



NEW YORK STATE DEPARTMENT OF HEALTH

NY State of Health, The Official Health Plan Marketplace

Request for Proposal (RFP)

Independent External Audit Services for the
NY State of Health

RFP # 15845

Schedule of Key Events

RFP Release Date	October 16, 2014
Written Questions Due	3:00pm ET, October 27, 2014
Department's Response to Written Questions	On or about November 10, 2014
Proposal Due Date	3:00pm ET, November 24, 2014
Anticipated Contract Start Date	January 15, 2015

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

DESIGNATED CONTACT:

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

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

1. Submission of written questions
2. Submission of written proposals or bids
3. Negotiation of contract terms after award recommendations
4. Debriefings

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For further information regarding these statutory provisions, see the Lobbying Statute summary in Section 6.11 of this solicitation.

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Acronyms and Abbreviations

Below is a list of acronyms and abbreviations used in this Request for Proposals.

ACA	Patient Protection and Affordable Care Act
APTC	Advance Premium Tax Credit
AG	New York State Attorney General
CCIIO	Center for Consumer Information and Insurance Oversight at HHS
CFR	Code of Federal Regulations
CIA	Certified Internal Auditor
CMS	Center for Medicare and Medicaid Services
CPA	Certified Public Accountant
DOH	NYS Department of Health
GAAP	Generally Accepted Accounting Principles
GAGAS	Generally Accepted Government Auditing Standards
HHS	U.S. Department of Health and Human Services
M/WBE	Minority/Women Business Enterprise
NYS	New York State
OHIP	Office of Health Insurance Programs, NYS Department of Health
OSC	New York State Office of the State Comptroller
PHL	New York Public Health Law
QHP	Qualified Health Plan
RFP	Request for Proposals
SHOP	Small Business Health Options Program
State	New York State

Definition

The term "Offeror" shall be defined as an individual, organization or company that is external to the State of New York and submits a proposal in response to this RFP. For the purposes of this RFP, the following terms will be used interchangeably: Offeror, Offeror, Bidder, Consultant, Contractor, Firm, Proposer and Vendor. The term "Contractor" refers to the successful Offeror.

1. INTRODUCTION

The NYS Department of Health (DOH) is seeking a Contractor to provide independent external auditing services for the NY State of Health, The Official Health Plan Marketplace (the NY State of Health or Marketplace), which is a part of the DOH. The Contractor selected shall perform an annual independent external financial and programmatic audit of the Marketplace. In addition, related assignments within the scope of the RFP may be required to address additional ad-hoc tasks as needed, such as new or revised regulatory requirements and/or standards.

This RFP outlines the terms and conditions and all applicable information required for the submission of a proposal. Offerors should pay strict attention to the proposal submission deadlines and all other mandatory requirements outlined in this RFP to prevent disqualification. Offerors should follow the format and instructions contained in this document. The term of the contract will be five (5) years. Questions regarding this RFP shall be directed only to the designated contacts listed in this document.

2. BACKGROUND

2.1 Creation of the Marketplace

By Executive Order #42 dated April 12, 2012, Governor Andrew M. Cuomo established the New York Health Benefit Exchange within the DOH in conformity with the Patient Protection and Affordable Care Act (ACA). On December 14, 2012, the United States Department of Health and Human Services (HHS) granted New York approval to operate a state based exchange. In August 2013, the New York Health Benefit Exchange was renamed NY State of Health.

NY State of Health is an organized, online marketplace through which individuals and small businesses may shop for health insurance in a way that allows them to easily compare health plan options. Through the Marketplace website, individuals may apply for and enroll in Insurance Affordability Programs including Medicaid, Child Health Plus, and Qualified Health Plans (QHPs) for which qualified individuals receive advanced premium tax credits and cost sharing reductions to help pay for coverage. Individuals can also enroll in QHPs at full premium. The Small Business Marketplace of the NY State of Health (also known as the Small Business Health Options Program or "SHOP") allows small employers (currently defined in New York as 50 or fewer employees) to enroll in QHPs certified by the Marketplace. A small business may define the coverage tier (i.e. silver) and the contribution level, and employees may choose a QHP that best meets their needs. Employers with fewer than 25 employees and meeting certain other requirements may qualify for small business tax credits using a sliding scale based on number of employees and average salary.

The Marketplace opened for business on October 1, 2013. The initial open enrollment period ran from October 1, 2013 through March 31, 2014. To date, well over 1 million individuals have enrolled in health insurance coverage through the Marketplace.

2.2 Functional Requirements of the Marketplace

The Marketplace has several functional requirements pursuant to federal regulation,¹¹ including:

1. Regularly consulting with Regional Advisory Committees comprised of stakeholders across New York State;
2. Conducting eligibility determinations for applicant participation in the Marketplace and for Insurance Affordability Programs, including premium tax credit calculation;
3. Enrolling eligible applicants into QHPs;
4. Conducting appeals of eligibility determinations for applicant participation in the Marketplace and for Insurance Affordability Programs;
5. Allowing an eligible employer to make one or more QHPs available to employees and providing premium aggregation services to such employers through the Small Business Marketplace, including:
 - a. Providing each qualified employer with a bill on a monthly basis that identifies the employer contribution, the employee contribution, and the total amount that is due to the QHP issuers from the qualified employer;
 - b. Collecting from each employer the total amount due and making payments to QHP issuers in the Small Business Marketplace for all enrollees; and
 - c. Maintaining books, records, documents, and other evidence of accounting procedures and practices of the premium aggregation program for each benefit year for at least 10 years.
6. Certifying individual health insurance plans as “Qualified Health Plans” or “QHPs” that satisfy the requirements to be offered on the Marketplace and contracting with the issuers of QHPs to make them available through the Marketplace; and
7. Implementing Navigator and Certified Application Counselor Programs to provide direct assistance to individuals in applying for coverage through the Marketplace.

¹¹ 45 Code of Federal Regulations (“CFR”), Part 155: Exchange Establishment Standards and Related Standards Under the Affordable Care Act

2.3 Premium Billing and Collection

The Marketplace does not collect premiums from individuals that enroll in health insurance through the Marketplace. Rather, the Marketplace transmits enrollment information to the QHP issuer that has been selected and the issuer bills the enrollee directly.

For small businesses, the NY State of Health's Small Business Marketplace provides each enrolled business with a single bill on a monthly basis that lists the employer contribution, the employee contribution, and the total amount of premium due. The small business returns its single payment to the Marketplace, and the Marketplace remits the premium payment to the individual QHP issuer or issuers that were selected by employees.

The Marketplace tracks non-payment and enforces the dunning and termination process. The billing of small businesses, collections and corresponding disbursements to individual QHP issuers are captured in PeopleSoft.

2.4 Marketplace Finances

The Marketplace's monthly expenses are paid by DOH, posted in PeopleSoft, and used in financial statement preparation.

The funding for the implementation of the Marketplace was provided by federal establishment grants administered by the Center for Consumer Information and Insurance Oversight of HHS (CCIIO). Consistent with federal requirements and the Executive Order, starting on January 1, 2015, the Marketplace must be self-sustaining.

2.5 Oversight and Program Integrity Requirements¹²

1. DOH, for the Marketplace, must:
 - a. Keep an accurate accounting of Marketplace receipts and expenditures in accordance with Generally Accepted Accounting Principles (GAAP).
 - b. Monitor and report to the HHS on Marketplace related activities.
 - c. Collect and report to HHS on performance monitoring data.

¹² 45 CFR 155.1200

2. DOH, for the Marketplace, must at least annually provide HHS, in a manner specified by HHS, the following:

- a. A financial statement presented in accordance with GAAP by April 1 of each year.
- b. Eligibility and enrollment reports.
- c. Performance monitoring data.

3. DOH must provide HHS with the results of the annual independent external financial and programmatic audit of the Marketplace that follows Generally Accepted Governmental Auditing Standards (GAGAS) and addresses:

- a. Compliance with the requirement to keep an accurate accounting of Marketplace receipts and expenditures in accordance with GAAP.
- b. Compliance with the requirements of a State Exchange pursuant to Part 155 of Title 45 of the Code of Federal Regulations, which is Exchange Establishment Standards and Other Related Standards under the ACA.
- c. Processes and procedures designed to prevent improper eligibility determinations and enrollment transactions.
- d. Identification of errors that have resulted in incorrect eligibility determinations.

4. DOH must inform HHS of any material weakness or significant deficiency identified in the audit and develop and inform HHS of a corrective action plan for such material weakness or significant deficiency.

5. DOH must make a summary of the results of the external audit public.

3. DETAILED SPECIFICATIONS

A. Minimum Eligibility Requirements

1. Offeror must have three (3) years of experience with financial and programmatic audits following the rules of GAAP and GAGAS.
2. Offeror must be an Independent Certified Public Accounting (CPA) Firm licensed in New York;

B. Preferred Qualifications

1. Knowledge of the Affordable Care Act, including the establishment of State Exchanges and their reporting requirements.
2. Five (5) years of experience in providing similar auditing services to government agencies.

3.1 Scope of Work

The Contractor selected as a result of the RFP will perform independent external financial statement and programmatic audits of the Marketplace for the period beginning October 31, 2013 and ending December 31, 2014, and for each calendar year thereafter covered by the awarded contract; together with related work or services within the scope of the RFP for ad-hoc tasks. DOH will require an annual audit report and audited set of financial statements to be issued as a product of the audit no later than February 15th of each year.

The results of the audit will be reported on an annual basis to Marketplace management and federal and State agencies as required. Contractor and any subcontractors must retain documentation related to the external audit for ten (10) years from the date of completion of each audit. Documentation includes paper and electronic media and other evidence of accounting procedures and practices.

