



# Department of Health

## Request for Proposals

RFP # 17637

## Radiology Management Services

Issued: March 12, 2018

### 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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### PERMISSIBLE SUBJECT MATTER CONTACT:

Pursuant to State Finance Law § 139-j(3)(a), the Department of Health identifies the following allowable contact for communications related to the submission of written proposals, written questions, pre-bid questions, and debriefings.

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## **TABLE OF CONTENTS**

*(Hyperlinked; click to go directly to desired topic.)*

TABLE OF CONTENTS	2
1.0 CALENDAR OF EVENTS	3
2.0 OVERVIEW	3
2.1 Introductory Background	3
2.2 Important Information	3
2.3 Term of the Agreement	4
3.0 BIDDERS QUALIFICATIONS TO PROPOSE	4
3.1 Minimum Qualifications	4
4.0 SCOPE OF WORK	4
4.1 General Specifications	5
4.2 Tasks/Deliverables	6
4.3 Staffing	10
4.4 Reporting	10
5.0 ADMINISTRATIVE INFORMATION	11
5.1 Restricted Period	12
5.2 Questions	12
5.3 Right to Modify RFP	12
5.4 Payment	12
5.5 Minority & Woman-Owned Business Enterprise Requirements	14
5.6 Equal Employment Opportunity (EEO) Reporting	15
5.7 Sales and Compensating Use Tax Certification (Tax Law, § 5-a)	15
5.8 Workers' Compensation and Disability Benefits Certifications	16
5.9 Subcontracting	17
5.10 DOH's Reserved Rights	17
5.11 Freedom of Information Law ("FOIL")	17
5.12 Lobbying	18
5.13 State Finance Law Consultant Disclosure Provisions	18
5.14 Debriefing	19
5.15 Protest Procedures	19
5.16 Iran Divestment Act	19
5.17 Piggybacking	19
5.18 Encouraging Use of New York Businesses in Contract Performance	19
5.19 Diversity Practices Questionnaire	20
6.0 PROPOSAL CONTENT	20
6.1 Administrative Proposal	20
6.2 Technical Proposal	21
6.3 Cost Proposal	24
7.0 PROPOSAL SUBMISSION	24
7.1 No Bid Form	25
8.0 METHOD OF AWARD	25
8.1 General Information	25
8.2 Submission Review	26
8.3 Technical Evaluation	26
8.4 Cost Evaluation	26
8.5 Composite Score	26
8.6 Reference Checks	27
8.7 Best and Final Offers	27
8.8 Award Recommendation	27
ATTACHMENTS	27

## 1.0 CALENDAR OF EVENTS

<b>RFP 17637 – RADIOLOGY MANAGEMENT SERVICES)</b>	
<b><u>EVENT</u></b>	<b><u>DATE</u></b>
Issuance of Request for Proposals	March 12, 2018
Deadline for Submission of Written Questions	<b>On or Before March 28, 2018 at 4:00 p.m. ET</b>
Responses to Written Questions Posted by DOH	<b>On or About April 20, 2018</b>
Deadline for Submission of Proposals	<b>On or Before May 3, 2018 at 4:00 p.m. ET</b>
<i>Anticipated</i> Contract Start Date	November 1, 2018

## 2.0 OVERVIEW

Through this Request for Proposals (“RFP”), the New York State (“State”) Department of Health (“DOH”) is seeking competitive proposals from radiology management vendors to provide services as further detailed in [Section 4.0](#) (Scope of Work). It is the Department’s intent to award one (1) contract from this procurement.

### 2.1 Introductory Background

The Department continues to modernize its Medicaid utilization management system to ensure the safety of its members, improve their access to evidence based care, and reduce unnecessary costs through the identification of inappropriate resource utilization. DOH's Office of Health Insurance Programs (OHIP) is responsible for overall administration of the Medicaid program. Within DOH, OHIP, in conjunction with 58 local districts, administers Medicaid. Depending on the eligibility of the member, Medicaid costs are generally shared by the federal, State, and local governments (county governments and New York City). New York's Medicaid spending is estimated to be over \$60 billion per year.

After a June 2008 report by the United States Government Accountability Office indicated that imaging services paid for under the physician fee schedule more than doubled from 2000-2006, spending on advanced imaging rose substantially faster than more routine imaging services and the proportion of imaging services performed in - office rose from 58-64 percent, the Department competitively procured a radiology management vendor to manage a prior authorization program for advanced imaging procedures.

The Radiology Management program went into operation in April 2011. Over the first two years of the radiology management program alone, the Medicaid program realized a savings of over \$24 million. At the same time, exposure to unnecessary radiation was reduced by the equivalent of 6.1 million chest x-rays or 2.5 billion cigarettes. The long-term health benefits for members and cost avoidance for treating illnesses caused by exposure to unnecessary radiation, further increases the cost savings to the Medicaid program. The need for ensuring the best possible care management for Medicaid members, in the most efficient manner possible, has prompted the Department to re-evaluate and re-procure its radiology management program.

Accordingly, DOH will procure a radiology management contractor through the RFP process to implement a program to manage utilization of more costly high tech imaging studies.

### 2.2 Important Information

The bidder is required to review, and is requested to have legal counsel review, Attachment E, the DOH Agreement as 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**

This contract term is expected to be for a period of five (5) 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 as described in [Section 5.4](#).

## **3.0 BIDDERS QUALIFICATIONS TO PROPOSE**

### **3.1 Minimum Qualifications**

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

- A minimum of three (3) years of experience working with radiology prior approval and utilization reviews.
- A minimum of three (3) years of experience in providing data analytics capable of aggregating health care data across a broad population, and in providing updated utilization review criteria derived from nationally recognized evidence based medical information sources, and
- Contractor must have a current Utilization Management certification or accreditation from the National Committee for Quality Assurance (NCQA) or Utilization Review Accreditation and Certification (URAC) and maintain such certification throughout the course of the contract.

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.

## **4.0 SCOPE OF WORK**

This Section describes the radiology management services that are required to be provided by the selected bidder. The selected 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 RFP as part of its Technical Proposal.

The terms “bidders”, “vendors” and “proposers” are also used interchangeably. 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.

Through this RFP, the Department seeks to select a contractor to develop, implement and operate a radiology management program for prior authorization of advanced medical imaging studies for Medicaid members receiving services through the Fee for Service program who are not Medicare dual eligible, and/or enrolled managed care.

The Department expects that the Radiology Management program will achieve the following:

- Access to quality care for MA members by ensuring that they receive the most clinically appropriate imaging studies;
- Application of nationally accepted, evidence-based clinical criteria to determine medical necessity of imaging studies;
- Education of prescribers regarding medically appropriate imaging studies; and
- Cost savings through elimination of inappropriate imaging utilization.

### **The Department’s Prior Authorization Programs**

The Department is responsible for the development and implementation of prior authorization requirements and guidelines to determine medical necessity. In addition to advanced imaging, services currently subject to the Department’s prior approval are private duty nursing, some durable medical equipment, certain pharmacy services, and certain dental procedures.

### **Denials and Member Appeal Rights**

A decision to deny services on the basis that services are not medically necessary can only be made by a physician reviewer. If a prior authorization request for service is denied or approved other than as requested, the member has the right to appeal the Department’s decision. The member has 60 days from the date of the notice of the prior authorization decision to submit the appeal in writing. The Office of Temporary and Disability Assistance (OTDA) conducts Fair Hearings when members exercise their right to appeal the Department’s decision.

In accordance with Social Services Law, Article 5, Title 11, Section 365-a, subdivision 8:

*When a non-governmental entity is authorized by the Department pursuant to contract or subcontract to make prior authorization or prior approval determinations that may be required for any item of medical assistance, a member may challenge any action taken or failure to act in connection with a prior authorization or prior approval determination as if such determination were made by a government entity, and shall be entitled to the same medical assistance benefits and standards and to the same notice and procedural due process rights including a right to a fair hearing and aid continuing pursuant to section twenty-two of this chapter, as if the prior authorization or prior approval determination were made by a government entity, without regard to expiration of the prior service authorization*

## **4.1 General Specifications**

**This RFP is for the development, implementation and operation of a radiology management program for prior authorization of non-emergency outpatient advanced imaging studies including, but not limited to, hospital outpatient, free standing clinics and private physician offices, covered under the Medicaid program.**

### **Population Served**

Medicaid members receiving services through the Fee for Service delivery system will be included in the radiology prior authorization program. For dual eligible members, Medicare is the primary payer, therefore, Medicaid will defer to the coverage decision made by Medicare and will not require prior authorization for advanced imaging studies. Medicaid eligible persons enrolled in a managed care plan are also not included in the scope of this Project.

## Covered Services

The radiology prior authorization program covers all non-emergency outpatient advanced imaging studies requested for New York State Medicaid members in the Fee for Service program. Medicaid members enrolled in managed care plans and Medicare dual eligible members are not covered under this RFP. The selected Contractor will be responsible for prior authorizing requests for the following non-emergency advanced imaging studies provided in outpatient settings (including but not limited to freestanding clinics, hospital outpatient, and private physician offices):

- Computerized Tomography (CT) scans
- Magnetic Resonance Images (MRI)
- Magnetic Resonance Angiograms (MRA)
- Computerized Tomography Angiograms (CTA)
- Positron Emission Tomography (PET) scans
- Nuclear Cardiology
- Other identified over utilized or high-cost radiology services

The Department reserves the right to modify the list, through either addition or deletion, of imaging study procedures subject to prior authorization over the term of the contract.

See Attachment M for the number of prior authorizations issued annually and a list of imaging study procedures subject to prior authorization.

This scope of work will also include the development of utilization profiles for referring Medicaid providers, and the identification of providers demonstrating a pattern of inappropriate radiology referrals. The contractor will manage utilization through direct communication with providers to ensure evidence based care and the appropriate allocation of resources.

## 4.2 Tasks/Deliverables

The selected Contractor will perform the following tasks under the resulting contract:

1. **Transition and Implementation:** Contractor is expected to begin transition from the existing processes and implementing the new processes proposed by the Contractor for the radiology management program prescribed in this RFP no later than 30 business days following approval by the Office of the State Comptroller (OSC).
2. **Recommend Prior Authorization Guidelines:** For the review and approval of the Department, 45 days prior to the initiation of the prior authorization program, the Contractor will develop and submit a reference manual for ordering practitioners and providers. The manual will provide prior authorization guidelines to be used to determine medical necessity for advanced imaging studies as well as procedures to obtain prior authorization, seek clarification on guidelines, and procedures to file complaints. Prior authorization guidelines must be based on nationally accepted evidence-based clinical criteria.
3. **Educate Stakeholders:** Contractor will develop and implement outreach program to train ordering practitioners and providers on the radiology management program. Contractor will hold initial orientations and ongoing seminars with providers and key stakeholders, as requested by the Department. Orientations may be conducted in-person or via webinar. Stakeholders may include, among others, members, providers, advocacy groups, legislators, and Department staff. The Contractor shall assist and support the Department in making the guidelines publicly available (i.e. on the State's website or through Listservs).
4. **Review Prior Authorization Requests:** Contractor must review requests for prior authorization for all radiology procedure codes listed in Attachment M and as amended by the Department, when the procedure is provided in an outpatient setting. Reviews will be conducted by licensed radiologists and nurses using the Department approved guidelines for determining medical necessity. The selected Contractor will:
  - a. Ensure that the United States board-certified radiologists make all determinations to deny covered services or approve services other than as requested on the basis that services are not medically necessary.
  - b. Be given limited access to the State's current and future Medicaid Management Information System (MMIS). Contractor will enter prior authorization information and decisions into the prior authorization

screens in the MMIS or via Contractor supplied web-portal or other interfaces to the MMIS. The Contractor will be required to sign and adhere to the New York State Department of Health Data Use Agreement (DUA).

