



# Department of Health

## Request for Proposals

RFP# 16501

### Rate and Fiscal Management Consultant

Issued: February 26, 2016

#### **DESIGNATED CONTACT:**

Pursuant to State Finance Law §§ 139-j and 139-k, the Department of Health identifies the following designated contact to whom all communications attempting to influence the Department of Health's conduct or decision regarding this procurement must be made.

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## **TABLE OF CONTENTS**

1.0	CALENDAR OF EVENTS	3
2.0	OVERVIEW	4
2.1	INTRODUCTORY BACKGROUND.....	4
2.2	Important Information.....	7
2.3	Term of the Agreement.....	7
3.0	SCOPE OF WORK	7
3.1	Performance Standards/Expectations.....	8
3.2	Tasks.....	16
3.3	Staffing Requirements, General Contractor Duties.....	20
3.4	Reporting Requirement.....	22
4.0	BIDDERS QUALIFICATIONS TO PROPOSE	23
4.1	Minimum Qualifications.....	23
5.0	ADMINISTRATIVE INFORMATION	24
5.1	Restricted Period.....	24
5.2	Questions.....	24
5.3	Right to Modify RFP.....	24
5.4	Payment.....	25
5.5	Minority & Woman-Owned Business Enterprise Requirements.....	27
5.6	Equal Employment Opportunity (EEO) Reporting.....	28
5.7	Sales and Compensating Use Tax Certification (Tax Law, § 5-a).....	29
5.8	Workers' Compensation and Disability Benefits Certifications.....	29
5.9	Subcontracting.....	30
5.10	DOH's Reserved Rights.....	30
5.11	Freedom of Information Law ("FOIL").....	31
5.12	Lobbying.....	31
5.13	State Finance Law Consultant Disclosure Provisions.....	32
5.14	Debriefing.....	32
5.15	Protest Procedures.....	33
5.16	Iran Divestment Act.....	33
5.17	Piggybacking.....	33
5.18	Encouraging Use of New York Businesses in Contract Performance.....	33
6.0	PROPOSAL CONTENT	33
6.1	Administrative Proposal.....	34
6.2	Technical Proposal.....	35
6.3	Cost Proposal.....	37
7.0	PROPOSAL SUBMISSION	38
7.1	No Bid Form.....	39
8.0	Method of Award	39
8.1	General Information.....	39
8.2	Submission Review.....	40
8.3	Technical Evaluation.....	40
8.5	Composite Score.....	41
8.6	Reference Checks.....	41
8.7	Best and Final Offers.....	41
8.8	Award Recommendation.....	41
	ATTACHMENTS	41

## 1.0 CALENDAR OF EVENTS

<b>RATE AND FISCAL MANAGEMENT CONSULTANT RFP</b>	
<b><u>EVENT</u></b>	<b><u>DATE</u></b>
Issuance of Request for Proposals	February 26, 2016
Deadline for Submission of Written Questions	March 11, 2016 <b>5:00 p.m. ET</b>
Responses to Written Questions	<b>On or About</b> March 25, 2016
Deadline for Submission of Proposals	Proposals Due On Or Before April 20, 2016 <b>5:00 p.m. ET</b>
<i>Anticipated</i> Contract Start Date	August 1, 2016
<b>RATE AND FISCAL MANAGEMENT CONSULTANT RFP</b>	

## **2.0 OVERVIEW**

Through this Request for Proposals (“RFP”), the New York State (“State”) Department of Health (“DOH”) is seeking competitive proposals from financial organizations who can also provide actuarial consultants to provide services as further detailed in [Section 3.0](#) (Scope of Work). It is the Department’s intent to award one (1) contract from this procurement.

## **2.1 INTRODUCTORY BACKGROUND**

### **A. INTRODUCTION**

#### **General Information for Prospective Contractors**

This RFP is to secure Medicaid rate, financial management and actuarial assistance for the Department and its sister agencies (the Office of Mental Health, the Office of Alcoholism and Substance Abuse Services and the Office of People with Developmental Disabilities) in support of the State’s existing Medicaid service programs including Mainstream Medicaid Managed Care (MMC), HIV/Special Need Plans (SNPs), Health and Recovery Plans (HARPs), Managed Long Term Care (MLTC) Partial Capitation, Program All-Inclusive Care for the Elderly (PACE), Medicaid Advantage Plus (MAP), Fully Integrated Dual Advantage (FIDA), Medicaid Advantage (MA), Essential Plan (EP), Fully Integrated Dual Advantage for Individuals with Developmental Disabilities and Development Disabilities Individual Support and Care Coordination Organization (DISCO). The State is also looking to secure fiscal management and consulting assistance with other topics such as service based payment programs, value based payments (VBP) and any new managed care programs or proposed initiatives during the term of the Agreement resulting from this RFP.

The DOH is the single state agency for administration of the New York State Medicaid program. Within DOH, the Office of Health Insurance Programs (OHIP) was established in January 2007 with the mission of ensuring that eligible New Yorkers are able to get and keep coverage; ensuring quality of care; and advancing health system reform. Within OHIP, the Division of Health Plan Contracting and Oversight (DHPCO) has responsibility for oversight of the managed care programs described in this RFP. DHPCO is responsible for monitoring the fiscal soundness of Prepaid Health Service Plans (PHSPs) which are licensed in NYS to serve government programs, and is jointly responsible with the State Insurance Department (SID) for monitoring Health Maintenance Organizations (HMOs) operating in NYS. Also within OHIP, the Division of Finance and Rate Setting (DFRS) is responsible for all financial and rate setting activities, and ensuring the adequacy, reasonableness and cost effectiveness of managed care rates for designated programs.

The New York State Office of Mental Health (OMH) operates psychiatric centers across the State, and also regulates, certifies and oversees more than 4,500 programs, which are operated by local governments and nonprofit agencies. These programs include various inpatient and outpatient programs, emergencies, community support, residential and family care plans. OMH continues to balance the competing challenges of cost-containment in response to fiscal conditions while ensuring that mental health obligations continue to be met through the provision of quality care and treatment.

The Office of Alcoholism and Substance Abuse Services (OASAS) certifies a range of substance use disorder treatment programs and funds them through a mechanism referred to as net deficit financing. Once certified, programs submit a budget with projected third party reimbursement revenue and projected costs. The program is approved by the agency field office for state aid to fund programs for the deficit between third party and other non-state revenues to the reasonable costs.

The New York State Office for People with Developmental Disabilities (OPWDD) is a New York State executive agency responsible for the provision, regulation and oversight of services to New York citizens with developmental disabilities. Individuals served by OPWDD have a documented history of

experiencing diagnoses which could include, but are not necessarily limited to, intellectual disabilities, cerebral palsy, epilepsy, neurological impairments, or autism spectrum disorders. The complexities of managing this vast system, even in a relatively static environment, are significant. Adding to these complexities, OPWDD is committed to transformational goals designed to make its outcomes, supports and services, business processes, administrative structure, and decision-making capabilities more person-centric and streamlined. These goals involve transforming the traditional service delivery model to a system with a heightened ability to offer more opportunities for self-direction including; self-directed living arrangements, allowing the individual and circle of support to make choices related to the types of interventions and services utilized, designing individualized and customized services, providing individuals opportunities to be part of and contribute to their community, and the provision of services that are community-integrated.

The successful Contractor will provide rate, fiscal management, actuarial support and technical assistance within the context of the work performed by the offices listed above. This work includes but is not limited to certifying that premium rates developed by the State for existing and new programs are actuarially sound and managed care rates meet requirements of the Balanced Budget Act (BBA).

## **B. PROGRAM BACKGROUND**

The Contractor must have the ability to allocate resources as required by the DOH to support the requested activities for each of the existing managed care programs, other rate setting initiatives as well as any new health care initiatives. The Contractor will also assist with any fiscal management and/or consulting services as described in this RFP.

### **1. Managed Care Programs**

The State operates several managed care programs. Throughout this document, Managed Care will generally be meant to include the following programs:

- Mainstream Medicaid Managed Care (MMC)
  - HIV/Special Need Plans (SNPs)
  - Health and Recovery Plans (HARPs)
- Medicaid Managed Long Term Care (MLTC) Plans
  - MLTC Partial Capitation
  - Program for All-Inclusive Care for the Elderly (PACE)
  - Medicaid Advantage Plus (MAP)
  - Fully Integrated Dual Advantage (FIDA)
- Medicaid Advantage (MA)
- Essential Plan (EP)
- Fully Integrated Dual Advantage for Individuals With Developmental Disabilities (IDD-FIDA)
- Developmental Disabilities Individual Support and Care Coordination Organization (DISCO)

Monthly managed care enrollment reports are available on the Department of Health website for some of the programs listed above at:

[http://www.nyhealth.gov/health\\_care/managed\\_care/reports/enrollment/monthly/](http://www.nyhealth.gov/health_care/managed_care/reports/enrollment/monthly/)

A brief description of each program is provided in Attachment L: Program Definitions.

### **2. Services Based Payment Programs**

The State also operates these Service Based Payment programs:

- Assistance to the Office of Alcoholism and Substance Abuse Services (OASAS)
  - OASAS System of Care
  - Medically Managed Detoxification Service
  - Medically Supervised Withdrawal Service
  - Inpatient Rehabilitation
  - Opioid Treatment Program (OTP)
  - Outpatient Clinic Services
  - Intensive Outpatient
  - Outpatient Rehabilitation
  - Stabilization in a Residential Setting
  - Rehabilitation Services in a Residential Setting
  - Re– integration Services in a Residential Setting
- b. Foster Care

A brief description of each program is provided in Attachment L: Program Definitions.

### **3. Other Initiatives**

#### **a. Value Based Payment (VBP)**

The Delivery System Reform Incentive Program (DSRIP) is a major effort to collectively and thoroughly transform the NYS Medicaid Healthcare Delivery System. The overall goal of DSRIP is to create a future-proof, high-quality and financially sustainable care delivery system. A major component to this Medicaid transformation lies on the transition away from a Service Based Payment System, toward a Value Based Payment structure.

By DSRIP Year 5 (2019), all Managed Care Organizations must employ non-service based payment systems that reward value over volume for at least 80%-90% of their provider payments. A Five-Year Roadmap was developed, outlining how NYS aims to achieve this goal. Core stakeholders, such as Managed Care Organizations (MCOs), provider unions, and patient organizations, have actively collaborated in the creation of this Roadmap, which both the State and the Centers for Medicare and Medicaid Services (CMS) have committed to.

#### **b. Assistance to the Office of Mental Health (OMH)**

The New York State Office of Mental Health (OMH) is in the process of collaborating with the DOH for the transition of the full Medicaid behavioral health system to managed care. The goal is to create a fully integrated behavioral health and physical health service system that provides comprehensive, accessible and recovery oriented services. NYS is phasing in the behavioral health population into managed care beginning with adults 21 and over in New York City, followed by the expansion to the rest of the state. Children will be transitioned at a later date.

#### **c. Assistance to the Office of Health Insurance Programs: Governmental Initiatives**

Representatives from the New York State Department of Health will provide technical assistance to Puerto Rico in developing a transformation plan as part of an application to the federal government for a similar investment to implement the type of health system redesign strategies that had been successful in New York State. This team will include key staff members who were involved in New York's successful Medicaid Waiver negotiations with the federal government. The transformation plan will focus on the elements of program design, performance measurement, and shared savings that have proven effective in New York. Governor Cuomo's administration will also share its experience in developing a state-of-the-art Medicaid Management Information System and the use of data mining

solutions to help identify opportunities to both lower costs and improve outcomes. Other support for future governmental initiatives may also be needed throughout this contract period.

## 2.2 Important Information

The bidder is required to review, and is requested to have legal counsel review, Attachment E, the DOH Agreement. The Bidder must be willing to enter into an Agreement substantially in accordance with the terms of Attachment E should the bidder be selected for contract award. Please note that this RFP and the awarded bidder's proposal will become part of the contract as Appendix B and C, respectively. It should be noted that Appendix A of Attachment E, "Standard Clauses for New York State Contracts", contains important information related to the contract to be entered into as a result of this RFP and will be incorporated, without change or amendment, into the contract entered into between DOH and the successful Bidder. By submitting a response to the RFP, the Bidder agrees to comply with all the provisions of Appendix A.

Note, Attachment A, the Bidder's Certifications/Acknowledgements, should be submitted and includes a statement that the bidder accepts, without any added conditions, qualifications or exceptions, the contract terms and conditions contained in this RFP including any exhibits and attachments. It also includes a statement that the bidder acknowledges that, should any alternative proposals or extraneous terms be submitted with the proposal, such alternate proposals or extraneous terms will not be evaluated by the DOH.

Any qualifications or exceptions proposed by a bidder to this RFP should be submitted in writing using the process set forth in [Section 5.2](#) (Questions) prior to the deadline for submission of written questions indicated in [Section 1.0](#) (Calendar of Events). Any amendments DOH makes to the RFP as a result of questions and answers will be publicized on the DOH web site.

## 2.3 Term of the Agreement

The term of the agreement will be for a period of five years commencing on the date shown on the Calendar of Events in [Section 1.0](#), subject to the availability of sufficient funding, successful contractor performance, and approvals from the New York State Attorney General (AG) and the Office of the State Comptroller (OSC).

The pricing for years four (4) and five (5) of the contract is subject to an annual increase or decrease of the lesser of three percent (3%) or the percent increase or decrease in the National Consumer Price Index for All Urban Consumers (CPI-U) as published by the United States Bureau of Labor Statistics, Washington, D.C., 2012 for the 12 month period ending ninety (90) days prior to the renewal date for years *four (4) and five (5) of the contract*.

## 3.0 SCOPE OF WORK

This Section describes the actuarial, financial and consulting services that are required to be provided by the selected bidder. Bidder must be able to provide all of these services throughout the contract term.

**PLEASE NOTE:** Bidders will be required to provide responses that address all of the requirements of this as part of its Technical Proposal.

For purposes of this RFP, the use of the terms "shall", "must" and "will" are used interchangeably when describing the Contractor's/Bidder's duties. The terms bidders, vendors and proposers are also used interchangeably.

### 3.1 Performance Standards/Expectations

#### A. Methodology

##### 1. Managed Care Programs

Currently, program's capitation rate settings operate under the following methodologies:

##### **Mainstream Medicaid Managed Care**

Historically, rates for each participating Managed Care plan were negotiated individually based upon plan-submitted premium proposals. Beginning April 2008, a risk based rate setting method using C was implemented for the Mainstream Managed Care program. Under the risk adjusted methodology, all plans are paid the same regional average premium, adjusted by a plan-specific risk factor that accounts for differences in enrollee acuity across plans. Maternity and newborn hospital costs are reimbursed using supplemental payment rates consistent with past payment methodology, except instead of plan-specific amounts, all plans within a region receive the same delivery and newborn supplemental payment. The risk rates were phased in over a four year period beginning April 1, 2008 and are now at 100% risk adjusted rates.

##### *Risk Adjusted Rate – Regional Base Rate:*

All plans must offer a standard set of "core" medical services. The risk adjusted rate component for each plan reflects the regional average medical costs for the core benefits plus the regional average administrative costs.

The regional average costs described above are developed using 2 years of Medicaid Managed Care Operating Reports (MMCOR) submitted by each plan participating in the Mainstream Managed Care program. The MMCOR data is reported on an aggregate basis by region, premium group and category of service and is submitted electronically on a quarterly basis. The MMCOR data is reviewed and adjusted for Plan reported Incurred But Not Reported (IBNR) claims adjustments and services identified as potentially preventable from specific categories of services.

The 2011 and 2012 annual MMCOR was used to establish the State Fiscal Year (SFY) 2014-15 risk adjusted regional base rates. These regional base rates are updated annually and utilize two (2) years of historical plan submitted MMCOR data. Additionally, the regional average risk based plan premiums are adjusted for any applicable program changes impacting the rate period along with an adjustment for non-medical expense loads (i.e. surplus, and applicable taxes) to arrive at final regional average risk based plan premium.

The regional average Per Member Per Month (PMPM) amounts derived from MMCORs are then trended and adjusted by each plan's relative risk score to derive the plan specific risk adjusted rate. Emergency/non-emergency transportation are optional add-on benefits in some counties. The regional average PMPM for each optional benefit provided by the plan is added to the risk adjusted rate.

##### *Risk Methodology:*

All plan risk scores are developed using the Clinical Risk Group (CRG) model currently developed by 3M Company. CRGs are one of several clinical categorical models being used by states to recognize differences in health status of enrollees across plans. Each individual is assigned to a single risk group based on the enrollee's diagnoses (using International Classification of Disease [ICD]-9 and ICD-10 codes), pharmaceuticals, and demographics.



The CRG risk group assignment starts with ten core health status groups ranging from catastrophic to healthy as shown below. Assignment is done from the most serious to the least serious.