The Marketplace is modeled to operate similar to an enterprise fund under the DOH. The financial statements the Marketplace anticipates issuing on an annual basis are:

- (i) Statement of Net Assets
- (ii) Comparative Statement of Revenues, Expenses and Changes in Fund Net Assets
- (iii) Statement of Cash Flows

3.1.1 New York State Single Audit OMB A-133

As described above, federal grants support the planning and first 15 months of the operation of the Marketplace, through December 31, 2014.

As a program administered by the DOH, the Marketplace is covered by the annual New York State Single Audit (OMB A-133), which includes the expenditure and use of federal grant funds. An independent, third-party firm is currently conducting the OMB A-133. The current OMB A-133 covers the State fiscal year period of April 1, 2013 through March 31, 2014.

The Contractor will not be required to duplicate tasks that have been performed in connection with the completion of the OMB A-133 audit. Reliance on the opinion expressed by the firm completing the OMB A-133 is expected to the extent that it is applicable and available, in accordance with GAAP and GAGAS.

3.2 Specific Tasks

The core tasks of the Contractor with respect to the annual audit in accordance with 45 CFR 155.1200(d) are set forth below. In addition, reference is made to Exhibits 1 of this RFP(45 CFR Part 155, Subpart M-Oversight and Program Integrity Standards for State Exchanges:

3.2.1 Financial

The Contractor shall review:

- a. Financial management structure including monitoring of financial and budget activities.
- b. Policy and procedures for accounting for Marketplace receipts and expenditures in accordance with GAAP.
 - (i) Review of Marketplace financial statements.
 - (ii) Sampling of receipts and expenditures to assure accuracy.
- c. Internal controls and related financial and accounting policies and procedures, including:
 - (i) Contracts, including applicable invoices, proposals and payment records.
 - (ii) Process for reporting and approving payments, and for identifying erroneous or improper payments.
 - (iii) Segregation of duties.
 - (iv) Policies and procedures related to fraud, waste and abuse.
 - (v) Records maintenance.

3.2.2 Program: Requirements of State Exchanges¹³

The Contractor must assess the Marketplace's compliance with the minimum functions of a State exchange described in subparts C, D, E, F, G, H and K of Part 155 of Title 45 of the Code of Federal Regulations, which include, but are not limited to, the following:

¹³ 45 CFR 155.1200 (d) (2)

a. General Marketplace Functions¹⁴

- (i) Providing consumer assistance tools and programs, including a toll free call center, website, consumer information that is accessible and in plain language, a Navigator program, and outreach and education;
- (ii) Navigator program established and standards in place, including training standards;
- (iii) Agent and broker agreement in place;
- (iv) Certified Application Counselor program in place;
- (v) Process for an applicant or enrollee to designate an Authorized Representative;
- (vi) Standards for Marketplace notices are in place;
- (vii) Standards and protocols for electronic transactions with QHP Issuers have been implemented;
- (viii) Privacy and security standards to protect personally identifiable information have been implemented.

b. Exchange Functions in the Individual Market: Eligibility Determinations for Exchange Participation and Insurance Affordability Programs¹⁵

- (i) Processes are in place for making eligibility determinations for Medicaid, Child Health Plus, advance payments of the premium tax credit and cost-sharing reductions in compliance with federal regulations.
- (ii) Processes are in place to determine eligibility for enrollment in a QHP through the Marketplace in compliance with federal regulations;
- (iii) Process in place to verify eligibility for minimum essential coverage other than through an employer-sponsored plan;
- (iv) Process in place for eligibility redeterminations within a benefit year;
- (v) Process in place for conducting annual redetermination of eligibility;
- (vi) Processes are in place for administration of advance payments of the premium tax credit (APTC) and cost-sharing reductions (CSR) in accordance with federal regulations;
- (vii) Special eligibility standards and process for Indians is in place;
- (viii) Notices of eligibility determination provided to applicants includes notice of the right to appeal and instructions regarding how to file an appeal, in accordance with federal regulation.

c. Enrollment in Qualified Health Plans¹⁶

- (i) Processes in place for accepting a QHP selection from an eligible applicant and transmitting the information necessary to enable the QHP issuer to enroll the applicant;
- (ii) Use of a single streamlined application;

¹⁴ 45 CFR 155, Subpart C

¹⁵ 45 CFR Part 155, Subpart D

¹⁶ 45 CFR Part 155, Subpart E

- (iii) Use of initial and annual open enrollment periods;
- (iv) Process to require issuer application assisters to meet the requirements set forth in 45 CFR 156.1230(a)(2) with respect to: (1) training, (2) privacy and security standards and (3) applicable state law;
- (v) Standards and procedures for special enrollment periods in accordance with federal regulation;
- (vi) Standards and procedures for termination of coverage in accordance with federal regulation.

d. Appeals of Eligibility Determinations for Marketplace Participation and Insurance Affordability Programs¹⁷

- (i) Establishment of an appeals process in accordance with 45 CFR 155.505;
- (ii) Notice of appeals procedure provided to applicants;
- (iii) Process in place for accepting appeal requests;
- (iv) Process to continue to consider an applicant eligible while the appeal is pending in accordance with applicable regulations;
- (v) Process for dismissing an appeal;
- (vi) Informal resolution process complies with applicable standards;
- (vii) Process for expedited appeals;
- (viii) Procedure for appeals decisions;
- (ix) Appellant access to appeal record;
- (x) Public access to appeal decisions, subject to applicable law regarding privacy;
- (xi) Employer appeals process regarding determinations that the employer does not provide minimum essential coverage or coverage that is affordable with respect to an employee.

e. Eligibility Process for Exemptions¹⁸

Notice is provided regarding the application process through HHS for an exemption from the shared responsibility payment.

f. Exchange Functions: Small Business Health Options Program (SHOP):¹⁹

- (i). Establishment of the SHOP, also known as a Small Business Marketplace, which complies with the standards in 45 CFR Part 155, Subpart H;
- (ii) Eligibility standards for qualified employers and qualified employees;
- (iii) Eligibility determination process in place;
- (iv) Process in place to enroll employees into QHPs within the Small Business Marketplace;
- (v) Enrollment periods;
- (vi) Application standards are in place;

¹⁷ 45 CFR Part 155, Subpart F

¹⁸ 45 CFR Part 155, Subpart G

¹⁹ 45 CFR Part 155, Subpart H

- (vii) Policies are in place regarding termination of coverage;
- (viii) Procedures are in place for employer and employee eligibility appeals.

g. Certification of Qualified Health Plans²⁰

- (i) Standard process in place for certifying QHPs;
- (ii) Process in place to receive information from QHP issuers on rates, benefits and cost-sharing requirements;
- (iv) Certification standards in place related to advance payments of the premium tax credit and cost-sharing reductions;
- (v) Collection of information regarding transparency in coverage and transparency of cost-sharing information;
- (vi) QHP network adequacy requirements are in place;
- (vii) Process to evaluate the service area of a QHP;
- (viii) Process in place for certification of stand-alone dental plans;
- (ix) Process for recertification of QHPs;
- (x) Process for decertification of health plans as QHPs.

3.3 Ad-Hoc Tasks

DOH may at any time, by written notice, make changes or additions to work or services within the general scope of the contract resulting from this RFP for ad-hoc tasks. Such as: auditing tasks that are necessitated by new or revised provisions of state or federal regulations, new or revised reporting requirements or standards imposed upon state exchanges by regulatory authorities. Any such tasks shall require the Contractor to prepare a proposal for the completion of the work that is subject to the prior approval of DOH. Following DOH approval, such related ad-hoc tasks shall be billed utilizing the ad-hoc blended hourly rate provided in the successful Offeror's cost proposal.

3.4 Deliverables

3.4.1 Audit Work Plan

The first audit work plan shall be delivered to DOH within thirty (30) business days of approval of the contract by the Office of the State Comptroller (OSC). In subsequent years (2-5), an audit work plan is required and shall be provided no less than twenty (20) business days prior to audit work commencing. Audit work plans must be approved by DOH in writing prior to the work commencing.

²⁰ 45 CFR, Part 155, Subpart K

3.4.2 Preliminary Annual Audit Findings

The Contractor shall present preliminary annual audit findings and recommendations resulting from the audit to designated DOH staff. The Contractor will allow DOH sufficient time to respond to any misstatement of fact prior to issuance of final reports.

3.4.3 Material Findings

The Contractor will report any material violations discovered during the contract term to DOH staff immediately. A material violation is one that has a significant adverse impact on the Marketplace program function or proper reporting requirements.

3.4.4 Final Certified Annual Audit Reports

The Contractor shall submit a certified annual audit report which includes an Executive Summary, Audit Findings and Recommendations to the DOH upon completion of each audit no later than February 15th of each year, unless another date is specified by DOH. Such reports shall include, but not be limited to:

- i. a description of the scope of the audit;
- ii. a description of the audit methodology including any quantitative and qualitative tests performed by auditor;
- iii. that the audit was conducted in accordance with GAGAS and GAAP;
- iv. nature of confidential or sensitive information that may have been omitted;
- v. specific findings from both the financial and programmatic audits, including a summary of compliance or non-compliance with all requirements;
- vi. material weaknesses, significant deficiencies and violations found;
- vii. recommended improvements to operating procedures to comply with programmatic and financial requirements; and
- viii. a significant statement setting forth:

“An independent, external auditor attests that the Marketplace has demonstrated accurate accounting of activities, receipts and expenditures to CMS and prepared an accurate annual financial statement in accordance with GAAP.”

3.4.5 Acceptance of Deliverables

All deliverables will be submitted to designated DOH staff, in writing, in a comprehensive and professional manner, addressing all deliverable requirements, and should be thoroughly edited.

Submission of required deliverables must occur within the designated timeframe outlined in the approved Audit Work Plan. Upon completion of each deliverable, the Contractor will submit the completed deliverable to DOH for approval. The selected Contractor will be notified in writing of approval of each deliverable by DOH.

