

NEW YORK STATE DEPARTMENT OF HEALTH

A Request for Proposal For

The Office of Managed Care

RFP No. 0605021014

Medicaid Managed Care External Quality Review

Proposal Release Date: July 24, 2006

Proposal Due Date: September 27, 2006

DESIGNATED CONTACT:

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

Beverly Pasley
Office of Managed Care
New York State Department of Health
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Albany, New York 12237
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Permissible Subject Matter Contact:

Pursuant to State Finance Law § 139-j(3)(a), the Department of Health also identifies the following allowable contact for communications related to the following subjects: written proposals or bids, written questions, pre-bid conference, debriefings and negotiation of contract terms after award:

Beverly Pasley
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For further information regarding this legislation, see the Lobbying Statute summary in Section E, 10 of this solicitation.

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SCHEDULE OF EVENTS

Issue RFP:	July 24, 2006
Questions for Bidders' Conference Due:	August 7, 2006
Notice of Intent to Submit Due:	August 7, 2006
Bidders' Conference:	August 16, 2006
Final Date for Submission of Questions:	August 21, 2006
Response to Questions Published:	August 28, 2006
Proposals Due:	September 27, 2006
Anticipated Award Announcement:	November 28, 2006
Anticipated Contract Begins:	April 1, 2007

ACRONYMS USED IN THIS DOCUMENT

The following table lists definitions for acronyms used throughout this document.

AIDS	Acquired Immune Deficiency Syndrome
AIMS	AIDS Intervention Management Systems
BAT	Baseline Assessment Tool
BBA	Balanced Budget Act of 1997
CAHPS	Consumer Assessment of Healthcare Providers and Systems
CDC	Centers for Disease Control and Prevention
CME	Continuing Medical Education
CMS	Centers for Medicaid and Medicare Services
COBRA	Consolidated Omnibus Budget Reconciliation Act
CQI	Continuous Quality Improvement
CSC	Computer Sciences Corporation
DOH	Department of Health
DRG	Diagnostic Related Groups
EO127	Executive Order #127
EQRO	External Quality Review Organization
ER	Emergency Room
FFP	Federal Financial Participation
FFS	Fee for Service
FTE	Full Time Equivalent
HEDIS®	Health Plan Employer Data Information Set
HIPAA	Health Insurance Portability and Accountability Act
HIV	Human Immunodeficiency Virus
HPN	Health Provider Network
IPRO	Island Peer Review Organization
MCO	Managed Care Organization
MEDS	Medicaid Encounter Data System
NCQA	National Committee for Quality Assurance
NYC	New York City
NYS	New York State
NYSDOH	New York State Department of Health
OB/GYN	Obstetrics and Gynecology
OMC	Office of Managed Care
OSC	Office of the State Comptroller
PACE	Program for All Inclusive Care for the Elderly
PHSP	Prepaid Health Services Plans
PIP	Performance Improvement Project
PRO	Peer Review Organization
QARR	Quality Assurance Reporting Requirements
QI	Quality Improvement
QIO	Quality Improvement Organization
RFP	Request for Proposals
SNP	Special Needs Plan
SSI	Supplemental Security Income
TANF	Temporary Aid to Needy Families

NOTICE OF INTENT TO DEVELOP A PROPOSAL IN RESPONSE TO RFP

This is to notify the New York State Department of Health of this bidder's intention to develop a proposal in response to the RFP # 0605021014 entitled Medicaid Managed Care External Quality Review. It is understood that this Notice of Intent is optional and not binding on either party but simply alerts the Department of Health of the bidder's intentions and assures the bidder will receive all further correspondence on this RFP.

This Notice should be returned by August 7, 2006 to:

Ms. Beverly Pasley
Office of Managed Care
Empire State Plaza, Tower Building, Room 1864
Albany, New York 12237

1. Name of Potential Bidding Organization:

2. Organization Address:

Street: _____

City: _____ State: _____ Zip: _____

Telephone: (____) _____ FAX: (____) _____

E-mail: _____

Authorized Signature

Date

Section A: INTRODUCTION

This document is a request by the New York State Department of Health, Office of Managed Care (OMC) for proposals from qualified entities to conduct quality of care reviews of medical services provided to individuals enrolled in managed care organizations participating in the New York State Medicaid managed care program.

The specific duties of the review agent selected through this process are detailed in Section C of this document, Detailed Specifications - Scope of Work. Specifics on proposal requirements, instructions to bidders and criteria to be used in choosing the selected bidder are outlined in Section D, Proposal Requirements – Instructions to Bidders.

Section B: BACKGROUND

State and Federal law impose requirements regarding appropriateness reviews of care provided under the Medical Assistance program, Title XIX. State law, through Section 2803(c) of the Public Health Law provides authorization for the Commissioner of Health to review the appropriateness and necessity of health care services provided to Medical Assistance recipients.

Federal legislation regarding medical assistance review activities includes the Federal Peer Improvement Act, which requires appropriateness reviews, and the Omnibus Reconciliation Act of 1986, Public Health Law 99-509, Section 9431. The Peer Improvement Act provides states with alternative mechanisms for implementing review activities: contracting with a federally designated PRO or PRO-like organization (subject to 75% federal financial participation); or conducting reviews through a contract with an identified medical review organization (subject to 50% federal financial participation).

The DOH has utilized an External Quality Review Organization (EQRO) since 1988 to evaluate the provision of care provided to the Medicaid population. With the rapid increase in enrollment in managed care, the Department has significantly expanded and redefined the role of the EQRO. In response to the Balanced Budget Act of 1997 (BBA), the Centers for Medicaid and Medicare Services (CMS) recently published protocols for external review of MCO compliance with state and federal regulations, validation of quality performance projects and validation of encounter data. CMS has also recently published a Final Rule regarding External Quality Review of Medicaid Managed Care Organizations. The successful bidder must comply with Section 438.354, Qualifications of external quality review organizations, of the EQR Final Rule including requirements of competence and independence.

The Department has an 1115 waiver from CMS to implement a statewide mandatory program (The Partnership Plan). New York State's Medicaid managed care enrollment has increased to over 2 million enrollees. The Temporary Aid to Needy Families

(TANF) eligibility group represents a large portion of Medicaid managed care enrollees. This eligibility category is composed primarily of women and children. Currently, about half the counties in New York State have mandatory programs, including the five counties that make up New York City. The remaining regions in the state have expanding voluntary Medicaid managed care programs.

The Department's primary goal for the Medicaid population is to improve the health status of the population by transitioning them into managed care programs. The overall objectives for the Medicaid managed care program are to improve the overall quality of care furnished to Title XIX beneficiaries by enhancing their access to primary, preventive, and other medically necessary services. Specific objectives include: promoting the delivery of primary and preventive care; and containing costs over the long term at a level which can be supported by the State's tax base.

The selected bidder will be required to conduct validation activities on MCO quality performance data (Quality Assurance Reporting Requirements); conduct medical record abstractions and clinical studies, including the analysis and presentation of data to promote the Department's quality improvement initiatives; conduct member experience of care and satisfaction surveys; assess ongoing operational requirements of Managed Care Organizations (MCO); validate encounter data; conduct access and availability surveys of provider panels and conduct quality improvement for managed long-term care plans.

During the 2004-2005 State fiscal year, approximately \$3.57 million was appropriated to support Medicaid managed care review and quality improvement activities, as well as the data system necessary to support these activities. The Department reserves the right to make the final award to the contractor who best meets overall program goals and objectives. All awards are subject to the approval of the State Comptroller.

Section C: DETAILED SPECIFICATIONS – SCOPE OF WORK

1. Overall Goals and Objectives

The overall goal of the managed care program is to improve health service delivery within managed care organizations (MCOs) in New York State that offer a Medicaid product. By contracting with an external quality review agent, the Office of Managed Care seeks to achieve the following objectives:

- a. Assure quality of data collected from Medicaid managed care plans;
- b. Achieve measurable improvements in the health status of Medicaid managed care enrollees and managed long-term care enrollees;
- c. Assure that Medicaid managed care enrollees have access to and the availability of an adequate provider network;

d. Narrow the gap between evidence-based recommendations/standards of care and actual practice;

e. Facilitate collaboration among MCOs and between MCOs and their common provider networks on shared, focused quality improvement goals;

The Managed Care contractor will conduct quality of care as directed and will develop and prepare statistical and descriptive data reports as described in this RFP. The purpose of this Scope of Work is to define the duties of the review agent regarding the evaluation of Medicaid managed care plans. The selected bidder will be required to work collaboratively with the Department and MCOs in developing all processes of evaluation. This will require the establishment of various workgroups that will focus on specific issues in order to obtain input from the Department and MCOs. All materials and methodologies must be approved by the Department prior to implementation and must reflect involvement from MCOs. Currently there are 28 operational MCOs certified in NYS, that offer a Medicaid line of business; 25 MCOs offer Family Health Plus (a Medicaid product for low income adults). There are currently 19 managed long-term care plans in the state.

2. Qualified Organizations

The Department will accept proposals from health care review organizations and other health care organizations with the ability to initiate the review programs described in this RFP; business groups and councils interested in conducting the functions described in this RFP; health care insurers and other existing or potential proprietary or private review organizations. In order to qualify an organization must be composed of, or have available to it, the services of licensed doctors of medicine, osteopathy and other health care professionals with the experience and training necessary to conduct the required review activities.

A review agent must not be a health care facility provider, an association of health care facilities, or a health care facility affiliate in New York State. **The potential contractor must provide assurance that it has no conflict of interest with respect to conducting the duties and responsibilities in this RFP. Consistent with BBA requirements regarding standards of independence, the EQRO and any subcontractors must also provide assurances that they are independent from the State Medicaid agency and from any managed care organization or Prepaid health plan they review.**

The bidder will submit a Budget/Cost Proposal that reflects each of the review activities listed below. Some tasks will require the full year to complete, while others will require several months. As noted in the following description, some projects are conducted every other year.

3. Data Validation and Assessment

To monitor and assess the quality of health care service delivery, the Bureau of Quality Management and Outcomes Research, within the Office of Managed Care (OMC) collects and maintains data and information from Medicaid managed care plans. Databases are established for quality measurement, Medicaid encounters and MCO provider networks.