- c. Verify through the New York State Medicaid Eligibility system the eligibility of each member for whom the service is requested to confirm that the member is Medicaid eligible and a participant in the Fee-For Service program, and not dual eligible. Additionally, Contractor must confirm any third-party payer resources.
  - d. Utilize the Department's existing approval and denial codes to enter narrative descriptions, at a fourth-grade reading level, of the reasons for decisions consistent with the Department's member and provider prior authorization notice templates. The notices will be sent to the providers via the current and future MMIS or Contractor supplied web-portal or interface.
  - e. Comply with the following prior authorization process timeframes:
    - i. Ninety percent (90%) of requests for prior authorization must be reviewed and decision made, or additional information requested within twenty-four (24) hours of the receipt, excluding State approved holiday, of the telephone, fax, web portal or other electronic interface. The remaining ten percent (10%) of requests must be reviewed and decision made, or additional information requested within two (2) business days of the receipt, excluding State approved holidays.
    - ii. If a provider does not submit additional information within 35 calendar days of the request for additional information, the request will be inactivated.
    - iii. The information required for the Department's prior authorization notices must be entered into the MMIS or Contractor supplied web-portal or interface the same day as the determination or request for additional information is made.
  - f. Be capable of receiving prior authorization requests via telephone, paper format (mail and fax delivery) and via the Internet. Turnaround times from receipt of request to determination must be tracked by the Contractor and reported to the Department (see Reporting Section 4.4).
5. **Operate a Call Center:** Contractor must maintain a call center with its own toll-free telephone line for the practitioner requesting prior authorization, ordering practitioners and providers to call with inquiries regarding the status of a prior authorization request, members and for any other inquiries or complaints regarding prior authorization of advanced imaging studies including appeals related to denials and interpretation of guidelines.
- a. Call Center must be located in New York State within a 50-mile radius of the New York State Capitol building, in Albany, to accommodate frequent meetings between the Contractor and the Department and to minimize travel costs.
  - b. At a minimum, Call Center must be open Monday- Friday 8:00 AM to 6:00 PM Eastern Time, with the exception of State approved holidays.
  - c. Call abandonment rates, average speed to answer, and average call wait times must be tracked and reported (see Reporting, Section 4.4). Contractor shall provide sufficient staff (see Staffing, Section 4.3), facilities and technology to meet performance standards outlined in this section. If an Automated Voice Response (AVR) system is used as an initial response to inquiries, the option must exist to allow a caller to speak directly with a live operator and bypass the AVR.
6. **Handle Inquiries and Complaints:**
- a. Contractor must have in place and maintain a process for responding to inquiries and complaints.
    - i. Respond to inquiries and address complaints about request for service within two (2) business days of notification;
    - ii. Track and report (see Reporting, Section 4.4) on recipient, ordering practitioner and provider for all inquiries and complaints received, including response timeframes.

- iii. Process must include a formal escalation process that includes notification of appropriate DOH personnel. In instances where the inquiry complaint is about the selected Contractor, the project Manager must be available to discuss the inquiry or complaint with the Department.
  - b. Have in place appropriate alternative mechanisms for communicating effectively with persons with visual, hearing, speech, physical or developmental disabilities. These alternative mechanisms include Braille or audio tapes for the visually impaired, TTY access for those with certified speech or hearing disabilities and the use of American Sign Language and/or integrative technologies.
  - c. At a minimum, Contractor must also offer fax and internet communication methods for member, ordering practitioner and provider inquiries and complaints.
7. **Translation and Interpreter Services for Member Communication:** The Contractor, as a representative of the Department, must ensure that all written and/or verbal communication with members align with Executive Order 26: Statewide Language Access Policy, as it relates to translation and interpreter services for those with limited-English proficiency. The policy can be found: <https://www.governor.ny.gov/news/no-26-statewide-language-access-policy>.
8. **Represent the Department in Fair Hearings:** Authorization decisions made by the Contractor are considered the decisions of the Department. Members have the right to appeal the Department's decision to deny requests for prior authorization of advanced imaging studies. Contractor is required to act promptly (or in a timely manner) with any definitive and final administrative decisions.
- a. Although historically, very few Fair Hearings have been requested, the Contractor must make qualified personnel available at the time of a Fair Hearing to testify on behalf of the Department related to denial or modification of radiologic services.
  - b. Contractor must prepare in advance for the Fair Hearings and must provide any materials it intends to introduce at the Fair Hearing to the member and or their representative, and OTDA for review upon oral or written request but no less than five business days prior to the Fair Hearing.
9. **Educate Ordering Practitioners:** Contractor must educate ordering practitioners when the Contractor denies or approves other than as "requested" requests for prior authorization of advanced imaging studies by explaining why the requested study is not medically necessary and, if applicable, which study is the appropriate one given the member's symptoms.
10. **Perform Quality Assurance Monitoring:** At least once a month, the Contractor must monitor the quality of its radiology prior authorization review operations, including performing inter rater reliability testing of review decision made by physician reviewers and call center staff. If the testing results fall below standards as outlined in this RFP and in the attached Service Level Agreements (Attachment N), the Contractor may be asked by the department to perform these monitoring more frequently and/or assessed damages as defined in Attachment N.
11. **Monitor Trends in Advanced Imaging:** Contractor must have a process to monitor trends in the advanced imaging industry, including changes in nationally accepted clinical guidelines to determine medical necessity of advanced imaging studies. Based on its monitoring, the Contractor must recommend to the Department changes in clinical guidelines that the Department may want to consider for the radiology prior authorization program and recommend clinical guidelines for the new advanced imaging studies that the Department will include in the radiology prior authorization program.
12. **Information Technology (IT) and Management Information System (MIS):** Contractor will have limited access to the Department's MMIS. The Contractor will have access to member eligibility and authorization history. Contractor will maintain its own MIS system to track requests, respond to provider and member inquiries and support the appeal process. Contractor must meet the following minimum requirements:
- a. All Call Center and Reviewer staff must have computers that can access the State's MMIS or Contractor supplied web-portal or interface,
  - b. Sufficient, secure telecommunication capabilities, including but not limited to electronic mail to meet the



requirements of the RFP,

- c. Ability to securely access the MMIS and any other systems of the Department and its contractors to ensure the delivery of accurate and timely data and information related to the radiology prior authorization program,
- d. Capability to securely receive, store, analyze and report on data sufficient to meet the requirements of the RFP.

13. **Security and Privacy:** Throughout the contract period, the contractor must be compliant with:

- a. All current and future Federal and State regulations governing the security and privacy of the Medicaid data,
- b. All current and future New York State Security Policies and Standards, located: <https://its.ny.gov/eiso/policies/security>.

14. **Security Privacy and Confidentiality Plan:** Contractor will maintain its own MIS system to track requests, respond to provider and member inquiries and support the appeal process, as such the Contractor is required to complete and submit within 60 business days following contract award, the Moderate-Plus Security Privacy and Confidentiality Plan (SPCP) workbooks (a.k.a. Moderate-Plus System Security Pan (SSP)) detailing the MIS system being utilized for this project. The SPCP documents the implementation and evidence of security and privacy controls for the system and of the organization. The SPCP consists of a system description and workbooks for each of the NIST 800-53 security and privacy families (18 Security families, 8 Privacy families). **The SPCP templates to be completed by the contractor are available from the Department by contacting [doh.sm.Medicaid.Data.Exchange@health.ny.gov](mailto:doh.sm.Medicaid.Data.Exchange@health.ny.gov).**

15. **Security Scans:** If proposing a vendor supplied system or web-portal, Contractor is required to perform security scans in accordance with New York State Standard NYS-S15-002 Vulnerability Scanning. The vendor is required to submit the security scan results and the Plan of Action and Milestones (PO&M) to DOH within 10 business days of the Vulnerability Scan. The POA&M is a corrective action plan for tracking and planning the resolution of information security weaknesses.

16. **Risk Assessment:** If proposing a vendor supplied system or web-portal, Contractor is required to perform and submit a risk assessment to NYSDOH as required by HIPAA and New York State Security Policies and Standards <https://its.ny.gov/eiso/policies/security>. The risk assessment must be submitted, at a minimum 30 days, prior to the system going live. For the risk assessment, the contractor must follow the NIST 800-30 Guide for Conducting Risk Assessments.

17. **HIPAA Compliance:** The contractor is required to be HIPAA compliant in transmissions and coding procedures, and use only HIPAA compliant data systems and comply with all aspects of HIPAA security, confidentiality and transactions requirements.

18. **Encryption:** Any Medicaid data sent over a public network and stored at rest must be encrypted using Federal Information Processing Standards (FIPS) 140-2 validated encryption algorithms, e.g., Advanced Encryption Standard (AES) as specified in NYS-S14-007 Encryption Standard.

19. **Disaster Recovery:** The contractor is required to maintain and annually test a disaster recovery plan designed to minimize any disruption of the contractor's services. It is the sole responsibility of the contractor to maintain adequate backup to ensure continued automated and manual processing of services/transactions required under this contract.

20. **Database Development and Maintenance:** The Contractor agrees to enter into a Data Use Agreement (DUA) with DOH. Pursuant to that agreement, DOH will extract claims data appropriate to conduct trend analysis in a format determined by DOH. The contractor's database must be capable of accepting Medicaid program member data including eligibility data. The contractor will be responsible for performing necessary data transformation, loading and quality assurance activities to load the data into its system(s), and to follow up with DOH to correct any identified data errors. Installation and maintenance costs for direct connection (browser based, lease lines) will be at the expense of the contractor.

21. **Quality Assurance:** The Contractor must have a utilization review decision making process that is supported by a team of health care professionals capable of analyzing and updating the retrospective utilization review criteria. It is expected that criteria revisions and systems updates would occur throughout the contract year. OHIP requires contractors to review their evidence based rules at least annually.

### 4.3 Staffing

1. At a minimum, the selected contractor's key personnel must include the following positions and the Contractor shall ensure that all staff assigned to the project possess sufficient current knowledge of the requirements of this RFP and maintain a level of performance consistent with the highest professional standards.
  - a. **Project Manager:** The Project Manager will serve as the primary contact person for the Department. The Project Manager must have experience with authorization of radiology services and oversight of a major contract including ensuring all policy and procedures and reporting requirements are met.
  - b. **Medical Director:** The Medical Director must be a board-certified radiologist and licensed in New York State with previous experience in utilization management and quality assurance activities. The Medical Director will be responsible for recommending to the Department, nationally recognized, evidence-based clinical guidelines for determining the medical necessity of advanced imaging studies. The Medical Director will ensure compliance with the Department's approved clinical guidelines and oversee interrater reliability testing of review decisions; oversight of fair hearing defense by physicians; and provide oversight of prior authorization decisions and communication between physician reviewers and ordering practitioners regarding denials.
  - c. **Call Center Manager:** The Call Center Manager must have previous experience with a prior authorization call center. The Manager's responsibilities include Call Center staff training, productivity analysis and reporting, auditing for compliance with the Department's policies and clinical guidelines.
  - d. **Clinical Reviewers:** Clinical review team should include physicians representing specialties associated with medical imaging (including but not limited to radiology, cardiology, oncology, OB/GYN, ENT, neurology and orthopedics). Professional medical staff that directly contacts provider clinicians as a result of utilization review activities must possess a valid New York State medical license and certification for their specialty.
  - e. **Peer Consultants:** The contractor must also make peer consultants available to the project. "Peer consultants" are defined as persons with the same or equivalent professional degree as the health care professional that provided the justification for the medical necessity and/or the appropriateness of the setting, care, diagnosis and coding. A peer consultant may be the Contractor's medical director or any physician peer consultant, specialist or generalist, designated by the Contractor's medical director licensed in their state of practice and board certified in at least one specialty area.
2. The contractor shall ensure that all staff assigned to the project possess sufficient current knowledge of the requirements of this RFP and maintain a level of performance consistent with the highest professional standards. At a minimum, or as otherwise approved by the Department, the Project Manager, Medical Director, Call Center Manager and Clinical Reviewers must be located at the Call Center as further set forth in Section 4.2 of this RFP.
3. All medical professionals must hold current and maintain United States issued certifications and licensure in good standing, at all times, during the term of the contract.
4. The Department reserves the right to request a replacement of equal or better qualification and skill level for any staff assigned to this program.