In the event that a submitted deliverable is not satisfactory, DOH will notify the Contractor with a list of deficiencies. The Contractor will be required to address the stated deficiencies and resubmit the deliverables within ten (10) working days of receipt of the State's comments, unless an extension is requested in writing by the Contractor and approved in writing by the State. Contractor shall respond to all State comments and incorporate such response into its resubmission of the deliverable. Full response by the Contractor to the State's comments within ten (10) working days will constitute fulfillment of that deliverable unless the State provides, within ten (10) working days of receipt of the resubmitted deliverable, notice of a continuing deficiency. If notice of a continuing deficiency is given, the State will provide to the Contractor a detailed description of the deficiencies that continue. If the Contractor fails to meet all criteria within the timeframes mentioned above, the State reserves the right to withhold payment, until the State is satisfied that all the deliverables have been achieved as set forth in this Agreement.

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

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

The intent of the above paragraph is to preclude the introduction of new and unrelated items during subsequent reviews, which could have been identified by a thorough review of a previously submitted deliverable.

Such reviews and resubmissions shall not be construed as a waiver of any deliverable or obligation to be performed under this Agreement, nor of any scheduled deliverable date, nor any rights or remedies provided by law or under this Agreement, nor State comment on any deliverable, relieve the Contractor from any obligation or requirement of this Agreement. In the event the State fails to review and accept or reject a deliverable within fifteen (15) working days of receipt, the Contractor shall notify the State of the late response and proceed with performance as if acceptance had been received from the State. However, such failure by the State to respond shall not constitute acceptance of the deliverable by the State. If, in such circumstances, the State subsequently requires material changes to the deliverable, the parties shall fairly consider and mutually agree as to the effect of the untimely rejection or acceptance on the delivery or implementation schedules. In no event shall the Contractor be entitled to any price increase due to the need to correct deficient deliverables.

4. PROPOSAL REQUIREMENTS

The Offeror should submit a proposal that includes all of the information requested in this RFP. All proposals must be submitted on or before the Proposal Due Date specified in this RFP. Emphasis should be placed on providing clear and concise responses.

The Offeror is advised to thoroughly read and follow all instructions contained in this RFP.

No information is required beyond what is specifically requested. The DOH requests that all Technical Proposals be bound and organized with dividers identified to match the specific information requested below:

Offeror should not include any promotional material with submitted proposal.

4.1 Technical Proposal Requirements

The purpose of the Technical Proposal is to provide Offerors with an opportunity to set forth their qualifications, competency, and capacity to provide the required services, in accordance with applicable laws and regulations and the requirements of this RFP. The following components below are mandatory with the exception of the Table of Contents:

1. Transmittal Letter
 2. Table of Contents
 3. Executive Summary
 4. Approach to Project
 5. Offeror Experience and Qualifications
-

Each page of the proposal should be numbered consecutively from the beginning of the proposal through all appended material. Narrative should be double spaced using 12 point font or larger, with a minimum of 1 inch margins on all sides, and adhere to the maximum page limit of 30 pages (not including attachments/appendices referenced in this RFP). A complete proposal for this RFP must be comprised of two (2) separate sealed proposals: Technical and Cost.

4.1.1 Transmittal Letter

Do not include any information regarding the cost of the proposal in the Transmittal Letter or in any part of the Technical Proposal.

A transmittal letter must be included as part of the Offeror's Technical Proposal. The submission of the Transmittal Letter is a minimum requirement (pass/fail) for consideration of the proposal. Please reference Section 5 of this RFP to ensure compliance with the mandatory requirements.

4.1.2 Table of Contents

The Table of Contents should clearly identify the location of all material within the proposal by section and page number.

4.1.3 Executive Summary

The Technical Proposal must include an Executive Summary that provides the Department with a brief overview of the contents of the Proposal.

The Executive Summary should describe the Offeror's understanding of the services that the Department is seeking through the RFP. The Executive Summary will be evaluated as part of the Technical Evaluation. The Executive Summary should include a narrative that outlines:

- a. the strengths of the Offeror and staff
- b. the key attributes of Offeror's proposed approach to meet the requirements of the RFP

Do not include any information regarding the cost of the proposal in the Executive Summary or in any part of the Technical Proposal.

4.1.4 Approach to Project

The proposed approach should include, but not be limited to, a detailed explanation of the bidder's specific plan for managing and performing the required tasks and activities, including the use of any potential subcontractors, for each of the project areas described therein.

The Offeror should describe its proposed approach to the audit in each of the major areas listed below. Proposals should include a detailed explanation of the Offeror's specific plan for performing the required tasks.

A. Audit Planning

- Identify staff by title, consistent with those defined in Section 4.2.1, describe their responsibilities in the engagement, and how their specific capabilities align them with the scope of this RFP:
 - The Engagement Partner and Project Manager must be specifically identified.
Failure to identify these key staff members will result in disqualification
 - A minimum of one individual per title should be proposed
 - A higher level staff member may serve in a lesser role

- A lower level staff may not serve in a higher role
(Staff titles are found in Section 4.2.1, Description of Required Staff Titles, descending from highest to lowest role)

-Specific information that should be provided for each staff person includes:

- (i) Name of Individual
 - (ii) Individual's title and role in Offeror's organization
 - (iii) Experience should include a listing of accounting and auditing assignments with New York State agencies, municipalities and other governmental agencies and roles on the assignments (i.e. Project Manager)
 - (iv) All relevant New York State licensure or certifications and the current status of each
 - (v) Description of individual's experience, qualifications and training that makes them suitable for this engagement
 - (vi) Resumes for the proposed team including any subcontracted personnel
- Describe how the Offeror will assure their ability to respond quickly and efficiently to assignments
 - Indicate how the availability of qualified staff will be maintained over the term of the contract. If substitution of staff is required, the qualifications of the newly appointed staff will need to meet or exceed the abilities of those staff identified in the original proposed approach. Any substitutions will be subject to DOH approval in writing.

B. Field Work / Testing

- Submit a summary description of the field work/transaction testing plan that the Offeror proposes. The summary should include the following:
 - The types of transactions the Offeror proposes to test
 - Method the Offeror will use to determine appropriate sample sizes
 - Offeror's plan for interviews with key Department staff
 - Offeror's plan for reviewing internal documents and policies
 - Offeror's plan for identifying and observing processes

C. Final Reports

- Provide a detailed outline of the Final Report:
 - Opinion
 - Financials
 - Notes
 - Other attachments as needed

- Describe how the Offeror will meet the timeframe required for submission of annual audit reports
- Describe any other end of engagement notices or reports that may be provided

4.1.5 Offeror Experience, Qualifications, and References

Firms should submit a proposal that demonstrates or includes the following:

- a. New York State Licensure and Certifications to comply with NY State Department of Education certification as a CPA Firm.
- b. Demonstration of programmatic and financial and audit experience following the rules of GAAP or GAGAS.
- c. A summary of the Offeror’s technical expertise and unique capabilities. This narrative should highlight the Offeror’s ability to provide auditing services to the Marketplace. The narrative should also include a description of the direct experience of the Offeror with New York State or other governmental entities relating to auditing services and any relevant experience with the Affordable Care Act.
- d. The Offeror should affirm its ability to provide staff to meet with DOH representatives in Albany, NY. DOH will make space available to Contractor’s personnel on an as needed basis to facilitate the audit in an effort to reduce project costs.
- e. Offerors should detail similar engagements with comparable size and scope of the detail outlined in this RFP. Each engagement should include:
 - (i) Name of client organization
 - (ii) Type of client i.e. government entity (local, State, Federal), private company
 - (iii) Engagement description
 - (iv) Engagement duration including start/end dates
 - (v) Number of Offeror staff as (Full Time Equivalent Employees FTEs) involved in the engagement
 - (vi) Any other information regarding the engagement that would assist DOH in determining the success experienced by the client
- f. Provide a reference contact for each of the clients listed.

References will be checked as follows:

References will be contacted for the successful Offerer in the order in which they are listed on the Reference Form, Attachment 6.

Attempts will be made to contact each reference on Monday through Friday during normal business hours. Reference checks will be used to verify submitted information related to the quality of services, ability to perform, and responsiveness of the Offeror.

4.2 Cost Proposal

The Offeror's Cost Proposal includes two (2) predetermined yearly deliverables;

- (i). The Audit Work Plan and;
- (ii). The Final Audit Report.

The Cost Proposal should be submitted in a separate sealed envelope, not included with the Technical Proposal and must include the following:

A. Contract Year One (1) Cost

Offerors will supply a year one (1) cost that shall take into consideration the following factors:

- (i). Year one (1) will encompass a 15 month audit period
- (ii). Year one (1) is a start-up period for the Exchange
- (ii). Year one (1) is inclusive of an OMB A-133 Audit Report

Due to these factors, a maximum of 33% of the total five (5) year contract cost can be allocated to year one (1). Those proposals whose year one (1) cost contains a price in excess of 33% of their total contract cost (not including ad-hoc rates in this calculation), will be disqualified. Please see Attachment 4 Cost Proposal.

B. Contract Years Two through Five (2-5)

Offerors must submit one annual total cost for year two (2) and that total will be multiplied by four (4) to determine years 2-5 total cost. This multiplier of four (4), represents the total cost of contract years two (2), three (3), four (4), and five (5). This total will be inclusive of salaries, fringe benefits, administrative costs, overhead, indirect, travel, parking, presentation costs, and any subcontractor costs.

C. Ad-Hoc Blended Hourly Rate

A blended hourly rate is to be provided on Attachment 4, Cost Proposal, and take into consideration each of the four titles listed below and described in Section 4.2.1. This rate will remain constant over the contract term. In the event that any ad-hoc projects occur during the term of the contract, this rate shall apply.