- a. Catastrophic Condition
- b. HIV
- c. Metastatic Malignancy
- d. Dominant Chronic Disease in 3 or more Organ Systems
- e. Significant Chronic Diseases in Multiple Organ Systems
- f. Significant Chronic Disease
- g. Minor Chronic Disease in Multiple Organ Systems
- h. Minor Chronic Diseases
- i. History of Significant Acute Diseases
- j. Healthy (including non-users)

Most categories are further divided into disease status at 4 to 6 severity “levels”. There are 1,100 specific CRGs at the most detailed level. New York State uses the most consolidated version of the CRGs called ACRG3, which condenses these into 48 different category/severity “buckets”.

Each individual’s diagnoses and pharmaceuticals are determined using plan reported encounter data augmented by service based payment claims. Each individual is assigned to a single mutually exclusive ACRG3 risk group based on diagnostic, procedure and pharmacy data during the applicable period.

MCO encounter data is also used to determine the overall cost of services for enrollees in each ACRG3 cell. An average cost PMPM is calculated for each CRG and compared to the overall population cost PMPM to construct a set of relative weights. Some CRG cells within a health status group were too small to be actuarially sound and were combined with other cells within the group with a single cost weight. Separate sets of cost weights were developed for Temporary Assistance to Needy Families (TANF) Children, TANF Adults, and Social Security Insurance (SSI), (Children and Adult combined).

MCO specific risk scores are determined based on its CRG distribution of enrollees multiplied by the relative weight of each CRG. All MCOs’ scores for a particular region are combined to determine the regional average risk score, and each MCOs score is then compared to the regional average to create a “relative risk score” for each MCO.

Calendar year 2012 encounters were used for the SFY 2014-15 MCO risk scores. The MCO risk scores are updated on an annual basis and utilize 1 year historical plan submitted encounter data. However, scores may be updated more frequently based on determinations made by the Department.

Under the risk method, premium rates are established for nine geographic rate regions for the following groupings:

- TANF/Safety Net Children (ages 6 months to 20 years old)
- TANF/Safety Net Aliessa Children (ages 6 months to 20 years old)
- TANF/Safety Net Adults (ages 21 and older)
- TANF/Safety Net Aliessa Adults (ages 21 and older)
- SSI (ages 6 months and older)
- SSI Aliessa (ages 6 months and older)

In addition, for hospital deliveries and hospital births a supplemental payment is made.

*Actuarial Memorandum:*

As part of the rate development process, an actuarial memorandum must be created along with all actuarial assumptions made and all other data, materials, and methodologies used in the development of such rates to accompany the final plan risk adjusted premiums.

**i. HIV/Special Needs Plan (SNP)**

Capitation rates for the HIV/SNP program are currently developed using two calendar years of Special Needs Plan Operating Reports (SNPORs) and plan-reported encounter data as the primary base data source in the rate-setting process. The base rate component for each plan reflects the regional average medical costs for the standard set of medical services provided in the benefit. The two years of data are blended together to arrive at base data that have sufficient credibility and reasonableness to develop actuarially sound capitation rates. Adjustments to the base data is made, including IBNR claims adjustments and efficiency adjustments.

The regional average base data amounts are then trended and adjusted for any applicable program changes impacting the rate period, non-medical expense loads (i.e., administration, surplus, and applicable taxes), and statistical variation to produce actuarially sound rate ranges.

All HIV/SNPs are required to purchase inpatient reinsurance through the DOH's reinsurance program. This program is a stop-loss program that provides relief to plans for covered inpatient services incurred by a member during a calendar year above certain threshold levels. A premium withhold is developed for each premium group that reflects the estimated liability for the risk assumed by the State through this program.

At this time, the following premium rates and supplemental "kick" payments are established for the New York City region only:

- HIV-positive (TANF/SN) for children age 6 months to 20 years
- HIV-positive TANF/SN) for adults age 21 years and older
- HIV-positive Social Security Income (SSI)
- HIV-negative TANF/SN for children age 6 months to 20 years
- HIV-negative SSI children age 6 months to 20 years
- HIV-negative homeless TANF/SN for children age 6 months to 20 years
- HIV-negative homeless TANF/SN for adults age 21 years and older
- HIV-negative homeless SSI
- Maternity kick payment
- Newborn kick payment

*Risk Methodology:*

The HIV/SNP program does not currently have a risk adjustment methodology.

*Actuarial Memorandum:*

As part of the rate development process, an actuarial memorandum must be created along with all actuarial assumptions made and all other data, materials, and methodologies used in the development of such rates to accompany the final plan premiums.

**ii. Health and Recovery Plan (HARP)**

The HARP program became effective in NYS on October 1, 2015. Capitation rates for the HARP program are currently developed using 2 calendar years of historical service based payments and plan reported encounter data as the primary base data source in the rate setting process. The service based payment data contained the utilization for most behavioral health benefits utilized by

HARP enrollees, as most behavioral services were previously excluded from the Managed Care program. The base rate component for each plan reflects the regional average medical costs for the standard set of medical services provided in the benefit. The two years of data were blended together to arrive at base data that has sufficient credibility and reasonableness to develop actuarially sound capitation rates. It is anticipated that as actual MMCOR experience becomes available for the HARP line of business, that this data would be leveraged for the 2 year base.

The regional average based data amounts are then trended and are adjusted for any applicable program changes impacting the rate period along with an adjustment for non-medical expense loads (i.e. administration, surplus, and applicable taxes) to arrive at final regional average risk based plan premium.

Premium rates are established for nine geographic rate regions. In addition, for hospital deliveries a supplemental payment is made.

*Risk Methodology:*

The HARP program does not currently have a risk adjustment methodology.

*Actuarial Memorandum:*

As part of the rate development process, an actuarial memorandum must be created along with all actuarial assumptions made and all other data, materials, and methodologies used in the development of such rates to accompany the final plan risk adjusted premiums.

**a. Medicaid Managed Long Term Care (MLTC) Programs**

MLTC Partial Capitation plans are capitated for long term care services such as personal care, home health, and nursing home, as well as services like transportation, durable medical equipment, nursing and case management. These programs are not capitated for Medicare services (such as physician or inpatient), which are billed by providers on a service based payment basis. PACE and FIDA programs receive a capitated payment for both Medicare and Medicaid.

*Actuarial Memorandum:*

As part of the rate development process, an actuarial memorandum must be created along with all actuarial assumptions made and all other data, materials, and methodologies used in the development of such rates to accompany the final plan risk adjusted premiums.

**i. MLTC Partial Capitation Program and PACE**

Beginning April 2010, a risk based rate setting method using the Semi-Annual Assessment of Members (SAAM) was implemented for the MLTC Partial Capitation and PACE programs. Under the risk adjusted methodology, all plans are paid the same regional average premium, adjusted by a plan-specific risk factor that accounts for differences in enrollee acuity across plans. The risk rates were phased in over a four year period beginning April 1, 2010 and are now at 100% risk adjusted rates.

**Regional Base Rate:**

All plans must offer a standard set of “core” medical services. The risk adjusted rate component for each plan reflects the regional average medical costs for the core benefits plus regional average administrative costs.

The regional average costs described above are developed using two years of MMCORs submitted by each plan participating in the Mainstream Managed Care program. The MMCOR data is reported on an aggregate basis by region, premium group and category of service and is

submitted electronically on a quarterly basis. The MMCOR data is reviewed and adjusted for Plan reported IBNR claims adjustments and services identified as potentially preventable from specific categories of services.

The 2012 and 2013 annual MMCOR was used to establish the State Fiscal Year (SFY) 2015-16 regional base rates for the risk adjusted rate.

The regional average PMPM amounts derived from MMCORs are then trended and adjusted by each plan's relative risk score to derive the plan specific risk adjusted rate.

Additionally, the regional average risk based plan premiums are adjusted for any applicable program changes impacting the rate period along with an adjustment for non-medical expense loads (i.e. administration, surplus, and applicable taxes) to arrive at a final regional average risk based plan premium.

#### Risk adjustment

In deciding on an approach for risk-adjusting the MLTC and PACE capitation payments, the State first evaluated the effectiveness of the national, diagnostic-based model that is currently used to risk adjust payments to the State's Mainstream program (Clinical Risk Groups) and found that a solely diagnostic-based risk assessment application is not effective for evaluating the risk associated with providing Long Term Care (LTC) services. The State then explored the possibility of using the responses from the SAAM assessment tool that evaluates the member's health status and activities of daily living and found that a strong correlation exists between SAAM responses and LTC costs.

To develop a SAAM-based risk adjustment model, long term care costs as reported within the MLTC and PACE plan submitted encounter data and the SAAM responses for the same time period are used. The data is limited to experience for members with at least three months of enrollment in health plans that submitted sufficient encounters as compared to the plan reported costs on the MLTC and PACE MMCORs. Shadow pricing and standard prices are developed and used to calculate the price for each service provided by the health plans. This process is performed for each Category of Service and incorporated into the data used for the risk-adjustment model development.

As of April 1, 2015, the State converted from utilizing the SAAM tool to the Uniform Assessment System (UAS) tool for the MLTC, PACE, and FIDA programs. For rate development beginning SFY 15-16, UAS data is the source data in the risk adjustment process.

Using the data as described above, analyses are performed to determine which UAS elements are statistically significant and have a positive relationship with long term costs. The regression coefficients associated with the model predictors are used as a basis in creating a long-term care cost index. The cost index is categorized and combined into mutually exclusive groups based on the criteria of monotonicity and sufficient sample size in each category. The cost weight for each category is developed by calculating the average per member per month managed long term care costs weighted by number of member months and divided by the overall average costs.

As part of the risk-adjustment model development, the performance of the model is measured. The primary gauge typically used for determining the predictive performance of the risk-adjustment models is the R-squared statistic. The effectiveness of the model is further evaluated by sorting the population by descending level of predicted long term care costs and separated the recipients into distinct subpopulations. Predictive ratios based on these subpopulations are within a range that indicates a favorable relationship between actual and expected long term care costs. The

consistency of the MLTC risk-adjustment results are also evaluated by comparing plan scores over three different points in time that span 18 months.

Once the model and the corresponding cost weights are developed, more recent UAS responses are used to measure the risk of the MLTC plans that will be applied in the adjustment of the capitation payments for the State Fiscal Year. These risk scores are determined using a member's most recent assessment.

Each plan's raw risk score is calculated by averaging the individual risk scores for all of the members that are enrolled in the plan during the year, weighted by each member's months of enrollment in the plan for the measurement period. Risk scores are developed separately for the NYC Area and Upstate regions. The plan's raw score in a region is then divided by the overall regional average raw risk score to determine their relative risk score. Risk scores are not determined for plans under an identified member month threshold in a region due to concerns regarding the credibility of the plan's risk score. In these instances, the plan is given a relative risk score of 1.0. The resulting risk scores are applied to all services covered by the MLTC and PACE capitation rates as well as the LTC service base of the FIDA capitation rates.

The list below provides a list of the tasks associated with risk score development.

#### Risk Score Development Tasks:

- Extraction of Eligibility and Encounter Data for Standardized Pricing
- Breakout of Encounter Data into Pricing Categories
- Standardized Pricing of Encounter Data.
- MMCOR Comparison by Service Categories
- Clinical Risk Group MDC and EDC Assignments from UAS data
- Identification of Assessment Data for Model Development
- Predictive Model Refinement / Coefficient Changes
- Creation of MLTC Cost Index
- Cost Weight Development
- Raw and Relative Risk Score Development
- Rolling Risk Score Analysis
- Documentation of Methods

Recent risk score development used calendar year 2012 encounters for the SFY 2014-15 risk scores. The risk scores are updated on an annual basis; however scores may be updated more frequently based on determinations made by the Department.

Under the risk method, premium rates are established for four geographic rate regions for the following premium groups:

#### Partial Cap

Dual eligible and non-Dual eligible enrollees aged 18 years and older

#### PACE

Dual eligible aged 55 years and older

Non-Dual aged 55 years and older

#### FIDA

Dual eligible aged 21 years and older

**ii. Medicaid Advantage Plus (MAP)**

The MAP premium development process is currently based upon historical service based payments, trended to the contract period. Programmatic changes that would materially impact the MAP program and the underlying data are taken into account. The rate development also includes trend factor assumptions, managed care adjustments, selection adjustments and non-medical expense loads such as administration and underwriting gain. Premiums are set for three (3) regions and include two (2) premium groups: age 18-64 and age 65+.

**iii. Fully Integrated Dual Advantage (FIDA)**

Currently, FIDA rates also utilize the region average PMPM amount derived from MLTC MMCORs, but require an additional actuarial adjustment to account for differences in costs associated with providing benefits to a dually-eligible only population. The adjusted PMPM is then trended and further adjusted by each plan’s relative risk score to derive the plan specific risk adjusted LTC service base rate.

The benefit package for FIDA also includes coverage for certain Medicaid services which are not traditionally part of the MLTC Partial benefit package. This includes Medicaid reimbursable acute care services, non-Part D pharmacy, and mental health & substance abuse services. Currently, historical service based payment data from eligible individuals is used to establish supplemental PMPM rate components for these services. These components are then added on to the LTC service base rate to establish FIDA rates.

In the future, FIDA plans will begin submitting MMCOR data specific to the FIDA program. DOH’s intent is that FIDA reimbursement rates for both the LTC services and additional FIDA Medicaid benefits will be derived from FIDA MCCOR data when it becomes available.

*Risk adjustment*

See MLTC Partial Cap and PACE *Risk Adjustment Section*

**b. Medicaid Advantage (MA)**

The Medicaid Advantage program plans receive, in addition to the Medicare capitation, Medicaid capitation which covers co-payments, any supplemental Medicare premiums, certain limited services covered by Medicaid but not Medicare, such as inpatient mental health in excess of the 190 day lifetime limit, non-Medicare covered home care, private duty nursing, dental (optional) and non-emergency transportation (optional).

The MA premium development process is currently based upon historical service based payments trended to the contract period. Programmatic changes that would materially impact the MA program and the underlying data are taken into account. The rate development also includes trend factor assumptions, managed care adjustments, selection adjustments and non-medical expense loads such as administration and underwriting gain. Premiums are set for three (3) regions and include two (2) premium groups: age 18-64 and age 65+.

**c. Essential Plan (EP)**

The Essential Plan, originally called the Basic Health Plan, became effective in NYS on April 1, 2015. Capitation rates for the Essential Plan are currently developed using plan supplemental survey data and plan reported encounter data, by finance region, as the primary base data source in the rate setting process. It is anticipated that as actual plan reported cost experience becomes available for the Essential Plan line of business, that this data would be leveraged to calculate the base rates.

The regional average based data amounts are then trended and are adjusted for any applicable program changes impacting the rate period along with an adjustment for non-medical expense loads (i.e. administration, surplus, and applicable taxes and surcharges) to arrive at final regional average risk based plan premium.

Premium rates are established for nine geographic rate regions and the following groups:

Aliessa Medicaid Population between 0% - 100% Federal Poverty Level (FPL)

Aliessa Medicaid Population between 101%-138% FPL

Non- Medicaid Population between 139% - 150% FPL

Non- Medicaid Population between 151% - 200% FPL

*Risk Methodology:*

The EP does not currently have a risk adjustment methodology, but it is anticipated that a risk methodology would be developed in subsequent years

*Trust Fund Reconciliation:*

The State must also establish and reconcile a trust fund for allowable Essential Plan trust fund expenditures.

**d. Fully Integrated Duals Advantage for Individuals with Developmental Disabilities (IDD-FIDA)**

Historical demographic, cost, and utilization data related to IDD-FIDA eligible population will be used as the basis for capitation rate development. The data encompasses IDD-FIDA covered services including Home and Community Based Services (HCBS) for individuals who are eligible for OPWDD's 1915(c) comprehensive waiver, Long-term Care services, some Behavioral Health services, and Acute Care services. This program is anticipated to begin in January 2016.

**e. Developmental Disabilities Individualized Support and Care Coordination Organization (DISCO)**

The rate development support for the DISCO managed care program, being implemented by the State Office for People with Developmental Disabilities (OPWDD), will reflect pertinent legislative requirements. The DISCO program is anticipated to begin in Calendar Year (CY) 2016. Historical demographic, cost, and utilization data related to DISCO eligible will be used as the basis for capitation rate development. The data encompasses DISCO covered services including Home and Community Based Services (HCBS) for individuals who are eligible for OPWDD's 1915(c) comprehensive waiver, Long Term Care services, and some Behavioral Health services. Most Acute Care services are not part of the DISCO managed care benefit plan and will continue to be covered via service based payments.