3 a. Quality Measurement

In 1993 New York State required MCOs to report on quality, access and utilization measures, known as the Quality Assurance Reporting Requirements (QARR). A standardized data collection process is used to evaluate plan performance in four specific areas: quality of care, member access and satisfaction, membership and utilization, network and clinical management. The quality measures are directed toward preventive health services, prenatal care, acute and chronic disease and mental health. This annual process primarily utilizes measures from the Health Employer Data Information Set (HEDIS®), and is augmented to reflect the health issues associated with the New York State Medicaid population.

In response to Pay for Performance legislation, Title 3 – Pay for Performance, Article 29-D of the Public Health law, the Office of Managed Care is also currently developing a Pay for Performance program that will begin with up to five demonstration projects throughout the state. A database will be created by the EQRO to collect and aggregate data from the demonstrations and produce reports for analysis of outcome and evaluation.

Specific tasks in data validation and assessment for Quality Measurement include:

- Conduct an annual NCQA certified audit of QARR data submitted by 17 Provider-sponsored Medicaid managed care organizations,
- Conduct a review, consistent with BBA requirements, of other Medicaid plan audits (from approximately 10 plans with commercial and Medicaid lines of business) that are performed by NCQA certified auditors other than the bidder,
- Audit source code for administrative measures calculated by the Department of Health,
- Prepare measure specifications each year incorporating changes to measures and new measures,
- Update a menu-driven data submission tool for each year's QARR data submission,

- Provide technical assistance to plans in submitting QARR data, including conducting a full-day training seminar in New York City,
- Maintain a database for the Pay for Performance demonstration projects and create periodic reports.

All data in the QARR is either self-reported by the plans or calculated by the Department of Health using encounter data. The EQRO will be required to validate data reported by provider-sponsored plans on an annual basis. The review involves evaluating the process and methodology by which data is collected including an administrative review; review of the source codes utilized; and the actual validation of the rates submitted by the plans. The EQRO will also review all source code used by NYSDOH in calculating administrative QARR rates using Medicaid encounter data. For the 2004 reporting year, 7 measures were calculated by NYSDOH.

The Department perceives the development of quality performance measures as an evolving process. The performance measures are refined annually in an attempt to develop a core set of reliable and valid quality measures. The selected bidder will assist the Department by preparing a set of measure specifications to be used by plans and updating the data submission tool to reflect each year's data collection requirements. The tool currently used is an Access database. Training for MCO staff in submitting QARR data will be provided at a full-day seminar, to take place in New York City. It will be conducted by the contractor in collaboration with the Department. Agenda topics will include discussion of changes in data submission, audit procedures, measure calculations and specifications. The contractor will cover all costs for this training including contractor staffing, hotel meeting room rental, food and beverages.

3 b. Medicaid Encounter Data System (MEDS)

MCOs participating in the New York State Medicaid managed care program are contractually obligated to submit data on recipient encounters with the health care system to the Department. Referred to as the Medicaid Encounter Data System (MEDS), the Department requires monthly submissions of encounter data. This data is collected and initially processed by the Computer Sciences Corporation Healthcare System (CSC). CSC provides plans with edit reports on a monthly basis and provides the Department with a monthly file of encounter records that have passed all initial edits. CSC, however, does not validate that the actual encounter occurred in the medical record. The EQRO will have this responsibility. A validation process will determine: 1) If MCOs are reporting the appropriate encounters, and 2) If the reported encounter data is an accurate assessment of what happened. In addition, the EQRO will have the responsibility of adding value to the data through analysis of data completeness and/or underreporting; analysis and technical assistance regarding use of vendors in data collection; continued evaluation of provider-sponsored information system capability; and assistance to plans for quality improvement.

Encounter data are used by the Department to track utilization patterns, assess

performance and health care quality, and perform a variety of health care research projects. Encounter data may be used in the future for rate-setting purposes.

Specific tasks in data validation and assessment for MEDS include:

- Conduct biennial validation on a sample basis (approximately 50 records per plan for 28 plans) of Medicaid encounter data which may include medical record review, review of NCQA's Baseline Assessment Tool (BAT) findings and/or other sources of data which may be required by CMS.
- Provide technical assistance and training to MCOs and Office of Managed Care staff in data submission, analysis and quality improvement.
- Conduct analyses of encounter data to determine utilization patterns and service delivery, performance, and quality gaps in the process of care within clinical groupings.

Over the past five years, data analysis using encounter data has taken several directions including data quality, utilization pattern analysis using statistical process control charts, and clinical risk grouping to better understand the severity levels of care for enrollees.

3 c. Provider Network

Managed care plans are required to submit information on their provider network panels to the Department on a periodic basis – Medicaid plans submit data quarterly and commercial plans submit once a year. Data is collected for physicians, other practitioners and for facilities such as hospitals, clinics, laboratories and radiology sites. The selected bidder will be responsible for auditing data quality and for providing the mechanisms for counties to use the provider network data electronically to assist Medicaid managed care enrollees in selecting their doctors.

Specific tasks in data validation and assessment for Provider Network include:

- Conduct a biennial audit of Provider Network submissions – 28 plans, approximately 100 providers per plan.
- Maintain a mechanism to electronically offer provider network data on the HPN intranet site for use in selecting a doctor.

An audit of provider network submissions will be conducted on a periodic basis, at least once every two years, with the first audit to take place in the second contract year. The audit will be conducted by mailing prepared surveys to physicians for verification of data submitted by Medicaid managed care plans. A sample of about 2,800 physicians will be surveyed. An initial mailing and one follow-up mailing will be conducted. The survey forms will be developed by the Department and the contractor will be responsible for

mailing the surveys, scanning results and preparing an analysis report.

Currently, provider information for 52,854 unique providers is made available electronically for Child Health Plus and Medicaid managed care enrollees through a sub-contract. This application offers enrollees the ability to locate physicians based on their geographic proximity to the enrollee and/or physician specialty and other characteristics such as languages spoken and wheelchair accessibility are also provided. It is an interactive program which allows the user to search the database for physicians by specialty, location and other characteristics. The successful bidder is expected to continue to maintain or sub-contract the maintenance of electronically displaying provider network data on the Department's intranet site.

4. Quality Improvement

The Bureau of Quality Management and Outcomes Research actively leads a quality improvement program for managed care plans in New York State. Building on the quality measurement functions described above, the EQRO will work collaboratively with the Department to conduct focused clinical studies and to implement quality improvement initiatives.

Specific tasks in quality improvement include:

- Conduct at least one focused clinical study each contract year;
- Validate Performance Improvement Projects (PIPs) conducted by 28 Medicaid MCOs;
- Conduct at least one enrollee survey on satisfaction or experience of care each contract year;
- Provide analysis and evaluation of plan performance quality data;
- Develop collaborative quality improvement initiatives;
- Offer at least one training or conduct one conference each contract year for plan medical directors and quality assurance/improvement staff on topics of interest in managed care;
- Conduct individual case reviews, when necessary.

4 a. Focused Clinical Study

The successful bidder will work cooperatively with the Department in designing and conducting one focused clinical study during the contract year. Focused study topics will be chosen by the Department with input from the EQRO. The specific tasks to be accomplished in a focused clinical study include coordinating advisory group sessions to

determine study questions and quality indicators, study design and identification of the study population, medical record selection and review, data retrieval and verification, data analysis and reporting of findings. Interventions based on the focused clinical study findings will also be conducted. Previous focused clinical studies explored topics of prenatal care, screening for mental health, alcohol and substance abuse, treatment for alcohol and substance abuse, emergency room utilization, asthma care and HIV.

All medical record reviews and clinical studies must be conducted in accordance with generally accepted principles of research design and statistical analysis in order to produce valid and reliable information. The external review process will give priority attention to clinical conditions, public health areas or health service delivery issues which have the highest prevalence or incidence and which have the greatest potential for improving health outcomes. All reviews and studies should be conducted with a clear understanding of standards of care and provide a baseline for future assessment to see if interventions implemented actually improve the provision of care. All studies conducted must have clearly defined goals and/or standards for the provision of services. The studies will be identified based upon the epidemiology of the enrolled population and should, whenever possible, utilize practice guidelines or standards which represent the consensus of the medical community and/or "best practice".

The EQRO should be prepared to conduct three types of review activities: focused studies of patterns of care and/or operational issues that impact the provision of care; individual case review in specific situations; and follow-up activities on previous clinical studies and/or individual case review findings. These activities may involve retrospective medical record reviews, prospective developmental data collection activities or the review of administrative data systems and analysis. The focused studies will center on specific clinical areas of interest which involve primary and preventive care, chronic care, acute care, ambulatory care sensitive conditions, etc. Focused studies may also evaluate health service delivery issues such as coordination, continuity, access and availability of needed services.

The external review agent must develop a study design that defines the specific question(s) to be answered by the study; the stated goal(s) of the study; the sample methodology; the intended use of the data; the type of data to be collected and the tools to be utilized in this process; the guidelines to be utilized; the degree of confidence required for the data; and the statistical tests to be performed on the data.

The most important aspect of conducting clinical studies and/or individual reviews is the opportunities that may be identified to improve the quality of care delivered. The EQRO will be required to work with the MCOs and the Department to establish processes to promote quality improvement. The selected bidder, or its sub-contracted vendor, must have experience in directing Continuous Quality Improvement (CQI) and evaluating the effectiveness of interventions developed and implemented by plans. The goal of this process is to obtain valid information that will enable the Department to make an assessment regarding the quality of care and collectively develop an effective process to improve the plans' performance in that defined area. It is expected that each study

involving medical record reviews will require the review of approximately 3,360 records (28 plans x 120 charts per plan). It is important to note that not all focused studies will involve the review of medical records.

The EQRO must ensure that all individual identifiable information relating to an enrollee is kept confidential pursuant to HIPAA, the Public Health Law, Section 369 of the State Social Service Law, and 42 U.S.C. Section 1369a(a)(7) of the Federal Social Security Act. The EQRO will function as the Commissioner's designee to access medical records and evaluate the provision of care provided in managed care settings. The EQRO must have and maintain adequate staff that is clinically competent and skilled in the process of reviewing and evaluating health care services provided to the Medicaid population. Professional nurse reviewers should be utilized in the initial medical record review with a second level review by physicians to review those specific cases that are problematic or do not meet defined standards. The bidder must also have an appropriate process and professional staff to develop standards or criteria for review and corresponding review tools.