- (i) Engagement Partner
- (ii) Audit Manager
- (iii) Senior Auditor/Accountant
- (iv) Staff Auditor/Accountant

4.2.1 Description of Required Staff Titles

- (i). **Engagement Partner:** A senior professional with generally 10-15 years of experience. Extensive experience and knowledge of auditing activities, both related to financial and programmatic.

General Duties: Project oversight, management of Contractor's team, liaison with DOH to plan and manage audit engagements. Understands the client business and provide appropriate audit services to meet client expectations. Maintain up-to-date knowledge regarding standards, policies and regulations. Address client concerns and escalate complex issues to management for immediate resolution.

- (ii). **Audit Manager:** A mid-level professional with generally 5-10 years of increasing responsibility and independent auditing work and experience. Individual requires little supervision, leads groups of auditors, provides oversight and guidance for auditors and may be responsible for training staff. Ensures standard auditing practices are followed. Possesses Certified Public Accountant (CPA) certification and may have other relevant professional designations.

General Duties: Analyze data and form preliminary conclusions and/or recommendations, but reports to Engagement Partner for overall direction on project and specific policy interpretation. May supervise lower level staff.

- (iii). **Senior Auditor/Accountant:** Mid-level professionals with generally 5-10 years of experience and supervisory responsibilities. Possess Certified Public Accountant (CPA) certification or any other relevant professional designation.

General Duties: Assist with annual external audit and examinations. Complete requested materials. Assist in preparing assigned schedules for the annual audit. Thorough understanding of GAAP and GAGAS and knowledge of statutory accounting principles.

- (iv). **Staff Auditor/Accountant:** Entry-level staff with 1-5 years of experience in general accounting processes. A staff auditor/accountant should possess a working knowledge of mathematics and accounting principles.

General Duties: Assist the Senior Auditor/Accountant. Technical support and data manipulation, but not necessarily drawing conclusions or making recommendations.

5. METHOD OF AWARD

5.1 Mandatory Requirements (Pass/Fail)

All proposals will be reviewed by DOH to ensure that minimum criteria are met. Proposals that do not meet the minimum criteria outlined below will not be forwarded to the review panel for evaluation and rating.

The following items are considered pass/fail:

- 1) A complete proposal is received before the submission deadline;
 - 2) A transmittal letter is submitted with the Offeror's Proposal;
 - 3) An Approach to Project is submitted with the Offeror's Proposal;
 - 4) A signature of an official of the Offeror's organization who is authorized to bind the organization to the provisions of the RFP and Proposal;
 - 5) A statement that the Offeror accepts the contract terms and conditions contained in this RFP including any exhibits and attachments;
 - 6) A statement that the proposal of the Offeror and all provisions of the proposal will remain valid for a minimum of 365 calendar days from the closing date for submission of proposals;
 - 7) Offeror must have three (3) years of experience with financial and programmatic audits following the rules of GAAP and GAGAS.
 - 8) Offeror must be an Independent Certified Public Accounting (CPA) Firm licensed in New York;
 - 9) The Engagement Partner and Project Manager must be specifically identified as defined in Section 4.2.1.
-

5.2 Evaluation Criteria

DOH will conduct a comprehensive, fair and impartial evaluation of each proposal in response to this RFP according to New York State laws and regulations and DOH rules.

The basis of the award will be the highest total combined Technical Evaluation and Cost Evaluation score. The evaluation of proposals will determine which proposal provides the "Best Value" to the State. Under NYS Procurement Guidelines, "Best Value" is the basis for awarding service contracts, which optimizes quality, cost and efficiency among responsive and responsible offers. Separate teams of staff will evaluate the Technical and Cost Components.

All proposals meeting the mandatory requirements shall be subject to an evaluation for the purposes of selecting the Offeror with whom a contract will be signed.

Technical and cost proposals for individual Offerors will be separately reviewed and scored by the Evaluation Committee as described below.

The Proposal scoring will be calculated and rounded to the second decimal point (.00) and will be performed as follows:

5.2.1 Technical Score (70 Points Maximum)

Technical proposals will be evaluated and scored by the Technical Evaluation Committee. Each member of the Committee will independently evaluate and score all technical proposals.

A total technical score for each proposal will be calculated by averaging all evaluators' technical scores. The evaluation of the Offeror's Technical Proposal will be based on the written responses for the following criteria:

- (i). Executive Summary
- (ii). Approach to Project
- (iii). Offeror Experience and Qualifications (including Preferred Qualifications)
- (iv). Staff Experience and Qualifications

A maximum score of 70 will be awarded to the Offeror with the highest scoring technical proposal. Other proposals will receive a normalized technical score based on the following formula:

Formula: $(x / y) * 70$ where:

x = technical score of proposal being scored

y = technical score of highest technical scoring proposal

70 = total technical points available

5.2.3 Cost Score (30 Points Maximum)

The evaluation of the Offeror's Cost Proposal will be based on the total costs supplied by the Offeror within the Cost Proposal Form, Attachment 4.

A maximum score of 30 will be awarded to the Offeror with the lowest cost as presented on the Cost Proposal Form.

The following formula will be used to determine each Offeror's final cost proposal score:

Formula: $(p / q) * 30$ where:
p = bid price of lowest bid
q = bid price of proposal being scored
30 = total cost points available

5.2.4 Total Combined Score

There is a maximum achievable total score of 100 (Technical proposal score 70 plus Cost proposal score 30). Offerors will be ranked from high to low according to their total combined Technical and Cost proposal scores.

The Offeror with the highest total combined score, who is deemed to be a responsible vendor by the DOH, will be recommended for award.

In the event of a tie among final bidder scores, the determining factor(s) for award, in descending order of importance, will be:

- i. Lowest cost
- ii. Minority/Women-Owned Business Enterprise (MWBE) utilization
- iii. Past experience
- iv. References

6. ADMINISTRATIVE

6.1 Issuing Agency

This Request for Proposal (RFP) is a solicitation issued by the NYS Department of Health. The DOH is responsible for the requirements specified herein and for the evaluation of all proposals.

6.2 Inquiries

Any questions concerning this solicitation must be directed to:

Ms. Tara Barbato
New York State Department of Health
Empire State Plaza, Corning Tower Room 2756
Albany, NY 12237
Telephone: 518-474-7896
Email Address: Tara.Barbato@health.ny.gov

Questions and answers, as well as any RFP updates and/or modifications, will be posted on Department of Health DOH's website at <http://www.health.ny.gov/funding/> by the date and time shown on the cover page of this RFP. Offerors wishing to receive these documents via mail must send a request, in writing, to DOH at the address above.

6.3 Submission of Proposals

Interested vendors should submit 3 originals and 4 signed copies of their Proposal, together with one (1) copy of the complete Proposal in a standard, searchable PDF, formatted on a closed session CD-R (not CD-RW) with copy/read permissions, not later than the date and time shown on the cover page of this RFP.

Responses to this solicitation should be clearly marked INDEPENDENT EXTERNAL
AUDIT SERVICES FOR THE NY STATE OF HEALTH
PROPOSAL - and directed to:

New York State Department of Health
NY State of Health
Corning Tower, Room 2462
Albany, NY 12237
Attention: Tara Barbato

It is the Offeror's responsibility to see that its proposal is delivered to Room 2462 prior to the date and time of the due date. Late proposals due to delay by the carrier or not received in DOH's mail room will not be considered.

1. The Bid Form should be filled out in its entirety.
2. The responsible corporate officer for contract negotiation should be listed. This document should be signed by the responsible corporate officer.
3. All evidence and documentation requested under Section 4.1, Proposal Requirements should be provided at the time the proposal is submitted.

6.4 RESERVED RIGHTS

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 Offeror 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 an Offeror's qualifications, experience, ability or financial standing, and any material or information submitted by the Offeror 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 Offerors 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 Offeror within the scope of the RFP in the best interests of the state;
13. Conduct contract negotiations with the next responsible Offeror, should the agency be unsuccessful in negotiating with the selected Offeror;
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 365 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 Offeror's proposal and/or to determine an Offeror's compliance with the requirements of the solicitation.

6.5 Payment

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:

The State shall pay the Contractor upon the Contractor's completion of first deliverable, "work plan", at the amount specified on Attachment 4 for the applicable yearly amount, and a submission of an invoice to the State and acceptance of such report and invoice by the State. The State shall pay the Contractor upon the submission of second deliverable, "Final Audit Report", at the amount specified on Attachment 4 for the applicable yearly amount, and an invoice by the Contractor and acceptance of such report and invoice by the State.

Payment shall be contingent upon full and proper performance, by the Contractor, of the audit activities specified in the RFP and the Contractor's proposal as modified or supplemented by the terms of this agreement, and the Contractor's submission and the State's acceptance of the deliverables identified in the RFP, the Contractor's proposal, and this Agreement.

In the event the contractor fails, in the reasonable judgment of the State, to properly perform in accordance with the performance standards, payment may be withheld by the State until such time as the State reasonably determines that the performance standards are met.

If the performance standard in question is subsequently achieved or furnished as determined by the State, payment shall be released to the Contractor.

If awarded a contract, the Contractor shall submit invoices and/or vouchers, together with any supporting documentation required by the contract, to the State's designated payment office:

Preferred Method: Email a .pdf copy of your signed voucher to the BSC at: [DOH accounts payable@ogs.ny.gov](mailto:DOH.accounts payable@ogs.ny.gov) with a subject field as follows:

Subject: **Unit ID: 3450475 <<Contract #>>**

Note: Do not send a paper copy in addition to your emailed voucher

Alternate Method: Mail vouchers to BSC at the following U.S. postal address:

**NYS Department of Health
Unit ID 3450475
PO Box 2093
Albany, NY 12220-0093**

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 Office of 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

No payment will be made until the Contract has received all required approvals. The Department is not responsible for and will not pay local, State, or federal taxes. All costs associated with the contract must be stated in U.S. currency.