### 4.4 Reporting

1. The contractor is responsible for establishing and maintaining a system to produce monthly, quarterly, annual and/or other reports as may be required by the Department; including reports related to member, provider, and Contractor service profiles; and reports identifying cost savings through appropriate utilization

management.

- a. Monthly data reports are due fifteen (15) calendar days following the end of each calendar month.
- b. Quarterly data reports are due fifteen (15) calendar days following the end of each State Fiscal Quarter.
- c. Annual data reports are due thirty (30) calendar days following the end of each calendar year with content and a format prescribed by the Department.
- d. Ad hoc Reports are due fifteen (15) calendar days following the request.
- i. Required Reports:
  1. Call Center Performance Statistics, to be provided monthly:
    - a. Total hours of daily call center access and downtime
    - b. Call abandonment Rate
    - c. Call waiting time
    - d. Average speed to answer
    - e. Report of nature of calls received (counts by type)
    - f. Provider calls (counts by reason for call)
    - g. Member calls (counts by reason)
  2. Prior Authorization Statistics, to be provided monthly:
    - a. Number/% of requests not processed within the specified timeframes.
    - b. Number/% of requests by procedure code and in total:
    - c. Number/% of requests requiring physician review
    - d. Number/% of approvals
    - e. Number/% of denials, by reason for denial
    - f. Number/% of appeals and appeal outcomes
  3. Inquiry and Complaint Statistics, to be provided monthly:
    - a. Number and type of inquiries and complaints from members
    - b. Number and type of inquiries and complaints from providers
    - c. Number of inquiries and complaints not responded to within the timeframes specified in the performance standards
  4. Service Level Agreement (SLA) Report, to be provided monthly:
    - a. As requested by the Department
  5. Cost Savings Report, to be provided quarterly:
    - a. Number of denials by procedure code and total dollars saved
    - b. Number of approved procedures and total claims dollars
  6. Utilization Trend Reports, to be provided as specified:
    - a. Annual trend variation (number and costs by procedure, and future projections, recommended changes in program direction)
    - b. Quarterly trend variation (number and costs by procedure)
  7. Ad Hoc Reports
    - a. As requested by the Department

## **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 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 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 [OHIPContracts@health.ny.gov](mailto: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: 3450412 Contract #: TBD**

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

**NYS Department of Health  
Unit ID 3450412  
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. Payment terms will be:

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), US City Average for Medical Care, 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.

The radiology management program will not include members who are eligible for both Medicaid and Medicare (dual eligible) or members who are enrolled in a managed care plan.

DOH estimates there will be approximately 3,800 prior authorizations created for Medicaid fee-for-service members per month covered by the Project. The actual number of authorization per month may vary up or down, the vendor will only be reimbursed based upon the actual number of prior authorizations completed per month. The table shown in Attachment M of this RFP provides a breakdown of covered services by procedure code and total radiology prior authorization volumes. This table is provided for informational purposes and is not a guarantee of volume or payment.

The radiology management contractor will be paid retrospectively for the total number of prior authorizations issued for Medicaid fee for service members in the calendar month and in accordance with the per prior authorization bid in Attachment C of this RFP. On or before the fifteenth (15) day of the month, The Department will provide to the Contractor the total number of prior authorizations created for the previous calendar month. No later than ten (10) business days following the data being received, the contractor will submit an invoice, based on the total number of prior authorizations issued within the Scope of the Project.

Payment is contingent upon the Contractor meeting all performance requirements/measures noted in the RFP Section 4.0 and defined in Attachment N. In the event the Contractor does not meet the performance

requirement/ measures, damages will be assessed on the Vendor's current voucher based upon the damages defined in Attachment N.

DOH reserves the right to remove or add Medicaid member populations, and /or modify the range of Medicaid services subject to the radiology management program.

DOH may also increase or limit the number of members eligible for the radiology management program in any month or 12-month period for any reason, including contractor performance and State fiscal considerations.

## 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 [OHIPContracts@health.ny.gov](mailto: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

Bidder's may propose the 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's 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 Department 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.us/agencies/forms/ac3271s.doc> and <http://www.osc.state.ny.us/agencies/forms/ac3272s.doc>.

## **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.

## 5.19 Diversity Practices Questionnaire

Diversity practices are the efforts of contractors to include New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) in their business practices. Diversity practices may include past, present, or future actions and policies, and include activities of contractors on contracts with private entities and governmental units other than the State of New York. Assessing the diversity practices of contractors enables contractors to engage in meaningful, capacity-building collaborations with MWBEs.

## 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 complete Administrative, Technical, and Cost proposals. A proposal that is incomplete in any material respect will 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 needed, 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 items 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 may be subject to verification for accuracy. Please provide the forms in the same order in which they are requested.

- A. M/WBE Forms  
Submit 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 (3) similar projects, including but not limited to; radiology management, utilization management or prior authorization review. Provide firm names, addresses, contact names, telephone numbers, and email addresses.
- H. Diversity Practices Questionnaire  
The Department has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of respondents to this procurement is practical, feasible, and appropriate. Accordingly, respondents to this procurement should include as part of their response, [Attachment K](#), “Diversity Practices Questionnaire”. **Responses to the questionnaire will be formally evaluated.**
- I. Conflict of Interest or Detrimental Effect  
Submit [Attachment L](#), Vendor’s Assurance of No Conflict of Interest or Detrimental Effect, which includes information regarding the Bidder, members, shareholders, parents, affiliates or subcontractors. Attachment L must be signed by an individual authorized to bind the Bidder contractually.

## 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.

A Technical Proposal that is incomplete in any material respect may be eliminated from consideration. The following outlines the information requested to be provided 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 may 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 should contain sufficient information to assure DOH of its accuracy. Failure to follow these instructions may result in disqualification.

**Pricing information contained in the Cost Proposal must not 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 Qualifications to Propose Responsive to Section 3.0 of RFP.

- A minimum of three (3) years of experience working with radiology prior approval and utilization reviews.
- A minimum of three (3) years of experience in providing data analytics capable of aggregating health care data across a broad population, and in providing updated utilization review criteria derived from nationally recognized evidence based medical information sources, and
- Contractor must have a current Utilization Management certification or accreditation from the National Committee for Quality Assurance (NCQA) or Utilization Review Accreditation and Certification (URAC) and maintain such certification throughout the course of the contract.

## D. Technical Proposal Narrative

### a. Executive Summary

- i. The bidder should describe its understanding of the services to be performed as outlined in Section 4.0: Scope of Work of the RFP, and how the bidder can assist DOH in accomplishing its radiology management objectives.

### b. Organizational Background and Experience

- i. The bidder should describe their ability to perform radiology management services including the technologies, special techniques, skills or abilities of it possesses to accomplish the program requirements, data processing and analysis capabilities.
- ii. The bidder should describe in detail its experience in administering prior authorization programs for health care services including programs for Medicaid members. The experience in projects referenced should substantiate the bidder's qualifications and capabilities to perform the RFP's specifications described in Section 4.0: Scope of Work.
- iii. For three (3) prior authorization programs performed by the bidder that are most similar to this RFP's scope of work, the bidder should:
  1. Describe the project(s) and project goals, results, summary of the project results, and describe the resources expended on the project. The bidder should include quantitative data, such as the prior approval requests reviewed, determinations, and any cost savings.
- iv. The same organizational background and experience description prescribed in section b.1 for the prime contractor, should also be provided for all subcontractors listed in this section.

### c. Implementation and Administration

Bidders should include a detailed description of how they propose to accomplish each of the following Performance items (from Section 4.2) as specified below:

- i. **Transition and Implementation.** Describe how the bidder will begin the transition and implementation of the radiology management program prescribed in this RFP;
- ii. **Recommend Prior Authorization Guidelines.** Bidder should include description of how the recommended guidelines identified in Section 4.2.2 will be developed: description should include proposed sources and frequency of the update.

- iii. **Educate Stakeholders.** Describe how bidder will assist and support the Department to educate stakeholders regarding the guidelines and prior approval processes. Description should include both activities supporting the initial roll out of the program as well as ongoing activity once the program is fully operational.
- iv. **Review Prior Authorization Requests.** Describe in detail bidder's process for reviewing requests for prior authorization within the designated timeframes for the Department. Include any proposed mechanisms to fast track prior approvals based on individual provider performance or individual member clinical needs. Description should include process for notifying providers of determination. Description of the minimum credentials for clinical review staff should be included in description.
- v. **Receiving prior authorization via telephone, via paper format (either mail or fax delivery) and via Internet.** Describe all mediums available for receipt of prior authorization requests, as well as tracking and reporting mechanism for turn-around time from receipt to determination. Provide description of emergency back up plans in the event of telephone or system outages or building access problems.
- vi. **Operate a Call Center.** Describe arrangements for a call center as described in Section 4.2.5, Provide a description of Call Center capacity including volume of reviews on a weekly basis and total number of covered lives handled by Call Center. Provide a description of emergency back up plans in the event of telephone or system outages or building access problems.
- vii. **Handle Inquiries and Complaints.** Describe in detail bidder's processes for handling inquiries and complaints. Include logging and tracking process and average turnaround times.
- viii. **Translation and Interpreter Services for Member Communication.** Describe how the bidder will ensure that all written and/or verbal communication with members align with Executive Order 26: Statewide Language Access Policy, as it relates to translation and interpreter services for those with limited-English proficiency.
- ix. **Represent the Department in Fair Hearings.** Describe in detail the bidder's experience in preparing fair hearing materials.
- x. **Educate Ordering Practitioners.** Describe the proposed process for outreach to ordering practitioners.
- xi. **Perform Quality Assurance Monitoring.** Describe in detail the bidder's quality assurance program. Include information pertaining to the processes for monitoring reviewer decision reliability.
- xii. **Monitor Trends in Advanced Imaging.** Describe the process for tracking and monitoring trends in imaging technology and changes in nationally accepted clinical guidelines.
- xiii. **Information Technology and Management Information System.** Describe the proposed information technology and management information system's capabilities in detail. Include the plan to develop, test and implement an electronic interface with the current MMIS or Contractor supplied web-portal or interface to assure timely transmission and uploading of prior approval data.
- xiv. **Security.** Describe the policies and procedures addressing the administrative, physical, and technical controls in place to safeguard the confidentiality, integrity, and availability of electronic protected health information as described in the Health Insurance Portability and Accountability Act ("HIPAA") and codified at 45 C.F.R. parts 160 and 164
- xv. **Privacy.** Describe how the proposed system supports privacy per Federal and State regulations, for example, but not limited to, HIPAA, NYS Public Health Law Article 27-F, 42 CFR Part 2
- xvi. **HIPAA Compliance.** Describe the process and procedures implemented to ensure HIPAA compliant transmissions and coding.

- xvii. **Encryption.** Describe the bidder's processes to ensure compliance with Federal Information Processing Standards (FIPS) 140-2 Security Requirements for Cryptographic Modules and NYS-S14-007 Encryption Standard for data in transit and at rest.
- xviii. **NYS Security Policies and Standards:** Describe how the proposed system conforms to NYS security policies and standards found, <https://its.ny.gov/eiso/policies/security> .
- xix. **Multi-Factor Authentication:** Describe how the proposed system will support multi-factor authentication.
- xx. **Disaster Recovery.** Describe your proposed plan for call center and/or systems backup in the event of unplanned events such as power outages, building closures, and equipment failures. This plan should address backup and recovery, failover, disaster recovery and business continuity and include procedures for file backup.
- xxi. **Database Development and Maintenance.** Describe the proposed system's data management capabilities.
- xxii. **Quality Assurance.** Describe the quality assurance process proposed for this project.

d. Staffing

The Bidder should describe the work experience, licensures and other relevant background of the key staff identified in Section 4.3: Staffing of the RFP:

### 6.3 Cost Proposal

Submit a completed and signed **Attachment C – Cost Proposal**. The Cost Proposal shall 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 per prior authorization 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.