**B. Expectations**

1. The Contractor shall conduct complete and accurate work in the reasonable judgment of the State.
2. The Contractor shall conduct all work in accordance with the actuarial performance standards and schedule set forth in the RFP and the contractor's proposal as modified or supplemented by the terms of this Agreement.
3. The Contractor shall provide qualified actuarial, financial and consulting services to develop, determine, manage or assist in the development and management of Medicaid rates for the

New York State Managed Care Program, Service Based Payment Program and other health care policy and financial needs.

4. Rate determination must be completed at the beginning of each rate cycle for the appropriate Managed Care program. Subsequent capitation rate updates may occur anytime during the state fiscal year. The table below reflects the known rates that are required as of this issuance for each program. A timeline will be developed between the selected contractor and the program. It is expected that the contractor will meet all deadlines stated in the timeline.

<u>Managed Care Program</u>	<u>Rate Develop</u>	<u>Original Rate Package Effective Date</u>	<u>Anticipated Number of Annual Modifications to Original Rate Package*</u>
a. Mainstream Managed Care, HIV, HARP	Annually	April 1	2 to 3
b. MLTC Programs: MLTC Partial Capitation, PACE, MAP, FIDA	Annually	April 1	4 to 5
c. Medicaid Advantage	Annually	January 1	0
d. Essential Plan	Annually	January 1	1 to 2
e. Fully Integrated Duals Advantage for Individuals with Developmental Disabilities (IDD-FIDA)	Annually	January 1	2 to 3
f. Developmental Disabilities Individualized Support and Care Coordination Organization (DISCO)	Annually	TBD	2 to 3

*\*Rates may be updated more frequently, based on determinations made by the Department.*

5. At the end of the contract period, the contractor will work cooperatively with the Department and any of its specified contracting organizations to develop and successfully implement a plan to transition all data, methodologies, documentation, and ongoing projects that resulted from this contract to the succeeding contracting organization, vendor, or firm or to the State.

### 3.2 Tasks

The Contractor shall perform the following core tasks:

- A. Develop or assist in development of the rate methodology (if not prescribed by law); determine, certify, update, and defend, when necessary, actuarially sound rates for all Managed Care Organization (MCO) cohorts under the Managed Care Program within the context of applicable state and federal laws and regulations, including the Balanced Budget Act and; rate development and financial management of the individualized service programs for which Medicaid rates are determined. Work performed under this contract for each task will depend on the requirements for that task. However, for all rates setting functions included in this RFP, work includes, but is not limited to the following:

#### **1. Capitation Rate Methodology Development and Determination:**

- a. Develop or assist in the development of a risk adjustment methodology;
- b. Develop Managed Care cohorts and capitation rates, using a variety of parameters, including but not limited to, recipients' age, gender, category of eligibility, level of care, and geographic location;



- c. Develop or assist in the development of capitation premium efficiency adjustments;
- d. Analyze any changes resulting from federal and/or state requirements or DOH programmatic changes that will be effective in the SFY and use the data to calculate adjustment factors to be applied to the existing capitation rate ranges;
- e. Provide technical assistance regarding use of risk mitigation techniques as part of capitation rate development;
- f. Provide technical assistance and develop premiums related to reinsurance requirements and other financial standards set forth by the State in the MCO contract agreements;
- g. Calculate the actuarially sound upper payment limit (UPL) capitation rate range for applicable programs;
- h. Calculate the actuarially sound upper/mid-point/lower bound capitation rate ranges;
- i. Ensure the methodology used to develop overall premiums and premium components is clear and can be easily comprehended by the State, MCOs, and other outside interested parties; and
- j. Develop an alternative to the service based payment UPL calculation for applicable programs.

**2. Rate Data Analysis and Manipulation:**

- a. Analyze the financial statement and encounter data of the MCOs or other service providers along with service based payment Medicaid claims experience;
- b. Analyze medical and pharmacy service utilization and cost profile patterns by category of service for all Managed Care cohorts;
- c. Provide technical assistance in the evaluation of individual MCOs, including areas such as IBNR claims adjustments, administrative overhead, care management overhead, and appropriateness of medical costs incurred; and
- d. Analyze inflation, economic, and health related trends;

**3. Interim Reporting and Other Deliverables for Rate Setting Functions:**

- a. Participate in periodic meetings with Department staff to discuss the parameters, priorities, methodology, timelines, and ongoing results of capitation rate development in each rate cycle;
- b. Provide documents and data, as directed by Department staff, to discuss at these meetings;
- c. Provide project management staff and project/timeline updates for all tasks associated with the capitation rate setting process;
- d. Work collaboratively with Department staff to improve the accuracy and efficiency of the existing data sources and new data sources used for capitation rate development;
- e. Work collaboratively with Department staff and other Department vendors to improve the accuracy and efficiency of capitation rate development methodologies;
- f. Provide the Department with exhibits, reports, and calculations in the format(s) specified by the Department, including all formulae, databases, data sets, analyses, and documents relevant to the capitation rate setting process;
- g. Develop work plans for rates to be determined including milestones for completion;
- h. Meet work plan milestones and timelines as agreed upon with the state;
- i. Provide staff training in methodologies used to develop rates; and
- j. Develop or assist in development of rate methodology for any new program(s) that may be implemented during the contract period;

#### **4. Capitation Rate Finalization:**

- a. Produce an actuarial memorandum that provides a detailed description of the methodology for developing the capitation rates along with all actuarial assumptions made and all other data, and materials used in the development of rates;
  - b. Certify that the rates comply with all requirements for managed care rate setting as described in the Balanced Budget Act (BBA) of 1997 including attestations of actuarial soundness and certification of plan rates in accordance to the BBA;
  - c. Provide actuarial certification as to the soundness of the rates along with all associated exhibits supporting the development of capitation rates
  - d. Provide necessary certification to meet the requirements of the CMS rate setting consultation guide;
  - e. Prepare all presentation material, attend, participate, and provide administrative support in the Department's rate setting discussions and meetings which take place monthly or as determined by the State; and
  - f. Attend, participate, and provide support in the Department's rate setting discussions and meetings with CMS.
- B. Provide the Department with service based payment rate setting, and policy and financial management consultation services, as requested by the Department which may include, but is not limited to the following:

#### **1. Service Based Payment Rate Methodology Development and Determination:**

- a. Develop and determine rates for OASAS that consider volume, payer mix, service mix, geographic and labor differentials in cost. Each of these variables should be evaluated against available outcome data, efficiency standards, and optimal clinical mix of services. Some services will be non-reimbursable across all payers but may add significant value based on outcomes. Overhead differences without a basis in regional cost differential should be smoothed and the contractor should make recommendations on service mix for optimal value for OASAS as a payer. The end result of the analysis should yield payment rates in per diem or per service rates for each service provided across modalities. The service payment rates should reflect regional rate differentials and may include additional differences based on other structural cost differences across modalities that may not be based on geographic region;
  - i. Research national data sets, New York State program specific Consolidated Fiscal Reporting data, other relevant real estate and labor cost data sets, and program models to determine reasonable rates for OASAS to purchase services on a per diem or per service basis for each of the funded settings;
  - ii. Compare regional costs and rates where service costs vary;
  - iii. Assist OASAS in identifying service costs through the 2010 ambulatory patient grouping exercise for outpatient clinic services in hospital and non-hospital based clinic and opioid treatment programs, drafting Medicaid rates for the clinical services provided within residential settings in the OASAS proposed residential restructuring and establishing non-Medicaid reimbursement rates across modalities of treatment; and
  - iv. Work with content experts to identify the best clinical modeling for each program, identify costs associated with reimbursable services and costs associated with non-reimbursable services. Costs will be computed through the program modeling exercise using nationally recognized standards of care, national and state level expert consensus documents and peer reviewed literature for specific modalities where such literature exists. The contractor will identify cost differentials across geographic regions as well as differences in patterns of service provisions;

- b. Develop methodology to construct and implement a foster care residual per diem to cover costs that will not be paid through the Managed Care per capita rates;
  - i. Determine Managed Care per capita rates for transition of foster care population to managed care;
- c. Develop or assist in the development of a service based payment premium methodology to reflect the utilization of service based payment data for applicable programs; and
- d. Develop or assist in the development of service based payment capitation rates for those programs still authorized for such payments.

## **2. Policy and Financial Management Consulting Services**

- a. Work collaboratively with the State in the exploration of various Value Based Payment (VBP) models for the State's Medicaid program as an alternative to the current reimbursement structure. Models include the use of Managed Care Organizations (MCOs), Performing Provider Systems (PPSs), Accountable Care Organizations (ACOs), and Independent Practice Associations (IPAs) to incorporate shared savings, bundled payment mechanisms based on an episode of care rather than an individual visit, and other total cost of care models consistent with the State's (VBP) initiative as defined by the State's VBP Roadmap ([https://www.health.ny.gov/health\\_care/medicaid/redesign/dsrip/docs/vbp\\_roadmap.pdf](https://www.health.ny.gov/health_care/medicaid/redesign/dsrip/docs/vbp_roadmap.pdf)) as a means to transform provider reimbursement over the next 5 years.
- b. As part of this transformation, the State anticipates major policy changes over the next several years with the implementation of federal and state health care payment care reform. The contractor will be expected to establish and staff a VBP team to analyze federal and state policies and provide technical support and analysis in the transformation of the State's Medicaid reimbursement system. The contractor will assist in quantifying the impact of proposed policy and legislative changes on existing capitation premiums; those changes that can affect the total number of eligible consumers, the underlying risk of the capitated population, or the Medicaid benefits package, which may increase or decrease the average capitation premium.
- c. This VBP team will also be tasked in assisting the State with the development and continued maintenance of bundled payments and total cost of care benchmarks.
- d. Provide technical assistance in evaluating management agreements, contracts between related parties, and cost sharing and cost allocation methods as they impact Managed Care plans;
- e. Assist in refinement of existing financial monitoring tools, on-site monitoring, and plan engagement techniques which include, but is not limited to plan encounter validation reports and plan MMCOR vs. plan encounter data comparison reports;
- f. Develop dashboard reporting with benchmark comparisons by category of service for the Managed Care programs;
- g. Analyze the accuracy of MCO premiums based on overall MCO financial performance, retrospectively;
- h. Provide on-site plan audit reviews as necessary including but not limited to financial, clinical and operational assessment;
- i. Track and analyze financial impacts of populations transitioning from service based payments programs to Managed Care;
- j. Develop annual financial comparison report based on cost report data and financial performance report data comparing all MCOs with each other and with a contractor developed average of all MCOs. The contractor should at a minimum analyze financial and medical management efficiency; MCO medical loss ratio; profitability and financial solvency; net worth per member. Ultimately this analysis will be used to assist the Department with the implementation of a profit cap requirement;

- k. Analyze and provide guidance related to federal legislation and regulation impacting Medicaid Managed Care and service based payment programs,
- l. Work in a consultative relationship with the State to increase the efficiency of the Managed Care delivery system. This includes: identifying opportunities to responsibly slow the growth rate of service costs; optimize utilization; and, improve health outcomes;
- m. Utilize existing efficiency metrics as the base, and work with the Department to develop an annual report on MCO efficiency along with appropriate reductions to plan capitation premiums;
- n. Develop a process to track and redistribute reductions associated with these efficiencies;
- o. Develop a data analytics team to assist the State in various financial and clinical analysis related to changes impacting the Medicaid and Medicare landscape;
- p. Provide consultation services to the State related to, State budget proposals, Federal Medicaid waivers, and budget neutrality;
- q. Develop or assist in development of Personal Resource Account (PRA) levels for OPWDD's self-direction model;
- r. Complete other ad hoc actuarial, consulting and financial/accounting technical assistance, as required.

### **3.3 Staffing Requirements, General Contractor Duties**

#### **A. Location of Core Team**

The selected Contractor is required to house a core team, permanently, for the duration of the contract, in a single location within a fifteen mile radius of the Capitol building in Albany, New York within four (4) months of signing the contract.

#### **B. Staffing Requirements**

The contractor will assume responsibility for organizing and training a sufficient number of staff. The contractor will also be responsible for coordinating and managing all tasks assigned. To accomplish this, the contractor shall:

1. Dedicate a Core team consisting of individuals with the appropriate experience and credentials, who will be working directly with DOH staff on a consistent basis. Locality of this team is crucial, as it is expected of the team to work closely with DOH. Staffing of the core team will be subject to DOH approval. The team must consist of:
  - At least one member being a certified actuary;
  - A project coordinator who possesses strong management skills necessary to coordinate activities, analyze data, prepare rate packages and reports and respond to the Department's management information needs. The project coordinator should be the sole liaison between the Department and the contractor. The Department should be able to direct all questions, and other correspondence to this individual. This individual is expected to be available to respond to the Department's management information needs on a daily basis via telephone and/or e-mail and to coordinate bi-weekly status meetings to apprise the Department of any issues and status updates. The project coordinator shall be part of the Core Team, located in the office describe in 3.3.A. Individuals with the appropriate knowledge and skills to assist DOH with the tasks outlined in this RFP.
2. Dedicate an on-site Analytic team of 3-5 staff who have the authority to provide recommendations and distribute information to the State and stakeholders on managed care rates. This team will be expected to work full time at One Commerce Plaza, Albany, NY with the OHIP Managed Care Rate Setting team. Within this team, at least two (2) staff must have experience with large datasets, knowledge of the State's Medicaid data systems, Medicaid

programs and be proficient in SQL and or SAS. At least one (1) staff must be an actuary. All staff leads should have the internal authority to release information and analysis to the Department for direct release to the MCOs. Space, computers and phones will be provided to the on-site team. The cost of this team should be included in Part A of the Cost Proposal, under the Deliverable Based Section.

3. The contractor shall provide additional staff who possess strong attributes to the appropriate tasks outlined in this RFP. Specifically, the contractor should have:
  - Individuals with extensive experience related to various healthcare risk adjustment methodologies and risk adjustment software on this team;
  - Extensive knowledge of federal and state public healthcare programs and policy which include but are not limited to proficiency in the programmatic aspects of federal Medicaid funding and federal waivers;
  - Experience in pharmacy utilization trends, new drug therapies and strategies on pharmacy benefit management;
  - Extensive knowledge and background of CMS laws and regulations;
  - Individuals with actuarial backgrounds;
  - Experience with data analytics, including experience with large datasets, knowledge of the State's Medicaid data systems, Medicaid programs and proficiency in SQL and SAS.
  - Finally, the team should include staff familiar with implementing and maintaining value based payment methodologies in a Medicare and Medicaid Managed Care environment.These staff do not need to meet the location requirement of Section 3.3.A.
4. Provide sufficient additional management and administrative support staff necessary to organize, prepare and carry out all administrative tasks associated with conducting the above-described tasks and submitting resultant reports.
5. The Contractor shall maintain the staffing levels and personnel as provided in the Contractor's proposal, except as approved by the State or caused by resignations or other situations which, in the State's judgment, are beyond the Contractor's control. If a member of a team needs to be replaced, such replacements shall be evaluated by DOH and acceptance is subject to DOH approval.
6. The Contractor should anticipate that its billable hours for the contract period, shall be divided among the three Staff Levels. See Attachment C: Cost Proposal for details on specific staffing levels.

### **C. General Contractor Duties**

It shall be the obligation of the Contractor to:

1. Assume complete responsibility for the cost and timely completion of all activities and duties required of the Contractor by this Agreement and carrying out those activities and duties in a competent and timely manner;
2. Maintain the levels of staffing and personnel expertise as provided in the Contractor's proposal, except as approved by the State or caused by resignations or other situations beyond the control of the Contractor;
3. Agree that no aspect of Contractor's performance under this Agreement will be contingent upon State personnel or the availability of State resources with the exception of such proposed actions of the Contractor which are specifically identified in this Agreement as requiring State

- approval, policy decisions, policy approvals, exceptions stated in this Agreement or which require the normal cooperation which would be expected in such a contractual relationship;
4. Submit in writing to the State, within three (3) days of learning of any situation which can reasonably be expected to adversely affect the operation of the task assigned, a description of the situation including a recommendation for resolution whenever possible;
  5. Perform the responsibilities, reporting requirements and meet the deadlines in Section 3.1;
  6. Furnish, or make available, accounts, records, or other information pertaining solely to this Agreement as required to substantiate any estimate, expenditures or reports as requested by the State or the Office of the State Comptroller, as may be necessary for auditing purposes regarding this Agreement, or to verify that expenditures were made only for the purposes authorized by this Agreement;
  7. Accept responsibility for compensating the State for any exceptions, for payments made under this Agreement, which are revealed on audit by the Office of the State Comptroller or another State agency, after due process and an opportunity to be heard has been afforded;
  8. The Contractor shall recognize and agree that the State may require the Contractor to perform other related tasks, which although within the general scope of work required by this Agreement, are not specifically listed in this Agreement;
  9. The Contractor shall implement changes within the scope of work of this Agreement, in accordance with a State approved schedule, including changes in policy, regulation, statute, or judicial interpretation;
  10. The Contractor shall assume responsibility for providing and ensuring the compatibility of all electronic equipment and resource needs;
  11. The Contractor may be required to sign and adhere to the New York State Department of Health Medicaid Data Exchange Application and Agreement (DEAA). In addition, the DEAA, when approved by NYSDOH, forms an agreement between the contractor (applicant) and DOH as to the terms and conditions under which a release will be made; and
  12. The Contractor may be required to enter into a Business Associates Agreement (BAA), upon execution of the resulting contract.