Findings from clinical focused studies will be presented in a technical report. The EQRO will prepare a data analysis plan outlining the report format, including table formats, for NYSDOH approval. The final report will include, but is not limited to an introduction, study questions/objectives, methodology (including sampling method), findings and conclusions and recommendations. The report narrative and tables should be presented in a clear and accurate format.

4 b. Validation of Performance Improvement Projects (PIPs)

In response to the Balanced Budget Act of 1997 (BBA) the Centers for Medicare and Medicaid Services (CMS) have released a set of protocols for external quality review of Medicaid and Medicare managed care plans. Validating performance improvement projects is one of the protocols that New York State has implemented on an annual basis. The successful bidder will follow CMS's written protocol for validating performance improvement projects by reviewing one performance improvement project proposal and one final report for each Medicaid plan. These reports are submitted by Medicaid managed care plans to the Department on a yearly basis. The review process will follow these steps:

- 1) Once a year, the Department will review a project proposal from each Medicaid managed care plan and approve study topics.
- 2) The EQRO will review the study design and methodology sections of the project proposal and conduct conference calls with each of the 28 plans to discuss recommended changes.
- 3) The EQRO will provide the Department a final project proposal for each of the 28 plans incorporating any recommended changes.

- 4) At the end of the study period, the EQRO will review PIP final reports submitted to the Department as per the CMS protocol and prepare recommendations for each plan.

4 c. Enrollee Survey - Consumer Assessment of Healthcare Providers and Systems (CAHPS)

The EQRO will work cooperatively with the Department to collect satisfaction data from Medicaid managed care enrollees using the Consumer Assessment of Healthcare Providers and Systems (CAHPS) and/or other standardized tools. Medicaid enrollee satisfaction surveys will be conducted every other year by a certified CAHPS vendor. It is anticipated that the successful bidder to this RFP will either be NCQA certified to conduct the CAHPS survey or will procure a certified CAHPS vendor to conduct the survey on a sample of Medicaid enrollees in all 28 MCOs with Medicaid products. Enrollees will be selected using the MEDS database and the survey will be conducted using 2 mailings. A telephone follow-up will also be included. The EQRO (or the sub-contracted vendor) will prepare a final report analyzing survey findings. The 2005 CAHPS survey of New York State Medicaid managed care enrollees involves a total sample of 750 adults and 750 children from each of 28 plans with an expected response rate of 32%.

4 d. Enrollee Survey (non-CAHPS)

At least one other satisfaction/experience of care survey will be conducted every other year on a subset of the Medicaid managed care population. For example, over the past two years, the current EQRO conducted a survey of adults and children with asthma; adult enrollees with diabetes and enrollees who have recently delivered a baby. Prior to conducting the survey, a focus group session will be conducted to evaluate survey questions. These surveys will use 2 mailings and a telephone follow-up, if necessary. Sample sizes will average about 5,000 eligible enrollees. Survey questions will be printed in a scannable format. Enrollees will be selected by NYSDOH using the MEDS database. The EQRO will prepare a final report analyzing survey findings.

4 e. Analysis and Evaluation of Plan Performance Quality Data

On an annual basis, the successful bidder will prepare a compendium of plan-specific descriptive data reflecting the CMS protocols for external review quality reports. Information included in this analysis will include trends in plan enrollment, provider network characteristics, QARR performance measures, complaints and grievances, identification of special needs populations, trends in utilization using encounter data, survey findings, focused clinical study findings and financial data. Each of the data files are provided by NYSDOH and the EQRO then compiles a profile for each plan including a summary of plan strengths and weaknesses. (For further information reference 42 CFR Part 438.364 External Quality Review Results) This data is currently updated annually for each of the 28 Medicaid managed care plans and is distributed on CDs within the Department and to the New York City Department of Health. Hardcopy

binders are also prepared.

4 f. Collaborative Quality Improvement Initiatives

The objective of this work activity is to develop a working network of organizations and individuals interested in proposing and implementing innovative quality improvement processes or best practices in New York State managed care plans. With research concerning best practices in a specified topic area, the successful bidder will work cooperatively with MCOs, the Department and the trade organizations to design quality improvement interventions to be pilot tested in a collaboration of plans in several geographically distinct areas. Work activities to be funded include facilitation of collaborative meetings, technical support in developing study designs, purchase and/or preparation of intervention materials and project evaluation. Recent work activities involved a training program for physicians on a statewide asthma guideline and a collaborative workgroup on case management. For this proposal, the bidder should choose a potential intervention, such as ADHD, and describe how it will be implemented. Statewide or regional quality improvement initiatives may include engagement of provider organizations as well as relevant consultants in quality improvement at the plan and practice level.

4 g. Quality Improvement Trainings and Conferences

The Department is committed to providing Medicaid managed care plans with tools to conduct successful quality improvement initiatives. One successful approach has been the sharing of other plan experiences in best practice forums. Working cooperatively with the Department, the successful bidder will contribute to defining a conference theme, procuring a conference site (commonly in NYC) and speakers and will handle all logistics for the event such as food selection, registration, preparation of handouts and evaluation. There will be one conference or training every contract year with expected attendance ranging between 100 and 150.

4 h. Individual Case Review and Ad Hoc Clinical Consultation

MCO enrollees may lodge a complaint with the Department prior to filing a complaint with the MCO, concurrently or as an appeal to the MCO's determination. Whenever the Department does not have the appropriate clinical expertise to respond to specific complaints, or when the Department's determination differs from the plan's determination, the Department will request the EQRO to review those specific cases and make a determination based upon the review of the medical record and other supporting information. The EQRO will function as an independent reviewer and will assist the Department in resolving specific medical care complaints on a timely basis. In other situations, of a more ad hoc nature, the EQRO may be requested to provide review of a program, legislation or policy which requires specialized clinical input.

The EQRO will be required to have a formal process for the identification of appropriate clinicians to respond to specific medical issues, and timeframes associated with the

review and submission of medical determinations or opinions. It is estimated that there would be no more than five cases or ad hoc requests annually. The EQRO would be required to submit a summary of each case with an analysis of the information and rationale for the determination. Each summary should identify the discipline of the individual(s) reviewing the case.

5. Access and Availability Surveys

The successful bidder will work cooperatively with the Bureau of Certification and Surveillance in the Office of Managed Care, to plan and conduct surveys to assess availability and access to providers. Surveys of primary care providers and selected specialists, dentists and HIV SNP providers will be conducted annually. Other practitioners such as behavioral health, will be surveyed on an as needed basis.

Specific tasks in conducting access and availability surveys include:

- Assist in the development of and revisions to the methodology used to conduct the study;
- Select random sample of providers from data provided by the Department;
- Prepare or update scripted scenarios for surveys;
- Conduct the telephone surveys using scripted scenarios;
- Prepare and transmit preliminary and final reports;
- Work with Department of Health staff to correct discrepancies that are discovered.

The access and availability surveys involve phone calls to a sample of physician offices. An average of 100 completed calls for each of 37 managed care plans (includes Medicaid and partially capitated plans) are conducted annually. Physician phone numbers are provided by the Department using the most recent Provider Network submission. The contractor will select the sample and make the phone calls following several different scenarios: to determine access and availability for specific appointment standards including routine appointments, non-urgent but sick appointments and after hours calls. If the plan does not achieve an 80% success rate in satisfying the standards, additional calls are made once the plan has had an opportunity to implement a plan of action. Discrepancies that are identified during the survey, such as name and address changes or incorrect phone numbers will be provided to the Bureau of Quality Management and Outcomes Research for use in auditing provider network submissions.

6. Managed Long-Term Care (MLTC) Quality Improvement

External quality review activities for managed long-term care plans were introduced in the 2001 – 2002 EQRO work plan. The quality improvement program for MLTC provides a comprehensive approach including quality measurement, data validation, focused clinical studies and quality improvement training.

Specific tasks in managed long-term care quality improvement include:

- Set up processes and conduct validation of encounter data on a biennial basis starting with the second contract year);
- Conduct at least one focused clinical study annually;
- Validate Performance Improvement Projects conducted by plans (one per plan per year);
- Provide technical assistance and oversight of plan submission of outcome data on a semi-annual basis.

6 a. Encounter data validation

In the 2002 – 2003 contract year, the current EQRO conducted audits of each managed long-term care plan's utilization data submissions. Final reports prepared for each plan outlined recommendations for improvement. The successful bidder on this RFP will continue efforts to improve data collection and submissions by providing technical assistance as plans begin to collect and submit encounter data. In January, 2004, managed long-term care plans began submitting encounter data on a monthly basis. The EQRO will develop a methodology for validating MLTC encounter data. Data will be validated on a biennial basis starting in the second contract year. It is estimated that about 50 records per plan will be validated for a total of 750 records reviewed.

6 b. Focused clinical study

Focused studies for the managed long term care population will center on specific clinical areas of interest such as chronic care, acute care, ambulatory care sensitive conditions, etc. Focused studies may also evaluate health service delivery issues such as coordination, continuity, access and availability of needed services. There are currently 17 managed long-term care plans in New York State - 4 PACE plans and 13 partially capitated plans, with a total approximate enrollment of 13,500 (as of September, 2005).

The external review agent must develop a study design that defines the specific question(s) to be answered by the study; the stated goal(s) of the study; the sample methodology; the intended use of the data; the type of data to be collected and the tools to be utilized in this process; the guidelines to be utilized; the degree of confidence

required for the data; and the statistical tests to be performed on the data.

The EQRO will be required to work with the MLTC plans and the Department to establish processes to promote quality improvement as directed by recommendations from the focused clinical study. The goal of this process is to obtain valid information that will enable the Department to make an assessment regarding the quality of care and collectively develop an effective process to improve the plans' performance in that defined area. It is expected that each study involving medical record reviews will require the review of approximately 750 records (15 plans x 50 records per plan).