The Attachment C: Cost Proposal must contain an all-inclusive Bid Price per prior authorization for services described in this RFP, rounded to the hundredth (\$0.XX) decimal point. DOH estimates there will be approximately 3,800 prior authorizations created for Medicaid fee-for-service members per month covered by the Project. This number may vary higher or lower, vendors will be reimbursed for only the actual prior authorizations created.

### 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 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 (single-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 Technical 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 blue 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 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# (Radiology Management Services) – (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 # 17637)  
Attention: Michael Lewandowski, Health Program Administrator  
One Commerce Plaza  
Room 1470  
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 and (2) proposed percentage of MWBE participation.

## **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 evaluation to verify Minimum Qualifications to Propose (Section 3.0).

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 Technical Score for each responsive Bidder.

The technical evaluation is **70% (up to 70 points)** of the final 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.

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:

$$C = (A/B) * 30\%$$

A is Total price of lowest cost proposal;

B is Total price of cost proposal being scored; and

C is the Cost score.

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 Technical Proposal points and the Cost 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 qualifications to propose (Section 3.0).

## 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 are susceptible to award 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.

## 8.8 Award Recommendation

The Evaluation Committee will submit a recommendation for award to 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 Diversity Practices Questionnaire
- L Conflict of Interest or Detrimental Effect
- M Total Radiology Prior Authorizations Issued Annually
- N Service Level Agreements

**ATTACHMENT A  
 BIDDER'S CERTIFIED STATEMENTS**

To be completed and included in the Administrative Proposal documents)

RFP # 17637 – Radiology Management Services
<b>1. Information with regard to the Bidder</b>
<b>A. Provide the Bidder's name, address, telephone number, and fax number.</b>
Name: 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.
Fax Number (including area code): Click here to enter 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: 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.
<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>
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.
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.
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.
Bidder accepts, without any added conditions, qualifications or exceptions, the contract terms and conditions contained in this RFP including any exhibits and attachments.
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.
The bidder agrees to occupy the call center, for the duration of the contract, in a single location within a fifty (50) mile radius of the New York State Capitol building in Albany, New York.

As an appendix to the Administrative Proposal, the bidder will provide the full name and address of any organization with which the bidder may/will subcontract for any services provided in the radiology management program and the mechanisms for assuring its effective and efficient operations. List responsible officers of each subcontractor, including those individuals authorized to negotiate for the subcontractor.

Bidder acknowledges that, if selected, it must comply with the performance requirements/measures described in the RFP or be subject to the damages defined within Attachment N.

**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 # 17637 – Radiology Management Services</b>		
<b>FOR THE ADMINISTRATIVE PROPOSAL</b>		
<b>RFP §</b>	<b>Criteria</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"/>
	Attachment F Form 4	<input type="checkbox"/>
	Attachment F Form 5	<input type="checkbox"/>
§ 6.1.B	<b>Attachment G – Disclosure of Prior Non-Responsibility Determinations, completed and signed.</b>	<input type="checkbox"/>
§ 6.1.C	<b>Attachment J- Vendor Responsibility Attestation</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"/>
§ 6.1.H	<b>Attachment K- Diversity Practices Questionnaire</b>	<input type="checkbox"/>
§ 6.1.I	<b>Attachment L- Vendor’s Assurance of No Conflict of Interest of Detrimental Effect</b>	<input type="checkbox"/>
<b>FOR THE TECHNICAL PROPOSAL</b>		
<b>RFP §</b>	<b>Criteria</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</b>		
<b>RFP §</b>	<b>Criteria</b>	<b>INCLUDED</b>
§ 6.3	<b>Attachment C- Cost Proposal</b>	<input type="checkbox"/>

**ATTACHMENT C  
COST PROPOSAL**

Bidders Name: \_\_\_\_\_

**Instructions:**

To complete the Cost Proposal form, Bidders must provide an all-inclusive Bid Price Per Prior Authorization, bid price must be to the hundredth (\$0.XX) decimal point. DOH estimates there will be approximately 3,800 prior authorizations created for Medicaid fee-for-service members per month covered by the Project. The number of prior authorizations may vary higher or lower each month, vendors will be reimbursed based upon the actual prior authorizations completed.

Price Per Prior Authorization (\$0.XX)*

*\*The Bidder's Price Per Prior Approval should assume all costs related to materials, labor, overhead, equipment, travel, meetings, and any other costs associated with providing services under the resulting contract;*

*\*The resulting contract value will be estimated upon an anticipated 3,800 Authorizations Per Month.*

By signing this Cost Proposal Form, bidder agrees that the prices above are binding for 365 days from the proposal due date.

\_\_\_\_\_  
Bidder's Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

**ATTACHMENT D  
REFERENCES**

Submit a total of THREE references (Section 6.0.G) using this form.

Expand fields and duplicate this page as necessary.

<b>RFP # 17637 – Radiology Management Services</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**

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

NYS COMPTROLLER'S NUMBER: C#  
ORIGINATING AGENCY GLBU: DOH01  
DEPARTMENT ID: 345XXXX (Use unit ID)

\_\_\_\_\_  
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  
NY STATE BUSINESS ENTERPRISE

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

**BID OPENING DATE:**

APPENDICES ATTACHED AND PART OF THIS AGREEMENT  
Precedence shall be given to these documents in the order listed below.

- APPENDIX A** – Standard Clauses as required by the Attorney General for all State Contracts.
- 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
- STATE OF NEW YORK AGREEMENT**
- APPENDIX D** – General Specifications
- APPENDIX B** – Request For Proposal (RFP)
- APPENDIX C** – Proposal
- APPENDIX E-1** – Proof of Workers' Compensation Coverage
- APPENDIX E-2** – Proof of Disability Insurance Coverage
- APPENDIX H** – Federal Health Insurance Portability and Accountability Act Business Associate Agreement
- APPENDIX G** – Notices
- APPENDIX M** – Participation by Minority Group Members and Women with respect to State Contracts: Requirements and Procedures

\_\_\_\_\_  
CONTRACTOR

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

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

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

\_\_\_\_\_  
STATE AGENCY

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

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

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

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

\_\_\_\_\_  
STATE OF NEW YORK)  
COUNTY OF \_\_\_\_\_) SS.:

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

\_\_\_\_\_  
(Signature and office of the individual taking acknowledgement)

**ATTORNEY GENERAL'S SIGNATURE**

\_\_\_\_\_

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

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

**STATE COMPTROLLER'S SIGNATURE**

\_\_\_\_\_

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

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

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

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

## TABLE OF CONTENTS

	Page
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, licenser, licensee, lessor, lessee or any other party):

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

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

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

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall

provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of STANDARD CLAUSES FOR NYS CONTRACTS APPENDIX A Page 4 January 2014 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, STANDARD CLAUSES FOR NYS CONTRACTS APPENDIX A Page 5 January 2014 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, upgrading, 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. 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

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. STANDARD CLAUSES FOR NYS CONTRACTS APPENDIX A Page 6 January 2014.

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](mailto: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: [mwb certification@esd.ny.gov](mailto:mwb certification@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 STANDARD CLAUSES FOR NYS CONTRACTS APPENDIX A Page 7 January 2014



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/Offerors 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**

**MODIFICATION AGREEMENT FORM** (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)

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:  
\$ \_\_\_\_\_ From \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_  
(Value before amendment) (Initial start date)

This amendment provides the following modification (complete only items being modified):  
\$ \_\_\_\_\_ From \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_

This will result in new contract terms of:  
\$ \_\_\_\_\_ From \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_.  
(All years thus far combined) (Initial start date) (Amendment end date)

SIGNATURE PAGE FOR:

Contract Number: \_\_\_\_\_ Contractor: \_\_\_\_\_

Amendment Number: X-\_\_\_\_\_ BSC Unit ID: 345<XXXX>

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

**CONTRACTOR SIGNATURE**

By: \_\_\_\_\_ Date: \_\_\_\_\_

(Signature)

Printed Name: \_\_\_\_\_

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

STATE OF NEW YORK )  
COUNTY OF \_\_\_\_\_) SS.:

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 Proposal" and "RFP" include all Appendix B documents as marked on the face page hereof.
- G. For the purposes of this AGREEMENT, the term "Proposal" includes all Appendix C documents as marked on the face page hereof.

## II. Payment and Reporting

- A. The CONTRACTOR shall submit complete and accurate invoices and/or vouchers, together with supporting documentation required by the contract, the State Agency and the State Comptroller, to the STATE's designated payment office in order to receive payment to one of the following addresses:
  - 1. Preferred Method: Email a .pdf copy of your signed voucher to the BSC at: [DOHaccountspayable@ogs.ny.gov](mailto:DOHaccountspayable@ogs.ny.gov) with a subject field as follows:  
Subject: <<Unit ID: 345XXXX>> <<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 345<<xxxx>>

PO Box 2093  
Albany, NY 12220-0093

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

Payment for invoices and/or vouchers submitted by the CONTRACTOR shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONTRACTOR shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/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.state.ny.us/vendors/vendorsguide/guide.htm>.

### III. Term of Contract

- A. Upon approval of the Office of the State Comptroller, this AGREEMENT shall be effective for the term as specified on the cover page.
- B. This Agreement may be terminated by mutual written agreement of the contracting parties.
- C. This Agreement may be terminated by the Department for cause upon the failure of the Contractor to comply with the terms and conditions of this Agreement, including the attachments hereto, provided that the Department shall give the contractor written notice via registered or certified mail, return receipt requested, or shall deliver same by hand-receiving Contractor's receipt therefor, such written notice to specify the Contractor's failure and the termination of this Agreement. Termination shall be effective ten (10) business days from receipt of such notice, established by the receipt returned to the Department. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination.
- D. This Agreement may be deemed terminated immediately at the option of the Department upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by the Department to the Contractor.
- E. This agreement may be canceled at any time by the Department of Health giving to the contractor not less than thirty (30) days written notice that on or after a date therein specified this agreement shall be deemed terminated and canceled.

### IV. Proof of Coverage

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

- A. Workers' Compensation, for which one of the following is incorporated into this contract as Appendix E-1: 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

1. 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
  2. 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.

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:
  - 1. 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;
  - 2. 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;

3. No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

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

A bid shall not be considered for award nor shall any award be made where (a), (b) and (c) above have not been complied with; provided however, that if in any case the Bidder cannot make the foregoing certification, the Bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a), (b) and (c) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department or agency to which the bid is made or its designee, determines that such disclosure was not made for the purpose of restricting competition. The fact that a Bidder has published price lists, rates, or tariffs covering items being procured, has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same price being bid, does not constitute, without more, a disclosure within the meaning of the above quoted certification.

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

- J. A Bidder may be disqualified from receiving awards if such Bidder or any subsidiary, affiliate, partner, officer, agent or principal thereof, or anyone in its employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
- K. The Department reserves the right to make awards within ninety (90) days after the date of the bid opening, during which period bids shall not be withdrawn unless the Bidder distinctly states in the bid that acceptance thereof must be made within a shorter specified time.
- L. Any contract entered into resultant from this request for proposal will be considered a "Work for Hire Contract." The Department will be the sole owner of all source code and any software which is developed for use in the application software provided to the Department as a part of this contract.
- M. Technology Purchases Notification --The following provisions apply if this Request for Proposal (RFP) seeks proposals for "Technology"
  1. For the purposes of this policy, "technology" applies to all services and commodities, voice/data/video and/or any related requirement, major software acquisitions, systems modifications or upgrades, etc., that result in a technical method of achieving a practical purpose or in improvements of productivity. The purchase can be as simple as an order for new or replacement personal computers, or for a consultant to design a new system, or as complex as a major systems improvement or innovation that changes how an agency conducts its business practices.
  2. If this RFP results in procurement of software over \$20,000, or of other technology over \$50,000, or where the department determines that the potential exists for coordinating purchases among State agencies and/or the purchase may be of interest to one or more other State agencies, PRIOR TO AWARD SELECTION, this RFP and all responses thereto are subject to review by the New York State Office for Technology.