6.6 Term of Contract

The contract term will be for five (5) years and will be effective upon approval of the NYS Office of the State Comptroller. Work cannot begin until the Office of the State

Comptroller approves the agreement resulting from this RFP process. This agreement may be canceled at any time by Department of Health (DOH) 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.

6.7 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 ten (10) business days from date of award or non-award announcement.

6.8 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 in Chapter XI Section 17 of the Guide to Financial Operations (GFO). Available on-line at:

<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>

6.9 Vendor Responsibility Questionnaire

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 ciohelpdesk@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 Department of Health (DOH) of Health or the Office of the State Comptroller for a copy of the paper form. Bidders should also complete and submit the Vendor Responsibility Attestation (Attachment 3).

6.10 State Consultant Services Reporting

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

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 Department of Health (DOH), the Office of the State Comptroller, and Department of Civil Service.

Both of these forms can be found electronically at: <http://www.osc.state.ny.us/procurement/>.

6.11 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 Offerors with respect to determinations of non-responsibility and debarment; expands the definition of lobbying to include attempts to influence gubernatorial or local Executive Orders, Tribal–State Agreements, and procurement contracts;
- g. modifies the governance of the New York State Commission on Public Integrity

- h. provides that opinions of the Commission shall be binding only on the person to whom such opinion is rendered;
- i. increases the monetary threshold which triggers a lobbyist's obligations under the Lobbying Act from \$2,000 to \$5,000; and
- j. 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 Offerors. 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.

6.12 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 (DOH), contractor or other, and the results of such testing must be satisfactory to Department of Health (DOH) before web content will be considered a qualified deliverable under the contract or procurement.

6.13 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/>

6.14 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 DOH 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 Offeror 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 Department of Health (DOH) 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 Offeror non-responsive and non-responsible. Offerors shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

NYS Taxation and Finance Contractor Certifications Form ST-220-TD may be accessed electronically at: http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf.

NYS Taxation and Finance Contractor Certification Form ST-220-CA may be accessed electronically at: http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf.

6.15 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.

6.16 Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority and Women Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

NEW YORK STATE EXECUTIVE LAW ARTICLE 15-A

Pursuant to New York State Executive Law Article 15-A, the New York State Department of Health recognizes its obligation to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of New York State Department of Health contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements.

As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program.

The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that New York State Department of Health establish goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, New York State Department of Health hereby establishes an overall goal of 20% for MWBE participation, 10% for Minority-Owned Business Enterprises ("MBE") participation and 10% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs).

A contractor ("Contractor") on the subject contract ("Contract") must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that New York State Department of Health may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at:

<http://www.esd.ny.gov/mwbe.html>.

For guidance on how New York State Department of Health will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and New York State Department of Health may withhold payment from the Contractor as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a bidder on the Contract ("Bidder") agrees to submit the following documents and information as evidence of compliance with the foregoing:

A. Bidders are required to submit a MWBE Utilization Plan on Form #1 with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to New York State Department of Health.

B. New York State Department of Health will review the submitted MWBE Utilization Plan and advise the Bidder of New York State Department of Health acceptance or issue a notice of deficiency within 30 days of receipt.

C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the [AGENCY NAME, address phone and fax information], a written remedy in response to the notice of deficiency.

If the written remedy that is submitted is not timely or is found by New York State Department of Health to be inadequate, New York State Department of Health shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form #2. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

D. New York State Department of Health may disqualify a Bidder as being non-responsive under the following circumstances:

- a) If a Bidder fails to submit a MWBE Utilization Plan;
- b) If a Bidder fails to submit a written remedy to a notice of deficiency;
- c) If a Bidder fails to submit a request for waiver; or

d) If New York State Department of Health determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to New York State Department of Health, but must be made prior to the submission of a request for final payment on the Contract.

Contractors are required to submit a Contractor's Quarterly M/WBE Contractor Compliance & Payment Report on Form #3 to the New York State Department of Health address, phone and fax information, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women.

The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 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, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation.

This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Bidder further agrees, where applicable, to submit with the bid a staffing plan (Form #4) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the New York State Department of Health, a workforce utilization report identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

6.17 Iran Divestment Act

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerors Pursuant to The New York State Iran Divestment Act of 2012” list (“Prohibited Entities List”) posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

During the term of the Contract, should Department of Health (DOH) receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, Department of Health (DOH) will review such information and offer the person an opportunity to respond.

If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then Department of Health (DOH) shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

Department of Health (DOH) reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

6.18 Encouraging Use of New York Business IN Contract Performance

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors.

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. All bidders should complete Attachment 8 to indicate their intent to use/not use New York Businesses in the performance of this contract.

7. 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 – Workers Compensation and Disability Coverage unless the CONTRACTOR is a political sub-division of New York State, the CONTRACTOR shall provide proof, completed by the CONTRACTOR's insurance carrier and/or the Workers' Compensation Board, of coverage for:
 - Workers' Compensation, for which one of the following is incorporated into this contract as **Appendix E-1**:
 - **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 M - Participation by Minority Group Members and Women with Respect to State Contracts: Requirements and Procedures
- Appendix X – Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)

8. LIST OF ATTACHMENTS & EXHIBITS

1. No Bid Form
2. Lobbying Form
3. Vendor Responsibility Attestation
4. Cost Proposal Form
5. Transmittal Letter Template
6. References
7. M/WBE Procurement Forms
8. Encouraging Use of New York Businesses in Contract Performance
9. Sample Standard NYS Contract Language and Appendices

EXHIBIT:

1. 45 CFR Part 155, Subpart M – Program Integrity –

<http://www.ecfr.gov/cgi-bin/text-idx?SID=66ccaa87e5baadcd2ad0ffe016e866ab&node=pt45.1.155&rgn=div5#sp45.1.155.m>

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ATTACHMENT 1 NO BID FORM

PROCUREMENT TITLE: Independent External Audit Services for the NY State of Health
RFP #: 15845

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.

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ATTACHMENT 2 LOBBYING FORM

PROCUREMENT TITLE: Independent External Audit Services for the
NY State of Health

RFP#: 15845

Bidder Name:

Bidder Address:

Bidder Vendor ID No:

Bidder Fed ID No:

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

Offeror/Bidder affirms that it understands and agrees to comply with the procedures of Department of Health (DOH) 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 Department of Health (DOH) (DOH) and an Offeror during the procurement process. An Offeror/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 Offeror/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 Offeror/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

ATTACHMENT 2 LOBBYING FORM

Basis of Termination or Withholding:

(Add additional pages as necessary)

- Offeror/Bidder certifies that all information provided to Department of Health (DOH) with respect to State Finance Law §139-k is complete, true and accurate.

(Officer Signature) _____ (Date)

(Officer Title) _____ (Telephone)

(e-mail Address)

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ATTACHMENT 3 VENDOR RESPONSIBILITY ATTESTATION

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: _____

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ATTACHMENT 4 Cost Proposal

Instructions for Bidders:

The Bidder is required to submit this form in its entirety.

The cost proposal is based on two (2) predetermined deliverables and inclusive of salaries, fringe benefits, administrative costs, overhead, indirect, travel, parking, presentation costs and any subcontractors. The two (2) yearly deliverables are the Audit Work Plan and the Final Audit Report.

Contract Year one (1) Cost:

Offerors will supply a year one (1) cost that shall take into consideration the following factors:

- (i). Year one (1) will encompass a 15 month audit period
- (ii). Year one (1) is a start-up period for the Exchange
- (ii). Year one (1) is inclusive of an OMB A-133 Audit Report

Due to these factors, a maximum of 33% of the total five (5) year contract cost can be allocated to year one (1). Those proposals whose year one (1) cost contains a price in excess of 33% of their total contract cost (not including ad-hoc rates in this calculation), **will be disqualified.**

Contract Years Two through Five (2-5):

Offerors must submit one annual total cost for year two (2) comprised of two (2) yearly deliverables; Audit Work Plan and Final Audit Report. The offeror shall multiply this year two (2) total by four (4) to determine Year 2-5 Total Cost.

Ad-Hoc Blended Hourly Rate:

A flat hourly rate is to be provided on Attachment 4, Cost Proposal, and take into consideration each of the four titles listed below and described in Section 4.2.1. This rate will remain constant over the contract term. In the event that any ad hoc projects occur during the term of the contract, this rate shall apply.

- (i) Engagement Partner
- (ii) Audit Manager
- (iii) Senior Auditor/Accountant
- (iv) Staff Auditor/Accountant

ATTACHMENT 4 Cost Proposal

Offeror Printed Name: _____

Offeror Signature: _____

YEAR 1

Deliverable	Year 1 Cost	
Audit Work Plan	\$ _____ Not-To-Exceed 25% of Year 1 Total Cost	
Final Audit Report (15 Month Audit Period)	\$ _____	
	YEAR 1 TOTAL COST (A) cannot exceed 33% of Contract Total Cost (C).	YEAR 1 TOTAL COST \$ _____ (A)

YEAR 2

Deliverable	Year 2 Cost	
Audit Work Plan	\$ _____ Not-To-Exceed 25% of Year 2 Total Cost	
Final Audit Report	\$ _____	
	\$ _____ YEAR 2 TOTAL COST	YEAR 2-5 TOTAL COST [B is calculated by multiplying YEAR 2 TOTAL COST by four (4)] \$ _____ (B)

TOTAL COST

CONTRACT TOTAL Cost (C)	YEAR 1 TOTAL Cost (A) Cannot Exceed 33% of this Contract Total Cost (C).	\$ _____ (C) = A + B
------------------------------------	--	-------------------------

Notice: The YEAR 1 TOTAL COST (A) must not exceed 33% of the CONTRACT TOTAL COST (C). Cost proposals submitted with prices that exceed 33% of TOTAL COST (C) will be disqualified. Cost proposals that do not fully complete Yearly Contract Costs above (A, B, and C), and the Ad-Hoc Blended Hourly Rate below, will be disqualified.