6 c. Validation of plans' Performance Improvement Projects (PIP)

In response to the Balanced Budget Act of 1997 (BBA) the Centers for Medicare and Medicaid (CMS) have released a set of protocols for external quality review of Medicaid and Medicare managed care plans. As described above, validating performance improvement projects is one of the protocols being implemented by the Department. The successful bidder will follow CMS's written protocol for validating performance improvement projects by annually reviewing one performance improvement project proposal and one final report for each MLTC plan. These reports are submitted by MLTC plans to the Department on a yearly basis. The review process will follow these steps:

- 1) Once a year, the Department will receive a project proposal from each MLTC plan.
- 2) The EQRO will review the topics, study design and methodology sections of the project proposal and conduct conference calls with each plan to discuss recommended changes.
- 3) The EQRO will provide the Department a final project proposal for each plan incorporating any recommended changes.
- 4) At the end of the study year, the EQRO will review PIP final reports submitted to the Department as per the CMS protocol and prepare recommendations for each plan.

6 d. Outcomes Measurement

As part of a CMS-sponsored effort, the Center for Health Services Research (CHSR) at the University of Colorado developed an outcome measurement system and accompanying data set for home health care called OASIS. Based on research findings from this data set, CMS has initiated a national implementation of this outcome measurement system and the OASIS data set for PACE plans. New York State has decided to require all MLTC plans – PACE and partially capitated plans to use this data set. To accomplish this, NYSDOH contracted with the University of Colorado, through a sub-contract with its EQRO, to develop an electronic data set submission application to

collect and submit data to NYSDOH every 6 months; with data submitted every January and July. The first data set was submitted by MLTC plans in November, 2005 for all MLTC plan enrollees who were due to be assessed between July, 2005 and October, 2005. A second submission in January, 2006 included enrollees due for assessments in November and December of 2005. After these initial 2 phase-in periods, regular submissions will occur in January and July of each year.

Specific tasks in managed long-term care outcomes measurement include:

- Review electronic data set submission application on a yearly basis to determine changes required;
- Revise application (or sub-contract for the application revision);
- Distribute revised application to MLTC plans.

Section D: PROPOSAL REQUIREMENTS – INSTRUCTIONS TO BIDDERS

1. Overview

This section provides the requirements that bidders will follow for preparing their proposal in response to this RFP. The details of overall procurement administration, including the requirements for packaging and submitting proposals are addressed in Section E - Administrative. The following material provides the requirements for the contents of the technical proposal and cost proposal for Managed Care Reviews. Please note: The Technical and Cost Proposals must be submitted in separately sealed envelopes and labeled in bold either “Technical Proposal” or “Cost Proposal.” There should be no cost information in the Technical Proposal.

2. Technical Proposal

Bidders are to develop and include in their proposal, a plan for implementing the review activities and data responsibilities set forth in Section C – Detailed Specifications – Scope of Work. The proposal must address all aspects of the Scope of Work and reflect an understanding of the scope and purpose of the Department’s review activities and of the need for the various tasks required under the contract. The technical proposal will include nine (9) separate sections, presented in the following order:

- a. Transmittal Letter
- b. Table of Contents
- c. Executive Summary
- d. Understanding of Work
- e. Organization and Personnel
- f. Methods and Procedures
- g. Data Management and Reporting

- h. Work Plan and Schedule of Deliverables
- i. Position Description (Attachment 7)

Each section within the Technical Proposal must include, at a minimum, the items listed above in the order presented. Proposals shall be direct, clear and concise. No reference to, or inclusion of, pricing information shall appear in any section of the technical proposal. Each Technical Proposal (including all copies thereof) shall meet the following general format requirements:

- Use letter size (8.5 x 11 inch) paper;
- Submit in three (3) ring binders;
- Use tab dividers for each section of the proposal;
- Clearly page number the proposal, with each section of the proposal separately numbered and identified in the Table of Contents;
- Use a font size of twelve (12) pt. or larger;
- Submit a copy of the Technical Proposal on a CD-Rom.

2.a. Transmittal Letter

The transmittal letter must be submitted on the official business letterhead of the bidder proposing to be the prime contractor and must be signed by an individual legally authorized to represent the bidder organization. The transmittal letter will include the following:

- A statement that the bidder accepts the terms and conditions as stated in the RFP.
- A statement that the offer is valid for a period of 240 calendar days from the date of submission of the proposal.
- A description of any existence of, or potential for, conflict of interest on the part of the bidder or it's subcontractors due to prior, current or proposed contracts or affiliations; if no such conflict of interest exists, a statement to that effect must be made.
- A statement that the bidder will be responsible to the Department for performance of all work specified in the RFP, including work assigned to subcontractors.

- Consistent with BBA requirements regarding standards of independence, the EQRO and any subcontractors must also provide assurances that they are independent from the State Medicaid agency and from any MCO or PHSP they review. The relationship between the MCO/PHSP and the EQRO can not involve any potential conflicts of interest.

Bidders may not place any conditions, reservations, limitations or substitutions in their proposal with regard to the contract language.

2.b. Table of Contents

The Technical Proposal shall contain a Table of Contents that includes beginning page numbers for each subsection of the Technical Proposal.

2.c. Executive Summary

The Executive Summary will condense and highlight the contents of the bidder's Technical Proposal in such a way to provide the Department with a broad understanding of the entire Technical Proposal. In addition, the Executive Summary will summarize the bidder's understanding of the operation of a statewide system for the ongoing monitoring and reporting of managed care performance as it pertains to each MCO's provision of quality care.

The Executive Summary will include a clear and concise summary of the proposed approach to the scope of work and the proposed staffing structure. The Executive Summary shall generally describe the capabilities and planned roles of any proposed subcontractors.

2.d. Understanding of Work

The proposal shall reflect an understanding of the scope and purpose of the Department's review activities and of the need for the various tasks required under the contract including access to data systems and the need to be in compliance with HIPAA, the Balanced Budget Act of 1997 and the CMS Final Rule - External Quality Review of Medicaid Managed Care Organizations.

2.e. Organization and Personnel

The bidder must describe in detail its organizational structure, including staff experience and organizational capacity.

Staff Experience

The proposal should describe the bidder's experience in conducting the activities set forth in the Scope of Work section of the RFP. The bidder must meet qualifications of external review organizations as published in the CMS External Quality Review Final Rule. In

addition to physicians and other health care professionals, the quality improvement activities for the Managed Care Reviews will require expertise in research and study design, data analysis, computer programming, statistical analysis, survey design and administration, technical report writing, National Committee for Quality Assurance (NCQA) certified auditing, ability to organize and/or conduct quality improvement training and conferences. The qualified organization can sub-contract with other organizations to perform activities described in this RFP. All sub-contractors must be approved by DOH.

The bidder's experience shall be evaluated based on how relevant their experience is to the Scope of Work to be performed in the contract. Only experience gained within the last five years should be included. The bidder is required to provide a list of current contracts within the last two (2) years from the date of the release of this RFP, which relate to the activities in this RFP. Information regarding the nature and quality of this experience such as letters of endorsement should also be provided. The bidder is required to provide a list of current contracts, contract person(s)/references and phone numbers regarding these contracts, dates and scope of efforts.

The bidder's Technical Proposal shall contain a section that describes the educational background, specialized training, professional experience, and special qualifications of the statewide coordinator, the project directors, team leaders and onsite audit/surveillance team and data staff. The proposal shall specify how the personnel will be utilized by project and the percentage of time they will devote to this contract. Résumés should be provided for the Statewide Coordinator and Project Directors as described in the RFP.

Organizational Capacity

The bidder's proposal shall detail the organization's capacity to carry out the scope of work activities on a timely basis and in a manner that allows for onsite activities to be carried out simultaneously as necessary. An organizational plan which demonstrates the organization's capacity to accomplish the goals and objectives of the RFP should be included. Detailed information regarding staffing numbers and teams to accomplish the projected workload shall be described. The proposal should include an organizational chart.

The proposal must include the experience and special qualifications of consultants to be involved in the contract as well as those of any proposed experienced subcontractor.

The bidder's proposal must describe where operations will be located, how and from where staff will be deployed to conduct statewide activities, and indicate locations where the bidder will carry out the activities and responsibilities associated with implementing this RFP, including arrangements for safeguarding confidential data. The proposal shall fully describe how the bidder's approach for recruitment and training of staff will be carried out.

2.f. Methods and Procedures

The bidder shall set forth in detail, how it proposes to implement the responsibilities set forth in the Scope of Work. The bidder is responsible for fully explaining, developing and presenting any alternative approach or protocol recommended to accomplish the goals and responsibilities set forth in the RFP. Detailed methods, policies and procedures and approaches for conducting required reviews and studies shall be fully explained and developed and should include, at a minimum, a description of:

- a process to validate the QARR, Encounter data and Provider Network data, including feedback of results to MCOs;
- a process to analyze encounter data,
- methods, policies and procedures for conducting medical record reviews and clinical studies, including the development of the review tools and guidelines;
- methods, policies and procedures for conducting mail and phone surveys and facilitating focus group meetings;
- methodologies for selecting cases and ensuring valid sample sizes for review activities.
- the primary location for conducting reviews; i.e., onsite, EQRO's central office, provider sites/offices;
- the development of an integrative process with the Department and plans to identify potential topics for focused clinical study;
- a process to plan and conduct training, technical assistance and conferences related to QARR submissions and quality improvement;
- a process to validate Performance Improvement Projects conducted by Medicaid and MLTC plans in accordance with the CMS protocol;
- a process to conduct access and availability surveys;
- a process for developing a quality improvement program for managed long term care.

2.g. Data Management and Reporting

The Technical Proposal must detail the approach, method, and formats for collecting and maintaining data, conducting data analysis and generating reports as required in the RFP. This should include, at a minimum, a description of the bidder's capability to:

- Collect, organize, and manage data to provide information resources sufficient to operate, manage and monitor a statewide initiative as set forth in the RFP.
- Prepare management reports and information which, at a minimum, present the information and reports specified in the bidder's work plan.
- Participate in bi-weekly conference calls documenting the completion or progress of the contractor's responsibilities for the period.
- Develop and prepare an Annual Report, acceptable to the Department.

The Department reserves the right to request statewide, regional or plan specific findings and information at any time, as needed to meet management information needs.