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

N. Date/Time Warranty

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

"Product" shall include, without limitation: when solicited from a vendor in a State government entity's contracts, RFPs, IFBs, or mini-bids, any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition function, calculation, comparing or sequencing. Where services are being furnished, e.g., consulting, systems integration, code or data conversion or data entry, the term "Product" shall include resulting deliverables.

"Third Party Product" shall include product manufactured or developed by a corporate entity independent from the vendor and provided by the vendor on a non-exclusive licensing or other distribution Agreement with the third party manufacturer. "Third Party Product" does not include product where vendor is: (a) a corporate subsidiary or affiliate of the third party manufacturer/developer; and/or (b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.

2. Date/Time Warranty Statement

Contractor warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

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

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

- O. No Subcontracting: Subcontracting by the Contractor shall not be permitted except by prior written approval of the Department of Health. All subcontracts shall contain provisions specifying that the work performed by the subContractor must be in accordance with the terms of this AGREEMENT, and that the subContractor specifically agrees to be bound by the confidentiality provisions set forth in the AGREEMENT between the STATE and the CONTRACTOR.
- P. Superintendence by Contractor: The Contractor shall have a representative to provide supervision of the work which Contractor employees are performing to ensure complete and satisfactory performance with the terms of the Contract. This representative shall also be authorized to receive and put into effect promptly all orders, directions and instructions from the Department of Health. A confirmation in writing of such orders or directions will be given by the Department when so requested from the Contractor.

- Q. Sufficiency of Personnel and Equipment: If the Department of Health is of the opinion that the services required by the specifications cannot satisfactorily be performed because of insufficiency of personnel, the Department shall have the authority to require the Contractor to use such additional personnel, to take such steps necessary to perform the services satisfactorily at no additional cost to the State.
- R. Experience Requirements: The Contractor shall submit evidence to the satisfaction of the Department that it possesses the necessary experience and qualifications to perform the type of services required under this contract and must show that it is currently performing similar services. The Contractor shall submit at least two references to substantiate these qualifications.
- S. Contract Amendments. This agreement may be amended by written agreement signed by the parties and subject to the laws and regulations of the State pertaining to contract amendments. This agreement may not be amended orally.

The Contractor shall not make any changes in the scope of work as outlined herein at any time without prior authorization in writing from the Department of Health and without prior approval in writing of the amount of compensation for such changes.

T. Provisions upon Default

1. In the event that the Contractor, through any cause, fails to perform any of the terms, covenants or promises of this agreement, the Department acting for and on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the Contractor.
2. If, in the judgment of the Department of Health, the Contractor acts in such a way which is likely to or does impair or prejudice the interests of the State, the Department acting on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the Contractor. In such case the Contractor shall receive equitable compensation for such services as shall, in the judgment of the State Comptroller, have been satisfactorily performed by the Contractor up to the date of the termination of this agreement, which such compensation shall not exceed the total cost incurred for the work which the Contractor was engaged in at the time of such termination, subject to audit by the State Comptroller.

U. Upon termination of this agreement, the following shall occur:

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

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

W. Contract Insurance Requirements

1. The successful Bidder must without expense to the State procure and maintain, until final acceptance by the Department of Health of the work covered by this proposal and the contract, insurance of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the

State of New York covering all operations under this proposal and the contract, whether performed by it or by subContractors. Before commencing the work, the successful Bidder shall furnish to the Department of Health a certificate or certificates, in a form satisfactory to the Department, showing that it has complied with the requirements of this section, which certificate or certificates shall state that the policies shall not be changed or canceled until thirty days written notice has been given to the Department. The kinds and amounts of required insurance are:

- a. A policy covering the obligations of the successful Bidder in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Workers' Compensation Law, and the contract shall be void and of no effect unless the successful Bidder procures such policy and maintains it until acceptance of the work (reference Appendix E).
  - b. Policies of Bodily Injury Liability and Property Damage Liability Insurance of the types hereinafter specified, each within limits of not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one person in any one occurrence, and subject to that limit for that person, not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by two or more persons in any one occurrence, and not less than \$500,000 for damages arising out of damage to or destruction 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.

#### FF. CONFLICTS OF INTEREST

1. The CONTRACTOR has provided a form (Attachment L, Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the CONTRACTOR's performance of the services does not and will not create a conflict of interest with, nor position the CONTRACTOR to breach any other contract currently in force with the State of New York, that the CONTRACTOR will not act in any manner that is detrimental to any STATE project on which the CONTRACTOR is rendering services.

2. The CONTRACTOR hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the CONTRACTOR's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this AGREEMENT. The CONTRACTOR shall have a duty to notify the STATE immediately of any actual or potential conflicts of interest.

3. In conjunction with any subcontract under this AGREEMENT, the CONTRACTOR shall obtain and deliver to the STATE, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subcontractor. The CONTRACTOR shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the STATE a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.

4. The STATE and the CONTRACTOR recognize that conflicts may occur in the future because the CONTRACTOR may have existing, or establish new, relationships. The STATE will review the nature of any relationships and reserves the right to terminate this AGREEMENT for any reason, or for cause, if, in the judgment of the STATE, a real or potential conflict of interest cannot be cured.

#### GG. PUBLIC OFFICERS LAW

However, as a general rule, the contractor shall be informed that in accordance with New York Public Officers Law, former employees of the State Agency or Authority may neither appear nor practice before the State Agency or Authority, nor receive compensation for services rendered on a matter before the State Agency or Authority, for a period of two years following their separation from State Agency or Authority service. In addition, former State Agency or Authority employees are subject to a "lifetime bar" from appearing before the State Agency or Authority or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the State Agency or Authority.

#### HH. ETHICS REQUIREMENTS

The Contractor and its Subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or

policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the "Ethics Requirements"). The Contractor, by signing the Contract, certifies that all of its employees and those of its Subcontractors who are former employees of the State and who are assigned to perform services under this Contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Contractor or its Subcontractors and who is disqualified from providing services under this Contract pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its Subcontractors derived from this Contract. The Contractor shall identify and provide the State with notice of those employees of the Contractor and its Subcontractors who are former employees of the State that will be assigned to perform services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Contractor provide whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any Subcontractor if utilizing such Subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate this Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

## II. SUBCONTRACTING

The CONTRACTOR agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the STATE. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

The CONTRACTOR may arrange for a portion/s of its responsibilities under this AGREEMENT to be subcontracted to qualified, responsible subcontractors, subject to approval of the STATE. If the CONTRACTOR determines to subcontract a portion of the services, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this AGREEMENT must be fully explained by the CONTRACTOR to the STATE. As part of this explanation, the subcontractor must submit to the STATE a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, as required by the CONTRACTOR prior to execution of this AGREEMENT.

The CONTRACTOR retains ultimate responsibility for all services performed under the AGREEMENT. All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this AGREEMENT including, but not limited to, the body of this AGREEMENT, Appendix A – Standard Clauses for New York State Contracts and Appendix B. Unless waived in writing by the STATE, all subcontracts between the CONTRACTOR and subcontractors shall expressly name the STATE and the Department of Health, as the sole intended third party beneficiary of such subcontract. The STATE reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make the Department of Health the STATE a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against the STATE.

The STATE reserves the right, at any time during the term of the AGREEMENT, to verify that the written subcontract between the CONTRACTOR and subcontractors is in compliance with all of the provisions of this Section and any subcontract provisions contained in this AGREEMENT.

The CONTRACTOR shall give the STATE immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subcontractor or which may affect the performance of the CONTRACTOR's duties under the AGREEMENT. Any subcontract shall not relieve the CONTRACTOR in any way of any responsibility, duty and/or obligation of the AGREEMENT.

If at any time during performance under this AGREEMENT total compensation to a subcontractor exceeds or is expected to exceed \$100,000, that subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.



## **APPENDIX F**

### **SOFTWARE AS A SERVICE (SAAS) TERMS AND CONDITIONS**

#### A. General Requirements

Contractor agrees that it shall perform the Software as a Services (SaaS) in a manner consistent with the following requirements:

1. Host all Department Data and maintain and implement procedures to physically and logically segregate Department's Data from Contractor's data and data belonging to Contractor's other customers.
2. Establish and maintain appropriate environmental, safety and facility procedures, data security procedures and other safeguards against the destruction, corruption, loss or alteration of the hosting Services and any Department Data, and to prevent unauthorized access, alteration or interference by third parties of the same.
3. Utilize industry best practices and technology (including appropriate firewall protection, intrusion prevention tools, and intrusion detection tools) to protect, safeguard, and secure the System and Department Data against unauthorized access, use, and disclosure. Contractor shall constantly monitor for any attempted unauthorized access to, or use or disclosure of, any of such materials and shall immediately take all necessary and appropriate action in the event any such attempt is discovered, promptly notifying the ITS EISO of any material or significant breach of security with respect to any such materials.
4. When software vulnerabilities are revealed and addressed by a vendor patch, Contractor will obtain the patch from the applicable vendor and categorize the urgency of application as either "critical" or "non-critical" in nature. The determination of the critical versus non-critical nature of patches is solely at the reasonable discretion of Contractor in consultation with ITS EISO. Contractor will apply all critical security patches, hot fixes, or service packs as they are tested and determined safe for installation.

#### B. Data Location and Related Restrictions

All Data shall remain in the Continental United States (CONUS). Any Data stored, or acted upon, must be located solely in Data Centers in CONUS. Services which directly or indirectly access Data may only be performed from locations within CONUS.

#### C. Support Services

All helpdesk, online, and support services which access any Data must be performed from within CONUS.

#### D. Contractor Portable Devices

Contractor shall not place Data on any portable Device unless Device is located and remains within Contractor's CONUS Data Center.

#### E. Data Breach - Required Contractor Actions

Unless otherwise provided by law, in the event of a Data Breach, the Contractor shall:

1. Notify the ITS EISO and any potentially affected Department or their designated contact person(s), by telephone as soon as possible.
2. Consult with and receive authorization from the Department as to the content of any notice to affected parties prior to notifying any affected parties to whom notice of the Data Breach is required, either by statute or by the Department;

3. Coordinate all communication regarding the Data Breach with the ITS EISO and the Department;
4. Cooperate with the Department and ITS EISO in attempting (a) to determine the scope and cause of the breach; and (b) to prevent the future recurrence of such security breaches; and
5. Take corrective action in the timeframe required by the Department. If Contractor is unable complete the corrective action within the required timeframe the Department may contract with a third party to provide the required services until corrective actions and services resume in a manner acceptable to the Department, or until the Department has completed a new procurement for a replacement service system. The Contractor will be responsible for the cost of these services during this period. Nothing herein shall in any way (a) impair the authority of the OAG to bring an action against Contractor to enforce the provisions of the New York State Information Security Breach Notification Act (ISBNA) or (b) limit Contractor's liability for any violations of the ISBNA or any other applicable statutes, rules or regulations.

F. Data Ownership

The Department shall own all right, title and interest in Data.

G. Department Access to Data

The Department shall have access to its Data at all times, through the term of this Contract. The Department shall have the ability to import or export Data in piecemeal or in its entirety at the Department's discretion, without interference from the Contractor. This includes the ability for the Department to import or export Data to/from other Contractors.