AD-HOC COST

Blended hourly rate must be proposed that is inclusive of the staff described in section 4.2.1.

Ad-Hoc Blended Hourly Rate	\$ _____
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ATTACHMENT 5

Transmittal Letter Template

(Please place on company letterhead)

Date:	Bidder Phone No.:
Bidder Name:	Bidder Fax No.:
Bidder Address:	Bidder Contact E-mail Address:
Federal Employee Identification Number:	NYS Vendor ID #:

Vendor RFP Designated Contact Person: *<bidder representative for RFP response>*
Vendor RFP Designated Contact Details: *<address [if different from above], telephone(s), fax, email>*

- 1) Bidder agrees to acceptance of all terms and conditions specified in this RFP including any attachments.
- 2) Bidder agrees that the offer submitted in this proposal is valid for a period of three hundred and sixty-five (365) calendar days from the date of submission of the proposal.
- 3) Bidder will be responsible to the Department for all work specified in the RFP, including work assigned to subcontractors.
- 4) Bidder will not place any conditions, reservations, limitations, or substitutions in their proposal with regard to the contract language, or include any statements intended to alter the order of precedence as defined in the RFP.
- 5) A description of the existence of, or potential for, conflict of interest on the part of the vendor or its subcontractors due to prior, current, or proposed contracts, or affiliations is provided below. If no such conflict of interest exists, a statement to that effect should be made.

ATTACHMENT 5

Transmittal Letter Template

Description (Please attach additional pages if necessary):

- 6) If a proposal is submitted which proposes to utilize the services of a subcontractor(s), the Offeror should provide, in an appendix to the Transmittal Letter, a subcontractor summary for each listed subcontractor. An individual authorized to legally bind the subcontractor should sign that subcontractor's summary document and certify that the information provided is complete and accurate. The summary document should contain the following information:
- a. Complete name of the subcontractor;
 - b. Complete address of the subcontractor;
 - c. A general description of the scope of work to be performed by the subcontractor;
 - d. Percentage of work the subcontractor will be providing.

The undersigned individual affirms and represents that he/she has the legal authority and capacity to sign and submit this bid on behalf of [INSERT BIDDER'S NAME] as well as to execute a contract with the Department.

Signature of Authorized Official

Printed Name of Authorized Official

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ATTACHMENT 6 REFERENCES

Offeror Name: _____

In accordance with Section 4.1.5 of the RFP, Offeror Experience, Qualifications, References provide the following information:

Offeror's Reference #1			
Name of Client:			
Type of Client (Private or Government):			
Engagement Description:			
Engagement Term:	Start Date: (Month/Year)		End Date: (Month/Year)
Reference Contact Name and Title:			
Phone Number:		Email:	

Offeror's Reference #2			
Name of Client:			
Type of Client (Private or Government):			
Engagement Description:			
Engagement Term:	Start Date: (Month/Year)		End Date: (Month/Year)
Reference Contact Name and Title:			
Phone Number:		Email:	

ATTACHMENT 6 REFERENCES

Offeror's Reference #3			
Name of Client:			
Type of Client (Private or Government):			
Engagement Description:			
Engagement Term:	Start Date: (Month/Year)		End Date: (Month/Year)
Reference Contact Name and Title:			
Phone Number:		Email:	

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ATTACHMENT 7 MWBE FORMS

- M/WBE Form #1 -

New York State Department of Health BIDDER/CONTRACTOR M/WBE UTILIZATION PLAN

Bidder/Contractor Name:	
Vendor ID:	Telephone No.
RFP/Contract Title:	RFP/Contract No.

Description of Plan to Meet M/WBE Goals

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		\$

Page 1 of 3

“Making false representation or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Firms that do not perform commercially useful functions may not be counted toward MWBE utilization.”

**ATTACHMENT 7
MWBE FORMS
BIDDER/CONTRACTOR PROPOSED M/WBE UTILIZATION PLAN
MINORITY OWNED BUSINESS ENTERPRISE (MBE)**

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 () -		\$ _____

ATTACHMENT 7 MWBE FORMS BIDDER/CONTRACTOR PROPOSED M/WBE UTILIZATION PLAN WOMEN OWNED BUSINESS ENTERPRISE (WBE)

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 () -		\$ _____

ATTACHMENT 7

MWBE FORMS

- M/WBE Form #2 -

M/WBE UTILIZATION WAIVER REQUEST

Bidder/Contractor Name:	
Vendor ID:	Telephone No.
RFP/Contract Title:	RFP/Contract No.

Explanation why Bidder/Contractor is unable to meet M/WBE goals for this project:

Include attachments below to evidence good faith efforts:

- Attachment A. List of the general circulation, trade and MWBE-oriented publications and dates of publications soliciting for certified MWBE participation as a subcontractor/supplier and copies of such solicitation.
- Attachment B. List of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
- Attachment C. Descriptions of the contract documents/plans/specifications made available to certified MWBEs by the contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.
- Attachment D. Description of the negotiations between the contractor and certified MWBEs for the purposes of complying with the MWBE goals of this contract.
- Attachment E. Identify dates of any pre-bid, pre-award or other meetings attended by contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the contract.
- Attachment F. Other information deemed relevant to the request.

Section 4: Signature and Contact Information

By signing and submitting this form, the contractor certifies that a good faith effort has been made to promote MWBE participation pursuant to the MWBE requirements set forth under the contract.

Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, and a suspension or termination of the contract.

Submitted by:

(Name and Title)

(Signature)

(Date)

ATTACHMENT 7
MWBE FORMS
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ATTACHMENT 7 MWBE FORMS

- M/WBE Form #3 -

M/WBE CONTRACTOR COMPLIANCE & PAYMENT REPORT

(PAYMENTS MUST BE REPORTED ONLINE QUARTERLY AT:

<https://ny.newnycontracts.com/>)

Contractor Name:	
Contract Title:	Contract No.

TOTAL PROJECTED M/WBE USAGE (from original M/WBE Utilization Plan)

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

ACTUAL M/WBE USAGE* AS OF _____ (insert date)

	%	Amount
1. Total Dollar Value Completed to date	100	\$
2. MBE Utilization to date		\$
3. WBE Utilization to date		\$
4. M/WBE Combined Utilization to date		\$

* Report usage from contract start date to quarterly end-date inserted above.

Explain any deficiencies in attaining M/WBE goals in the space below:

(Name, Title, Email)

(Signature)

(Date)

**ATTACHMENT 7
MWBE FORMS**

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**ATTACHMENT 7
MWBE FORMS**

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ATTACHMENT 7 MWBE FORMS

- M/WBE Form #5 -

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

M/WBE AND EEO POLICY STATEMENT

I, _____, the (awardee/contractor) _____ agree to adopt the following policies with respect to the project being developed or services rendered at

M/WBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

(b) This organization shall state in all solicitation 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 disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized 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 this organization's obligations herein.

(d) Contractor shall comply with the provisions of

ATTACHMENT 7 MWBE FORMS

the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the

Submitted by:

Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

(Name and Title)

(Signature)

(Date)

**ATTACHMENT 7
MWBE FORMS**

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ATTACHMENT 7 MWBE FORMS

- M/WBE Form #6 -

New York State Department of Health WORKFORCE EMPLOYMENT UTILIZATION REPORT

Check applicable categories: Project Staff Consultants
 Subcontractors

Contractor Name _____ Contract # _____

Staff Used on Contract for the quarter / / to / /

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

Submitted by:

(Name and Title)

(Signature)

(Date)

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ATTACHMENT 8 ENCOURAGING USE OF NEW YORK BUSINESSES IN CONTRACT PERFORMANCE

ENCOURAGING USE OF NEW YORK BUSINESSES

IN CONTRACT PERFORMANCE

I. Background

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing service and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law. Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements. Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

II. Required Identifying Information

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below: Will New York State Businesses be used in the performance of this contract?

YES NO

If yes, identify New York State businesses that will be used and attach identifying information. Information should include at a minimum: verifiable business name, New York address and business contact information.

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ATTACHMENT 9

SAMPLE STANDARD NYS CONTRACT LANGUAGE AND APPENDICES

MISCELLANEOUS/ CONSULTANT SERVICES

STATE AGENCY (Name and Address):
 Department of Health
 Corning Tower
 Albany, NY 12237

NYS COMPTROLLER'S NUMBER: C#

 ORIGINATING AGENCY GLBU: DOH01
 DEPARTMENT ID: 345XXXX

 CONTRACTOR (Name and Address):

 TYPE OF PROGRAM(S):

 CHARITIES REGISTRATION NUMBER:

 CONTRACT TERM

FROM:
 TO:

CONTRACTOR HAS () HAS NOT () TIMELY
 FILED WITH THE ATTORNEY GENERAL'S
 CHARITIES BUREAU ALL REQUIRED
 PERIODIC OR ANNUAL WRITTEN REPORTS

 FUNDING AMOUNT FOR CONTRACT
 TERM:

FEDERAL TAX IDENTIFICATION NUMBER:
 CONTRACTOR IS () IS NOT () A SECTARIAN ENTITY
 NYS VENDOR IDENTIFICATION NUMBER:

STATUS:

MUNICIPALITY NO. (if applicable)

CONTRACTOR IS () IS NOT () A
 NOT-FOR-PROFIT ORGANIZATION

CONTRACTOR IS () IS NOT () A
 N Y STATE BUSINESS ENTERPRISE

() IF MARKED HERE, THIS CONTRACT IS RENEWABLE FOR ___ ADDITIONAL ONE-YEAR PERIOD(S)
 AT THE SOLE OPTION OF THE STATE AND SUBJECT TO APPROVAL OF THE OFFICE OF THE STATE
 COMPTROLLER.