### **3.4 Reporting Requirement**

#### **A. Rate Development**

1. The Contractor will be responsible for providing the Department with a final rate package. The final rate package should include the actuarial certified rate ranges, rate range certification letter, actuarial memorandum and all associated rate exhibits which support the development of the rate package. The Contractor shall timely submit all required rate packages in accordance with the schedule to be determined by the State. A schedule of Rate Effective Dates can be found in Section 3.1. Rate Packages should contain all deliverables set forth by the State in accordance with Section 3.2 Tasks of this Agreement. Rate packages must contain the original signature of the Partner in Charge or other duly authorized person who is a Certified Actuary.

2. The Contractor shall submit rate packages, which in the reasonable judgment of the State, are fully supported by work papers, which are neat, organized, accurate and signed and dated by both the preparer and the preparer's supervisor;
3. The Contractor shall maintain work papers that, in the reasonable judgment of the State, contain sufficient detail so as to allow a conclusion to be drawn without oral explanation and/or clarification being required by the preparer;
4. The contractor shall maintain work papers and evidence containing sufficient information to enable an experienced actuary consultant, having no previous connection with the work, to validate the actuary's significant conclusions and judgments. Such evidence shall include, but not be limited to, documentation, analyses, and data; and
5. The Department shall be the owner of the work papers. The contractor will retain the work papers for the balance of the calendar year in which they were generated and for six (6) additional years thereafter, and will provide the Department timely access to the work papers as requested. If requested by the State, the Contractor must provide copy of work papers and related material request by the State within 10 business days of written request;

## **B. Non-rate work**

1. The Contractor shall submit monthly progress reports before the submission of monthly vouchers. These progress reports shall consist of:
  - a. Activity conducted in the voucher month;
  - b. A summary and highlight of significant progress areas;
  - c. A summary of accomplishments in each activity area where work was performed;
  - d. A listing of all developed materials for each program;
  - e. All counts of meetings attended by program;
  - f. A breakdown of hours by Title for each program; and
  - g. A summary of overall updates and changes to each program.

## **4.0 BIDDERS QUALIFICATIONS TO PROPOSE**

### **4.1 Minimum Qualifications**

NYSDOH will accept proposals from organizations with the following types and levels of experience as a prime contractor.

- Bidder must identify an actuary who will be assigned to the contract that is a member of at least one of the following: the American Academy of Actuaries, a Fellow or Associate of the Society of Actuaries or the Casualty Actuarial Society, a Fellow of the Conference of Consulting Actuaries, a member or a Fellow of the American Society of Pension Professional and Actuaries, or a fully qualified member of another International Actuarial Association member organization. Documentation of these credentials will be required;
- Bidder must have at least three (3) years of actuarial experience; and
- Bidder must have at least two (2) years' actuarial experience in the health care industry.

Experience acquired concurrently is considered acceptable.

For the purposes of this RFP, a prime contractor is defined as one who has the contract with the owner of a project or job and has full responsibility for its completion. A prime contractor undertakes to perform

a complete contract and may employ (and manage) one or more subcontractors to carry out specific parts of the contract.

Failure to meet these Minimum Qualifications will result in a proposal being found non-responsive and eliminated from consideration.

## **5.0 ADMINISTRATIVE INFORMATION**

The following administrative information will apply to this RFP. Failure to comply fully with this information may result in disqualification of your proposal.

### **5.1 Restricted Period**

“Restricted period” means the period of time commencing with the earliest written notice, advertisement, or solicitation of a Request for Proposals (“RFP”), Invitation for Bids (“IFB”), or solicitation of proposals, or any other method for soliciting a response from Bidders intending to result in a procurement contract with DOH and ending with the final contract award and approval by DOH and, where applicable, final contract approval by the Office of the State Comptroller.

This prohibition applies to any oral, written, or electronic communication under circumstances where a reasonable person would infer that the communication was intended to influence this procurement. Violation of any of the requirements described in this Section may be grounds for a determination that the bidder is non-responsible and therefore ineligible for this contract award. Two violations within four years of the rules against impermissible contacts during the “restricted period” may result in the violator being debarred from participating in DOH procurements for a period of four years.

Pursuant to State Finance Law §§ 139-j and 139-k, the Department of Health identifies a designated contact on the face page of this RFP to whom all communications attempting to influence this procurement must be made.

### **5.2 Questions**

There will be an opportunity available for submission of written questions and requests for clarification with regard to this RFP. All questions and requests for clarification of this RFP should cite the particular RFP Section and paragraph number where applicable and must be submitted via email to [OHIPcontracts@health.ny.gov](mailto:OHIPcontracts@health.ny.gov). It is the bidder’s responsibility to ensure that email containing written questions and/or requests for clarification is received at the above email address no later than the Deadline for Submission of Written Questions as specified in [Section 1.0](#) (Calendar of Events).

Questions received after the deadline may **not** be answered.

### **5.3 Right to Modify RFP**

DOH reserves the right to modify any part of this RFP, including but not limited to, the date and time by which proposals must be submitted and received by DOH, at any time prior to the Deadline for Submission of Proposals listed in [Section 1.0](#) (Calendar of Events). Modifications to this RFP shall be made by issuance of amendments and/or addenda.

Prior to the Deadline for Submission of Proposals, any such clarifications or modifications as deemed necessary by DOH will be posted to the DOH website.



If the bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the Bidder shall immediately notify DOH of such error in writing at [doh.sm.OHIPcontracts@health.ny.gov](mailto:doh.sm.OHIPcontracts@health.ny.gov) and request clarification or modification of the document.

If, prior to the Deadline for Submission of Proposals, a bidder fails to notify DOH of a known error or an error that reasonably should have been known, the bidder shall assume the risk of proposing. If awarded the contract, the bidder shall not be entitled to additional compensation by reason of the error or its correction.

## 5.4 Payment

The contractor shall submit invoices and/or vouchers to the State's designated payment office:

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

**Subject: <<Unit ID: 3450445>> <<Contract #>>**

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

NYS Department of Health  
Unit ID 3450445  
c/o NYS OGS BSC Accounts Payable  
Building 5, 5th Floor  
1220 Washington Ave  
Albany, NY 12226-1900

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](http://www.osc.state.ny.us/epay/index.htm), by email at [epayments@osc.state.ny.us](mailto:epayments@osc.state.ny.us) or by telephone at 518-474-6019. CONTRACTOR acknowledges that it will not receive payment on any invoices and/or vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

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

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

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

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

Contractor should submit invoices based upon these payment terms:

- A. Payments for all work related to the development of the annual Managed Care Program rates will be made once the rate is developed and submitted to the department with the supporting documentation and rate certification. This rate package must be approved by the Department before payment will be authorized.
- B. Modifications for the annual Managed Care rates shall be billed on a deliverable basis. A payment shall be made for the development and calculation of each rate modification requested by the department once the work is completed and supporting documentation and rate certification is submitted to the department and approved.
- C. The programs for which one payment for the initial development and/or for each modification of the annual Managed Care rates shall be made are:
  - Mainstream Managed Care: HIV/ SNP and HARP
  - MLTC Programs: MLTC Partial Capitation, PACE, MAP and FIDA
  - Medicaid Advantage
  - Essential Plan
  - Fully Integrated Duals Advantage for Individuals with Developmental Disabilities
  - Developmental Disabilities Individualized Support and Care Coordination Organization
- D. Payments for service based payment rate setting, financial management and other consultative assistance outlined in Section 3.2, B will be made on an hourly basis, in compliance with a developed task order detailing the scope of the work and the staff level authorized by DOH to complete the work. Vouchers may be submitted once the progress report has been submitted to DOH in the agreed format and approved. The requirements for the progress report are in section 3.4.B.
- E. Subcontractor billing arrangements are not subject to the same requirements as this RFP and should be agreed upon between the contractor and the subcontractor, prior to payment for work completed. The contractor should include on the monthly progress report, the subcontractor's work performed.
- F. The Department will not authorize payment for any additional costs beyond those specified in the contract. In the event of misunderstanding of any requirements, deliverables, or services to be provided; the Contractor shall make the necessary adjustments or corrections at no additional cost to the State.
- G. The Contractor shall, upon completion and Department approval of each deliverable, submit to Department a voucher for payment on such forms and in such detail as required. All vouchers submitted by the Contractor shall be submitted to Department no later than sixty (60) days after the end of the monthly reporting period.

Price Adjustment Clause:

The pricing for years four (4) and five (5) of the contract is subject to an annual increase or decrease of the lesser of three percent (3%) or the percent increase or decrease in the National Consumer Price Index for All Urban Consumers (CPI-U) as published by the United States Bureau of Labor Statistics, Washington, D.C., 20212 for the 12 month period ending ninety (90) days prior to the renewal date for years *four (4) and five (5) of the contract*.

## 5.5 Minority & Woman-Owned Business Enterprise Requirements

Pursuant to New York State Executive Law Article 15-A, the New York State Department of Health (“DOH”) 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 DOH 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 DOH 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, DOH hereby establishes an overall goal of **30%** for MWBE participation, **15%** for Minority-Owned Business Enterprises (“MBE”) participation and **15%** for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs and outreach efforts to certified MWBE firms). 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 DOH may withhold payment pending receipt of the required MWBE documentation. For guidance on how DOH will determine “good faith efforts,” refer to 5 NYCRR §142.8.

The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com>. The directory is found in the upper right hand side of the webpage under “Search for Certified Firms” and accessed by clicking on the link entitled “MWBE Directory”. Engaging with firms found in the directory with like product(s) and/or service(s) is strongly encouraged and all communication efforts and responses should be well documented.

By submitting a bid, a bidder agrees to complete an MWBE Utilization Plan (Attachment F, Form #1) of this RFP. DOH will review the submitted MWBE Utilization Plan. If the plan is not accepted, DOH may issue a notice of deficiency. 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. DOH 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 (if applicable); or
- d) If DOH determines that the Bidder has failed to document good-faith efforts;

The Contractor will be required to 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 DOH, but must be made no later than prior to the submission of a request for final payment on the Contract.

The Contractor will be required to submit a Contractor's Quarterly M/WBE Contractor Compliance & Payment Report to the DOH, by the 10<sup>th</sup> 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.

If the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding will constitute a breach of Contract and DOH 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.

New York State certified Minority- and Women-Owned Businesses (M/WBE) may request that their firm's contact information be included on a list of M/WBE firms interested in serving as a subcontractor for this procurement. The listing will be publicly posted on the Department's website for reference by the bidding community. A firm requesting inclusion on this list should send contact information and a copy of its NYS M/WBE certification to [doh.sm.OHIPcontracts@health.ny.gov](mailto:doh.sm.OHIPcontracts@health.ny.gov) before the Deadline for Questions as specified in [Section 1.0](#) (Calendar of Events). Nothing prohibits an M/WBE Vendor from proposing as a prime contractor.

**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.**

## **5.6 Equal Employment Opportunity (EEO) Reporting**

By submission of a bid in response to this solicitation, the Bidder agrees with all of the terms and conditions of Attachment E Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. Additionally, the successful bidder will be required to certify they have an acceptable EEO (Equal Employment Opportunity) policy statement in accordance with Section III of Appendix M in Attachment E.

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.

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, 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.

To ensure compliance with this Section, the Bidder should submit with the bid or proposal an Equal Employment Opportunity Staffing Plan (Attachment F, Form #4) identifying the anticipated work force to be utilized on the Contract. Additionally, the Bidder should submit a Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement (Attachment F, Form # 5), to DOH with their bid or proposal.

### **5.7 Sales and Compensating Use Tax Certification (Tax Law, § 5-a)**

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

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agencies, from approving a contract awarded to an offerer meeting the registration requirements but who is not so registered in accordance with the law. The successful Bidder must file a properly completed Form ST-220-CA with the Department of Health and Form ST-220-TD with the DTF. These requirements must be met before a contract may take effect. Further information can be found at the New York State Department of Taxation and Finance's website, available through this link: <http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>. Forms are available through these links:

- ST-220 CA: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)
- ST-220 TD: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)

### **5.8 Workers' Compensation and Disability Benefits Certifications**

Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) provide that DOH shall not enter into any contract unless proof of workers' compensation and disability benefits insurance coverage is produced. Prior to entering into a contract with DOH, successful Bidders will be required to verify for DOH, on forms authorized by the New York State Workers' Compensation Board, the fact that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL. The forms to be used to show compliance with the WCL are listed below. Any questions relating to either workers' compensation or disability benefits coverage should be directed to the State of New York Workers' Compensation Board, Bureau of Compliance at (518) 486-6307. Failure to provide verification of either of these types of insurance coverage by the time contracts are ready to be executed will be grounds for disqualification of an otherwise successful Proposal.

The successful Bidder must submit the following documentation to the Department within 10 calendar days of notification of award.

ONE of the following forms as Workers' Compensation documentation:

- A. Proof of Workers' Compensation Coverage:

1. **Form C-105.2** – Certificate of Workers’ Compensation Insurance issued by private insurance carrier (or Form U-26.3 issued by the State Insurance Fund); or
2. **Form SI-12** – Certificate of Workers’ Compensation Self-Insurance (or Form GSI-105.2 Certificate of Participation in Workers’ Compensation Group Self-Insurance); or
3. **Form CE-200** – Certificate of Attestation of Exemption from New York State Workers’ Compensation and/or Disability Benefits Coverage.

B. Proof of Disability Benefits Coverage:

ONE of the following forms as Disability documentation:

1. **Form DB-120.1** – Certificate of Disability Benefits Insurance; or
2. **Form DB-155** – Certificate of Disability Benefits Self-Insurance; or
3. **Form CE-200** – Certificate of Attestation of Exemption from New York State Workers’ Compensation and/or Disability Benefits Coverage.

Further information is available at the Workers’ Compensation Board’s website, which can be accessed through this link: <http://www.wcb.ny.gov>.

## 5.9 Subcontracting

Bidders may propose use of a subcontractor. The Contractor shall obtain prior written approval from NYSDOH before entering into an agreement for services to be provided by a subcontractor. The Contractor is solely responsible for assuring that the requirements of the RFP are met. All subcontracts shall contain provisions specifying that the work performed by the subcontractor must be in accordance with the terms of the prime contract, and that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the agreement between the DOH and the Contractor. DOH reserves the right to request removal of any Bidder staff or subcontractor’s staff if, in DOH’s discretion, such staff is not performing in accordance with the Agreement. Subcontractors whose contracts are valued at or above \$100,000 will be required to submit the Vendor Responsibility Questionnaire upon selection of the prime contractor.

## 5.10 DOH’s 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 bidder whose conduct and/or proposal fails to conform to the requirements of the RFP;
5. Seek clarifications and revisions of proposals;
6. Use proposal information obtained through site visits, management interviews and the state’s investigation of a bidder’s qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency’s request for clarifying information in the course of evaluation and/or selection under the RFP;
7. Prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
8. Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments;
9. Change any of the scheduled dates;



10. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
11. Waive any requirements that are not material;
12. Negotiate with the successful bidder within the scope of the RFP in the best interests of the state;
13. Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
14. Utilize any and all ideas submitted in the proposals received;
15. Every offer shall be firm and not revocable for a period of three hundred and sixty-five days from the bid opening, to the extent not inconsistent with section 2-205 of the uniform commercial code. Subsequent to such three hundred and sixty- five days, any offer is subject to withdrawal communicated in a writing signed by the offerer; 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 offerer's proposal and/or to determine an offerer's compliance with the requirements of the solicitation.

### 5.11 Freedom of Information Law (“FOIL”)

All proposals may be disclosed or used by DOH to the extent permitted by law. DOH may disclose a proposal to any person for the purpose of assisting in evaluating the proposal or for any other lawful purpose. All proposals will become State agency records, which will be available to the public in accordance with the Freedom of Information Law. **Any portion of the proposal that a Bidder believes constitutes proprietary information entitled to confidential handling, as an exception to the Freedom of Information Law, must be clearly and specifically designated in the proposal as directed in [Section 6.1 \(D\)](#) of the RFP.** If DOH agrees with the proprietary claim, the designated portion of the proposal will be withheld from public disclosure. Blanket assertions of proprietary material will not be accepted, and failure to specifically designate proprietary material may be deemed a waiver of any right to confidential handling of such material.