2.h. Work Plan and Schedule of Deliverables

The bidder must submit a detailed work plan and schedule of deliverables as part of the Technical Proposal that is based upon the projected workload. The work plan should be presented in a tabular format listing specific activities for each project area, the months in which each activity will be conducted and the expected deliverable(s) for each activity. For the Technical Proposal, the work plan and schedule of deliverables must not include costs associated with carrying out the projected workload.

The work plan and schedule of deliverables will be evaluated to determine the appropriateness and reasonableness of the bidder's approach in meeting the goals and responsibilities of the RFP.

2.i. Position Description

The bidder is requested to provide a brief description of each of the staff positions that would be supported by this contract (Attachment 7). Position descriptions should include required skills, degrees, and experience required for the position, but should not include salary level or other employee cost information.

3. Cost proposal

The cost proposal must be fully supported by cost and pricing data adequate to establish the reasonableness of the proposed amount.

The Cost Proposal shall include four (4) sections:

- a. Bid Form (Attachment 6)

- b. Proof of incorporation and financial viability;
- c. Documentation of designation as a QIO or QIO-like entity;
- d. Budget/Cost Proposal - schedule of deliverables and associated costs for Year 1 and Year 2 activities (Budget form Attachment 8)

Each section of the Cost Proposal must include at a minimum, the items listed above. Proposals should be direct, clear and concise. Proposals will be reviewed for the mathematical accuracy of the submitted pricing/budget sheets. Any discrepancies will be referred to the evaluation coordinator for correction and possible resubmission by the bidder. The Department reserves the right to reject any proposal with discrepancies in the Cost proposal.

3.a. Bid Form

This form must accompany the Cost Proposal. It presents the total bid price and includes questions on prior non-responsibility, procurement terminations or withholds of the bidder and certifies that all information is complete and accurate.

3.b. Proof of Incorporation and Financial Viability

The financial and budget information must include proof of incorporation and financial viability for the most recent fiscal year, i.e. independent financial audits; Dunn and Bradstreet reports etc. It is the bidder's responsibility to demonstrate financial capability to the satisfaction of the State.

Bidder's financial strength and stability, along with that of any proposed subcontractors, will be examined to ensure sufficient assets are available to perform the magnitude of services required.

3.c. Designation as a QIO or QIO-like Organization

If an organization is claiming 75% Federal Financial Participation (FFP), it must provide current documentation of its designation as a QIO or QIO-like entity eligible to receive the FFP.

3.d. Budget/Cost Proposal

Based upon the project work plan, the bidder must submit a schedule of deliverables and cost by work activity for Year 1 and 2 separately (Attachment 8). A payment schedule for the contract will be determined based on the completion of deliverables by the contractor.

The bidder is expected to submit a firm fixed price for all costs using the budget forms attached (Attachment 8). Sufficient information must be provided to fully explain and

document how the cost amount was arrived at. Information must be presented in a manner that fully reflects the cost of implementing the review program including specific costs associated with carrying out the projected work plan.

The Cost Proposal must be correlated to the schedule of deliverables and the projected work plan. Information must be provided in sufficient detail to document total dollar/cost.

4. Method of Award – Criteria for Selection

This section of the RFP sets forth the criteria to be used by the Department for evaluation of the technical proposal submitted in response to the Department of Health's RFP for a managed care External Quality Review Organization (EQRO). Each proposal will receive a numerical score based on the values associated with the criteria listed below.

The evaluation of the bids will include, but not be limited to the following considerations:

Preliminary Evaluation (Pass/Fail)

Bidders will be evaluated to determine if the proposal qualifies for further consideration. Criteria for evaluation will include timely submission of the proposal; appropriate submission of separate technical and cost proposals; and submission of the Bid Form.

I. Understanding of managed care quality assessments and data validation (10 pts.)

Bidders will be evaluated on how well they demonstrate scope of knowledge and ability to translate the review goals and requirements contained in the RFP into an effective, efficient and valid managed care quality assessment and data validation program. The bidder will be expected to have knowledge of the environment in which managed care evaluations and studies take place, including identification of issues, obstacles, policies that impact on the ability to develop and implement an effective review system. The bidder's understanding of the nature, scope and purpose of the various required reviews and other activities will also be evaluated.

II. Technical Approach (40 pts.)

1. The bidder will be evaluated on the quality of task definition including a statement of expected problems and proposed solutions with respect to conducting all required review activities; meeting the data system requirements, and the overall contract management plan. Specific attention will be given to bidder's understanding and ability to implement a quality improvement process with MCOs and the ability to validate collected data.
2. Particular attention will be paid to the bidder's:
 - ability to validate QARR, encounter data and Provider Network data;
 - ability to design proposed clinical studies, including methods to ensure the reliability and validity of the data;
 - ability to analyze, interpret and present information clearly and accurately; and
 - ability to conduct enrollee surveys for satisfaction, experience of care and access and availability.
3. In addition, the bidder must include a description of the process to include MCOs in the development of focused review activities, timeframes for submitting needed data and/or specifications, and feedback to the plans on results.

III. Organization, Experience, and Capability (25 pts.)

1. The credentials and expertise of the personnel involved in the managed care quality assessment will be carefully evaluated. The bidder's proposal will be judged on the skills, type, and length of experience of the individuals proposed as well as the extent to which the appropriate disciplines are adequately represented. Technical writing capabilities will also be assessed.
2. Evidence of the organization's ability to implement the program within the specified timeframe will be reviewed.
3. The bidder will also be judged on the extent to which their proposal reflects experience in the subject area and can reasonably be expected to successfully complete the tasks required by the proposal.
4. The bidder must provide the names, addresses and telephone numbers for contact persons representing three business references. These business references may be contacted by the Department as a means of

confirming representation made in the proposal. The recipients listed should be recent, i.e. someone the bidder has engaged in business with during the most recent three year period. This information may be used by the Department as part of an overall evaluation of the bidder's capabilities and experience.

The maximum points available for the technical proposal is 75. The following formula will be used when assigning a final score to technical proposals:

Technical Proposal Points = $(a/b) \times c$
 a = technical proposal being scored
 b = highest scored technical proposal
 c = number of technical points available (in this case, 75 points)

IV. Cost Proposal (25 pts.)

The bidder is expected to submit a fixed price proposal. The financial proposal of each bidder will be evaluated separately from the technical proposal. The pricing information must be correlated to the schedule of deliverables and projected workload described in the RFP and outlined in the bidder's deliverable schedule. Information must be provided in detail sufficient to document how the final price was determined. (See Attachment 8)

The level of Federal Financial Participation (FFP) will be incorporated into the evaluation. Currently, the Centers for Medicare and Medicaid Services (CMS) provides 75% Federal Financial Participation to states who contract with a federally designated Quality Improvement Organization or Quality Improvement Organization-like entity; Federal Financial Participation to states for contracts with other review organizations is set at 50%.

To qualify for the 75% FFP the bidder must provide documentation as to their designation by CMS as a Quality Improvement Organization or as a Quality Improvement Organization-like entity, eligible for 75% FFP.

The net cost or bid, i.e., the total bid (year 1 plus year 2) reduced by the FFP, will be used in comparing bids and awarding points. The proposal with the lowest net cost will receive the maximum cost proposal score (25 points), other bidders will receive proportional scoring in relationship to the lowest net cost as follows:

Cost Proposal Points = $(a/b) \times c$
 a = lowest net total cost (year 1 and 2 of all bids)
 b = net cost of this proposal (year 1 + year 2)
 c = number of cost points available (25)

All prices used in the proposal must be documented and justified. Estimates

based on current or past performance must be substantiated and demonstrated.

Section E: ADMINISTRATIVE

1. Issuing Agency

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

2. Inquiries

Any questions concerning this solicitation must be directed to:

Beverly Pasley
NYS Department of Health
Office of Managed Care
Room 1864 Corning Tower Building
Empire State Plaza
Albany, New York 12237-0094

Questions and answers, as well as any RFP updates and/or modifications, will be posted on the Department of Health's website at <http://www.nyhealth.gov/funding/>. Bidders wishing to receive these documents via mail must send a request, in writing, to the Department at the address above.

3. Bidders' Conference

A bidders' conference will be held for prospective bidders from 1:00pm – 3:00pm on **August 16, 2006** in Meeting Room 7, Empire State Plaza, Albany, New York. The purpose of the conference is to provide information concerning the Department's requirements, which may be helpful in the preparation of proposals, and to answer questions regarding this solicitation. Attendance at the conference is not required and will not be considered a factor in evaluating the proposals. A summary of the conference will automatically be provided to all organizations registered at the bidders' conference or that submit a Notice of Intent to Develop a Proposal in Response to this RFP. Minutes of the Bidders' Conference will be posted on the DOH website along with the Questions and Answers.

4. Submission of Proposals

Interested vendors should submit their Bid Proposal no later than 4:00 pm EST on **September 27, 2006**.

Bid Proposals shall be prepared in two (2) components: a Technical Proposal and a Cost Proposal, prepared in accordance with the requirements stated in this RFP. One (1) original and five (5) copies of the Technical Proposal must be submitted under sealed cover, and one original and five (5) copies of the Cost Proposal must be submitted under separate sealed cover. One (1) copy each of the Technical and Cost proposals must be unbound. One copy of the Technical and Cost Proposal must also be submitted on CD ROM in a Microsoft Office or Adobe Acrobat (PDF) format.

The outside cover of the separate, sealed package containing the Technical Proposal shall be clearly marked by Proposal type (Technical or Cost Proposal); followed by Bidder's Name.

Example: New York State Department of Health
Medicaid Managed Care External Quality Review –
Technical Proposal
(Bidder's Name)

The outside cover of the separate, sealed package containing the Cost Proposal shall be clearly marked with the proposal Activity (Medicaid Managed Care External Quality Review) and Proposal type (Cost Proposal); followed by Bidder's Name.

Example: New York State Department of Health
Medicaid Managed Care External Quality Review -
Cost Proposal
(Bidder's Name)

Responses to this solicitation should be directed to:

New York State Department of Health
Attention: Beverly Pasley
Office of Managed Care
Room 1864 Corning Tower Building
Empire State Plaza
Albany, NY 12237-0094

It is the bidders' responsibility to see that bids are delivered to Room 1864 by the due date. Late bids due to delay by the carrier or not received in the Department's mail room in time for transmission to room 1864 will not be

considered.