H. Contractor Access to Data

The Contractor shall not copy or transfer Data unless authorized by the Department. In such an event the Data shall be copied and/or transferred in accordance with the provisions of this Section. Contractor shall not access any Data for any purpose other than fulfilling the service. Contractor is prohibited from Data Mining, cross tabulating, monitoring Department's Data usage and/or access, or performing any other Data Analytics other than those required under this contract. At no time shall any Data or processes (e.g. workflow, applications, etc.), which either are owned or used by the Department be copied, disclosed, or retained by the Contractor or any party related to the Contractor. Contractors are allowed to perform industry standard back-ups of Data. Documentation of back-up must be provided to the Department upon request.

I. Suspension of Services

During any period of suspension of service, the Department shall have full access to all Data at no charge. The Contractor shall not take any action to erase and/or withhold any Department Data, except as directed by the Department.

J. Transferring of Data

The Contractor will not transfer Data unless directed to do so in writing by the Department. At the request of the Department, the Contractor will provide the services required to transfer Data from existing Databases to physical storage devices, to facilitate movement of large volumes of Data.

K. Requests for Data by Third Parties

Unless prohibited by law, Contractor shall notify the Department in writing within 24 hours of any request for Data (including requestor, nature of Data requested and timeframe of response) by a person or entity other than the Department, and the Contractor shall secure written acknowledgement of such notification from the Department before responding to the request for Data. Unless compelled by law, the Contractor shall not release Data without the Department's prior written approval.

L. Transfer of Data at End of Contract

At the end of the Contract, Contractor may be required to transfer Data to a new Contractor and/or to the Department. This transfer must be carried out as specified by the Department. This transfer may include, but is not limited to, conversion of all Data into or from an industry standard format(s) including comma/delimited files, txt files, or Microsoft standard file formats

M. Transfer of Data; Contract Breach or Termination

In the case of Contract breach or termination for cause of the Contract, all expenses for the transfer of Data shall be the responsibility of the Contractor.

N. Expiration or Termination of Services

Upon expiration or termination of this Contract, the Department shall have full access to all Data for a period of 90 calendar days at no charge. During this period, the Contractor shall not take any action to erase and/or withhold any Data, except as directed by the Department.

O. Return of Data

Upon expiration or termination of this Contract, the Contractor shall return Data in a format required by the Department. When requested by the Department, the Contractor must certify that all Data has been removed from its system and removed from backups.

P. Secure Data Disposal

If requested by the Department, the Contractor shall destroy Data in all of its forms, including all backups. Data shall be permanently deleted and shall not be recoverable, according to ITS Policy S13-003 Sanitization/Secure Disposal or successor and S14-003 Information Security Controls or successor. Certificates of destruction, in a form acceptable to the Department, shall be provided by the Contractor to the Department.

Q. Destruction of Data

The Data, and/or the storage medium containing the Data, shall be destroyed in accordance with applicable ITS destruction policies (ITS Policy S13-003 Sanitization/Secure Disposal and S14-003 Information Security Controls or successor) when the Contractor is no longer contractually required to store the Data.

R. Background Checks

The Department may require the Contractor to conduct background checks on certain Contractor staff at no charge to the Department.

S. Separation of Duties

The Department may require the separation of job duties, and limit staff knowledge of Data to that which is absolutely needed to perform job duties.

T. Business Continuity/Disaster Recovery Operations

The Contractor shall provide and implement a business continuity and disaster recovery plan in accordance with the requirements of the RFP and approved by the New York State Office for Information Technology Services.

U. Compliance with Federal, State and Local Regulations

The Department may require the Contractor to provide verification of compliance with specific federal, State and

local regulations, laws and information technology standards with which the Department is required to comply.

#### V. WARRANTIES

1. **Software Performance.** Contractor hereby warrants and represents that the SaaS acquired by the Department under this Contract conform to Contractor's specifications, performance standards and Documentation and that the Documentation fully describes the proper procedure for using the Products.
2. **Title and Ownership.** Contractor warrants and represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights from a third party, to any Products or Services acquired by the Department under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify the State and hold the State harmless from any damages and liabilities (including reasonable attorneys' fees and costs) arising from any breach of Contractor's warranties as set forth herein.
3. **Product Warranty.** Contractor further warrants and represents that Products or Services shall be free from defects in material and workmanship and will conform to all requirements of the Contract for the Contractor's standard commercial warranty period, if applicable, or for the term of the contract from the date of acceptance, whichever is longer (the "Product warranty period").
4. **Virus Warranty.** The Contractor represents and warrants that any Licensed Software acquired under the Contract by the Department does not contain any known Viruses. Contractor is not responsible for Viruses introduced at the Department's Site.
5. **Workmanship Warranty.** Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with industry standards. The Department must notify Contractor of any services warranty deficiencies within ninety calendar days from performance of the services that gave rise to the warranty claim.
6. **Survival of Warranties.** All warranties contained in this Contract shall survive the termination of this Contract.
7. **Prompt Notice of Breach.** The Department shall promptly notify the Contractor and the Commissioner in writing of any claim of breach of any warranty provided herein.
8. **Additional Warranties.** Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous warranties than those set forth herein, Contractor shall offer or pass through any such warranties to the Department.
9. **No Limitation of Rights.** The rights and remedies of the Department provided in this clause are in addition to and do not limit any rights afforded to the Department by any other clause of the Contract.

#### W. Ownership/Title to Project Deliverables

Title and ownership to software delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other independent software vendor proprietary owner ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the proprietary owner of other independent software vendor(s) ("ISV"). Effective upon acceptance, such Product shall be licensed to the Department in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must during the term of the Contract, at a minimum, grant the Department a non-exclusive license to use, execute, reproduce, display, perform, adapt (unless Contractor advises the Department as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Department's satisfaction).

#### X. Contractor's Obligation with Regard to ISV (Third Party) Product

Contractor shall be responsible for obtaining from the ISV third party proprietary owner/developer the rights set forth herein to the benefit of the Department at Contractor's sole cost and expense.

Y. Escrow of Source Code

1. The Contractor shall either:
  - a. Provide the Department with the source code for the product;
  - b. At the expense of the Contractor, place the source code in a third-party escrow arrangement with a designated escrow agent, who shall be named and identified to, and acceptable to, the Department, and who shall be directed to release the deposited source code in accordance with a standard escrow agreement acceptable and approved by the Department. That agreement must, at minimum, provide for release of the source code to the Department if a) Contractor files for bankruptcy or becomes insolvent b) Contractor misrepresents its products or services c) Contractor fails to perform work as agreed upon in this contract and subsequent agreement d) Contractor ceases business operations generally or fails to make available maintenance or support services for the then-current version of the licensed product; or
  - c. Certify to the Department that the product manufacturer/developer has named the Department as a named member of an established escrow arrangement with its designated escrow agent who shall be named and identified to the Department and who shall be directed to release the deposited source code in accordance with the terms of escrow. Source code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the product in the same manner as provided above and such updating of escrow shall be certified to the Department in writing. The Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this paragraph.
2. Throughout the term of this Contract, the Contractor will deliver all software, including updates to the software, to the Department or the escrow agent within five (5) business days of implementing the use of such software so that all software in the custody of the Department or the escrow agent will be the then current version reflecting all changes and upgrades, but in any event, no less frequently than every six (6) months.
3. The Contractor also must place in escrow one (1) paper copy and one (1) electronic copy of maintenance manuals and additional documentation that are required for the proper maintenance of all systems and the software used to develop, test, and implement the system. Revised copies of manuals and documentation must be placed in the escrow account in the event they are changed. Such documentation must consist of logic diagrams, installation instructions, operation and maintenance manuals, and must be the same as that which the Contractor supplies to its maintenance personnel to maintain its software.
4. Except as otherwise provided in this Contract, the Contractor will not be obligated to provide source code (the un-compiled operating instructions for the software) for commercial software unless it is readily available from the licensor. When source code is provided, it must be provided in the language in which it was written and will include commentary that will allow a competent programmer proficient in the source language to readily interpret the source code and understand the purpose of all routines and subroutines contained within the source code. If the source code of such third-party is not otherwise provided or freely available, the Contractor will be obliged to ensure that the source code and associated documentation is subject to an escrow agreement meeting the requirements of Paragraph 1 of this Appendix. In the event that this Contract expires and is not renewed or extended, the Department has the option to continue the escrow agreement until such time that the Department is no longer using the software or documentation covered by this escrow agreement.

## **APPENDIX H**

### **FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT BUSINESS ASSOCIATE AGREEMENT**

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.

Except as provided in paragraph (c)(2) below, upon termination of this AGREEMENT, for any reason, Business Associate shall return or destroy all

1. 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.

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 H



## **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.

## **APPENDIX M**

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

#### I. General Provisions

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

#### II. Contract Goals

- A. For purposes of this procurement, the New York State Department of Health hereby establishes an overall goal of 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.

A. 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.

- B. 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.
- A. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, New York State Department of Health shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

V. Waivers

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

VI. Quarterly MWBE Contractor Compliance Report

- A. Contractor is required to submit a Quarterly MWBE Contractor Compliance Report 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. Data should be submitted via the online compliance system at <https://ny.newnycontracts.com>.

VII. Liquidated Damages - MWBE Participation

- B. 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.
- C. 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.
- A. 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 should 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 list of bidder generated attachments, documenting the bidder’s good-faith efforts, can be found in the “Detailed Instructions for Completing MWBE Forms 1 & 2”, which is found herein. 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.	<b>\$</b> Click here to enter text.
<b>3. WBE Goal Applied to the Contract</b>	Click here to enter text.	<b>\$</b> Click here to enter text.
<b>4. M/WBE Combined Totals</b>	Click here to enter text.	<b>\$</b> 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.”

- M/WBE Form #1 – cont.

**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>
Name  Address  City, State, ZIP  Employer I.D.  Telephone Number ( ) -		\$ _____
Name  Address  City, State, ZIP  Employer I.D.  Telephone Number ( ) -		\$ _____
Name  Address  City, State, ZIP  Employer I.D.  Telephone Number ( ) -		\$ _____



- M/WBE Form #1 – cont.

**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> _____

**New York State Department of Health  
Waiver Request**

<b>Applicant/Grantee :</b> Click here to enter text.	<b>Federal Identification No.:</b> Click here to enter number.	
<b>Address:</b> Click here to enter text.	<b>Solicitation/Contract No.:</b> Click here to enter number.	
<b>City, State, Zip Code:</b> Click here to enter text.	<b>M/WBE Goals: MBE %%% WBE %%%</b> (From Lines 2&3 of Form 1)	
<p><b>By submitting this form and the required information, the officer or/contractor certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract.</b></p>		
<p><b>Contractor is requesting a :</b></p> <p><input type="checkbox"/> <b>MBE Waiver – A waiver of the MBE Goal for this procurement is requested. Total / Partial (circle one)</b></p> <p><input type="checkbox"/> <b>WBE Waiver – A waiver of the WBE Goal for this procurement is requested. Total / Partial (circle one)</b></p> <p><input type="checkbox"/> <b>Waiver Pending ESD Certification – (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for certification has been filed with Empire State Development.)</b></p> <p><b>Date of such filing with Empire State Development:</b> Click here to enter a date.</p> <p><u>If a total or partial waiver is requested, appropriate supporting documentation as outlined in the Detailed MWBE Form Instructions is required.</u></p>		
<p><b>PREPARED BY (Signature) _____ Date: _____</b></p> <p>SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.</p>		
<b>Name and Title of Preparer (Printed or Typed):</b>	<b>Telephone Number:</b>	<b>Email Address:</b>
<p>Submit with the bid or proposal or if submitting after award submit to: <a href="mailto:doh.sm.mwbe@health.ny.gov">doh.sm.mwbe@health.ny.gov</a></p>	<b>***** FOR DMWBD USE ONLY *****</b>	
	<b>REVIEWED BY:</b>	<b>DATE:</b>
	<p><b>Waiver Granted: <input type="checkbox"/> YES <input type="checkbox"/> NO</b></p> <p><b>MBE: <input type="checkbox"/> WBE: <input type="checkbox"/></b></p> <p><input type="checkbox"/> <b>Total Waiver</b> <span style="float: right;"><input type="checkbox"/> <b>Partial Waiver</b></span></p> <p><input type="checkbox"/> <b>ESD Certification Waiver</b> <span style="float: right;"><input type="checkbox"/> <b>*Conditional</b></span></p> <p><input type="checkbox"/> <b>Notice of Deficiency Issued</b> _____</p>	

**- 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** 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

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color,

## 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 Check):

No Yes

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

**Governmental Entity:** [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 Check):

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 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 DIVERSITY PRACTICES QUESTIONNAIRE

I, \_\_\_\_\_, as \_\_\_\_\_ (title) of \_\_\_\_\_ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No

If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company's clients or customers?