### 5.12 Lobbying

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, made significant changes as it pertains to development of procurement contracts with governmental entities. The changes included:

- a) made 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) required 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) required 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) authorized the New York State Commission on Public Integrity, (now New York State Joint Commission on Public Ethics), 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) directed 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) required the timely disclosure of accurate and complete information from offerers with respect to determinations of non-responsibility and debarment; (Bidders responding to this RFP should submit a completed and signed [Attachment G](#), "Prior Non-Responsibility Determination".)
- g) increased the monetary threshold which triggers a lobbyist's obligations under the Lobbying Act from \$2,000 to \$5,000; and
- h) established the Advisory Council on Procurement Lobbying.

Subsequently, Chapter 14 of the Laws of 2007 amended the Lobbying Act of the Legislative Law, particularly as it related to specific aspects of procurements as follows: (i) prohibiting lobbyists from entering into retainer agreements on the outcome of government grant making or other agreement involving public funding; and (ii) reporting lobbying efforts for grants, loans and other disbursements of public funds over \$15,000.

The most notable, however, was the increased penalties provided under Section 20 of Chapter 14 of the Laws of 2007, which replaced old penalty provisions and the addition of a suspension option for lobbyists engaged in repeated violations. Further amendments to the Lobbying Act were made in Chapter 4 of the Laws of 2010.

Questions regarding the registration and operation of the Lobbying Act should be directed to the New York State Joint Commission on Public Ethics.

### **5.13 State Finance Law Consultant Disclosure Provisions**

In accordance with New York State Finance Law Section 163(4)(g), State agencies must require all contractors, including subcontractors, that provide consulting services for State purposes pursuant to a contract to submit an annual employment report for each such contract.

The successful bidder 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.

The successful winning bidder must also agree to complete a "State Consultant Services Form B, Contractor's Annual Employment Report" for each state fiscal year included in the resulting contract. This report must be submitted annually to the Department of Health, the Office of the State Comptroller, and Department of Civil Service.

State Consultant Services Form A: Contractor's Planned Employment and Form B: Contractor's Annual Employment Report may be accessed electronically at: <http://www.osc.state.ny.gov/procurement>.

### **5.14 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.

### **5.15 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/>

### **5.16 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/Offerers Pursuant to The New York State Iran Divestment Act of 2012” list (“Prohibited Entities List”) posted on the OGS website (currently found at this address: <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 DOH receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, 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 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. 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.

### **5.17 Piggybacking**

New York State Finance Law section 163(10)(e) (see also <http://www.ogs.ny.gov/purchase/snt/sflxi.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.

### **5.18 Encouraging Use of New York Businesses 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 H, Encouraging Use of New York Businesses in Contract Performance, to indicate their intent to use/not use New York Businesses in the performance of this contract.

## **6.0 PROPOSAL CONTENT**

The following includes the requested format and information to be provided by each Bidder. Bidders responding to this RFP must satisfy all requirements stated in this RFP. All Bidders are requested to submit a complete Administrative, Technical, and Cost proposals. A proposal that is incomplete in any material respect may be rejected.

To expedite review of the proposals, Bidders are requested to submit proposals in separate Administrative, Technical, and Cost packages inclusive of all materials as summarized in Attachment B, Proposal Documents. This separation of information will facilitate the review of the material requested. No information beyond that specifically requested is required, and Bidders are requested to keep their submissions to the shortest length consistent with making a complete presentation of qualifications. Evaluations of the Administrative, Technical, and Cost Proposals received in response to this RFP will be conducted separately. Bidders are therefore cautioned not to include any Cost Proposal information in the Technical Proposal documents.

**DOH will not be responsible for expenses incurred in preparing and submitting the Administrative, Technical, or Cost Proposals. Such costs should not be included in the Proposal.**

## **6.1 Administrative Proposal**

The Administrative Proposal should contain all requirements listed below. A proposal that is incomplete in any material respect may be eliminated from consideration. The information requested should be provided in the prescribed format. Responses that do not follow the prescribed format may be eliminated from consideration. All responses to the RFP will be subject to verification for accuracy. Please provide the forms in the same order in which they are requested.

### **A. M/WBE Forms**

Submit a completed Form #1 and/or Form #2, Form #4 and Form #5 as directed in [Attachment F](#), "Guide to New York State DOH M/WBE RFP Required Forms."

### **B. Bidder's Disclosure of Prior Non-Responsibility Determinations**

Submit a completed and signed [Attachment G](#), "Prior Non-Responsibility Determination".

### **C. Vendor Responsibility Questionnaire**

Complete, certify, and file a **New York State Vendor Responsibility Questionnaire**. DOH recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions at [www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm) or go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

**Vendors must provide their New York State Vendor Identification Number when enrolling.** To request assignment of a Vendor ID or for VendRep System assistance, contact the OSC Help Desk at 866-370-4672 or 518-408-4672 or by email at [ciohelpdesk@osc.state.ny.us](mailto:ciohelpdesk@osc.state.ny.us).

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website, [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep), or may contact the Office of the State Comptroller's Help Desk for a copy of the paper form.

Bidder's should complete and submit the Vendor Responsibility Attestation [Attachment J](#).

### **D. Freedom of Information Law – Proposal Redactions**

Bidders must clearly and specifically identify any portion of the proposal that a Bidder believes constitutes proprietary information entitled to confidential handling as an exception to the Freedom of Information Law. See [Section 4.10](#), (Freedom of Information Law).

#### **E. Bidder's Certified Statements**

Submit [Attachment A](#), **Bidder's Certified Statements**, which includes information regarding the Bidder. Attachment A must be signed by an individual authorized to bind the Bidder contractually. Please indicate the title or position that the signer holds with the Bidder. DOH reserves the right to reject a proposal that contains an incomplete or unsigned Attachment A or no Attachment A.

#### **F. Encouraging Use of New York Businesses in Contract Performance**

Submit [Attachment H](#), Encouraging Use of New York State Businesses in Contract Performance to indicate which New York Businesses you will use in the performance of the contract.

#### **G. References**

Provide references using [Attachment D](#) (References) for three similar engagement, *if applicable*. Provide firm names, addresses, contact names, telephone numbers, and email addresses.

### **6.2 Technical Proposal**

The purpose of the Technical Proposal is to demonstrate the qualifications, competence, and capacity of the Bidder to perform the services contained in this RFP. The Technical Proposal should demonstrate the qualifications of the Bidder and of the staff to be assigned to provide services related to the services included in this RFP.

All bidders are required to provide a technical proposal based upon Sections 3.0-3.4 of this RFP. All proposals shall be formatted and numbered to correspond to each portion of this section. A response to how the bidder will meet each deliverable is requested.

A Technical Proposal that is incomplete in any material respect may be eliminated from consideration. The following outlines the required information to be provided, in the following order, by Bidders. The information requested should be provided in the prescribed format. Responses that do not follow the prescribed format may be eliminated from consideration. All responses to the RFP will be subject to verification for accuracy.

While additional data may be presented, the following should be included. Please provide the information in the same order in which it is requested. Your proposal must contain sufficient information to assure DOH of its accuracy. Failure to follow these instructions may result in disqualification.

Cost information cannot be included in the Technical Proposal documents.

#### **A. Title Page**

Submit a Title Page providing the RFP subject and number; the Bidder's name and address, the name, address, telephone number, and email address of the Bidder's contact person; and the date of the Proposal.

#### **B. Table of Contents**

The Table of Contents should clearly identify all material (by section and page number) included in the proposal.

### **C. Documentation of Bidder's Eligibility Responsive to Section 4.0 of RFP**

The Bidder will provide supporting documentation that their actuary meets the credentialing requirements of this RFP and that they possess the experience required to bid.

### **D. Technical Proposal Requirements**

#### **1. Organization and Personnel**

- a. Bidders should provide, in relation to responsibilities set forth in Sections 3.0-3.4 of this RFP and referenced attachments:
  - i. A description of the bidder's organizational structure and background;
  - ii. An organizational chart which clearly demonstrates how the organization intends to organize staff and management for this project;
  - iii. A description of the bidder's experience in conducting the tasks associated with this RFP.

The bidder's experience should be relevant to the scope of work to be performed in accordance with this RFP. Experience gained within the last five years should be included;

- iv. A description of the bidding organization's data processing and analytical capabilities including any technologies, special techniques, skills or abilities that the organization considers necessary to accomplish the goals and objectives of this RFP; and
- v. A summary of training initiatives utilized to ensure that all staff that will be assigned to this contract will be appropriately trained and that training protocols provide for consistency among all staff.

#### **2. Implementation Plan**

- a. Bidders should propose a plan for implementing the activities and data responsibilities set forth in Sections 3.0-3.4 of this RFP. The plan should include at a minimum:
  - i. Descriptions outlining the bidder's understanding of the tasks set forth in this RFP;
  - ii. Timeframes and tasks to be completed to ensure timely implementation of the proposed tasks by the dates proposed in Section 3.1. Consideration of timing should be given for Department edits and reviews;
  - iii. Descriptions of electronic data processing equipment to be utilized;
  - iv. Descriptions of all computer software to be utilized;
  - v. Description of a Quality Control Plan for the work covered by this RFP; and

- vi. Description of the methods to be utilized to maintain the level of cooperation with the Department necessary for proper performance of all contractual responsibilities and to apprise the Department of any issues and status.

### 6.3 Cost Proposal

Submit a completed and signed [Attachment C – Cost Proposal](#). The Cost Proposal should comply with the format and content requirements as detailed in this document and in Attachment C. Failure to comply with the format and content requirements may result in disqualification.

The bid price is to cover the cost of furnishing all of the said services, including but not limited to materials, equipment, profit and labor to the satisfaction of the Department of Health and the performance of all work set forth in said specifications.

- A. Payments for all work related to the development and calculation of the annual Managed Care rates for the following programs (see Section 3.2, A) will be made once work is completed and the supporting documentation and rate certification is submitted to the department and approved. The programs for which one payment shall be made for the initial rate and one payment for each modification are:

<u>Managed Care Program</u>	<u>Rate Develop</u>	<u>Original Rate Package Effective Date</u>	<u>Anticipated Number of Annual Modifications to Original Rate Package*</u>
a. Mainstream Managed Care	Annually	April 1	2 to 3
HIV/SNP	Annually	April 1	2 to 3
HARP	Annually	April 1	2 to 3
b. <i>MLTC Programs</i>			
MLTC Partial Capitation	Annually	April 1	4 to 5
PACE	Annually	April 1	4 to 5
MAP	Annually	April 1	4 to 5
FIDA	Annually	April 1	4 to 5
c. Medicaid Advantage	Annually	January 1	0
d. Essential Plan	Annually	January 1	1 to 2
e. Fully Integrated Duals Advantage for Individuals with Developmental Disabilities (IDD-FIDA)	Annually	January 1	2 to 3
f. Developmental Disabilities Individualized Support and Care Coordination Organization (DISCO)	Annually	TBD	2 to 3

*\*Rates may be updated more frequently, based on determinations made by the department.*

- B. Modifications for the Managed Care rates in above shall be billed on a deliverable basis. A payment shall be made for the development and calculation of each rate modification requested by the department once the work is completed and supporting documentation and rate certification is submitted to the department and approved. The anticipated number of modifications outlined in the above table are to assist in your price determination. Actual number of needed rate modifications may vary and will be made per DOH's request. These modifications may include, but are not limited to, recipients' age, gender, category of eligibility, level of care, and geographic location.

- C. Payments for service based payment rate setting, financial management and other consultative assistance outlined in Section 3.2, B will be made on an hourly basis, in compliance with a developed task order detailing the scope of the work and the staff needed to complete the work as detailed in Section 3.4. Monthly vouchers may be submitted once the progress report has been submitted to DOH in the agreed format. The requirements for the progress report are on page 30.
- D. All bidders are required to complete the attached Cost Proposal Form (Attachment C). Bidders shall be evaluated on their given prices for each program and their given per hour rates for the job categories listed in Attachment C.
  - a. It is estimated that billable hours for the contract period, shall be divided among the three Staff Levels as 30% for Level 1, 45% for Level 2 and 25% for Level 3. Percent of billable hours is based on historical data and both the proportions of hours and actual hours will likely vary from these estimates. See Attachment C: Cost Proposal for specific details on each staffing level.
- E. Subcontractor billing arrangements are not subject to the same requirements as this RFP and should be agreed upon between the contractor and the subcontractor, prior to payment for work completed. The contractor should include on the monthly progress report, the subcontractor's work performed and may bill the State the same hourly rate as the contractor or a lump sum price.
- F. All administrative and travel shall be included in the price

**7.0 PROPOSAL SUBMISSION**

A proposal consists of three distinct parts: (1) the Administrative Proposal, (2) the Technical Proposal, and (3) the Cost Proposal. The table below outlines the required format and volume for submission of each part. Proposals should be submitted in all formats as prescribed below.

	<b>Electronic Submission</b>	<b>Paper Submission</b>
<b>Administrative Proposal</b>	2 dedicated flash drives or CDs labeled "Administrative Proposal" containing a standard searchable PDF file with copy/read permissions only.	4 Originals 6 Copies
<b>Technical Proposal</b>	2 dedicated flash drives or CDs labeled "Technical Proposal" containing a standard searchable PDF file with copy/read permissions only.	4 Originals 6 Copies
<b>Cost Proposal</b>	2 dedicated flash drives or CDs labeled "Cost Proposal" containing standard searchable PDF file(s) with copy/read permissions only.	4 Originals 6 Copies

1. All hard copy proposal materials should be printed on 8.5" x 11" white paper (two-sided) and **be clearly page numbered on the bottom of each page with appropriate header and footer information.** A type size of eleven (11) points or larger should be used. The Technical Proposal materials should be presented separate from the sealed Cost Proposal. The sealed Cost Proposal should also be presented in separate three-ring binder(s);
2. Where signatures are required, the proposals designated as originals should have a handwritten signature and be signed in ink.
3. The NYSDOH discourages overly lengthy proposals. Therefore, marketing brochures, user manuals or other materials, beyond that sufficient to present a complete and effective proposal, are not desired. Elaborate artwork or expensive paper is not necessary or desired. In order for

the NYSDOH to evaluate proposals fairly and completely, proposals should follow the format described in this RFP to provide all requested information. The Bidder should not repeat information in more than one section of the proposal. If information in one section of the proposal is relevant to a discussion in another section, the Bidder should make specific reference to the other section rather than repeating the information;

4. Audio and/or videotapes are not allowed. Any submitted audio or videotapes will be ignored by the evaluation team; and
5. In the event that a discrepancy is found between the electronic and hardcopy proposal, the original hardcopy will prevail.

**The complete proposal must be received by the NYSDOH, no later than the Deadline for Submission of Proposals specified in [Section 1.0](#), (Calendar of Events). Late bids will not be considered.**

Proposals should be submitted in three (3) separate, clearly labeled packages: (1) Administrative Proposal, (2) Technical Proposal and (3) Cost Proposal, prepared in accordance with the requirements stated in this RFP. Mark the outside envelope of each proposal as “RFP# 16501 Rate and Fiscal Management Consultant – (Administrative) (Technical) or (Cost) Proposal submitted by (Bidder’s name)”. The three sealed proposals may be combined into one mailing, if desired.

Proposals must be submitted, by U.S. Mail, by courier/delivery service (e.g., FedEx, UPS, etc.) or by hand as noted below, in a sealed package to:

Department of Health (RFP # 16501 Rate and Fiscal Management Consultant)  
Attention: Michael Lewandowski  
One Commerce Plaza  
99 Washington Ave, Room 1460  
Albany, NY 12237

NOTE: You should request a receipt containing the time and date received and the signature of the receiver for all hand-deliveries and ask that this information also be written on the package(s).

Submission of proposals in a manner other than as described in these instructions (e.g., fax, electronic transmission) will not be accepted.

## **7.1 No Bid Form**

Bidders choosing not to bid are requested to complete the No-Bid form [Attachment I](#).

## **8.0 METHOD OF AWARD**

### **8.1 General Information**

DOH will evaluate each proposal based on the “Best Value” concept. This means that the proposal that best “optimizes quality, cost, and efficiency among responsive and responsible offerers” shall be selected for award (State Finance Law, Article 11, §163(1)(j)).

DOH at its sole discretion, will determine which proposal(s) best satisfies its requirements. DOH reserves all rights with respect to the award. All proposals deemed to be responsive to the requirements of this procurement will be evaluated and scored for technical qualities and cost. Proposals failing to meet the requirements of this document may be eliminated from consideration. The evaluation process will include separate technical and cost evaluations, and the result of each evaluation shall remain confidential until both evaluations have been completed and a selection of the winning proposal is made.



The evaluation process will be conducted in a comprehensive and impartial manner, as set forth herein, by an Evaluation Committee. The Technical Proposal and compliance with other RFP requirements (other than the Cost Proposal) will be weighted **70%** of a proposal's total score and the information contained in the Cost Proposal will be weighted **30%** of a proposal's total score

Bidders may be requested by DOH to clarify the contents of their proposals. Other than to provide such information as may be requested by DOH, no Bidder will be allowed to alter its proposal or add information after the Deadline for Submission of Proposals listed in [Section 1.0](#) (Calendar of Events).