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

5. THE DEPARTMENT OF HEALTH RESERVES THE RIGHT TO:

- a. Reject any or all proposals received in response to this RFP.
- b. Waive or modify minor irregularities in proposals received after prior notification to the bidder.
- c. Adjust or correct cost or cost figures with the concurrence of bidder if errors exist and can be documented to the satisfaction of DOH and the State Comptroller.
- d. Negotiate with vendors responding to this RFP within the requirements to serve the best interests of the State.
- e. Modify the detailed specifications should no bids be received that meet all these requirements.
- f. If the Department of Health is unsuccessful in negotiating a contract with the selected vendor within an acceptable time frame, the Department of Health may begin contract negotiations with the next qualified vendor(s) in order to serve and realize the best interests of the State.

6. Payment

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

Office of Managed Care
 NYS Department of Health
 Room 1864 Corning Tower Building
 Empire State Plaza
 Albany, NY 12237-0093

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

7. Term of Contract

This agreement shall be effective upon approval of the NYS Office of the State Comptroller for the anticipated period of **April 1, 2007 to March 31, 2012**.

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.

8. 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.

9. Vendor Responsibility Questionnaire

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

Attachment 5 contains the "Vendor Responsibility Questionnaire" that all bidders must complete and submit with their proposal.

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

- a. Proof of financial stability in the form of audited financial statements, Dunn & Bradstreet Reports, etc.
- b. Department of State Registration.
- c. Certificate of Incorporation, together with any and all amendments thereto; Partnership Agreement; or other relevant business organizational documents, as applicable.
- d. N.Y.S. Dept of Taxation and Finance's Contractor Certification
- e. Form ST-220.

10. Lobbying Statute

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

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

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

- a. makes the lobbying law applicable to attempts to influence procurement contracts once the procurement process has been commenced by a state agency, unified court system, state legislature, public authority, certain industrial development agencies and local benefit corporations;
- b. requires the above mentioned governmental entities to record all contacts made by lobbyists and contractors about a governmental procurement so that the public knows who is contacting governmental entities about procurements;
- c. requires governmental entities to designate persons who generally may be the only staff contacted relative to the governmental procurement by that entity in a restricted period;
- d. authorizes the Temporary State Commission on Lobbying to impose fines and penalties against persons/organizations engaging in impermissible contacts about a governmental procurement and provides for the debarment of repeat violators;
- e. directs the Office of General Services to disclose and maintain a list of non-responsible bidders pursuant to this new law and those who have been debarred and publish such list on its website;
- f. requires the timely disclosure of accurate and complete information from offerers with respect to determinations of non-responsibility and debarment;

- g. expands the definition of lobbying to include attempts to influence gubernatorial or local Executive Orders, Tribal–State Agreements, and procurement contracts;
- h. modifies the governance of the Temporary State Commission on lobbying;
- i. provides that opinions of the Commission shall be binding only on the person to whom such opinion is rendered;
- j. increases the monetary threshold which triggers a lobbyist's obligations under the Lobbying Act from \$2,000 to \$5,000; and
- k. establishes the Advisory Council on Procurement Lobbying.

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

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

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

12. Appendices

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

- APPENDIX A - Standard Clauses for All New York State Contracts
- APPENDIX B - Request for Proposal
- APPENDIX C - Proposal
 - The bidder's proposal (if selected for award), including the Bid Form and all proposal requirements.
- APPENDIX D - General Specifications
- APPENDIX E
 - Unless the CONTRACTOR is a political sub-division of New York State, the CONTRACTOR shall provide proof, completed by the CONTRACTOR's insurance carrier and/or the Workers' Compensation Board, of coverage for:
 - Workers' Compensation, for which one of the following is incorporated into this contract as **Appendix E-1**:
 - **WC/DB-100**, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
 - **WC/DB-101**, Affidavit That An OUT-OF-STATE Or FOREIGN EMPLOYER Working In New York State Does Not Require Specific New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage; OR
 - **C-105.2** – Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the **U-26.3**; OR
 - **SI-12** – Certificate of Workers' Compensation Self-Insurance, OR **GSI-105.2** – Certificate of Participation in Workers' Compensation Group Self-Insurance.

- Disability Benefits coverage, for which one of the following is incorporated into this contract as **Appendix E-2**:
 - **WC/DB-100**, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
 - **WC/DB-101**, Affidavit That An OUT-OF-STATE Or FOREIGN EMPLOYER Working In New York State Does Not Require Specific New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage; OR
 - **DB-120.1** – Certificate of Disability Benefits Insurance OR the **DB-820/829** Certificate/Cancellation of Insurance; OR
 - **DB-155** – Certificate of Disability Benefits Self-Insurance
- APPENDIX H – Business Agreement/Health Insurance Portability and Accountability Act (HIPAA)
- APPENDIX I – Medicaid Confidential Data/Protected Health Information Privacy Language

ATTACHMENTS

1. Appendix A: Standard State Contract Clauses
2. Appendix D: General Specifications
3. Appendix H: HIPAA Business Agreement – Confidentiality Agreement
4. Appendix I: Medicaid Confidential Data/Protected Health Information Privacy Language
5. Responsibility Questionnaire
6. Bid Form
7. Technical Proposal – Position Description Form
8. Budget/Cost Submission Forms
9. Proposal Checklist

ATTACHMENT 1
Appendix A - STANDARD CLAUSES FOR NYS
CONTRACTS

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$15,000 (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 \$30,000 (State Finance Law Section 163.6.a).

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

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or bidder for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance

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

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

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

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise

found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor

within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification

number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

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

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized

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

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

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

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

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

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

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of

process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

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

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

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

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

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic
Development
Division for Small Business
30 South Pearl St - 7th Floor
Albany, New York 12245
Telephone: 518-292-5220

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

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

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

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

ATTACHMENT 2
APPENDIX D
GENERAL SPECIFICATIONS

- A. By signing the "Bid Form" each bidder attests to its express authority to sign on behalf of this company or other entity and acknowledges and accepts that:
- All specifications, general and specific appendices, including Appendix-A, the Standard Clauses for all New York State contracts, and all schedules and forms contained herein will become part of any contract entered, resulting from the Request for Proposal. Anything which is not expressly set forth in the specification, appendices and forms and resultant contract, but which is reasonable to be implied, shall be furnished and provided in the same manner as if specifically expressed.
- B. The work shall be commenced and shall be actually undertaken within such time as the Department of Health may direct by notice, whether by mail, telegram, or other writing, whereupon the undersigned will give continuous attention to the work as directed, to the end and with the intent that the work shall be completed within such reasonable time or times, as the case may be, as the Department may prescribe.
- C. The Department reserves the right to stop the work covered by this proposal and the contract at any time that the Department deems the successful bidder to be unable or incapable of performing the work to the satisfaction of the Department and in the event of such cessation of work, the Department shall have the right to arrange for the completion of the work in such manner as the Department may deem advisable and if the cost thereof exceeds the amount of the bid, the successful bidder and its surety be liable to the State of New York for any excess cost on account thereof.
- D. Each bidder is under an affirmative duty to be informed by personal examination of the specifications and location of the proposed work and by such other means as it may select, of character, quality, and extent of work to be performed and the conditions under which the contract is to be executed.
- E. The Department of Health will make no allowances or concession to a bidder for any alleged misunderstanding or deception because of quantity, quality, character, location or other conditions.
- F. The bid price is to cover the cost of furnishing all of the said services, materials, equipment, and labor to the satisfaction of the Department of Health and the performance of all work set forth in said specifications.

- G. The successful bidder will be required to complete the entire work, or any part thereof as the case may be, to the satisfaction of the Department of Health in strict accordance with the specifications and pursuant to a contract therefore.
- H. Contractor will possess, at no cost to the State, all qualifications, licenses and permits to engage in the required business as may be required within the jurisdiction where the work specified is to be performed. Workers to be employed in the performance of this contract will possess the qualifications, training, licenses and permits as may be required within such jurisdiction.
- I. **Non-Collusive Bidding**
By submission of this proposal, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:
- a. The prices of this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
 - b. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly to any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
 - c. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

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

A bid shall not be considered for award nor shall any award be made where (a), (b) and (c) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall

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

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

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

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

acquisitions, systems modifications or upgrades, etc., that result in a technical method of achieving a practical purpose or in improvements of productivity. The purchase can be as simple as an order for new or replacement personal computers, or for a consultant to design a new system, or as complex as a major systems improvement or innovation that changes how an agency conducts its business practices.

2. If this RFP results in procurement of software over \$20,000, or of other technology over \$50,000, or where the department determines that the potential exists for coordinating purchases among State agencies and/or the purchase may be of interest to one or more other State agencies, PRIOR TO AWARD SELECTION, this RFP and all responses thereto are subject to review by the New York State Office for Technology.
3. Any contract entered into pursuant to an award of this RFP shall contain a provision which extends the terms and conditions of such contract to any other State agency in New York. Incorporation of this RFP into the resulting contract also incorporates this provision in the contract.
4. The responses to this RFP must include a solution to effectively handle the turn of the century issues related to the change from the year 1999 to 2000.

N. YEAR 2000 WARRANTY

1. Definitions

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

- a. Product shall include, without limitation: any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition function, calculation, comparing or sequencing. Where services are being furnished, e.g. consulting, systems integration, code or data conversion or data entry, the term Product shall include resulting deliverables.
- b. Vendor's Product shall include all Product delivered under this Agreement by Vendor other than Third Party Product.
- c. Third Party Product shall include products manufactured or developed by a corporate entity independent from Vendor and provided by Vendor on a non-exclusive licensing or other distribution Agreement with the third party

manufacturer. Third Party Product does not include product where Vendor is: a) corporate subsidiary or affiliate of the third party manufacturer/developer; and/or b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.

2. Warranty Disclosure

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

- a. For Vendor Product and for Products (including, but not limited to, Vendor and/or Third Party Products and/or Authorized User's Installed Product) which have been specified to perform as a system: Compliance or non-compliance of the Products individually or as a system with the Warranty Statement set forth below; and
- b. For Third Party Product Not Specified as Part of a System: Third Party Manufacturer's statement of compliance or non-compliance of any Third Party Product being delivered with Third Party Manufacturer/Developer's Year 2000 warranty. If such Third Party Product is represented by Third Party Manufacturer/Developer as compliant with Third Party Manufacturer/Developer's Year 2000 Warranty, Vendor shall pass through said third party warranty from the third party manufacturer to the Authorized User but shall not be liable for the testing or verification of Third Party's compliance statement.