BID OPENING DATE:

APPENDICES ATTACHED AND PART OF THIS AGREEMENT

Precedence shall be given to these documents in the order listed below.

- X APPENDIX A Standard Clauses as required by the Attorney General for all State Contracts.
- X APPENDIX X Modification Agreement Form (to accompany modified appendices for change in term or consideration on an existing period or for renewal periods)
- ____ APPENDIX Q Modification of Standard Department of Health Contract Language
- X STATE OF NEW YORK AGREEMENT
- X APPENDIX D General Specifications
- X APPENDIX B Request For Proposal (RFP)
- X APPENDIX C Proposal
- X APPENDIX E-1 Proof of Workers' Compensation Coverage
- X APPENDIX E-2 Proof of Disability Insurance Coverage
- X APPENDIX H Federal Health Insurance Portability and Accountability Act Business Associate Agreement
- X APPENDIX G Notices
- X APPENDIX M Participation by Minority Group Members and Women with respect to State Contracts: Requirements and Procedures

Contract No.: C#

IN WITNESS THEREOF, the parties hereto have executed or approved this AGREEMENT on the dates below their signatures.

CONTRACTOR

STATE AGENCY

By: _____

By: _____

Printed Name

Printed Name

Title: _____

Title: _____

Date: _____

Date: _____

State Agency Certification:

"In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."

STATE OF NEW YORK)
)SS.: County of _____)

On the ____ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their/ capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(Signature and office of the individual taking acknowledgement)

ATTORNEY GENERAL'S SIGNATURE

STATE COMPTROLLER'S SIGNATURE

Title: _____

Title: _____

Date: _____

Date: _____

GLBU: DOH01
APPENDIX X

Contract Number: _____

Contractor: _____

Amendment Number X- _____

BSC Unit ID: 345<XXXX> _____

This is an AGREEMENT between THE STATE OF NEW YORK, acting by and through NYS Department of Health, having its principal office at Albany, New York, (hereinafter referred to as the STATE), and _____ (hereinafter referred to as the CONTRACTOR), for amendment of this contract.

This amendment makes the following changes to the contract (check all that apply):

_____ Modifies the contract period at no additional cost

_____ Modifies the contract period at additional cost

_____ Modifies the budget or payment terms

_____ Modifies the work plan or deliverables

_____ Replaces appendix(es) _____ with the attached appendix(es) _____

_____ Adds the attached appendix(es) _____

_____ Other: (describe) _____

This amendment *is* ___ *is not* ___ a contract renewal as allowed for in the existing contract.

All other provisions of said AGREEMENT shall remain in full force and effect.

Additionally, Contractor certifies that it is not included on the prohibited entities list published at <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> as a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York. Under the Act, the Commissioner of the Office of General Services (OGS) has developed a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Contractor (or any assignee) also certifies that it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Prior to this amendment, the contract value and period were:

\$ _____
(Value before amendment)

From ____ / ____ / ____ to ____ / ____ / ____
(Initial start date)

This amendment provides the following modification (complete only items being modified):

\$ _____

From ____ / ____ / ____ to ____ / ____ / ____

This will result in new contract terms of:

\$ _____
(All years thus far combined)

From ____ / ____ / ____ to ____ / ____ / ____
(Initial start date) (Amendment end date)

Signature Page for:

Contract Number: _____

Contractor: _____

Amendment Number: X _____

BSC Unit ID: 345<XXXX> _____

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the dates appearing under their signatures.

CONTRACTOR SIGNATURE:

By: _____ Date: _____

(signature)

Printed Name: _____

Title: _____

STATE OF NEW YORK)
) SS: County of _)

On the ____ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their/ capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(Signature and office of the individual taking acknowledgement)

STATE AGENCY SIGNATURE

"In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."

By: _____ Date: _____

(signature)

Printed Name: _____

Title: _____

ATTORNEY GENERAL'S SIGNATURE

By: _____ Date: _____

STATE COMPTROLLER'S SIGNATURE

By: _____ Date: _____

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS
DOCUMENT FOR
FUTURE REFERENCE.**

January 2014

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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, licenser, 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 State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments 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). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

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 (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim 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. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of

any State approved sums due and owing for work done upon the project.

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 set-off 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) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, 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 the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, 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 and 5 NYCRR 143, 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 the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(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, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts 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. 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 Department of Economic Development's Division 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 Section 165 of the State Finance Law, (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
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884 email:
opa@esd.ny.gov

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
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

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).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded

the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not

limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**STATE OF NEW YORK
AGREEMENT**

This AGREEMENT is hereby made by and between the State of New York Department of Health (STATE) and the public or private agency (CONTRACTOR) identified on the face page hereof.

WITNESSETH:

WHEREAS, the STATE has formally requested contractors to submit bid proposals for the project described in Appendix B for which bids were opened on the date noted on the face pages of this AGREEMENT; and

WHEREAS, the STATE has determined that the CONTRACTOR is the successful bidder, and the CONTRACTOR covenants that it is willing and able to undertake the services and provide the necessary materials, labor and equipment in connection therewith;

NOW THEREFORE, in consideration of the terms hereinafter mentioned and also the covenants and obligations moving to each party hereto from the other, the parties hereto do hereby agree as follows:

I. Conditions of Agreement

- A. This AGREEMENT incorporates the face pages attached and all of the marked appendices identified on the face page hereof.
- B. The maximum compensation for the contract term of this AGREEMENT shall not exceed the amount specified on the face page hereof.
- C. This AGREEMENT may be renewed for additional periods (PERIOD), as specified on the face page hereof.
- D. To exercise any renewal option of this AGREEMENT, the parties shall prepare new appendices, to the extent that any require modification, and a Modification Agreement (the attached Appendix X is the blank form to be used). Any terms of this AGREEMENT not modified shall remain in effect for each PERIOD of the AGREEMENT. The modification agreement is subject to the approval of the Office of the State Comptroller.
- E. Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of the AGREEMENT.
- F. For the purposes of this AGREEMENT, the terms "Request For Proposal" and "RFP" include all Appendix B documents as marked on the face page hereof.
- G. For the purposes of this AGREEMENT, the term "Proposal" includes all Appendix C documents as marked on the face page hereof.

II. Payment and Reporting

- A. The CONTRACTOR shall submit complete and accurate invoices and/or vouchers, together with supporting documentation required by the contract, the

State Agency and the State Comptroller, to the STATE's designated payment office in order to receive payment to one of the following addresses:

1. Preferred Method: Email a .pdf copy of your signed voucher to the BSC at: DOHaccountspayable@ogs.ny.gov with a subject field as follows:

Subject: **Unit ID: 3450475<<Contract #>>**

(Note: **do not** send a paper copy in addition to your emailed voucher.)

2. Alternate Method: Mail vouchers to BSC at the following U.S. postal address:

**NYS Department of Health
Unit ID 3450475 PO Box 2093
Albany, NY 12220-0093**

- B. 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 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 helpdesk@sfs.ny.gov or by telephone at 1-855-233-8363. 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/vendors/vendorguide/guide.htm>.

III. Term of Contract

- A. Upon approval of the Office of the State Comptroller, this AGREEMENT shall be effective for the term as specified on the cover page.
- B. This Agreement may be terminated by mutual written agreement of the contracting parties.
- C. This Agreement may be terminated by the Department for cause upon the failure of the Contractor to comply with the terms and conditions of this Agreement, including the attachments hereto, provided that the Department shall give the contractor written notice via registered or certified mail, return receipt requested, or shall deliver same by hand- receiving Contractor's receipt therefor, such written notice to specify the Contractor's failure and the termination of this

Agreement. Termination shall be effective ten (10) business days from receipt of such notice, established by the receipt returned to the Department. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination.

- D. This Agreement may be deemed terminated immediately at the option of the Department upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by the Department to the Contractor.
- E. 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.

IV. Proof of Coverage

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

- A. Workers' Compensation, for which one of the following is incorporated into this contract as Appendix E-1:
 - 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
 - 2. 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
 - 3. SI-12 – Certificate of Workers' Compensation Self-Insurance, OR GSI-105.2 – Certificate of Participation in Workers' Compensation Group Self-Insurance.
- B. Disability Benefits coverage, for which one of the following is incorporated into this contract as Appendix E-2:
 - 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
 - 2. DB-120.1 – Certificate of Disability Benefits Insurance OR
 - 3. DB-155 – Certificate of Disability Benefits Self-Insurance

V. Indemnification

- A. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall

indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this AGREEMENT.

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

VI. Limitation of Liability

Except as otherwise set forth in the Indemnification Paragraphs above, the limit of liability shall be as follows:

1. CONTRACTOR's liability for any claim, loss or liability arising out of, or connected with the Products and services provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the original contract value exclusive of renewals, or (ii) one million dollars (\$1,000,000), whichever is greater.
2. The STATE may retain such monies from any amount due CONTRACTOR as may be necessary to satisfy any claim for damages, costs and the like asserted against the STATE unless CONTRACTOR at the time of the presentation of claim shall demonstrate to the STATE's satisfaction that sufficient monies are set aside by the CONTRACTOR in the form of a bond or through insurance coverage to cover associated damages and other costs.
3. Notwithstanding the above, neither the CONTRACTOR nor the STATE shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the STATE, the CONTRACTOR, or by others.

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 specifications, 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, e-mail, 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 shall 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 allowance 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 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. 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 for use 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.

N. Date/Time Warranty

1. Definitions: For the purposes of this warranty, the following definitions apply:

"Product" shall include, without limitation: when solicited from a vendor in a State government entity's contracts, RFPs, IFBs, or mini-bids, 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.