3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?<sup>1</sup>

4. Does your company provide technical training<sup>2</sup> to minority- and women-owned business enterprises? Yes or No

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program? Yes or No

If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Yes or No

If Yes, provide a description of such non-government procurements (including time period, goal, scope, and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? Yes or No

If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? Yes or No

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<sup>1</sup>Do not include onsite project overhead. Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

Signature of Owner/Official \_\_\_\_\_  
Printed Name of Signatory \_\_\_\_\_  
Title \_\_\_\_\_  
Name of Business **Error! Reference source not found.** \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_ ) ss:

On the \_\_\_ day of \_\_\_\_\_, 201\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

\_\_\_\_\_  
Notary Public

## **ATTACHMENT L**

### **Vendor Assurance of No Conflict of Interest or Detrimental Effect**

The CONTRACTOR offering to provide services pursuant to this Contract, as a Contractor, joint venture Contractor, subContractor, or consultant, attests that its performance of the services outlined in this contract does not and will not create a conflict of interest with nor position the CONTRACTOR to breach any other contract currently in force with the State of New York.

As such, the CONTRACTOR will disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated Contractor, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Respondent or former officers and employees of the Contractor or their Affiliates, in connection with your rendering services enumerated in this Contract. If a conflict does or might exist, please describe how you would eliminate or prevent it. Indicate what procedures will be followed to detect, notify the Agencies of, and resolve any such conflicts.

In addition, the Contractor must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a brief description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

Furthermore, the CONTRACTOR attests that it will not act in any manner that is detrimental to any State project on which the CONTRACTOR is rendering services. Specifically, the CONTRACTOR attests that:

1. The fulfillment of obligations by the CONTRACTOR, as proposed in the response, does not violate any existing contracts or agreements between the CONTRACTOR and the State;
2. The fulfillment of obligations by the CONTRACTOR, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the CONTRACTOR has with regard to any existing contracts or agreements between the CONTRACTOR and the State;
3. The fulfillment of obligations by the CONTRACTOR, as proposed in the response, does not and will not compromise the CONTRACTOR's ability to carry out its obligations under any existing contracts between the CONTRACTOR and the State;
4. The fulfillment of any other contractual obligations that the CONTRACTOR has with the State will not affect or influence its ability to perform under any contract with the State resulting from this RFP;
5. During the negotiation and execution of any contract resulting from this RFP, the CONTRACTOR will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
6. In fulfilling obligations under each of its State contracts, including any contract which results from this RFP, the CONTRACTOR will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;

7. No former officer or employee of the State who is now employed by the CONTRACTOR, nor any former officer or employee of the CONTRACTOR who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and

8. The CONTRACTOR has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

CONTRACTORS responding to this contract should note that the State recognizes that conflicts may occur in the future because a CONTRACTOR may have existing or new relationships. The State will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

Name: \_\_\_\_\_

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

Signature: \_\_\_\_\_

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

This form must be signed by an authorized executive or legal representative.



**ATTACHMENT M**  
**TOTAL RADIOLOGY PRIOR AUTHORIZATIONS ISSUED ANNUALLY**

State Fiscal Year 2015-2016: 50,731  
 State Fiscal Year 2016-2017: 46,568

<b>CPT Code</b>	<b>Radiology Procedures Requiring Prior Authorization</b>
70336	MAGNETIC RESONANCE (EG, PROTON) IMAGING, TEMPOROMANDIBULAR JOINT(S)
70450	COMPUTED TOMOGRAPHY, HEAD OR BRAIN; WITHOUT CONTRAST MATERIAL
70460	COMPUTED TOMOGRAPHY, HEAD OR BRAIN; WITH CONTRAST MATERIAL(S)
70470	COMPUTED TOMOGRAPHY, HEAD OR BRAIN; WITHOUT CONTRAST MATERIAL,
70480	COMPUTED TOMOGRAPHY, ORBIT, SELLA, OR POSTERIOR FOSSA OR OUTER,
70481	COMPUTED TOMOGRAPHY, ORBIT, SELLA, OR POSTERIOR FOSSA OR OUTER,
70482	COMPUTED TOMOGRAPHY, ORBIT, SELLA, OR POSTERIOR FOSSA OR OUTER,
70486	COMPUTED TOMOGRAPHY, MAXILLOFACIAL AREA; WITHOUT CONTRAST MATERIAL
70487	COMPUTED TOMOGRAPHY, MAXILLOFACIAL AREA; WITH CONTRAST MATERIAL(S)
70488	COMPUTED TOMOGRAPHY, MAXILLOFACIAL AREA; WITHOUT CONTRAST MATERIAL,
70490	COMPUTED TOMOGRAPHY, SOFT TISSUE NECK; WITHOUT CONTRAST MATERIAL
70491	COMPUTED TOMOGRAPHY, SOFT TISSUE NECK; WITH CONTRAST MATERIAL(S)
70492	COMPUTED TOMOGRAPHY, SOFT TISSUE NECK; WITHOUT CONTRAST MATERIAL
70496	COMPUTED TOMOGRAPHIC ANGIOGRAPHY, HEAD, WITH CONTRAST MATERIAL(S),
70498	COMPUTED TOMOGRAPHIC ANGIOGRAPHY, NECK, WITH CONTRAST MATERIAL(S),
70540	MAGNETIC RESONANCE (EG, PROTON) IMAGING, ORBIT, FACE, AND/OR NECK;
70542	MAGNETIC RESONANCE (EG, PROTON) IMAGING, ORBIT, FACE, AND NECK; WITH
70543	MAGNETIC RESONANCE (EG, PROTON) IMAGING, ORBIT, FACE, AND/OR NECK;
70544	MAGNETIC RESONANCE ANGIOGRAPHY, HEAD; WITHOUT CONTRAST MATERIAL(S)
70545	MAGNETIC RESONANCE ANGIOGRAPHY, HEAD; WITH CONTRAST MATERIAL(S)
70546	MAGNETIC RESONANCE ANGIOGRAPHY, HEAD; WITHOUT CONTRAST MATERIAL(S),
70547	MAGNETIC RESONANCE ANGIOGRAPHY, NECK; WITHOUT CONTRAST MATERIAL(S)
70548	MAGNETIC RESONANCE ANGIOGRAPHY, NECK; WITH CONTRAST MATERIAL(S)
70549	MAGNETIC RESONANCE ANGIOGRAPHY, NECK; WITHOUT CONTRAST MATERIAL(S),
70551	MAGNETIC RESONANCE (EG, PROTON) IMAGING, BRAIN (INCLUDING BRAIN STEM);
70552	MAGNETIC RESONANCE (EG, PROTON) IMAGING, BRAIN (INCLUDING BRAIN STEM);
70553	MAGNETIC RESONANCE (EG, PROTON) IMAGING, BRAIN (INCLUDING BRAIN STEM);
70555	MAGNETIC RESONANCE IMAGING, BRAIN, FUNCTIONAL MRI; REQUIRING PHYSICIAN
71250	COMPUTED TOMOGRAPHY, THORAX; WITHOUT CONTRAST MATERIAL
71260	COMPUTED TOMOGRAPHY, THORAX; WITH CONTRAST MATERIAL(S)
71270	COMPUTED TOMOGRAPHY, THORAX; WITHOUT CONTRAST MATERIAL, FOLLOWED BY
71275	COMPUTED TOMOGRAPHIC ANGIOGRAPHY, CHEST (NONCORONARY), WITH
71550	MAGNETIC RESONANCE (EG, PROTON) IMAGING, CHEST (EG, FOR EVALUATION OF
71551	MAGNETIC RESONANCE (EG, PROTON) IMAGING, CHEST (EG, FOR EVALUATION OF
71552	MAGNETIC RESONANCE (EG, PROTON) IMAGING, CHEST (EG, FOR EVALUATION OF
71555	MAGNETIC RESONANCE ANGIOGRAPHY, CHEST (EXCLUDING MYOCARDIUM), WITH
72125	COMPUTED TOMOGRAPHY, CERVICAL SPINE; WITHOUT CONTRAST MATERIAL

72126	COMPUTED TOMOGRAPHY, CERVICAL SPINE; WITH CONTRAST MATERIAL
72127	COMPUTED TOMOGRAPHY, CERVICAL SPINE; WITHOUT CONTRAST MATERIAL,
72128	COMPUTED TOMOGRAPHY, THORACIC SPINE; WITHOUT CONTRAST MATERIAL
72129	COMPUTED TOMOGRAPHY, THORACIC SPINE; WITH CONTRAST MATERIAL
72130	COMPUTED TOMOGRAPHY, THORACIC SPINE; WITHOUT CONTRAST MATERIAL,
72131	COMPUTED TOMOGRAPHY, LUMBAR SPINE; WITHOUT CONTRAST MATERIAL
72132	COMPUTED TOMOGRAPHY, LUMBAR SPINE; WITH CONTRAST MATERIAL
72133	COMPUTED TOMOGRAPHY, LUMBAR SPINE; WITHOUT CONTRAST MATERIAL,
72141	MAGNETIC RESONANCE (EG, PROTON) IMAGING, SPINAL CANAL AND CONTENTS,
72142	MAGNETIC RESONANCE (EG, PROTON) IMAGING, SPINAL CANAL AND CONTENTS,
72146	MAGNETIC RESONANCE (EG, PROTON) IMAGING, SPINAL CANAL AND CONTENTS,
72147	MAGNETIC RESONANCE (EG, PROTON) IMAGING, SPINAL CANAL AND CONTENTS,
72148	MAGNETIC RESONANCE (EG, PROTON) IMAGING, SPINAL CANAL AND CONTENTS,
72149	MAGNETIC RESONANCE (EG, PROTON) IMAGING, SPINAL CANAL AND CONTENTS,
72156	MAGNETIC RESONANCE (EG, PROTON) IMAGING, SPINAL CANAL AND CONTENTS,
72157	MAGNETIC RESONANCE (EG, PROTON) IMAGING, SPINAL CANAL AND CONTENTS,
72158	MAGNETIC RESONANCE (EG, PROTON) IMAGING, SPINAL CANAL AND CONTENTS,
72159	MAGNETIC RESONANCE ANGIOGRAPHY, SPINAL CANAL AND CONTENTS, WITH OR
72191	COMPUTED TOMOGRAPHIC ANGIOGRAPHY, PELVIS, WITH CONTRAST MATERIAL(S),
72192	COMPUTED TOMOGRAPHY, PELVIS; WITHOUT CONTRAST MATERIAL
72193	COMPUTED TOMOGRAPHY, PELVIS; WITH CONTRAST MATERIAL(S)
72194	COMPUTED TOMOGRAPHY, PELVIS; WITHOUT CONTRAST MATERIAL, FOLLOWED BY
72195	MAGNETIC RESONANCE (EG, PROTON) IMAGING, PELVIS; WITHOUT CONTRAST
72196	MAGNETIC RESONANCE (EG, PROTON) IMAGING, PELVIS; WITH CONTRAST
72197	MAGNETIC RESONANCE (EG, PROTON) IMAGING, PELVIS; WITHOUT CONTRAST
72198	MAGNETIC RESONANCE ANGIOGRAPHY, PELVIS, WITH OR WITHOUT CONTRAST
73200	COMPUTED TOMOGRAPHY, UPPER EXTREMITY; WITHOUT CONTRAST MATERIAL
73201	COMPUTED TOMOGRAPHY, UPPER EXTREMITY; WITH CONTRAST MATERIAL(S)
73202	COMPUTED TOMOGRAPHY, UPPER EXTREMITY; WITHOUT CONTRAST MATERIAL,
73206	COMPUTED TOMOGRAPHIC ANGIOGRAPHY, UPPER EXTREMITY, WITH CONTRAST
73218	MAGNETIC RESONANCE (EG, PROTON) IMAGING, UPPER EXTREMITY, OTHER THAN
73219	MAGNETIC RESONANCE (EG, PROTON) IMAGING, UPPER EXTREMITY, OTHER THAN
73220	MAGNETIC RESONANCE (EG, PROTON) IMAGING, UPPER EXTREMITY, OTHER THAN
73221	MAGNETIC RESONANCE (EG, PROTON) IMAGING, ANY JOINT OF UPPER EXTREMITY;
73222	MAGNETIC RESONANCE (EG, PROTON) IMAGING, ANY JOINT OF UPPER EXTREMITY;
73223	MAGNETIC RESONANCE (EG, PROTON) IMAGING, ANY JOINT OF UPPER EXTREMITY;
73225	MAGNETIC RESONANCE ANGIOGRAPHY, UPPER EXTREMITY, WITH OR WITHOUT
73700	COMPUTED TOMOGRAPHY, LOWER EXTREMITY; WITHOUT CONTRAST MATERIAL
73701	COMPUTED TOMOGRAPHY, LOWER EXTREMITY; WITH CONTRAST MATERIAL(S)
73702	COMPUTED TOMOGRAPHY, LOWER EXTREMITY; WITHOUT CONTRAST MATERIAL,
73706	COMPUTED TOMOGRAPHIC ANGIOGRAPHY, LOWER EXTREMITY, WITH CONTRAST
73718	MAGNETIC RESONANCE (EG, PROTON) IMAGING, LOWER EXTREMITY OTHER THAN
73719	MAGNETIC RESONANCE (EG, PROTON) IMAGING, LOWER EXTREMITY OTHER THAN
73720	MAGNETIC RESONANCE (EG, PROTON) IMAGING, LOWER EXTREMITY OTHER THAN

