE) INFORMATION

In order to achieve the WBE Goals, bidder expects to subcontract with New York State certified WOMEN-OWNED entities as follows:

WBE Firm (Exactly as Registered)	Description of Work (Products/Services) [WBE]	Projected WBE Dollar Amount
Name Address City, State, ZIP Employer I.D. Telephone Number () -		\$ _____
Name Address City, State, ZIP Employer I.D. Telephone Number () -		\$ _____
Name Address City, State, ZIP Employer I.D. Telephone Number () -		\$ _____

**New York State Department of Health
M/WBE UTILIZATION PLAN**

Agency Contract: _____ Telephone: _____
 Contract Number: _____ Dollar Value: _____
 Date Bid: _____ Date Let: _____ Completion Date: _____

Contract Awardee/Recipient: _____

Name

Address

Telephone

Description of Contract/Project Location: _____

Subcontractors Purchase with Majority Vendors:

Participation Goals Anticipated: _____ % MBE _____ % WBE

Participation Goals Achieved: _____ % MBE _____ % WBE

Subcontractors/Suppliers:

Firm Name and City	Description of Work	Dollar Value	Date of Subcontract	Identify if MBE or WBE or NYS Certified

Contractor's Agreement: My firm proposes to use the MBEs listed on this form

Prepared By: (Signature of Contractor)	Print Contractor's Name:	Telephone #:	Date:
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Grant Recipient Affirmative Action Officer Signature (If applicable):

FOR OFFICE USE ONLY

Reviewed By:	Date:
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M/WBE Firms Certified: _____ Not Certified: _____

CBO: _____ MCBO: _____

New York State Department of Health

MWBE ONLY

**MWBE SUBCONTRACTORS AND SUPPLIERS
LETTER OF INTENT TO PARTICIPATE**

To: _____ Federal ID Number: _____
(Name of Contractor)

Proposal/ Contract Number: _____

Contract Scope of Work: _____

The undersigned intends to perform services or provide material, supplies or equipment as: _____

Name of MWBE: _____

Address: _____

Federal ID Number: _____

Telephone Number: _____

Designation:

MBE - Subcontractor

WBE - Subcontractor

MBE - Supplier

WBE - Supplier

Joint venture with:

Name: _____

Address: _____

Fed ID Number: _____

MBE

WBE

Are you New York State Certified MWBE? _____ Yes _____ No

The undersigned is prepared to perform the following work or services or supply the following materials, supplies or equipment in connection with the above proposal/contract. (Specify in detail the particular items of work or services to be performed or the materials to be supplied): _____

at the following price: \$ _____

The contractor proposes, and the undersigned agrees to, the following beginning and completion dates for such work.

Date Proposal/ Contract to be started: _____

Date Proposal/ Contract to be Completed: _____

Date Supplies ordered: _____ Delivery Date: _____

The above work will not further subcontracted without the express written permission of the contractor and notification of the Office. The undersigned will enter into a formal agreement for the above work with the contractor ONLY upon the Contractor's execution of a contract with the Office.

_____ Signature of M/WBE Contractor

Date

Contractor _____

Printed/Typed Name of M/WBE

INSTRUCTIONS FOR M/WBE SUBCONTRACTORS AND SUPPLIERS LETTER OF INTENT TO PARTICIPATE

This form is to be submitted with bid attached to the Subcontractor's Information Form in a sealed envelope for each certified Minority or Women-Owned Business enterprise the Bidder/Awardee/Contractor proposes to utilize as subcontractors, service providers or suppliers.

If the MBE or WBE proposed for portion of this proposal/contract is part of a joint or other temporarily-formed business entity of independent business entities, the name and address of the joint venture or temporarily-formed business should be indicated.

New York State Department of Health M/WBE STAFFING PLAN

Check applicable categories: Project Staff Consultants Subcontractors

Contractor Name _____

Address _____

	Total	Male	Female	Black	Hispanic	Asian/ Pacific Islander	Other
STAFF							
Administrators							
Managers/Supervisors							
Professionals							
Technicians							
Clerical							
Craft/Maintenance							
Operatives							
Laborers							
Public Assistance Recipients							
TOTAL							

(Name and Title)

Date