"Third Party Product" shall include product manufactured or developed by a corporate entity independent from the vendor and provided by the 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) 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. Date/Time Warranty Statement

Contractor warrants that Product(s) furnished pursuant to this Contract 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) transitions, including leap year

calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract through: a) ninety (90) days or b) the Contractor's or Product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

- O. No Subcontracting Subcontracting by the contractor shall not be permitted except by prior written approval of the Department of Health. All subcontracts shall contain provisions specifying that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT, and that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the AGREEMENT between the STATE and the CONTRACTOR.
- 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 judgment of the Department of Health, the Contractor acts in such a way which is likely to or does impair or prejudice the interests of the State, 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 judgment 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. 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. 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 or 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.
- X. 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 non-procurement 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 whom 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 Non-procurement 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.

Y. 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.

Z. 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 following address New York State Department of Health, Bureau of Contracts Room -2756, Corning Tower, Albany, NY 12237; 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, Albany NY 12239, ATTN: Consultant Reporting.

AA. Provisions Related to New York State Procurement Lobbying Law 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.

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

CC. Lead Guidelines All products supplied pursuant to this agreement shall meet local, state and federal regulations, guidelines and action levels for lead as they exist at the time of the State's acceptance of this contract.

DD. On-Going Responsibility

1. General Responsibility Language: The CONTRACTOR shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of Health or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
2. Suspension of Work (for Non-Responsibility) :The Commissioner of Health or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor.

In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Health or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

3. Termination (for Non-Responsibility) : Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Department of Health officials or staff, the Contract may be terminated by Commissioner of Health or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of Health or his or her designee to be non-responsible. In such event, the Commissioner of Health or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

EE. Provisions Related to Iran Divestment Act As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) has developed a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list has been posted on the OGS website at <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>.

By entering into this Contract, CONTRACTOR (or any assignee) certifies that it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Additionally, CONTRACTOR agrees that should it seek to renew or extend the Contract, it will be required to certify at the time the Contract is renewed or extended that it is not included on the prohibited entities list. CONTRACTOR also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the prohibited entities list before the New York State Department of Health may approve a request for Assignment of Contract. During the term of the Contract, should New York State Department of Health receive information that a person is in violation of the above referenced certification, New York State Department of Health will offer the person an opportunity to respond.

If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then New York State Department of Health shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the CONTRACTOR in default.

New York State Department of Health reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

Appendix H

for CONTRACTOR that creates, receives, maintains or transmits individually identifiable health information on behalf of a New York State Department of Health HIPAA-Covered Program

- I. Definitions. For purposes of this Appendix H of this AGREEMENT:
 - A. "Business Associate" shall mean CONTRACTOR.
 - B. "Covered Program" shall mean the STATE.
 - C. Other terms used, but not otherwise defined, in this AGREEMENT shall have the same meaning as those terms in the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act ("HITECH") and implementing regulations, including those at 45 CFR Parts 160 and 164.
- II. Obligations and Activities of Business Associate:
 - A. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this AGREEMENT or as Required By Law.
 - B. Business Associate agrees to use the appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this AGREEMENT and to comply with the security standards for the protection of electronic protected health information in 45 CFR Part 164, Subpart C. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this AGREEMENT.
 - C. Business Associate agrees to report to Covered Program as soon as reasonably practicable any use or disclosure of the Protected Health Information not provided for by this AGREEMENT of which it becomes aware. Business Associate also agrees to report to Covered Program any Breach of Unsecured Protected Health Information of which it becomes aware. Such report shall include, to the extent possible:
 1. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 2. A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 3. Any steps individuals should take to protect themselves from potential harm resulting from the breach;
 4. A description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and

5. Contact procedures for Covered Program to ask questions or learn additional information.
- D. Business Associate agrees, in accordance with 45 CFR § 164.502(e)(1)(ii), to ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions and conditions that apply to Business Associate with respect to such information.
 - E. Business Associate agrees to provide access, at the request of Covered Program, and in the time and manner designated by Covered Program, to Protected Health Information in a Designated Record Set, to Covered Program in order for Covered Program to comply with 45 CFR § 164.524.
 - F. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Program directs in order for Covered Program to comply with 45 CFR § 164.526.
 - G. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Program to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528; and Business Associate agrees to provide to Covered Program, in time and manner designated by Covered Program, information collected in accordance with this AGREEMENT, to permit Covered Program to comply with 45 CFR § 164.528.
 - H. Business Associate agrees, to the extent the Business Associate is to carry out Covered Program's obligation under 45 CFR Part 164, Subpart E, to comply with the requirements of 45 CFR Part 164, Subpart E that apply to Covered Program in the performance of such obligation.
 - I. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Program available to Covered Program, or to the Secretary of the federal Department of Health and Human Services, in a time and manner designated by Covered Program or the Secretary, for purposes of the Secretary determining Covered Program's compliance with HIPAA, HITECH and 45 CFR Parts 160 and 164.
- III. Permitted Uses and Disclosures by Business Associate
- A. Except as otherwise limited in this AGREEMENT, Business Associate may only use or disclose Protected Health Information as necessary to perform functions, activities, or services for, or on behalf of, Covered Program as specified in this AGREEMENT.

- B. Business Associate may use Protected Health Information for the proper management and administration of Business Associate.
 - C. Business Associate may disclose Protected Health Information as Required By Law.
- IV. Term and Termination
- A. This AGREEMENT shall be effective for the term as specified on the cover page of this AGREEMENT, after which time all of the Protected Health Information provided by Covered Program to Business Associate, or created or received by Business Associate on behalf of Covered Program, shall be destroyed or returned to Covered Program; provided that, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Appendix H of this AGREEMENT.
 - B. Termination for Cause. Upon Covered Program's knowledge of a material breach by Business Associate, Covered Program may provide an opportunity for Business Associate to cure the breach and end the violation or may terminate this AGREEMENT if Business Associate does not cure the breach and end the violation within the time specified by Covered Program, or Covered Program may immediately terminate this AGREEMENT if Business Associate has breached a material term of this AGREEMENT and cure is not possible.
 - C. Effect of Termination.
 - 1. Except as provided in paragraph (c)(2) below, upon termination of this AGREEMENT, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Program, or created or received by Business Associate on behalf of Covered Program. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
 - 2. In the event that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Program notification of the conditions that make return or destruction infeasible. Upon mutual agreement of Business Associate and Covered Program that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this AGREEMENT to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

V. Violations

- A. Any violation of this AGREEMENT may cause irreparable harm to the STATE. Therefore, the STATE may seek any legal remedy, including an injunction or specific performance for such harm, without bond, security or necessity of demonstrating actual damages.
- B. Business Associate shall indemnify and hold the STATE harmless against all claims and costs resulting from acts/omissions of Business Associate in connection with Business Associate's obligations under this AGREEMENT. Business Associate shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the STATE from suits, actions, damages and costs, of every name and description relating to breach notification required by 45 CFR Part 164 Subpart D, or State Technology Law § 208, caused by any intentional act or negligence of Business Associate, its agents, employees, partners or subcontractors, without limitation; provided, however, that Business Associate shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the STATE.

VI. Miscellaneous

- A. Regulatory References. A reference in this AGREEMENT to a section in the Code of Federal Regulations means the section as in effect or as amended, and for which compliance is required.
- B. Amendment. Business Associate and Covered Program agree to take such action as is necessary to amend this AGREEMENT from time to time as is necessary for Covered Program to comply with the requirements of HIPAA, HITECH and 45 CFR Parts 160 and 164.
- C. Survival. The respective rights and obligations of Business Associate under (IV)(C) of this Appendix H of this AGREEMENT shall survive the termination of this AGREEMENT.
- D. Interpretation. Any ambiguity in this AGREEMENT shall be resolved in favor of a meaning that permits Covered Program to comply with HIPAA, HITECH and 45 CFR Parts 160 and 164.
- E. HIV/AIDS. If HIV/AIDS information is to be disclosed under this AGREEMENT, Business Associate acknowledges that it has been informed of the confidentiality requirements of Public Health Law Article 27-F.

NOTICES

All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- (a) via certified or registered United States mail, return receipt requested;
- (b) by facsimile transmission;
- (c) by personal delivery;
- (d) by expedited delivery service; or
- (e) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time to time designate:

State of New York Department of Health

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

[Insert Contractor Name]

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this AGREEMENT by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representative for the purposes of receiving notices under this AGREEMENT. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems, and/or for dispute resolution.

Appendix M

PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

I. General Provisions

- A. The New York State Department of Health is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State New York State Department of Health (the “New York State Department of Health”), to fully comply and cooperate with the New York State Department of Health in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. For purposes of this procurement, the New York State Department of Health hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, 10% for Minority-Owned Business Enterprises (“MBE”) participation and 10% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:
<http://www.esd.ny.gov/mwbe.html>

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the New York State Department of Health for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 2. The Contractor shall submit an EEO policy statement to the New York State Department of Health within seventy two (72) hours after the date of the notice by New York State Department of Health to award the Contract to the Contractor.
 3. If Contractor or Subcontractor does not have an existing EEO policy statement, the New York State Department of Health may provide the Contractor or Subcontractor a model statement (see Form #5 - Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
 4. The Contractor's EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

- b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the 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.
- c. 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.
- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Form #4 - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

D. Form #6 - Workforce Employment Utilization Report ("Workforce Report")

1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the New York State Department of Health of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

- E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan (Form #1) either prior to, or at the time of, the execution of the contract.
- B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, New York State Department of Health shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

V. Waivers

- A. For Waiver Requests Contractor should use Form #2 – Waiver Request.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the New York State Department of Health shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the New York State Department of Health, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the New York State Department of Health may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

- A. Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form #3) to the New York State Department of Health by the 10th day

following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VII. Liquidated Damages - MWBE Participation

- A. Where New York State Department of Health determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the New York State Department of Health liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the New York State Department of Health, Contractor shall pay such liquidated damages to the New York State Department of Health within sixty (60) days after they are assessed by the New York State Department of Health unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the New York State Department of Health.