73721	MAGNETIC RESONANCE (EG, PROTON) IMAGING, ANY JOINT OF LOWER EXTREMITY;
73722	MAGNETIC RESONANCE (EG, PROTON) IMAGING, ANY JOINT OF LOWER EXTREMITY;
73723	MAGNETIC RESONANCE (EG, PROTON) IMAGING, ANY JOINT OF LOWER EXTREMITY;
73725	MAGNETIC RESONANCE ANGIOGRAPHY, LOWER EXTREMITY, WITH OR WITHOUT
74150	COMPUTED TOMOGRAPHY, ABDOMEN; WITHOUT CONTRAST MATERIAL
74160	COMPUTED TOMOGRAPHY, ABDOMEN; WITH CONTRAST MATERIAL(S)
74170	COMPUTED TOMOGRAPHY, ABDOMEN; WITHOUT CONTRAST MATERIAL, FOLLOWED BY
74174	COMPUTED TOMOGRAPHIC ANGIOGRAPHY, ABDOMEN AND PELVIS, WITH CONTRAST
74175	COMPUTED TOMOGRAPHIC ANGIOGRAPHY, ABDOMEN, WITH CONTRAST MATERIAL(S),
74176	CT SCAN OF ABDOMEN AND PELVIS
74177	COMPUTED TOMOGRAPHY, ABDOMEN AND PELVIS; WITH CONTRAST MATERIAL(S)
74178	COMPUTED TOMOGRAPHY, ABDOMEN AND PELVIS; WITHOUT CONTRAST MATERIAL IN
74181	MAGNETIC RESONANCE (EG, PROTON) IMAGING, ABDOMEN; WITHOUT CONTRAST
74182	MAGNETIC RESONANCE (EG, PROTON) IMAGING, ABDOMEN; WITH CONTRAST
74183	MAGNETIC RESONANCE (EG, PROTON) IMAGING, ABDOMEN; WITHOUT CONTRAST
74185	MAGNETIC RESONANCE ANGIOGRAPHY, ABDOMEN, WITH OR WITHOUT CONTRAST
74712	MAGNETIC RESONANCE IMAGING OF FETUS, SINGLE OR FIRST PREGNANCY
74713	MAGNETIC RESONANCE IMAGING OF FETUS, EACH ADDITIONAL PREGNANCY
75557	CARDIAC MAGNETIC RESONANCE IMAGING FOR MORPHOLOGY AND FUNCTION
75559	CARDIAC MAGNETIC RESONANCE IMAGING FOR MORPHOLOGY AND FUNCTION
75561	CARDIAC MAGNETIC RESONANCE IMAGING FOR MORPHOLOGY AND FUNCTION
75563	CARDIAC MAGNETIC RESONANCE IMAGING FOR MORPHOLOGY AND FUNCTION
75565	CARDIAC MAGNETIC RESONANCE IMAGING FOR VELOCITY FLOW MAPPING (LIST
75574	COMPUTED TOMOGRAPHIC ANGIOGRAPHY, HEART, CORONARY ARTERIES AND
75635	COMPUTED TOMOGRAPHIC ANGIOGRAPHY, ABDOMINAL AORTA AND BILATERAL
76380	COMPUTED TOMOGRAPHY, LIMITED OR LOCALIZED FOLLOW-UP STUDY
77058	MAGNETIC RESONANCE IMAGING, BREAST, WITHOUT AND/OR WITH CONTRAST
77059	MAGNETIC RESONANCE IMAGING, BREAST, WITHOUT AND/OR WITH CONTRAST
77084	MAGNETIC RESONANCE (EG, PROTON) IMAGING, BONE MARROW BLOOD SUPPLY
78451	MYOCARDIAL PERFUSION IMAGING, TOMOGRAPHIC (SPECT) (INCLUDING
78452	MYOCARDIAL PERFUSION IMAGING, TOMOGRAPHIC (SPECT) (INCLUDING
78453	MYOCARDIAL PERFUSION IMAGING, PLANAR (INCLUDING QUALITATIVE OR
78454	MYOCARDIAL PERFUSION IMAGING, PLANAR (INCLUDING QUALITATIVE OR
78459	MYOCARDIAL IMAGING, POSITRON EMISSION TOMOGRAPHY (PET), METABOLIC
78466	MYOCARDIAL IMAGING, INFARCT AVID, PLANAR; QUALITATIVE OR QUANTITATIVE
78469	MYOCARDIAL IMAGING, INFARCT AVID, PLANAR; TOMOGRAPHIC SPECT WITH OR
78472	CARDIAC BLOOD POOL IMAGING, GATED EQUILIBRIUM; PLANAR, SINGLE STUDY AT
78473	CARDIAC BLOOD POOL IMAGING, GATED EQUILIBRIUM; MULTIPLE STUDIES, WALL
78481	CARDIAC BLOOD POOL IMAGING (PLANAR), FIRST PASS TECHNIQUE; SINGLE STUDY,
78483	CARDIAC BLOOD POOL IMAGING (PLANAR), FIRST PASS TECHNIQUE; MULTIPLE
78491	MYOCARDIAL IMAGING, POSITRON EMISSION TOMOGRAPHY (PET), PERFUSION;
78492	MYOCARDIAL IMAGING, POSITRON EMISSION TOMOGRAPHY (PET), PERFUSION;
78494	CARDIAC BLOOD POOL IMAGING, GATED EQUILIBRIUM, SPECT, AT REST, WALL
78496	CARDIAC BLOOD POOL IMAGING, GATED EQUILIBRIUM, SINGLE STUDY, AT REST, WITH

78608	BRAIN IMAGING, POSITRON EMISSION TOMOGRAPHY (PET); METABOLIC EVALUATION
78609	BRAIN IMAGING, POSITRON EMISSION TOMOGRAPHY (PET); PERFUSION EVALUATION
78811	POSITRON EMISSION TOMOGRAPHY (PET) IMAGING; LIMITED AREA (EG, CHEST,
78812	POSITRON EMISSION TOMOGRAPHY (PET) IMAGING; SKULL BASE TO MID-THIGH
78813	POSITRON EMISSION TOMOGRAPHY (PET) IMAGING; WHOLE BODY
78814	POSITRON EMISSION TOMOGRAPHY (PET) WITH CONCURRENTLY ACQUIRED
78815	POSITRON EMISSION TOMOGRAPHY (PET) WITH CONCURRENTLY ACQUIRED
78816	POSITRON EMISSION TOMOGRAPHY (PET) WITH CONCURRENTLY ACQUIRED
G0297	LOW DOSE CT SCAN (LDCT) FOR LUNG CANCER

**ATTACHMENT N**  
**SERVICE LEVEL AGREEMENTS**

<b>SLA Number</b>	<b>Service Level Agreement</b>	<b>Definition</b>	<b>Damages</b>
RADMGMTSLA01	Reporting	Produce all daily, weekly, monthly, quarterly and annual operational and performance management reporting at the schedule defined per report.	\$1,000 for each report not produced within the agreed timeframe.
RADMGMTSLA02	SLA Reporting	The contractor must maintain the necessary data in appropriate log files to measure its performance and report monthly on all SLAs illustrating daily metrics against the SLAs defined in this RFP. If the Department notifies the contractor that damages will be assessed because of nonconformance with an SLA and the log files are not maintained or are damaged in such a way that the contractor cannot substantiate its performance against an SLA it will be construed that the contractor did not meet the SLA in question.	The damages for the appropriate SLA where performance was not met or log files were not maintained to confirm performance was met will be assessed by the Department.
RADMGMTSLA03	Hours of Call Center Availability	The call center must be available Monday through Friday from 8:00 am until 6:00 pm, Eastern Standard Time, with the exception of State approved holidays.	\$500 per hour or a portion thereof that the call center is not available.
RADMGMTSLA04	Call Center Time to Answer	All calls must be answered within three (3) rings or fifteen (15) seconds.	\$0.15 for each call not serviced per the SLA.
RADMGMTSLA05	Call Center Hold Time	At least ninety-eight percent (98%) of calls placed on hold will be answered within two (2) minutes or less.	\$0.15 for each call not serviced per the SLA.

<b>SLA Number</b>	<b>Service Level Agreement</b>	<b>Definition</b>	<b>Damages</b>
RADMGMTSLA06	Call Center Blockage Rate	The contractor guarantees that no more than five percent (5%) of incoming calls will be blocked by a busy signal calculated on a monthly basis.	\$5,000 for each month where incoming calls to the telephone line are blocked by a busy signal, in excess of the standard of five percent (5%). Calculated on a monthly basis.
RADMGMTSLA07	Call Center Abandonment Rate	The percentage of incoming calls to the telephone line in which the caller disconnects prior to the call being answered by a customer service representative will not exceed three percent (3%), calculated and reported on a monthly basis.	\$.15 for each call not serviced as per the SLA.
RADMGMTSLA08	Prior Authorization	Ninety percent (90%) of all requests for prior authorization received in a calendar month must be reviewed and decision made, or additional information requested, within twenty-four (24) hours of the telephone, fax or web portal interface. The remaining ten percent (10%) must be reviewed and decision made, or additional information requested, within two (2) business days of receipt.	\$500 per day that the requests are not processed as per the SLA.