In the event of a tie, the determining factors for award, in descending order, will be: (1) lowest cost, (2) proposed percentage of MWBE participation, and (3) Past Experience.

## **8.2 Submission Review**

DOH will examine all proposals that are received in a proper and timely manner to determine if they meet the proposal submission requirements, as described in [Section 6.0](#) (Proposal Content) and [Section 7.0](#) (Proposal Submission), and include the proper documentation, including all documentation required for the Administrative Proposal, as stated in this RFP. Proposals that are materially deficient in meeting the submission requirements or have omitted material documents, in the sole opinion of DOH, may be rejected.

## **8.3 Technical Evaluation**

The evaluation process will be conducted in a comprehensive and impartial manner. A Technical Evaluation Committee comprised of program staff of DOH will review and evaluate all proposals.

Proposals will undergo a Preliminary Technical Evaluation to verify Minimum Qualifications to Propose (Section 4.0).

The Technical Evaluation Committee members will independently score each Technical Proposal that meets the submission requirements of this RFP. The individual Committee Member scores will be averaged to calculate the raw Technical Score for each responsive Bidder. The scores will be normalized by using the following formulas:

$$Z = (X/Y) * 70\%$$

X is the average raw technical score of the proposal being scored;

Y is the average raw technical score of the highest raw Technical Proposal; and

Z is the Technical score.

## **8.4 Cost Evaluation**

The Cost Evaluation Committee will examine the Cost Proposal documents. The Cost Proposals will be opened and reviewed for responsiveness to cost requirements. If a cost proposal is found to be non-responsive, that proposal may not receive a cost score and may be eliminated from consideration.

Each proposal that meets the submission requirements and meets the cost proposal requirements will receive a cost score. The Cost Proposals will be scored based on a maximum cost score of 30 points. The maximum cost score will be allocated to the proposal with the lowest all-inclusive not-to-exceed maximum price. All other responsive proposals will receive a proportionate score based on the relation of their Cost Proposal to the proposals offered at the lowest final cost, using this formula:

$$\text{Total Cost Score} = (A/B) * 30\%$$



- A is Total price of lowest cost proposal;
- B is Total price of cost proposal being scored; and

The cost evaluation is **30% (up to 30 points)** of the final score.

### **8.5 Composite Score**

A composite score will be calculated by the DOH by adding the Total Technical Score points and the Total Cost Score points awarded. Finalists will be determined based on composite scores.

### **8.6 Reference Checks**

The Bidder should submit references using [Attachment D](#) (References). At the discretion of the Evaluation Committee, references may be checked at any point during the process to verify bidder qualification to propose (Section 4.0).

### **8.7 Best and Final Offers**

NYSDOH reserves the right to request best and final offers. In the event NYSDOH exercises this right, all bidders that submitted a proposal that met the minimum mandatory requirements will be asked to provide a best and final offer. Bidders will be informed that should they choose not to submit a best and final offer, the offer submitted with their proposal will be construed as their best and final offer.

### **E. 8.8 Award Recommendation**

The Evaluation Committee will submit a recommendation of the Finalist(s) with the highest composite score(s) whose experience and qualifications have been verified.

The Department will notify the awarded Bidder(s) and Bidders not awarded. The awarded Bidder(s) will enter into a written Agreement substantially in accordance with the terms of **Attachment E**, DOH Agreement, to provide the required services as specified in this RFP. The resultant contract shall not be binding until fully executed and approved by the New York State Office of the Attorney General and the Office of the State Comptroller.

## **ATTACHMENTS**

- A Bidder's Certified Statements
- B Proposal Document Checklist
- C Cost Proposal
- D References
- E DOH Agreement
- F Guide to New York State DOH M/WBE Required Forms & Forms
- G Bidder's Disclosure of Prior Non-Responsibility Determination
- H Encouraging Use of New York Businesses in Contract Performance
- I No-Bid Form
- J Vendor Responsibility Attestation
- K List of Acronyms and Abbreviations
- L Program Definitions

**ATTACHMENT A**

**BIDDER'S CERTIFIED STATEMENTS**

To be completed and included in the Administrative Proposal documents

<b>RFP # 16501 Rate and Fiscal Management Consultant</b>
<b>1. Information with regard to the Bidder</b>
<b>A. Provide the Bidder's name, address, telephone number, and fax number.</b>
Name: <input type="text"/>
Address: <input type="text"/>
City, State, ZIP Code: <input type="text"/>
Telephone Number (including area code): <input type="text"/>
Fax Number (including area code): <input type="text"/>
<b>B. Provide the name, address, telephone number, and email address of the Bidder's Primary Contact with DOH with regard to this proposal.</b>
Name: <input type="text"/>
Address: <input type="text"/>
City, State, ZIP Code: <input type="text"/>
Telephone Number (including area code): <input type="text"/>
Email Address: <input type="text"/>
<b>2. By submitting the bid the Bidder acknowledges and agrees to all of the following: [Please note: alteration of any language contained in this section may render your proposal non-responsive.]</b>
<b>Bidder certifies that either there is no conflict of interest or that there are business relationships and /or ownership interests for the organization for the above named organization that may represent a conflict of interest for the organization as a bidder and attached to this form is a description of how the potential conflict of interest and/or disclosure of confidential information relating to this contract will be avoided.</b>
<b>The Bidder certifies that it can and will provide and make available, at a minimum, all services as described in the RFP if selected for award.</b>
<b>Bidder acknowledges that, should any alternative proposals or extraneous terms be submitted with the proposal, such alternate proposals or extraneous terms will not be evaluated by the DOH.</b>
<b>Bidder accepts, without any added conditions, qualifications or exceptions, the contract terms and conditions contained in this RFP including any exhibits and attachments.</b>

The bidder is either registered to do business in NYS, or if formed or incorporated in another jurisdiction than NYS, can provide a Certificate of Good Standing from the applicable jurisdiction or provide an explanation, subject to the sole satisfaction of the Department, if a Certificate of Good Standing is not available, and if selected, the vendor will register to do business in NYS.

vi. The bidder will disclose as part of their technical proposal, a description of the educational background, experience and special qualifications of consultants to be involved in the contract as well as those of any proposed subcontractor. The following information should be provided for each subcontractor:

- a) A complete description of specific responsibilities to be undertaken by the subcontractor under this contract. Include the percentage of work and effort to be completed by the subcontractor under this contract;
- b) A description of the subcontractor's experience performing the specific functions that they will be completing;
- c) Three (3) business references that can demonstrate the subcontractor's experience in performing functions related to this RFP that they will be completing;
- d) A letter of commitment to undertake the specific functions required in this RFP which the subcontractor will be completing, signed by an authorized representative of the proposed subcontractor; and

**A. The Bidder is (check as applicable):**

- A New York State Certified Minority-Owned Business Enterprise
- A New York State Certified Woman-Owned Business Enterprise
- A New York State Certified Minority and Woman-Owned Business Enterprise (Dual Certified)
- None of the above

**B. Provide the name, title, address, telephone number, and email address of the person authorized to receive Notices with regard to the contract entered into as a result of this procurement. See Section \_\_\_ of the DOH Agreement (Attachment E), NOTICES.**

**Name:** Click here to enter text.

**Title:** Click here to enter text.

**Address:** Click here to enter text.

**City, State, ZIP Code:** Click here to enter text.

**Telephone Number (including area code):** Click here to enter text.

**Email Address:** Click here to enter text.

**c. Bidder's Taxpayer Identification Number:**

Click here to enter text.

**D. Bidder's NYS Vendor Identification Number as discussed in Section 6.1.F, if enrolled:**

Click here to enter text.

**By my signature on this Attachment A, I certify to the statements made above in Section 2 and that I am authorized to bind the Bidder contractually. Furthermore, I certify that all information provided in connection with its proposal is true and accurate.**

\_\_\_\_\_  
**Typed or Printed Name of Authorized Representative of the Bidder**

\_\_\_\_\_  
**Title/Position of Authorized Representative of the Bidder**

\_\_\_\_\_  
**Signature of Authorized Representative of the Bidder**

\_\_\_\_\_  
**Date**

**ATTACHMENT B**

**PROPOSAL DOCUMENT CHECKLIST**

Please reference Section 7.0 for the appropriate format and quantities for each proposal submission.

<b>RFP # 16501 - Rate and Fiscal Management Consultant</b>		
<b>FOR THE ADMINISTRATIVE PROPOSAL</b>		
<b>RFP §</b>	<b>REQUIREMENT</b>	<b>INCLUDED</b>
§ 6.1.A	<b>M/WBE Participation Requirements:</b>	<input type="checkbox"/>
	Attachment F Form 1	<input type="checkbox"/>
	Attachment F Form 2 (If Applicable)	<input type="checkbox"/>
§ 6.1.B	<b>Appendix D – Disclosure of Prior Non-Responsibility Determinations, completed and signed.</b>	<input type="checkbox"/>
§ 6.1.C	<b>Vendor Responsibility Questionnaire, online or if hard copy, completed, and signed.</b>	<input type="checkbox"/>
§ 6.1.D	<b>Freedom of Information Law – Proposal Redactions (If Applicable)</b>	<input type="checkbox"/>
§ 6.1.E	<b>Attachment A - Bidder’s Certified Statements, completed &amp; signed.</b>	<input type="checkbox"/>
§ 6.1.F	<b>Attachment H – Encouraging Use of New York Businesses in Contract Performance</b>	<input type="checkbox"/>
§ 6.1.G	<b>Attachment D (References)</b>	<input type="checkbox"/>
<b>FOR THE TECHNICAL PROPOSAL</b>		
<b>RFP §</b>	<b>REQUIREMENT</b>	<b>INCLUDED</b>
§ 6.2.A	<b>Title Page</b>	<input type="checkbox"/>
§ 6.2.B	<b>Table of Contents</b>	<input type="checkbox"/>
§ 6.2.C	<b>Documentation of Bidder’s Eligibility</b>	<input type="checkbox"/>
§ 6.2.D	<b>Technical Proposal Narrative</b>	<input type="checkbox"/>
<b>FOR THE COST PROPOSAL REQUIREMENT</b>		
<b>RFP §</b>	<b>REQUIREMENT</b>	<b>INCLUDED</b>
§ 6.3	<b>Attachment C- Cost Proposal</b>	<input type="checkbox"/>

**ATTACHMENT C**

**COST PROPOSAL**

**A. DELIVERY BASED PRICING: Managed Care Rate Setting Functions**

**1. Managed Care Programs**

Submit a price in the last two columns that reflect the total price for the completion of the annual rate for each of the programs below, and the estimated price for each rate modification. This rate will be held firm for years one (1) through three (3) of the contract. See Section 5.4 Payment for price adjustment clause for years four (4) and (5).

This will be the price paid to the contractor for the completion of the initial rates and for each rate modification, in accordance with Sections 3.3 and 6.3 of this RFP.

<b><u>Managed Care Program</u></b>	<b><u>Effective Date</u></b>	<b><u>Rate Price</u></b>	<b><u>Modification Price</u></b>
a. Mainstream Managed Care	April 1		
HIV/SNP	April 1		
HARP	April 1		
b. <i>MLTC Programs*</i>	--	--	--
MLTC Partial Cap	April 1		
PACE	April 1		
MAP	April 1		
FIDA	April 1		
c. Medicaid Advantage	January 1		
d. Essential Plan	January 1		
e. Fully Integrated Duals Advantage for Individuals with Developmental Disabilities (IDD-FIDA)	January 1		
f. Developmental Disabilities Individual Support and Care Coordination Organization (DISCO)	TBD		

*\*This is just a title, does not require a rate or modification price*

**B. HOURLY BASED PRICING: Service Based Payment Rate Setting Functions and Policy and Financial Management Consulting Services**

Complete the information below based on the assumptions contained in Sections 3.3 and 6.3 of the RFP and the information provided below. These estimated hours shall be meant to include work for service based payment rate setting functions and assistance with financial and consulting activities.

For purposes of this proposal, use the following guidelines in assigning staff to one of the three levels listed below, provide one hourly rate for each Staff Level. It is estimated that billable hours for the contract period, shall be divided among the three Staff Levels as 30% for Level 1, 45% for Level 2 and 25% for Level 3. Percent of billable hours is an estimate based on historical data. Both the proportions of hours and actual hours will likely vary from these estimates during the term of the contract.

<b>Level of Staff</b>	<b>(A) Proposed Hourly Rate Per Staff Level (Years 1-3)</b>	<b>(B) Total Hours*</b>	<b>(A*B) Annual Total Cost Per Staff Level (Years 1-3)</b>	<b>List Titles Assigned to Each Level</b>
<b>Level 1</b>	\$	9,600	\$	
<b>Level 2</b>	\$	14,400	\$	
<b>Level 3</b>	\$	8,000	\$	
<b>Total</b>			\$	

*\*This is an annual estimate. Actual hours may increase or decrease based on the need of the State. It is estimated that 20,000 of these hours will be allocated to policy and financial management consulting services, 6,000 of these hours for OASAS service based rate setting functions and 6,000 hours for Foster Care service based rate setting functions, annually.*

These hourly rates will be held firm for years one (1) through three (3) of the contract. See Section 5.4 Payment for price adjustment clause for years four (4) and (5).

### **Examples of Experience and Duties by Staffing Level:**

This is only to be used as a guide and is not all inclusive of staff types, experience and/or duties, but is representative of the level of staff the Department may require to perform such task.

#### **Level 1 Staff:**

Staff Types: Principals, Partners, Project Leaders, Lead Consultants, or other staff with similar responsibilities.

Experience: These staff have extensive experience and knowledge of actuarial activities related to setting rates and evaluating methodologies. These upper level staff are seasoned professionals with generally 10-15 years of experience, and may be an actuary, accountant or a Fellow of the Society of Actuaries (FSA).

General Duties: Project oversight, management of Contractor's team, liaison with DOH, client relationships, and global policy development.

#### **Level 2 Staff:**

Staff Types: Associates, Consultants, Senior Analysts, or other staff with similar responsibilities.

Experience: These staff are mid-level professionals with generally 5-10 years of increasing responsibility and independent analysis work and experience, require little supervision

General Duties: Analyze data and form preliminary conclusions and/or recommendations, but report to Level 1 staff for overall direction on project, specific policy interpretation, and may supervise lower level staff.

#### **Level 3 Staff:**

Staff Types: Analysts, Consulting Assistants, or other staff with similar responsibilities.

Experience: These staff are entry level professionals with less than 5 years' experience. They work under direct supervision of Level 2 staff

General Duties: Technical support and data manipulation, but not necessarily drawing conclusions or making recommendations.



**ATTACHMENT D**

**REFERENCES**

Submit a total of THREE references (Section 6.0.F) using this form.  
 Expand fields and duplicate this page as necessary.

<b>RFP # 16501 - Rate and Fiscal Management Consultant</b>	
<b>BIDDER:</b>	
<b>Provide the following information for each reference submitted. Fields will expand as you type.</b>	
<b>Reference Company #1:</b>	Click here to enter text.
<b>Contact Person:</b>	Click here to enter text.
<b>Address:</b>	Click here to enter text.
<b>City, State, Zip:</b>	Click here to enter text.
<b>Telephone Number:</b>	Click here to enter text.
<b>Email Address:</b>	Click here to enter text.
<b>Number of years Bidder provided services to this entity:</b>	Click here to enter text.
<b>Brief description of the services provided:</b>	Click here to enter text.
<b>Reference Company #2:</b>	Click here to enter text.
<b>Contact Person:</b>	Click here to enter text.
<b>Address:</b>	Click here to enter text.
<b>City, State, Zip:</b>	Click here to enter text.
<b>Telephone Number:</b>	Click here to enter text.
<b>Email Address:</b>	Click here to enter text.
<b>Number of years Bidder provided services to this entity:</b>	Click here to enter text.
<b>Brief description of the services provided:</b>	Click here to enter text.
<b>Reference Company #3:</b>	Click here to enter text.
<b>Contact Person:</b>	Click here to enter text.
<b>Address:</b>	Click here to enter text.
<b>City, State, Zip:</b>	Click here to enter text.
<b>Telephone Number:</b>	Click here to enter text.
<b>Email Address:</b>	Click here to enter text.
<b>Number of years Bidder provided services to this entity:</b>	Click here to enter text.
<b>Brief description of the services provided:</b>	Click here to enter text.