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

3. Warranty Statement

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

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

system.

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

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

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

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

This agreement may be amended by written agreement signed by the parties and subject to the laws and regulations of the State pertaining to contract amendments. This agreement may not be amended orally.

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

T. Provisions Upon Default

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

U. Termination Provision

Upon termination of this agreement, the following shall occur:

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

V. Conflicts

If, in the opinion of the Department of Health, (1) the specifications conflict, or (2) if the specifications are not clear as to (a) the method of performing any part of the

work, or as to (b) the types of materials or equipment necessary, or as to (c) the work required to be done in every such situation, the Contractor shall be deemed to have based his bid upon performing the work and furnishing materials or equipment in the most inexpensive and efficient manner. If such conflicts and/or ambiguities arise, the Department of Health will furnish the Contractor supplementary information showing the manner in which the work is to be performed and the type or types of material or equipment that shall be used.

W. **MINORITY AND WOMEN OWNED BUSINESS POLICY STATEMENT**

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

It is the intention of the New York State Department of Health to fully execute the mandate of Executive Law, Article 15-A and provide Minority and Women Owned Business Enterprises with equal opportunity to bid on contracts awarded by this agency in accordance with the State Finance Law.

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

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

X. **Contract Insurance Requirements**

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

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

- a. A policy covering the obligations of the successful bidder in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Workers' Compensation Law, and the contract shall be void and of no effect unless the successful bidder procures such policy and maintains it until acceptance of the work (reference Appendix E).
- b. Policies of Bodily Injury Liability and Property Damage Liability Insurance of the types hereinafter specified, each within limits of not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one person in any one occurrence, and subject to that limit for that person, not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by two or more persons in any one occurrence, and not less than \$500,000 for damages arising out of damage to or destruction of property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.
 - i. Contractor's Liability Insurance issued to and covering the liability of the successful bidder with respect to all work performed by it under this proposal and the contract.
 - ii. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.
 - iii. Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.

Y. Certification Regarding Debarment and Suspension

Regulations of the Department of Health and Human Services, located at Part 76 of Title 45 of the Code of Federal Regulations (CFR), implement Executive Orders 12549 and 12689 concerning debarment and suspension of participants in federal programs and activities. Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a government-wide system for 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 which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- d. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered Transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of parties Excluded from Federal Procurement and 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.

Z. Confidentiality Clauses

1. Any materials, articles, papers, etc., developed by the CONTRACTOR under or in the course of performing this AGREEMENT shall contain the following, or similar acknowledgment: "Funded by the New York State Department of Health". Any such materials must be reviewed and approved by the STATE for conformity with the policies and guidelines for the New York State Department of Health prior to dissemination and/or publication. It is agreed that such review will be conducted in an expeditious manner. Should the review result in any unresolved disagreements regarding content, the CONTRACTOR shall be free to publish in scholarly journals along with a disclaimer that the views within the Article or the policies reflected are not necessarily those of the New York State Department of Health. The Department reserves the right to disallow funding for any educational materials not approved through its review process.

2. Any publishable or otherwise reproducible material developed under or in the course of performing this AGREEMENT, dealing with any aspect of performance under this AGREEMENT, or of the results and accomplishments attained in such performance, shall be the sole and exclusive property of the STATE, and shall not be published or otherwise disseminated by the CONTRACTOR to any other party unless prior written approval is secured from the STATE or under circumstances as indicated in paragraph 1 above. Any and all net proceeds obtained by the CONTRACTOR resulting from any such publication shall belong to and be paid over to the STATE. The STATE shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any such material for governmental purposes.
3. No report, document or other data produced in whole or in part with the funds provided under this AGREEMENT may be copyrighted by the CONTRACTOR or any of its employees, nor shall any notice of copyright be registered by the CONTRACTOR or any of its employees in connection with any report, document or other data developed pursuant to this AGREEMENT.
4. All reports, data sheets, documents, etc. generated under this contract shall be the sole and exclusive property of the Department of Health. Upon completion or termination of this AGREEMENT the CONTRACTOR shall deliver to the Department of Health upon its demand all copies of materials relating to or pertaining to this AGREEMENT. The CONTRACTOR shall have no right to disclose or use any of such material and documentation for any purpose whatsoever, without the prior written approval of the Department of Health or its authorized agents.
5. The CONTRACTOR, its officers, agents and employees and subcontractors shall treat all information, which is obtained by it through its performance under this AGREEMENT, as confidential information to the extent required by the laws and regulations of the United States and laws and regulations of the State of New York.
6. All subcontracts shall contain provisions specifying:
 - a. that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT, and
 - b. that the subcontractor specifically agrees to be bound by the

confidentiality provisions set forth in the AGREEMENT between the STATE and the CONTRACTOR.

AA. Provisions Related to New York State Executive Order Number 127

1. The CONTRACTOR certifies that all information provided to the STATE with respect to New York State Executive Order Number 127, signed by Governor Pataki on June 16, 2003, is complete, true, and accurate.
2. 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 Executive Order Number 127, 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 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.

ATTACHMENT 3

Appendix H

Federal Health Insurance Portability and Accountability Act ("HIPAA") Business Associate Agreement ("Agreement") Governing Privacy and Security

I. Definitions:

- (a) Business Associate shall mean the 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") and its implementing regulations, including those at 45 CFR Parts 160 and 164.

II. Obligations and Activities of the Business Associate:

- (a) The Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as required by law.
- (b) The Business Associate agrees to use the appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement and to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any electronic Protected Health Information that it creates receives, maintains or transmits on behalf of the Covered Entity pursuant to this Agreement.
- (c) The Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of Protected Health Information by the Business Associate in violation of the requirements of this Agreement.
- (d) The Business Associate agrees to report to the Covered Program, any use or disclosure of the Protected Health Information not provided for by this Agreement, as soon as reasonably practicable of which it becomes aware. The Business Associate also agrees to report to the Covered Entity any

security incident of which it becomes aware.

- (e) The Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by the Business Associate on behalf of the Covered Program agrees to the same restrictions and conditions that apply through this Agreement to the Business Associate with respect to such information.
- (f) The Business Associate agrees to provide access, at the request of the Covered Program, and in the time and manner designated by the Covered Program, to Protected Health Information in a Designated Record Set, to the Covered Program or, as directed by the Covered Program, to an Individual in order to meet the requirements under 45 CFR 164.524, if the business associate has protected health information in a designated record set.
- (g) The Business Associate agrees to make any amendment(s) to Protected Health Information in a designated record set that the Covered Program directs or agrees to pursuant to 45 CFR 164.526 at the request of the Covered Program or an Individual, and in the time and manner designated by Covered Program, if the business associate has protected health information in a designated record set.
- (h) The Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by the Business Associate on behalf of, the Covered Program available to the Covered Program, or to the Secretary of Health and Human Services, in a time and manner designated by the Covered Program or the Secretary, for purposes of the Secretary determining the Covered Program's compliance with the Privacy Rule.
- (i) The 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.
- (j) The Business Associate agrees to provide to the Covered Program or an Individual, in time and manner designated by Covered Program, information collected in accordance with this Agreement, to permit 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.

III. Permitted Uses and Disclosures by Business Associate

(a) General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, the Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the Covered Program as specified in the Agreement to which this is an addendum, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Program.

(b) Specific Use and Disclosure Provisions:

- (1) Except as otherwise limited in this Agreement, the Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (2) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the business associate or to carry out its legal responsibilities and to provide Data Aggregation services to Covered Program as permitted by 45 CFR 164.504(e)(2)(i)(B). Data Aggregation includes the combining of protected information created or received by a business associate through its activities under this contract with other information gained from other sources.
- (3) The Business Associate may use Protected Health Information to report violations of law to appropriate federal and State authorities, consistent with 45 CFR '164.502(j)(1).

IV. Obligations of Covered Program

Provisions for the Covered Program To Inform the Business Associate of Privacy Practices and Restrictions

- (a) The Covered Program shall notify the Business Associate of any limitation(s) in its notice of privacy practices of the Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect the Business Associate's use or disclosure of Protected Health Information.
- (b) The Covered Program shall notify the Business Associate of any changes in, or revocation of, permission by the Individual to use or disclose Protected Health Information, to the extent that such changes may affect the Business Associate's use or disclosure of Protected Health Information.
- (c) The Covered Program shall notify the Business Associate of any restriction to the use or disclosure of Protected Health Information that the Covered Program has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of Protected Health Information.

V. Permissible Requests by Covered Program

The Covered Program shall not request the Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Program, except if the Business Associate will use or disclose protected health information for, and the contract includes provisions for, data aggregation or management and administrative activities of Business Associate.

VI. Term and Termination

- (a) *Term.* The Term of this Agreement shall be effective during the dates noted on page one 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, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in The Agreement.
- (b) *Termination for Cause.* Upon the Covered Program's knowledge of a material breach by Business Associate, Covered Program may provide an opportunity for the Business Associate to cure the breach and end the violation or may terminate this Agreement and the master Agreement if the Business Associate does not cure the breach and end the violation within the time specified by Covered Program, or the Covered Program may immediately terminate this

Agreement and the master Agreement if the Business Associate has breached a material term of this Agreement and cure is not possible.

(c) *Effect of Termination.*

- (1) Except as provided in paragraph (c)(2) below, upon termination of this Agreement, for any reason, the Business Associate shall return or destroy all Protected Health Information received from the Covered Program, or created or received by the Business Associate on behalf of the Covered Program. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of the Business Associate. The Business Associate shall retain no copies of the Protected Health Information.
- (2) In the event that the Business Associate determines that returning or destroying the Protected Health Information is infeasible, the Business Associate shall provide to the Covered Program notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, the 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.