**ATTACHMENT E**

**DOH AGREEMENT  
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: 3450000

CONTRACTOR (Name and Address):

TYPE OF PROGRAM(S):

CHARITIES REGISTRATION NUMBER:

CONTRACT TERM

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

FROM:  
TO:

FUNDING AMOUNT FOR CONTRACT TERM:

FEDERAL TAX IDENTIFICATION NUMBER:

STATUS:  
CONTRACTOR IS ( ) IS NOT ( ) A SECTARIAN ENTITY

NYS VENDOR IDENTIFICATION NUMBER:

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

MUNICIPALITY NO. (if applicable)

CONTRACTOR IS ( ) IS NOT ( ) A NYS 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 changes 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



**APPENDIX A: STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS  
REVISED Appendix A dated January 2014**

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

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

**TABLE OF CONTENTS**

	<b>Page</b>
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	4-5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with New York State Information Security Breach and Notification Act	6
23. Compliance with Consultant Disclosure Law	6
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7
26. Iran Divestment Act	7

**STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the 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 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: mwbcertification@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.

**APPENDIX X  
GLBU: DOH01**

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), \_\_\_\_\_ having its mailing address at \_\_\_\_\_, 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:

Revised 05/13/2014

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: \_\_\_\_\_

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 Proposals" 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: [accountspayable@ogs.ny.gov](mailto:accountspayable@ogs.ny.gov) with a subject field as follows:  
Subject: <<Unit ID: 3450437>> <<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 3450000  
c/o NYS OGS BSC Accounts Payable  
Building 5, 5th Floor  
1220 Washington Ave  
Albany, NY 12226-1900**

- 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.ny.gov/epay/index.htm](http://www.osc.ny.gov/epay/index.htm), by email at [helpdesk@sfs.ny.gov](mailto: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.ny.gov/vendors/vendorguide/guide.htm>.

### III. Term of Contract

- A. Upon approval of the Commissioner of Health, 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.



## 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:

May 2013

- a. "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.
- b. "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 of property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.
  - i. CONTRACTOR's Liability Insurance issued to and covering the liability of the successful bidder with respect to all work performed by it under this proposal and the contract.
  - ii. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.
  - iii. Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.

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 B: REQUEST FOR PROPOSAL**

To be added upon award

**APPENDIX C: PROPOSAL OF BIDDER**

To be added upon award.

## **APPENDIX H: HIPAA CONFIDENTIALITY**

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.
-

**APPENDIX G:  
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.

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**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 Amendment X-?, the New York State Department of Health hereby establishes an overall goal of **30%** for Minority and Women-Owned Business Enterprises (“MWBE”) participation, **15%** for Minority-Owned Business Enterprises (“MBE”) participation and **15%** 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**

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form #3) to the New York State Department of Health by the 10<sup>th</sup> 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.

## **ATTACHMENT F**

### **NEW YORK STATE DOH MWBE RFP REQUIRED FORMS**

All DOH procurements have a section entitled “**MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE REQUIREMENTS.**” This section of procurement sets forth the established DOH goal for that particular procurement and also describes the forms that must be completed with their bid. Below is a summary of the forms used in the DOH MWBE Participation Program by a bidder.

**Form #1: Bidder MWBE Utilization Plan** - This document should be completed by all bidders responding to RFPs with an MWBE goal greater than zero. The bidder must demonstrate how it plans to meet the stated MWBE goal. In completing this form, the bidder should describe the steps taken to establish communication with MWBE firms and identify current or future relationships with certified MWBE firms. The second page of the form should list the MWBE certified firms that the vendor plans to engage with on the project and the amount that each certified firm is projected to be paid. Plans to work with uncertified firms or women and minority staffed firms do not meet the criteria for participation. The firm must be owned and operated by a Woman and/or Minority and must be certified by NYS Empire State Development to be eligible for participation. If the plan is not submitted or is deemed deficient, the bidder may be sent a notice of deficiency. It is mandatory that all awards with goals have a utilization plan on file.

**Form #2: MWBE Utilization Waiver Request** - This document should be filled out by the bidder if the utilization plan (Form #1) indicates less than the stated participation goal for the procurement. In this instance, Form #2 must accompany Form #1 with the bid. If Form #2 is provided and goal was initially set higher, revised goal approval will be necessary from DOB. When completing Form #2, it is important that the bidder thoroughly document the steps that were taken to meet the goal and provide evidence in the form of attachments to the document. The required attachments are listed on Form #2 and will document the good-faith efforts taken to meet the desired goal. A bidder can also attach additional evidence outside of those referenced attachments. Without evidence of good-faith efforts, in the form of attachments or other documentation, the Department of Health may not approve the waiver and the bidder may be deemed non-responsive.

New MWBE firms are being certified daily and new MWBE firms may now be available to provide products or services that were historically unavailable. If Form #2 is found by DOH to be deficient, the bidder may be sent a deficiency letter which will require a revised form to be returned within 7 business days of receipt to avoid a finding of non-compliance. DOH may work directly with firm to resolve minor deficiencies via e-mail.

**Form #3: Replaced by Online Compliance System** - <https://ny.newnycontracts.com> Contractors will need to login and submit payments to MWBE Firms in this online system once payments to these vendors commence.

**Form #4 – MWBE Staffing Plan**- This form should be completed based on the composition of staff working on the project. Enter the numbers or counts in the corresponding boxes and add up the totals in each column. This form is for diversity research purposes only and has no bearing on MWBE goal achievement.

**Form #5 – EEO and MWBE Policy Statement** -This is a standard EEO policy that needs to be signed and dated and submitted. If Bidder has their own EEO policy it may be submitted instead of endorsing this document.

**- M/WBE Form #1 -**

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

<b>Bidder/Contractor Name:</b> Click here to enter text.	
<b>Vendor ID:</b> Click here to enter text.	<b>Telephone No.</b> Click here to enter text. <b>Email:</b> Click here to enter text.
<b>RFP/Contract Title:</b> Click here to enter text.	<b>RFP/Contract No.</b> Click here to enter text.

**Description of Plan to Meet M/WBE Goals**

Click here to enter text.

**PROJECTED M/WBE USAGE**

	<b>%</b>	<b>Amount</b>
<b>1. Total Dollar Value of Proposal Bid</b>	<b>100</b>	Click here to enter text.
<b>2. MBE Goal Applied to the Contract</b>	Click here to enter text.	\$ Click here to enter text.
<b>3. WBE Goal Applied to the Contract</b>	Click here to enter text.	\$ Click here to enter text.
<b>4. M/WBE Combined Totals</b>	Click here to enter text.	\$ Click here to enter text.

“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.”

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

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

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

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

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

**WOMEN OWNED BUSINESS ENTERPRISE (WBE) INFORMATION**

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

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





**- M/WBE Form #4 -  
New York State Department of Health  
M/WBE STAFFING PLAN**

For project staff, consultants and/or subcontractors working on this grant complete the following plan. This has no impact on MWBE utilization goals, or the submitted Utilization Plan - Form#1. This is for diversity research purposes.

Contractor Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

STAFF	Total	Male	Female	Black	Hispanic	Asian/ Pacific Islander	Other
Executive/Senior level Officials							
Managers/Supervisors							
Professionals							
Technicians							
Administrative Support							
Craft/Maintenance Workers							
Laborers and Helpers							
Service Workers							
Totals							

\_\_\_\_\_  
(Name and Title)

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

\_\_\_\_\_  
Date

**- 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:

Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations. Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.

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.

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.

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.

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 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.

(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 & Title

\_\_\_\_\_  
Signature & Date

Detailed Instructions for Completing MWBE Forms 1 & 2

**Form#1 – MWBE Utilization Plan**

**Page #1 of Form #1:**

**Description of Plan** - Describe any steps/details that support Bidder/Contractor plan to meet the MWBE goals stated in the procurement/contract.

**Line#1 - Total Dollar Value of Proposal Bid** – This line should represent the total dollar amount of bid. The total value is eligible for MWBE goal setting.

**Line#2 - MBE Goal Applied to the Contract**– Bidder/Contractor lists the amount to be paid/subcontracted to Certified Minority-owned Business Enterprise(s) and the percentage this amount represents of the Total Dollar Value of Proposal Bid listed on Line #1.

*Example:* If paying two MBE firms \$100,000 & \$50,000 each and Total Dollar Value of Proposal Bid listed on line #1 is \$1,000,000, list 15% and \$150,000 on Line #2.

**Line#3 - WBE Goal Applied to the Contract**– Bidder/Contractor lists the amount paid/subcontracted to Certified Woman-owned Business Enterprise(s) and the percentage this amount represents of the Total Dollar Value of Proposal Bid listed on Line 1 of the “Form #1 MWBE Utilization Plan”.

*Example:* If Bidder/Contractor is paying two WBE firms \$50,000 & \$100,000 each and the Total Dollar Value of Proposal Bid listed on line#1 is \$1,000,000 Bidder/Contractor would list 15% and \$150,000 on Line #2 of the Utilization Plan.

**Line#4 - MWBE Combined Totals** – Total of Line #2 and Line #3. [Line #2 + Line #3 = MWBE Combined Totals]

*Example:* Using the above Line #2 and Line #3 examples for payment data, Bidder/Contractor achieves a combined MWBE % of 30% and a combined MWBE dollar amount of \$300,000. (15%M and 15%W; \$150,000M + \$150,000W). MWBE total/Total dollar value of bid = %.

**Page#2 of Form#1:**

**The first column** (left column): Bidder/Contractor lists any Minority-owned Business Enterprises (MBE) that Bidder/Contractor will be subcontracting with or purchasing from and the MBE contact/company information.

**The second column** (center column): Bidder/Contractor describes what type of work certified MBE will be providing or what product certified MBE will be supplying to Bidder/Contractor.

**Third column** (right column): Bidder/Contractor states the amount to be paid to the certified MBE during the term of the contract. The amount totaled from Page #2 should equal the amount listed on Line #2 of Page #1.

**Page#3 of Form#1:**

**The first column** (left column): Bidder/Contractor lists any Woman-owned Business Enterprises (WBE) that Bidder/Contractor will be subcontracting with or purchasing from and WBE contact/company information.

**The second column** (center column): Bidder/Contractor describes what type of work certified WBE will be providing or what product certified WBE will be supplying to Bidder/Contractor.

**Third column** (right column): Bidder/Contractor states the amount to be paid to the certified WBE during the term of the contract. The amount totaled from Page#3 should equal the amount listed on Line#3 of Page#1.

### **Form#2 – MWBE Waiver Request**

“Form#1 MWBE Utilization Plans” that commit to a goal % less than the stated MWBE goal percentage in procurement, must be accompanied by a “Form#2 MWBE Waiver Request”.

A Bidder/Contractor may qualify for a partial or total waiver of the MWBE goal requirements established on a State contract only upon the submission of a waiver form by a Bidder/Contractor, documenting good-faith efforts by the Contractor to meet the goal requirements of the state contract and a consideration of applicable factors. The ability to subcontract with M/WBEs and separately the ability to purchase with M/WBEs must be addressed in attachments on all waiver requests.

Fill out the header with the name of the Bidder/Contractor requesting the waiver under Offeror/Contractor Name, include your Federal Identification ID, Address, Solicitation/Contract Number, and M/WBE Goals.

Check off the appropriate box for the type of waiver that is being requested and whether it is a total or partial waiver. If the waiver is Pending ESD Certification, meaning the subcontractor has applied for certification with Empire State Development, check off that box and state the date that they applied for certification.

Next, and directly below the Pending ESD Certification area, please sign and date the waiver. Provide the name of the preparer as well as a telephone number and email address (Bidder/Contractor direct contact number of person authorized to discuss submission).

The following attachments should also be provided:

1. A statement setting forth your basis for requesting a partial or total waiver. The statement should at a minimum include the services being subcontracted out and why a portion of those services cannot be subcontracted to Certified MWBE(s). In addition, statement must also include what purchases of equipment and supplies are being made and why those purchases cannot be provided by certified MWBE(s).
2. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals related to this contract.
3. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.
4. A list of all certified M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified M/WBE participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified M/WBEs.

6. Provide copies of responses to your solicitations received by you from certified M/WBEs.
7. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Offeror/Contractor, and the M/WBEs undertaken for purposes of complying with the certified M/WBE participation goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.

**\* All attachments are created by the entity requesting the waiver. These are self-generated attachments and are not provided by the agency.**

## ATTACHMENT G

### BIDDER'S DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

Procurement Title:[Type text]

RFP #: [Type text]

Bidder Name: [Type text]

Bidder Address: [Type text]

Bidder SFS Vendor ID #: [Type text]

Bidder Federal ID#: [Type text]

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

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

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

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 check):

No

Yes

If yes, please answer the next questions:

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

No

Yes

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

No

Yes

Attachment G Page 1

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

**Governmental Entity:** [Type text]

**Date of Finding of Non-responsibility:** [Type text]

**Basis of Finding of Non-Responsibility:** [Type text]

(Add additional pages as necessary)

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

No Yes

2b. If yes, please provide details below.

**Governmental Entity:** [Type text]

**Date of Termination or Withholding of Contract:** [Type text]

Basis of Termination or Withholding: [Type text]

(Add additional pages as necessary)

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

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

\_\_\_\_\_  
(Date)

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

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(e-mail Address)

## **ATTACHMENT H**

### **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.

<b>New York Business Identifying Information Business Name</b>	<b>Business Address</b>	<b>Contact Name</b>	<b>Contact Phone</b>	<b>Contact Email Address</b>

**ATTACHMENT I**

**NO-BID FORM**

PROCUREMENT TITLE: \_\_\_\_\_ RFP # \_\_\_\_\_

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

- We do not provide the requested services. Please remove our firm from your mailing list
- We are unable to bid at this time because:

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

- Please retain our firm on your mailing list.

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

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

\_\_\_\_\_  
(Date)

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

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(e-mail Address)

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

## ATTACHMENT J

### VENDOR RESPONSIBILITY ATTESTATION

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

**Choose one:**

- An on-line Vendor Responsibility Questionnaire has been updated or created at OSC's website: <https://portal.osc.state.ny.us> within the last six months.
- A hard copy Vendor Responsibility Questionnaire is included with this proposal/bid and is dated within the last six months.
- A Vendor Responsibility Questionnaire is not required due to an exempt status. Exemptions include governmental entities, public authorities, public colleges and universities, public benefit corporations, and Indian Nations.

Signature of Organization Official: \_\_\_\_\_

Print/type Name: \_\_\_\_\_

Title: \_\_\_\_\_

Organization: \_\_\_\_\_

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

## ATTACHMENT K

### List of Acronyms and Abbreviations

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

- ACO: Accountable Care Organizations
- AG: New York State Attorney General
- BBA: Balanced Budget Act
- CHIP: Children's Health Insurance Program
- CMS: Centers for Medicare and Medicaid Services
- Contractor: Successful Bidder
- CPI-U: Consumer Index for All Urban Consumers
- CRG: Clinical Risk Group
- DEA: Drug Enforcement Agency
- Department: New York State Department of Health
- DFRS: Division of Finance and Rate Setting
- DHPCO: Division of Health Plan Contracting and Oversight
- DISCO: Developmental Disabilities Individual Support and Care Coordination Organization
  
- DOH: Department of Health
- DTF: Department of Tax and Finance
- EEO: Equal Employment Opportunity
- EP: Essential Plan
- FIDA: Fully Integrated Dual Advantage
- FOIL: Freedom of Information Law
- FPL: Federal Poverty Level
- GFO: Guide to Financial Operations
- HARP: Health and Recovery Plan
- HCBS: Home and Community Based Services
- HIV/SNP: HIV/SNP: Human Immunodeficiency Virus/Special Need Plan
- HMO: Health Maintenance Organization
- IBNR: Incurred But Not Reported
- ICD: International Classification of Disease
- IDD: Individuals With Developmental Disabilities
- IDD-FIDA: Fully Integrated Duals Advantaged for Individuals with Developmental Disabilities
  
- IPA: Independent Practice Association
- LTC: Long Term Care
- M/WBE: Minority/Women Business Enterprise
- MA: Medicaid Advantage
- MAGI: Modified Adjusted Gross Income
- MAP: Medicaid Advantage Plus
- MCO: Managed Care Organization
- MLTC: Medicaid Managed Long Term Care
- MMC: Mainstream Medicaid Managed Care
  
- MMCOR: Medicaid Managed Care Operating Reports

- MRT: Medicaid Redesign Team
- NTP: Narcotic Treatment Program
- NYS: New York State
- OASAS: Office of Alcoholism and Substance Abuse Services
- OGS: Office of General Services
- OHIP: Office of Health Insurance Programs
- OMH: Office of Mental Health
- OPWDD: Office for People with Developmental Disabilities
- OSC: New York State Office of the State Comptroller
- OTP: Opioid Treatment Program
- PACE: Program for All Inclusive Care for the Elderly
- PMPM: Per Member Per Month
- PPS: Performing Provider System
- PRA: Personal Resource Account
- QHP: Qualified Health Plan
- RFP: Request for Proposal
- SAAM: Semi-Annual Assessment of Members
- SFL: State Finance Law
- SFY: State Fiscal Year
- SID: State Insurance Department
- SNA: Safety Net Adult
- SNP: Special Needs Plan
- SNPOR: Special Need Plan Operating Reports
- SSI: Social Security Insurance
- State: New York State
- SUD: Substance Use Disorder
- TANF: Temporary Assistance to Needy Families
- UAS: Uniform Assessment System
- UPL: Upper Payment Limit
- VBP: Value Based Payment

## ATTACHMENT L

### Program Definitions

#### 1. Managed Care Programs

##### **Mainstream Medicaid Managed Care**

The Partnership Plan, referred to as “mainstream” Medicaid, covers most of the non-elderly, non-institutionalized Medicaid population in the State. The Terms and Conditions of the Partnership Plan define specific populations who are either excluded or exempt from joining managed care.

As of November 2012, MMC programs are operating in all counties of the state, including New York City.

As of April 2015, there is a total of 4,568,293 individuals enrolled in mainstream Medicaid managed care. Specifically, 1,648,745 enrollees are categorized as TANF, 1,148,975 enrollees are categorized as a Safety Net Adult (SNA), and 345,929 enrollees are categorized as SSI, while an additional 1,415,644 are Modified Adjusted Gross Income (MAGI) eligible individuals enrolled through NY State of Health, the Official Health Plan Marketplace. A copy of the Medicaid managed care model contract that describes in greater detail the Medicaid Managed Care benefit package is available at:

[http://www.health.ny.gov/health\\_care/managed\\_care/docs/mc Medicaid\\_managed\\_care\\_fhp\\_hiv-snp\\_model\\_contract.pdf](http://www.health.ny.gov/health_care/managed_care/docs/mc Medicaid_managed_care_fhp_hiv-snp_model_contract.pdf)

*Known future Transition of Services to Managed Care as of September 2015:* January 1, 2017 is the targeted implementation date for behavioral health services for children in New York City to transition to Managed Care, and July 1, 2017 is the expected implementation date for the children’s transition for the rest of the state.

##### **i. HIV/Special Needs Plan (SNP)**

The AIDS Institute oversees three HIV Special Needs Plans (SNPs) that are currently operational only in New York City. As a Medicaid managed care program, the HIV SNPs seek to improve access to high quality health care and essential supportive services for their members. Enrollment in these three HIV SNPs is currently restricted to HIV-positive Medicaid recipients and their HIV-negative dependents and to HIV-negative Medicaid recipients who are homeless. Currently there are nearly 15,000 enrollees, mostly persons who are HIV-infected and their uninfected dependents.

##### **ii. Health and Recovery Plan (HARP)**

Adults enrolled in Medicaid and 21 years or older with select Serious Mental Illness (SMI) and Substance Use Disorder (SUD) diagnoses having serious behavioral health issues will be eligible to enroll in a new type of health plan, HARP. These specialty lines of business operated by the MCO will be available statewide. Individuals meeting the HARP eligibility criteria who are already enrolled in an HIV Special Needs Plan may remain enrolled in the current plan and receive the enhanced benefits of a HARP. HARPs and SNPs will arrange for access to a benefit package of Home and Community Based Services (HCBS) for members who are determined eligible. HARPs and SNPs will contract with Health Homes, or other State designated entities, to develop a person-centered care plan and provide care management for all services within the care plan, including the HCBS.

The State is in the process of designating mainstream MCOs, HARPs, and SNPs to manage the behavioral health benefit in New York City. The State will qualify plans in the rest of the state in the fall of 2015 to ensure that plans meet the requirements for the management of behavioral health services.

For a timeline of the transition of services, please visit

[https://www.health.ny.gov/health\\_care/medicaid/redesign/behavioral\\_health/index.ht](https://www.health.ny.gov/health_care/medicaid/redesign/behavioral_health/index.ht).

#### **a. Medicaid Managed Long Term Care (MLTC) Programs**

Enrollment in a MLTC plan is mandatory for those who are dual eligible (eligible for both Medicaid and Medicare) age 21 and over and in need of community based long term care services for more than 120 days. Effective February 21, 2015, MLTC enrollment became mandatory for individuals 21 and over who are dual eligible and new to permanent placement in nursing homes in New York City. This was expanded statewide on July 1, 2015.

Enrollment in a MLTC plan is voluntary for:

- Dual eligibles age 18 through 20 years in need of nursing home level of care and community based long term care services for more than 120 days
- Non-dual eligible and over age 18 who are assessed as both nursing home eligible and require community based long term care services for more than 120 days.
- Dual eligibles age 18 and over who were previously determined as permanently placed in a nursing home, effective October 1, 2015.

There are four different MLTC program models; Partial Capitation, Program of All-inclusive Care for the Elderly (PACE), Medicaid Advantage Plus (MAP) and Fully Integrated Duals Advantage (FIDA). These models provide health and long term care services to adults with chronic illness or disabilities, to better address their needs and to prevent or delay nursing home placement.

There are currently thirty-three (33) Partial Capitation, eight (8) PACE, eight (8) MAP, and 21 FIDA Plans. Mandatory enrollment into MLTC is currently available in 49 counties and will be state-wide by the end of 2015.

#### **i. MLTC Partial Capitation Program**

MLTC Partial Capitation plans are entities specifically licensed to offer long term care benefits. Many plans are sponsored by or related to nursing homes and/or home health agencies. These programs are not capitated for any Medicare services, and are billed by providers on a service based payment basis.

There are 123,522 enrollees in MLTC Partial Capitation plans as of May 1, 2015.

#### **ii. Program for All Inclusive Care for the Elderly (PACE)**

PACE is a federal managed care model that includes long term care services as well as acute care and physician services. The PACE program is a service for Medicare and Medicaid eligible enrollees. PACE programs receive a capitated payment for both Medicare and Medicaid. The PACE model revolves around a care management team that works to provide social and medical services primarily at a PACE center which provides clinic and day care services.

PACE enrollees must be at least 55 years old, be able to live safely in the community and be certified as eligible for nursing home care by the state. There are 5,451 enrollees in PACE plans as of May 1, 2015.

### **iii. Medicaid Advantage Plus (MAP)**

MAP plans must be certified by the NYSDOH as MLTC plans and by the Centers for Medicare and Medicaid Services (CMS) as a Medicare Advantage Plan. As with the PACE model, the plan receives a capitation payment from both Medicare and Medicaid. The enrollee must use the Plan's Medicare product and must choose a primary care physician from the MAP plan. In addition to services included in the Partial Capitation model, MAP Medicare services include doctor visits, specialty care, clinic visits, hospital stays, mental health services, x-ray and radiology services, chiropractic care, Medicare Part D drug benefits and Ambulance services.

MAP enrollees must be 18 years of age or older and eligible for nursing home placement. There are 6,055 enrollees in MAP plans as of May 1, 2015.

### **iv. Fully Integrated Dual Advantage (FIDA)**

The Fully Integrated Duals Advantage Plan is an anticipated three-year demonstration program that is a collaboration between NYSDOH and CMS. Certain dual eligible individuals are passively enrolled into fully capitated FIDA plans. FIDA is optional and participants can opt out at any time. FIDA participants receive Medicare services (including Part D prescription drugs) and Medicaid long term care services as well as behavioral health, wellness programs, and home and community based waiver services through one plan. FIDA plans receive a capitated payment from both Medicare and Medicaid. Central to the FIDA program is an interdisciplinary approach in which care is person-centered and based on the participant's specific preferences and need. This also includes the delivery of services with respect to linguistic and cultural competence and dignity.

The program was implemented on January 1, 2015 and is expected to go through December 31, 2017. Passive enrollment began on April 1, 2015 and will continue through September 2015, with possible future additional passive enrollments. It is operational in New York City and Nassau County and will be rolled out in Westchester and Suffolk Counties in 2015. There are 5,920 enrollees in FIDA plans as of May 1, 2015.

## **b. Medicaid Advantage**

The Medicaid Advantage program allows dual-eligible Medicaid recipients to receive a covered copayment and certain Medicaid covered services. A specific Medicare Advantage benefit package must be offered by plans to participate in this model. Plans receive, in addition to the Medicare capitation, Medicaid capitation which covers co-payments, any supplemental Medicare premium, certain limited services covered by Medicaid but not Medicare, such as inpatient mental health in excess of the 190 day lifetime limit, non-Medicare covered home care, private duty nursing, dental (optional) and non-emergency transportation (optional).

## **c. Essential Plan (EP)**

Through the Essential Plan, originally named Basic Health Plan, states can provide coverage to individuals who are citizens or lawfully present non-citizens, who do not qualify for Medicaid,



Children's Health Insurance Program (CHIP), or other minimum essential coverage and have income between 133 percent and 200 percent of the federal poverty level (FPL). People who are lawfully present non-citizens who have income that does not exceed 133 percent of FPL but who are unable to qualify for Medicaid due to such non-citizen status, are also eligible to enroll.

Consistent with the statute, benefits will include at least the ten essential health benefits specified in the Affordable Care Act. The monthly premium and cost sharing charged to eligible individuals will not exceed what an eligible individual would have paid if he or she were to receive coverage from a qualified health plan (QHP) through the Marketplace.

**d. Fully Integrated Duals Advantage for Individuals with Developmental Disabilities (IDD-FIDA)**

Fully Integrated Duals Advantage for Individuals with Developmental Disabilities (IDD-FIDA) is expected to potentially enable enrollment of dual eligibles of Medicaid and Medicare, for individuals with Developmental Disabilities. The IDD-FIDA program is anticipated to begin enrolling dual eligibles beginning January 2016. This program will be monitored by the Office of Persons with Developmental Disabilities (OPWDD).

**e. Developmental Disabilities Individualized Support and Care Coordination Organization (DISCO)**

The proposed DISCO demonstration seeks to develop managed care plans that will coordinate all Medicaid, and eventually Medicare, services for all developmentally disabled members. This establishment is planned to take effect in calendar year 2016. This program will also be monitored by OPWDD.

**2. Services Based Payment Programs**

**a. Assistance to the Office of Alcoholism and Substance Abuse Services (OASAS)**

OASAS is transitioning to a payment for service method by establishing per service prices that are risk adjusted and adjusted for regional cost differences for much of the net deficit financed system for inpatient, crisis and residential levels of care. The major service areas provided through OASAS are as follows:

**i. OASAS System of Care**

OASAS certifies a continuum of treatment services. Admission to each service is determined through a level of care assessment and admission criteria for each service that is identified in regulation for each service category. Any OASAS certified program may receive OASAS net deficit financing, although levels of care with fewer third party payment opportunities would receive higher level of funding from OASAS than a program with less third party payment opportunities. However any service could receive net deficit financing and OASAS is requesting a per service cost analysis for each service category.

**ii. Medically Managed Detoxification Service**

Medically managed withdrawal and stabilization services are designed for patients who are acutely ill from alcohol-related and/or substance-related addictions or dependence, including the need for medical management of persons with severe withdrawal or risk of severe

withdrawal symptoms, and may include individuals with or at risk of acute physical or psychiatric co-morbid conditions. This level of care includes the forty-eight (48) hour observation bed. Patients who have stabilized in a medically managed detoxification service may step-down to a medically supervised service.

### **iii. Medically Supervised Withdrawal Service**

This service provides treatment of moderate withdrawal symptoms and non-acute physical or psychiatric complications. Medically supervised withdrawal services must provide: biopsychosocial assessment, medical supervision of intoxication and withdrawal conditions; pharmacological services; individual and group counseling; level of care determination; and referral to other appropriate services. Medically supervised withdrawal and stabilization services are appropriate for persons who are intoxicated by alcohol and/or substances, who are suffering from mild to moderate withdrawal, coupled with situational crisis, or who are unable to abstain with an absence of past withdrawal complications. Patients who have stabilized in a medically managed or medically supervised inpatient withdrawal service may step-down to a medically supervised outpatient service.

### **iv. Inpatient Rehabilitation**

This service occurs at an OASAS-certified treatment setting with 24-hour medical coverage and oversight provided to individuals with significant acute medical, psychiatric and substance use disorders with 12 significant associated risks. Inpatient rehabilitation services provide intensive management of substance dependence symptoms and medical management/monitoring of medical or psychiatric complications to individuals who cannot be effectively served as outpatients and who are not in need of medical detoxification or acute care. These services can be provided in a hospital or free-standing facility. Services are short-term and intensive.

### **v. Opioid Treatment Program (OTP)**

OASAS-certified sites where methadone or other approved medications are administered to treat opioid dependency following one or more medical treatment protocols defined by State regulation. OTPs offer rehabilitative assistance including counseling and educational and vocational rehabilitation. OTP also includes the Narcotic Treatment Program (NTP) as defined by the federal Drug Enforcement Agency (DEA) in 21 CFR Section 13.

### **vi. Outpatient Clinic Services**

OASAS-certified Outpatient Services have multi-disciplinary teams that include medical staff and a Medical Director. These programs provide the following procedures: group and individual counseling; education about, orientation to, and opportunity for participation in, relevant and available self-help groups; alcohol and substance abuse disease awareness and relapse prevention; HIV and other communicable disease, education, risk assessment, supportive counseling and referral; and family treatment. In addition, social and health care services, skill development in accessing community services, activity therapies, information and education about nutritional requirements, and vocational and educational evaluation must be available either directly or through written agreements. Procedures are provided according to an individualized assessment and treatment plan.

### **vii. Intensive Outpatient**

Intensive Outpatient is an OASAS-certified treatment service provided by a team of clinical staff for patients who require a time-limited, multi-faceted array of services. A team of clinical and medical staff must provide this service. The treatment program consists of, but is not limited to, individual, group and family counseling, relapse prevention and coping skills training, motivational enhancement, and drug refusal skills training.

#### **viii. Outpatient Rehabilitation**

OASAS-certified services designed to assist individuals with chronic medical and psychiatric conditions. These programs provide: social and health care services; skill development in accessing community services; activity therapies; information and education about nutritional requirements; and vocational and educational evaluation. Individuals initially receive these procedures three to five days a week for at least four hours per day. There is a richer staff to client ratio for these services compared to other outpatient levels and these services are required to have a half-time staff person qualified in providing recreation and/or occupational services and a half-time nurse practitioner, physician's assistant, or registered nurse. Like medically supervised outpatient, outpatient rehabilitation services mandate that medical staff be part of the multi-disciplinary team and include the designation of a medical director, who provides for medical oversight and involvement in the provision of outpatient services.

#### **ix. Stabilization in a Residential Setting**

This setting provides medical and clinical services including: medical evaluation, ongoing medication management and limited medical intervention, ancillary withdrawal and medication assisted substance use treatment, psychiatric evaluation and ongoing management, group, individual and family counseling focused on stabilizing the patient and increasing coping skills until the patient is able to manage feelings, urges and craving, co-occurring psychiatric symptoms and medical conditions within the safety of the residence.

#### **x. Rehabilitation Services in a Residential Setting**

In this setting medical staff is available in the residence, however, it is not staffed with 24 hour medical/nursing services. This setting provides medical and clinical services including: medical evaluation, ongoing medication management and limited medical intervention, medication assisted substance use treatment when medically necessary, psychiatric evaluation and ongoing management, group, individual and family counseling focused on rehabilitation and increasing coping skills until the patient is able to manage feelings, urges and craving, co-occurring psychiatric symptoms and medical conditions within the community. The treatment includes at least 30 hours of structured treatment of which at least 10 hours are individual, group or family counseling. Programs are characterized by their reliance on the treatment community as a therapeutic agent. It is also to promote abstinence from substance use and interpersonal behaviors to effect a global change in participants' lifestyles, attitudes, and values. Individuals typically have multiple functional deficits, which may include substance-related disorders, criminal activity, psychological problems, impaired functioning, and disaffiliation from mainstream values.

#### **xi. Re-integration Services in a Residential Setting**

This is a residential setting with access to limited medical and clinical services that are generally provided in the community. There is 24-hour oversight by on-site staff and structured activities

to promote increasing independence in independent living skills. The residential program may provide some individual, family or group counseling to support the development of intra and interpersonal coping skills, recovery oriented peer supports and support for activities for daily living skills. There is access to ongoing medical, psychiatric and other clinical services through the residence or by agreements with outpatient or clinic providers.

**b. Foster Care**

In 2011, New York State's Medicaid Redesign Team (MRT) recommended that all children and adolescents being served in the foster care system should be enrolled in Medicaid Managed Care. As part of the transition to managed care, the New York State Department of Health needs to establish premiums/payment rates for managed care organizations. In addition, for a period of time, it will be necessary to construct a residual Foster Care per diem that will cover certain costs that are incurred by the Voluntary Foster Care Agency and now reflected in the current foster care per diem that will not be included in the benefits/premium provided by Managed Care Organizations (e.g., on site nursing staff).