VII. Violations

- (a) It is further agreed that any violation of this agreement may cause irreparable harm to the State, therefore the State may seek any other remedy, including an injunction or specific performance for such harm, without bond, security or necessity of demonstrating actual damages.
- (b) The business associate shall indemnify and hold the State harmless against all claims and costs resulting from acts/omissions of the business associate in connection with the business associate's obligations under this agreement.

Miscellaneous

- (a) *Regulatory References.* A reference in this Agreement to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.

- (b) *Amendment.* The Parties 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 the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- (c) *Survival.* The respective rights and obligations of the Business Associate under Section VI 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 the Covered Program to comply with the HIPAA Privacy Rule.
- (e) If anything in this agreement conflicts with a provision of any other agreement on this matter, this agreement is controlling.
- (f) HIV/AIDS. If HIV/AIDS information is to be disclosed under this agreement, the business associate acknowledges that it has been informed of the confidentiality requirements of Public Health Law Article 27-F.

(HIPAA Appendix H) 6/05

ATTACHMENT 4

Appendix I: Medicaid Confidential Data/Protected Health Information Privacy Language

Medicaid Confidential Data includes, but is not limited to, names and addresses of Medicaid bidders/recipients, the medical services provided, social and economic conditions or circumstances, the Department's evaluation of personal information, medical data, including diagnosis and past history of disease and disability, any information regarding income eligibility-and amount of medical assistance payment, income information, and/or information regarding the identification of third parties, . Income information received from SSA or the Internal Revenue Service must be safeguarded according to the requirements of the agency that furnished the data. Also any information received in connection with the identification of legally liable third party resources under 433.138 of this chapter. Each element of Medicaid confidential data is confidential regardless of the document or mode of communication or storage in which it is found.

Note that this contract involves the Medicaid Confidential Data (MCD) of recipients and possibly bidders, both of which are confidential pursuant to Section 367b(4) of the N.Y. Social Services Law, 42 U.S.C. Section 1396(a)(7), Section 1902(a)(7) of the Social Security Act and 42 C.F.R. Section 431.300 et seq.

NO DISCLOSURE OF MCD IN YOUR POSSESSION CAN BE MADE TO ANY OTHER PERSON OR ENTITY WITHOUT THE PRIOR WRITTEN PERMISSION OF THE NEW YORK STATE DEPARTMENT OF HEALTH (NYSDOH), MEDICAID CONFIDENTIAL DATA REVIEW COMMITTEE (MCDRC). LIKEWISE, NO USE(S), OTHER THAN THE USE(S) OF MCD APPROVED IN THIS DATA EXCHANGE APPLICATION AND AGREEMENT, CAN BE MADE OF THE MCD WITHOUT THE PRIOR WRITTEN APPROVAL OF NYSDOH, MCDRC.

Also, pursuant to Section 367b(4) of the NY Social Services Law, information relating to persons APPLYING FOR medical assistance shall also be considered confidential and shall not be disclosed to persons or agencies without the prior written approval of the New York State Department of Health.

AIDS/HIV Related Confidentiality Restrictions:

Also note that Medicaid Confidential Data (MCD) may contain HIV related confidential information, as defined in Section 2780(7) of the N.Y. Pub. Health Law. As required by N.Y. Pub. Health Law Section 2782(5). The New York Department of

Health hereby provides you with the following notice:

HIV/AIDS NOTICE

This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is NOT sufficient authorization for further disclosure.

The contractor agrees that any further disclosure of MCD requires the prior, written approval of the New York State Department of Health (NYSDOH), Medicaid Confidential Data Review Committee (MCDRC). The Contractor will require and ensure that any approved agreement, contract or document with a subcontractor contains the above Notice and a statement that the subcontractor or other party may not disclose the MCD without the prior, written approval of the NYSDOH MCDRC.

Alcohol and Substance Abuse Related Confidentiality Restrictions

Alcohol and substance abuse information is confidential pursuant to 42 C.F.R. Part 2. General authorizations are ineffective to obtain the release of such data. The federal regulations provide for a specific release for such data.

ANY AGREEMENT, CONTRACT OR DOCUMENT WITH A SUBCONTRACTOR MUST CONTAIN ALL OF THE ABOVE PROVISIONS PERTAINING TO CONFIDENTIALITY. IT MUST CONTAIN THE HIV/AIDS NOTICE AS WELL AS A STATEMENT THAT THE SUBCONTRACTOR MAY NOT USE OR DISCLOSE THE MCD WITHOUT THE PRIOR WRITTEN APPROVAL OF THE NYSDOH, MCDRC.

Bidder/Contractor

Signature.....Date...../...../.....
Name Printed.....
Company.....

Second Bidder/Contractor

Signature.....Date...../...../.....
Name Printed.....
Company.....

ATTACHMENT 5

OFFICE OF THE STATE CONTROLLER - BUREAU OF CONTRACTS VENDOR RESPONSIBILITY PROFILE

Part I - Complete for all contract transactions

1. Agency Code:		2. Agency Name:	
3. Batch No:		4. Contract No. or Purchase Order No.:	
5. Vendor Name:			
<input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor			
6. Vendor Federal Employer Identification Number:		7. Contract Amount:	\$
8. Description of Contract:			

9. Responsibility Determination - The contracting agency has reviewed the proposed contractor and made the following determination regarding the proposed contractor's responsibility:

Responsible

The proposed contractor meets the appropriate standards.

Responsibility issues identified have been addressed by remedial actions of the vendor to the satisfaction of the contracting agency. [1]

Responsibility issues identified have been addressed by a formal agreement with the vendor, which include measurable actions and standards satisfactory to the agency. [1]

Non-Responsible - The proposed contractor initially selected was found non-responsible. [1]

[1] Attach and list in item 14 below additional documentation, if needed.

OFFICE OF THE STATE CONTROLLER - BUREAU OF CONTRACTS

VENDOR RESPONSIBILITY PROFILE

Part II. Complete for contract transactions exceeding \$100,000

10. Did the contracting agency require vendor disclosure in each of the following areas?

Legal Authority Yes

Integrity Yes

Financial & Organizational Capacity Yes

Performance Yes

11. What methods were used to obtain these disclosures and any other information used in making the responsibility determination?

OSC Questionnaire

Procurement Council Questionnaire

Solicitation Document

Other (i.e., vendor disclosure, web site, other information source). Describe:

12. Describe the process used to determine vendor responsibility. Attach and list in item 14 below additional documentation, if needed.

OFFICE OF THE STATE CONTROLLER - BUREAU OF CONTRACTS

VENDOR RESPONSIBILITY PROFILE

Part III - Complete for all contract transactions

13. Identify any vendor responsibility issues found:

No issues known or found.

Issues found. Describe below the issue and related resolution. Attach and list in item 14 below additional documentation, if needed.

Issue #	Legal Authority	Integrity	Fin./Org. Capacity	Performance	Narrative Description	Resolution
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

14. Attachments

Completed Vendor Questionnaire (required if one was used in the procurement)

Other (list)

OFFICE OF THE STATE CONTROLLER - BUREAU OF CONTRACTS**VENDOR RESPONSIBILITY PROFILE**

AGENCY RESPONSIBILITY CERTIFICATION

New York State Department of Health has undertaken an affirmative review of the proposed contractor's responsibility in accordance with the standards outlined in Comptroller's Bulletin No. G-221, and based upon such review, has reasonable assurance that the proposed contractor is responsible or non-responsible as indicated in question 9 above.

Signed

Authorized Agency
Officer:
Direct Phone
Number:
Date:

Title:
Email
Address:

ATTACHMENT 6

NEW YORK STATE DEPARTMENT OF HEALTH

BID FORM

PROCUREMENT TITLE: _____ FAU # _____

Bidder Name:

Bidder Address:

Bidder Fed ID No:

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

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

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

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

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

No

Yes

If yes, please answer the next questions:

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

No

Yes

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

No Yes

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

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility:

(Add additional pages as necessary)

1d. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No Yes

1e. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding:

(Add additional pages as necessary)

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

D. Disclosure of Prior Non-Responsibility Determinations under Executive Order Number 127:

ATTACHMENT 7

ORGANIZATION:
CONTRACT PERIOD:

**TECHNICAL PROPOSAL
POSITION DESCRIPTION FORM**

Instructions: For all funded positions, include a brief paragraph summarizing the duties/responsibilities the individual is performing directly related to this contract. Attach additional sheets as necessary.

ATTACHMENT 8

ORGANIZATION:
CONTRACT PERIOD:

MANAGED CARE REVIEWS

BUDGET/COST PROPOSAL

Instructions: For each project area to be conducted as part of the contract, list all proposed deliverables and provide an estimated deliverable cost.

NA – Not applicable in that year

Project	List of Tasks/Deliverables	Cost Year 1	Cost Year 2
3.2 Data Validation and Assessment:			
a. Quality Measurement		\$	\$
b. Medicaid Encounter Data System (MEDS)		\$	NA
c. Provider Network		NA	\$
3.3 Quality Improvement:			
a. Focused clinical study		\$	\$
b. Validation of Medicaid plans' Performance Improvement Projects		\$	\$
c. Enrollee survey (CAHPS)		NA	\$
d. Enrollee survey (non-CAHPS)		\$	NA
e. Analysis and evaluation of plan performance quality data		\$	\$
f. Collaborative quality improvement initiatives		\$	\$
g. Quality improvement training and conference		\$	\$
h. Individual case review and ad hoc clinical consultation		\$	\$

Project	List of Tasks/Deliverables	Cost Year 1	Cost Year 2
3.4 Access and Availability:			
Access and Availability survey		\$	\$
3.5 Managed Long Term Care:			
a. Encounter data validation		NA	\$
b. Focused clinical study		\$	\$
c. Validation of plans' Performance Improvement Projects		\$	\$
d. Outcomes measurement		\$	\$
Total Projected Cost:		\$	\$

ATTACHMENT 9
PROPOSAL CHECKLIST

The following items should be included in the Part B proposal mailing:

Technical Proposal:

- ~ Transmittal letter
- ~ Technical Proposal Narrative
- ~ Technical Proposal - Position Description Form
- ~ Vendor Responsibility Questionnaire

Cost Proposal:

- ~ Bid Form
- ~ Budget/Cost Proposal Form
- ~ Proof of federal designation as a Quality Improvement Organization or equivalent for FFP purposes
- ~ Proof of incorporation and financial viability